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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

July 29, 2009

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: Mont Belvieu Caverns, L.L.C.
TCEQ Docket No. 2009-0930-MIS-U; Use Determination No. 12969
Executive Director's Response to Mont Belvieu Caverns, L.L.C.'s Appeal of the
Executive Director's Negative Use Determination Issued for Mont Belvieu North Storage

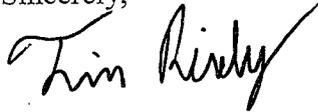
Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the "*Executive Director's Response to Mont Belvieu Caverns, L.L.C.'s Appeal of the Executive Director's Negative Use Determination Issued for Mont Belvieu North Storage.*" I have also attached the following exhibits to assist the Commission in the resolution of this matter:

- Exhibit 1 TCEQ, Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, January 2008.
- Exhibit 2 TCEQ, Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, December 2006.
- Exhibit 3 Railroad Commission of Texas, Pit Permit No. P011287
- Exhibit 4 TCEQ, Commission Order Concerning the Appeal Filed by Mont Belvieu Caverns, L.L.C. with regard to the Executive Director's Negative Use Determination for Application No. 07-11881; TCEQ Docket No. 2008-0940-MIS-U
- Exhibit 5 Use Determination Application No. 07-11881
- Exhibit 6 Excerpt from Transcription of Commission's Consideration of the Appeal Filed by Mont Belvieu Caverns, LLC, Item 73, TCEQ Docket No. 2008-0940-MIS-U (December 10, 2008)

Please file stamp these documents and return one complete set to Timothy J. Reidy, Staff Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-0969.

Sincerely,

A handwritten signature in black ink that reads "Tim Reidy". The signature is written in a cursive style with a large, sweeping initial "T" and a long, horizontal flourish at the end.

Timothy J. Reidy, Staff Attorney
Environmental Law Division

**TCEQ DOCKET NO. 2009-0930-MIS-U
USE DETERMINATION NO. 12969**

APPEAL OF THE EXECUTIVE	§	BEFORE THE
DIRECTOR'S NEGATIVE USE	§	
DETERMINATION ISSUED TO	§	TEXAS COMMISSION ON
MONT BELVIEU CAVERNS, L.L.C.	§	
APPLICATION NO. 12969	§	ENVIRONMENTAL QUALITY

**EXECUTIVE DIRECTOR'S RESPONSE TO MONT BELVIEU CAVERNS,
L.L.C.'S APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE
DETERMINATION ISSUED FOR MONT BELVIEU NORTH STORAGE**

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to the appeal of the Executive Director's negative use determination issued to Mont Belvieu Caverns, L.L.C. for its Mont Belvieu North Storage Facility. The appeal was submitted by Jay M. Chadha, of Fulbright & Jaworski, L.L.P, on behalf of Mont Belvieu Caverns, L.L.C.

For the reasons described below, the Executive Director respectfully requests that the Commission deny the appeal and affirm the Executive Director's Tier I negative use determination for (1) the brine transfer pumps, (2) fire and safety equipment, (3) brine pond piping, (4) the electrical substation, (5) the instrumentation and monitoring equipment that is not part of the leak detection and collection system, (6) water supply and treating equipment, (7) the brine pond construction, (8) associated land and pipeline right of way, (9) the earthwork and site grading, and (10) the soft costs (permits, legal, travel, inspection, etc).

PROGRAM BACKGROUND

This appeal of the Executive Director's negative use determination is 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) and 30 TEX. ADMIN. CODE § 17.25. 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 pollution control use determinations. *See* TEX. TAX CODE § 11.31(g).

Appeals under Section 17.25 of the Commission rules 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). The Appellant is required to explain the basis for the appeal. 30 TEX. ADMIN. CODE § 17.25(b)(5). Under Section 11.31(i) of the Tax Code, “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

On February 2, 2009, Mont Belvieu Caverns, L.L.C. (Mont Belvieu or Appellant) filed a Tier I application with the Executive Director seeking a positive use determination for “construction of [a] brine disposal pond.”¹ On February 9, 2009, the application was declared administratively complete. On February 27, 2009, Executive Director staff issued a Notice of Deficiency (NOD).² The NOD stated that the pond at issue was a brine storage pond rather than a brine disposal pond; and as such, was not eligible for a positive use determination. The NOD also stated that certain items described in the application may be eligible for a positive use determination. Executive Director staff requested that the Appellant: 1.) individually list the items which may be eligible for a positive use determination, 2.) provide the items’ corresponding Equipment and Categories List (ECL) number and dollar value, 3.) provide additional information about the sump pit, and 4.) provide additional information about any secondary leak containment. On March 26, 2009, the Appellant responded to the NOD by listing the following items: 1.) a High Density Polyethylene (HDPE) liner, 2.) brine vertical and transfer pumps, 3.) fire and safety equipment, 4.) brine pond piping, 5.) an electric substation, 6.) instrumentation and monitoring equipment, 7.) water supply and treating equipment, 8.) brine pond construction, 9.) land and pipeline right of way, 10.) earthwork and site grading, and 11.) soft costs (permits, legal, travel, inspection, etc.).³ On May 22, 2009, the application was declared technically complete, and the Executive Director issued a 100% positive use determination for: 1.) the HDPE double liner, 2.) the leak detection and collection system, including the associated instrumentation and monitoring system, and 3.) the 35 ft. x 70 ft. concrete containment sump.⁴ The Executive Director

¹ Use Determination Application No. 12969, p. 5

² *See* Notice of Deficiency (NOD), dated February 27, 2009.

³ *See* Appellant’s Response to NOD, dated March 26, 2009.

⁴ Use Determination No. 12969.

issued a negative determination for the remaining equipment; specifically the: 1.) brine transfer pumps, 2.) fire and safety equipment, 3.) brine pond piping, 4.) electrical substation, 5.) instrumentation and monitoring equipment that is not part of the leak detection and collection system, 6.) water supply and treating equipment, 7.) brine pond construction, 8.) land and pipeline right of way, 9.) the earthwork and site grading, and 10.) the soft costs.⁵

APPELLANT'S CLAIM

The Appellant contends that the Executive Director has failed to "correctly interpret the regulations relating to the category S-20, as it pertains to the qualification of brine ponds for Tier 1 pollution control exemption"⁶ The Appellant further outlined its position as follows,

"We do not view the parenthetical "(Including Brine Disposal Ponds)" to limit this category to only disposal ponds. Rather, it merely includes brine disposal ponds in this category. Further, the description of the property in Equipment and Categories List number S-20, "excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.," is much broader to include other types of surface impoundments, other than brine disposal ponds. Further, Part A of the Equipment and Categories List of 30 T.A.C. § 17.14 is the former Predetermined Equipment List. Under the former rules, TCEQ granted positive use determination [sic] for brine ponds. We see no authority for the TCEQ's change in policy with respect to brine ponds."⁷

LEGAL ANALYSIS

1. THE EXECUTIVE DIRECTOR'S USE DETERMINATION SHOULD BE AFFIRMED BECAUSE BRINE STORAGE PONDS ARE NOT LISTED ON PART A OF THE EQUIPMENT AND CATEGORIES LIST (ECL).

Brine storage ponds are not listed on Part A of the ECL; and therefore, are not eligible for a Tier I positive use determination.⁸ Part A of the ECL contains a list of property that the Executive Director has determined is used either wholly or partly for pollution control purposes.⁹ The Executive Director has assigned each piece of equipment listed on Part A of the ECL a corresponding pollution control percentage based upon the standard use of the equipment. Applications requesting property listed on Part A of the ECL are processed as Tier I applications.

⁵ Id.

⁶ Appellant's Use Determination Appeal Letter, dated June 12, 2009.

⁷ Appellant's Response to NOD, dated March 26, 2009.

⁸ 30 TEX. ADMIN. CODE § 17.14(a).

⁹ Id.; Also see Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, p. 5 – 6, January 2008. (Attached as ED's Exhibit #1).

During the last revision of the ECL the listing for item number S-20 was specifically revised to exclude brine storage ponds. The legislature amended Section 11.31 of the TEXAS TAX CODE in May of 2007 by passing House Bill 3732.¹⁰ HB 3732 required the TCEQ to: 1.) adopt a nonexclusive list of pollution control property which included eighteen categories of property, 2.) review that nonexclusive list at least once every three years, and 3.) review applications which contain items listed on the nonexclusive list within 30 days of the receipt of all necessary information. In July of 2007, the Executive Director impaneled an advisory group for the purpose of evaluating: 1.) the items listed on the Predetermined Equipment List (PEL), the predecessor to the current ECL and 2.) the eighteen categories of property added by HB 3732.¹¹ The advisory group was composed of various property tax-related associations, consumer groups, industry, property tax consultants, and TCEQ technical staff.

At its July 6, 2007 meeting, the advisory group was presented with the then current PEL and the PEL with Executive Director staff's proposed changes.¹² One of the Executive Director staff's proposed changes to the PEL was to change the listing for item number S-20 from "Surface Impoundments and Ancillary Equipment (Including Brine Storage Ponds)" to "Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)."¹³ A portion of the meeting was spent going through the list item by item, and explaining the proposed changes.¹⁴ Comments and suggestions were solicited and received during the next two meetings, and the advisory group was adjourned. The TCEQ drafted proposed rules amending 30 TEX. ADMIN. CODE CHAPTER 17, incorporating the comments and suggestions received from the advisory committee and implementing HB 3732. The proposed rules were published in the October 5, 2007 issue of the *Texas Register*.¹⁵ The TCEQ solicited and received public comment, and amended its program rules on February 7, 2008.¹⁶

Brine storage ponds store brine that will be pumped into underground storage caverns to displace unrefined petroleum and natural gas. Underground storage caverns are used to store large quantities of unrefined petroleum and natural gas.¹⁷ Salt domes are used for

¹⁰ Tex. Tax Code § 11.31, as amended by Act of May 28, 2007, 80th Leg., R.S., ch. 1277, § 4, 2007 Tex. Gen. Laws 4261, 4264.

¹¹ See Marked Agenda: Predetermined Equipment List Advisory Group, July 6, 2007, available at http://www.tceq.state.tx.us/assistance/Prop2/advisory_group.html (last visited July 27, 2009).

¹² *Id.*

¹³ Compare Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, p. 40, January 2008 (Attached as **ED's Exhibit #1**), to Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, p. A-11, December 2006 (Attached as **ED's Exhibit #2**).

¹⁴ *Id.*

¹⁵ 32 Tex. Reg. 6979 (2007) (to be codified as an amendment to 30 TEX. ADMIN. CODE CHAPTER 17) (proposed October 5, 2007).

¹⁶ 32 Tex. Reg. 6979 (2007), adopted 33 Tex. Reg. 932 (2008) (codified as an amendment to 30 TEX. ADMIN. CODE CHAPTER 17).

¹⁷ Fact Sheet: Underground Storage Caverns, U. S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS), available at <http://primis.phmsa.dot.gov/comm/FactSheets/FSUndergroundStorage.htm?nocache=7523> (last visited July 27, 2009).

this purpose. To create an underground cavern in a salt dome, a hole is drilled from the surface down to the salt dome, and water is injected to dissolve the salt and create the storage space. The salt solution is pumped out and the cavern is then filled with crude oil or other petroleum-based substance.¹⁸ Stored product is extracted from salt caverns by pumping brine into the cavern. Because the brine is denser than the stored product, it forces the stored product out of the cavern. Because of density differences, the brine does not mix with the stored product.¹⁹ When brine is removed from the cavern, it is stored in brine storage ponds. The removal of brine storage ponds from item S-20 was in recognition of their use as production devices in oil and gas operations.

While brine storage ponds are not eligible for a Tier I positive use determination under the current rules, certain ancillary equipment that prevents the brine from polluting surface or subsurface water is eligible. On February 2, 2009, the Appellant filed a Tier I use determination application for the “construction of [a] brine disposal pond,” citing item number S-20 in Part A of the ECL.²⁰ In its March 26, 2009 response to the Executive Director’s NOD the Appellant listed the following items: 1.) a HDPE liner, citing S-7 and S-20, 2.) brine vertical and transfer pumps, citing S-4 and S-20, 3.) fire and safety equipment, citing S-9 and S-20, 4.) brine pond piping, citing S-4 and S-20, 5.) an electric substation, citing S-4 and S-20, 6.) instrumentation and monitoring equipment, citing S-4 and S-20, 7.) water supply and treating equipment, citing S-20, 8.) brine pond construction, citing S-6 and S-20, 9.) land and pipeline right of way, citing S-20, 10.) earthwork and site grading, citing S-20, and 11.) soft costs, citing S-20.²¹ After reviewing the application, the Executive Director has determined that, under the current rules, the following items qualified for a Tier I 100% positive use determination: 1.) the HDPE double liner, pursuant to S-7, 2.) the leak detection and collection system, including the associated instrumentation monitoring system, pursuant to S-9, and 3.) the 35 ft x 70 ft concrete containment sump, pursuant to S-6.²² The remaining items are not listed on Part A of the ECL, and are not eligible for a Tier I positive use determination. At a minimum, the Applicant should have submitted a Tier II or Tier III application for the remaining items.²³ As such, the Commission should deny the instant appeal.

2. THE EXECUTIVE DIRECTOR’S USE DETERMINATION SHOULD BE AFFIRMED BECAUSE BRINE STORAGE PONDS DO NOT PROVIDE AN ENVIRONMENTAL BENEFIT AT THE SITE.

¹⁸ Id.

¹⁹ Id.

²⁰ Use Determination Application No. 12969, p. 5.

²¹ Appellant’s Response to NOD, dated March 26, 2009.

²² Use Determination No. 12969.

²³ See Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, p. 5 – 7, January 2008 (Attached as **ED’s Exhibit #1**); Tier II is defined as an application for property that is used wholly for the control of air, water, and/or land pollution, but not on the Equipment and Categories List, located in 30 TEX. ADMIN. CODE § 17.14(a). See 30 TEX. ADMIN. CODE § 17.2(14); Tier III is defined as an application for property used partially for the control of air, water, and/or land pollution but that is not included on the Equipment and Categories List, located in 30 TEX. ADMIN. CODE § 17.14(a). See 30 TEX. ADMIN. CODE § 17.2(14).

The mere storage of brine does not provide an environmental benefit at the site. In order to be eligible for a positive use determination a piece of equipment must provide an environmental benefit at the site.²⁴ Brine is regulated as an oilfield fluid by the Texas Railroad Commission.²⁵ The mere storage of an oilfield fluid does not provide an environmental benefit at the site. However, items installed to control or prevent oilfield fluids from contaminating surface and subsurface water are eligible for a positive use determination. In this case, the Executive Director determined that the HDPE double liners, the leak detection and collection system, and the concrete containment sump provided the environmental benefit of preventing the intrusion of brine water into surface or subsurface water of the state; and thus, they received a positive use determination.²⁶

3. THE EXECUTIVE DIRECTOR'S USE DETERMINATION SHOULD BE AFFIRMED BECAUSE BRINE STORAGE PONDS ARE PRODUCTION PROPERTIES USED TO STORE BRINE UNTIL SUCH TIME AS IT IS USED TO DISPLACE HYDROCARBONS FROM UNDERGROUND STORAGE FACILITIES.

Brine storage ponds are permitted under 16 TEX. ADMIN. CODE § 3.8.²⁷ Section 3.8 of the Railroad Commission rules deals with water protection. Section 3.8(a)(2) defines "brine pit" as a "pit used for storage of brine which is used to displace hydrocarbons from an underground hydrocarbon storage facility." Section 3.8(b) prohibits any person conducting activities subject to regulation by the Railroad Commission from causing or allowing pollution of surface or subsurface water in the state. Section 3.8(d)(2) provides that "no person may maintain or use any pit for the storage of oil field fluids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit." Section 3.8(d)(6)(A) provides the following:

"Permits issued pursuant to this paragraph will contain conditions reasonably necessary to prevent the waste of oil, gas, or geothermal resources and pollution of surface and subsurface waters...Any permits issued pursuant to this paragraph may contain requirements concerning the design and construction of pits and disposal facilities, including requirements relating to pit construction materials, dike design, liner material, liner thickness, procedures for installing liners, schedules for inspecting and/or replacing liners, overflow warning devices, leak detection devices, and fences. However, a permit to maintain or use any lined brine mining pit or any lined pit for storage or disposal of oil field brines, geothermal resource waters, or other mineralized waters will contain requirements relating to liner material, liner thickness, procedures for installing liners, and schedules for inspecting and/or replacing liners."

²⁴ 30 TEX. ADMIN. CODE § 17.15(a).

²⁵ 16 TEX. ADMIN. CODE §§ 3.95(c), 3.8(a)(27) & (30)(iv).

²⁶ Use Determination No. 12969.

²⁷ 16 TEX. ADMIN. CODE §§ 3.95(c), 3.8(d)(2).

The permit issued by the Railroad Commission of Texas for the Appellant's North Storage Facility states: "Use of the pit is limited to storage of brine used to displace hydrocarbons from the Enterprise East underground storage facility. No other oil field fluids or oil and gas wastes may be stored or disposed of in the pit."²⁸ The permit also explicitly prohibits the discharge of any oil and gas wastes from the pit.²⁹

The provisions of the Appellant's permit indicate that sole function of the brine pond at the North Storage Facility is to store brine until such time as it is used to move unrefined petroleum and natural gas from underground storage caverns. Section 11.31(d) of the TEX. TAX CODE authorizes the Executive Director to determine whether a piece of equipment is used to wholly or partly to control air, water, or land pollution. The owner of a production property that does not control air, water, or land pollution is not entitled to receive a positive use determination. Brine storage ponds are production properties that are not eligible for a positive use determination. However, as previously mentioned, certain ancillary equipment associated with brine storage ponds that prevents the contamination of surface and subsurface water in the state is eligible for a positive use determination. The Appellant's permit contains multiple provisions relating to the installation and operation of the liner and leak detection system.³⁰ In this case, the Executive Director determined that the HDPE double liners, the leak detection and collection system, and the concrete containment sump were eligible for a Tier I 100% positive use determination.³¹

4. THE EXECUTIVE DIRECTOR'S USE DETERMINATION SHOULD BE AFFIRMED BECAUSE IT IS CONSISTENT WITH THE COMMISSION'S PRIOR DETERMINATION ON THIS EQUIPMENT.

The Commission has previously determined that, under the current rules, brine storage ponds are not eligible for a Tier I 100% positive use determination.³² The Commission considered the Appellant's appeal of the Executive Director's issuance of a negative use determination for application number 07-11881 at its December 10, 2008 agenda.³³ As in this case, the Appellant filed a Tier I application seeking a 100% positive use determination for the construction of its brine storage pond at its North Storage Facility.³⁴ The Commissioners determined that, under the current rules, brine storage ponds are not eligible for Tier I 100% positive use determinations.³⁵ The Commission also recognized that some components of a brine storage pond may be eligible for a positive use

²⁸ Condition No. 2, Pit Permit No. P011287 (Attached as **ED's Exhibit #3**).

²⁹ Condition No. 15, Pit Permit No. P011287(Attached as **ED's Exhibit #3**).

³⁰ See Condition Nos. 5 – 10, Pit Permit No. P011287(Attached as **ED's Exhibit #3**).

³¹ Use Determination No. 12969.

³² See Commission's Order Concerning the Appeal Filed by Mont Belvieu Caverns, L.L.C. with regard to the Executive Director's Negative Use Determination for Application No. 07-11881; TCEQ Docket No. 2008-0940-MIS-U (Attached as **ED's Exhibit #4**).

³³ *Id.*

³⁴ See Use Determination Application No. 07-11881, p. 4 (Attached as **ED's Exhibit #5**).

³⁵ See Excerpt from Transcription of Commission's Consideration of the Appeal Filed by Mont Belvieu Caverns, LLC, Item 73, TCEQ Docket No. 2008-0940-MIS-U (December 10, 2008) (Attached as **ED's Exhibit #6**).

determination.³⁶ However, when Commissioner Shaw asked whether the Applicant would be willing to cure the deficiencies in their application by providing “a more detailed breakdown of the different equipment, the cost for the liner, the cost for the excavation, the cost for the different components then that would then be evaluated against their environmental benefit,” the Appellant refused.³⁷ The Commission affirmed the Executive Director’s negative use determination.³⁸

In this case the Appellant filed a Tier I application seeking a 100% positive use determination for the “construction of [a] brine disposal pond.”³⁹ On February 27, 2009, Executive Director staff issued a NOD, stating that the pond at issue was a brine storage pond rather than a brine disposal pond; and under the current rules, did not qualify for a positive use determination. However, the NOD also stated that certain items described in the application may be eligible for a positive use determination. Executive Director staff requested that the Appellant individually list the items which may be eligible for a positive use determination, and provide their corresponding ECL numbers and dollar value. On March 26, 2009, the Appellant responded to the NOD by providing a list of items that they contended qualified for a Tier I 100% positive use determination, their corresponding ECL numbers, and their dollar value. Based on this additional information, the Executive Director determined that the HDPE double liners, the leak detection and collection system, and the concrete containment sump were eligible for a Tier I 100% positive use determination. The Executive Director also determined that the remaining items were not listed on Part A of the ECL, and were not eligible for a Tier I positive use determination.⁴⁰ This determination is consistent with the Commission’s previous decision on this equipment. As such, the instant appeal should be denied.

CONCLUSION

After careful consideration of the Appeal filed by Mont Belvieu Caverns, L.L.C. on Use Determination Application Number 12969, the Executive Director concludes that its original Tier I negative use determination was not issued in error. The Appellant has failed to provide any legal basis upon which the Commission should reverse the Executive Director’s use determination in this case. The Executive Director’s use determination is consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Appellant do not alter the findings and final negative use determination issued by the Executive Director in this case.

Accordingly, the Executive Director respectfully requests that the Commission deny the instant appeal and affirm the Executive Director’s Tier I negative use determination.

³⁶ Id.

³⁷ Id.

³⁸ See Commission’s Order Concerning the Appeal Filed by Mont Belvieu Caverns, L.L.C. with regard to the Executive Director’s Negative Use Determination for Application No. 07-11881; TCEQ Docket No. 2008-0940-MIS-U.

³⁹ Use Determination Application No. 12969, p. 5

⁴⁰ Use Determination No. 12969.

Respectfully submitted,
Texas Commission on Environmental
Quality

Mark R. Vickery, P.G.
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Robert Martinez, Director
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By Tim Reidy
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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on July 29, 2009, an original and seven copies of the "Executive Director's Response to Mont Belvieu Caverns, L.L.C.'s Appeal of the Executive Director's Negative Use Determination Issued for Mont Belvieu North Storage" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, or hand-delivery to all persons on the attached mailing list.

Tim Reidy
Timothy J. Reidy, Staff Attorney
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CHIEF CLERKS OFFICE

2009 JUL 29 PM 2:57

TEXAS
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Use Determination Application No. 12969

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**ED's Exhibit #1 –
January 2008 Draft
Guidelines**

Property Tax Exemptions for Pollution Control Property

Table of Contents

Disclaimer	2
Introduction.....	2
Eligibility And Exclusions.....	3
Completing An Application.....	4
Types Of Applications	5
Determining The Tier Level Of An Application	7
Calculating A Partial Determination.....	8
About The Equipment And Categories List.....	10
Application Review	12
Flow Chart For Obtaining A Use Determination.....	14
Appeals Process	14
Confidential Material.....	15
Obtaining Program Documents.....	16
Contacting The Program.....	16
Application Filing.....	16
Delinquent Fee/Penalty Protocol	16
Chapter 17: Tax Relief For Property Used For Environmental Protection	26
Equipment And Categories List.....	32
Part A	32
Part B	44
Texas Tax Code § 11.31. Pollution Control Property.....	53
Article 8 - Taxation And Revenue.....	55
Section 1-L - Property Used For Control Of Air, Water, Or Land Pollution; Exemption From Ad Valorem Taxation	55

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 draft 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 draft 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.

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 (TTC), 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 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 (HB) 1920 during the regular session of the 73rd Legislature. This legislation added §11.31 to the TTC. Copies of §11.31 and §1-1 of Article VIII are located on pages 53 and 55 of this document. The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not increase a facility's property taxes.

In 2001, the 77th Legislature amended §11.31 to require the TCEQ to adopt specific standards for evaluating applications and provide a formal procedure to allow applicants or appraisal districts to appeal a final determination.

In 2007, the 80th Legislature amended §11.31 by adding three new subsections. The first change required the TCEQ to adopt a nonexclusive list of property which included a list of 18 property categories. The second change requires that the list be reviewed a minimum of once every three years and established a standard for removing property from the list. The third change established a 30 day review period for applications that contain property listed on the nonexclusive list.

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 on Page 30 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 facility's 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. The applicant must show that the property was installed to meet or exceed adopted environmental regulations of the United States, the State of Texas, or political subdivisions of Texas. For property used *partly* for pollution control, the applicant must perform a cost analysis using the Cost Analysis Procedure to determine the percentage of the capital cost that qualifies.

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.

Qualifying Land Land may be eligible for a positive determination, but it is restricted to land that actually contains only pollution control property, or property that is used solely for pollution control purposes, or is property which was specifically purchased solely for pollution control purposes. Examples of the first condition include the actual square footage of land that contains a bag-house or scrubber. An example of the second condition is the land used for a stormwater or wastewater containment pond. An example of the third condition is the purchase of adjacent land which will be used solely for pollution control purposes. The land must have been acquired after January 1, 1994.

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 that is used as pollution control property will be considered. Property used solely as a buffer zone is not eligible.

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.
- Property used for residential purposes.
- Property used for recreational, park, or scenic uses, which includes sporting activities, camping, scenic areas and historical, archeological, or scientific sites.
- 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.

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 for a fee. The incinerator would not be eligible for a positive use determination since it would be considered commercial waste disposal equipment. However, pollution control equipment, such as bag-houses or scrubbers needed to comply with environmental regulations, would be eligible. If a company installed and operated an incinerator to dispose of its own waste and did not accept other's waste for a fee, then the incinerator would be eligible for a positive use determination.

COMPLETING AN APPLICATION

Application Submission Requirements

When submitting an application to the TCEQ, the applicant must provide an original, signed application and one copy. The copy must be complete and must be marked as "Appraisal District Copy."

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 final determinations by April 30. By law, there is an April 30 deadline for filing an exemption request with an appraisal district. TCEQ will review the applications in the order received. The agency will make every effort to issue a determination prior to April 30 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 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: Pollution control property that became taxable after January 1, 1994, but for which no positive use determination has been issued is eligible for a positive use determination. However, the tax exemption is not retroactive and previously paid taxes will not be refunded.

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 or a receipt from the ePay system showing that the payment has been made 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. Two Decision Flow Charts have been developed to assist applicants in preparing applications. The Decision Flow Chart is to be used for all applications to determine if each device or equipment item qualifies as pollution control property and the proper Tier level. If it is determined that a Tier IV application is appropriate the Part B Decision Flow Chart is used.

An application form and instructions are provided on pages 21 and 24. Applicants are allowed to use a copy or similar reproduction of the TCEQ application form as long as it provides all of the information requested in the most recent version of the application form. An electronic version of the application form is available for download from the TCEQ Web page. Instructions for downloading forms can be found in the section **Obtaining Publications** within this document. When submitting an application, the original and a complete copy must be submitted.

TYPES OF APPLICATIONS

There are four different tiers, or levels, of applications that can be submitted for a use determination.

Tier I – Part A ECL Applications

This tier is for property listed on Part A of the Equipment and Categories List (ECL), which is located on page 34. Part A of the ECL consists of specific equipment that the TCEQ has determined 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 Part A of the ECL or must be necessary for the installation or operation of property located on Part A of the ECL. The most current version of the ECL is located in 30 TAC 17.14(a). Additional copies may be obtained by contacting the TCEQ or by accessing the TCEQ Web page. Follow the instructions in the section **Obtaining Publications** in this document.

The ECL contains property that is used both wholly and partially for pollution control. The equipment listed at less than 100% was 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 established, the percentage is fixed for Tier I applications. Anyone seeking to obtain a different percentage must apply for a Tier III determination.

The ECL is generic in nature and will not specify brand names. The ECL will be reviewed and updated at least once every three years. An advisory group will be formed to assist in conducting the review.

Tier II - 100% Non-ECL Applications

Tier II is for property that an applicant believes is 100% pollution control property but which is not contained on the ECL. Tier II applications have a \$1,000 fee. 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 Determination Applications

This tier is for property that is partially used for pollution control and which is not listed on the ECL. Tier III applications have a \$2,500 fee. Tier III application properties have environmental benefits and process improvements or benefits. These include new or modified process equipment that has both environmental and production elements. An example would be the 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 later in this document.

Tier IV -- Part B ECL Nonexclusive List Applications

This tier is for property contained in one of the categories listed on Part B of the ECL. Tier IV applications have a fee of \$500. Due to the accelerated review process for Tier IV, applications must be submitted separately from applications containing other tier levels of property. The property items contained in the ECL Part B have unspecified variable percentages which must be calculated by the applicant.

If an application includes property for more than one tier (with the exception of Tier IV), it can all be submitted as a single application. The highest tier level included in the application will determine the appropriate application fee. For example, if the application contains ECL equipment (Tier I), 100% pollution control property (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.

Application fee levels were developed with the intent of recovering the costs to administer the program. Fees are higher for Tiers II and III because there are greater administrative costs involved in reviewing applications. The fee level for Tier IV was based on the knowledge that while the categories of property listed on Part B of the ECL may not have been previously reviewed, once several properties for a category have been reviewed, the length of the review will be shortened.

DETERMINING THE TIER LEVEL OF AN APPLICATION

The Decision Flow Charts are used by both the applicant and program staff in order to determine the proper application level for an item of property. All applicants must first use the Decision Flow Chart located in §17.15(a) located on page 47. Each item of pollution control property or process change must be taken step-by-step through the chart in order to determine “how” and “if” the particular equipment item will qualify as pollution control property.

Decision Flow Chart

The steps for processing property through the Decision Flow Chart are:

- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific environmental regulation, rule or law that is being met or exceeded by the use of the property.
- Determine the environmental benefit that this property provides at the site where it is installed.
- Determine if the property is listed on Part B of the ECL. If it is, use the Part B Decision Flow Chart.
- Determine if the equipment is only partly used for pollution control. If it is, and is not listed on Part A of the ECL, then a Tier III application must be filed and the partial determination calculation must be used.
- If the equipment is used wholly as pollution control property and it is listed on Part A on the ECL, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application.
- If the equipment is used wholly as pollution control property but is not listed on Part A on the ECL, prepare a Tier II application.

Part B Decision Flow Chart Used for Tier IV Applications

Applicants must use the Part B Decision Flow Chart for each item of pollution control property or process change that is located in one of the categories listed on Part B of the ECL. The Part B Decision Flow Chart is located on page 49. You must proceed step-by-step through the chart to determine “how” and “if” the particular equipment item will qualify as pollution control property.

The steps for processing property through the Part B Decision Flow Chart are:

- Use the Decision Flow Chart (Figure §17.15(a)) to determine that this is Tier IV property.
- Is there an environmental benefit at the site? If the answer is no, then the property is not eligible for a positive use determination.
- Determine if the equipment was installed in order to meet or exceed an adopted environmental rule or regulation. If the answer is no, then the property is not eligible for a positive use determination.
- Prepare a property description. Since the use determination percentage is considered to be application-specific, you must provide an explanation of how the percentage was calculated.

CALCULATING A PARTIAL DETERMINATION

Partial use determinations must be calculated for property that is not used wholly as pollution control property and for property located in one of the categories listed in Part B on the ECL. In order to calculate a partial determination for property other than that listed on Part B of the ECL, the applicant must use the Cost Analysis Procedure (CAP). Partial determinations for items located on Part B of the ECL may be calculated using the CAP or applicants may propose a different calculation method. The purpose of the calculation is to determine the percentage of the property which is being used for pollution control. If an alternative method is proposed, the applicant must submit supporting documentation to show the method is more effective than the CAP.

Cost Analysis Procedure

The following procedure must be used to determine the creditable partial percentage for a property that is used only partly as pollution control property and that is not listed on the ECL (Tier III application):

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

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.

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

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 Net Present Value (NPV) of the byproduct over the lifetime of the equipment. The equation for calculating BP is as follows:

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

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 are the costs to store and transport the byproduct that 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.

Cost Analysis Procedure Example

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)

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

BP = \$8,000,000

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

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

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.

ABOUT THE EQUIPMENT AND CATEGORIES LIST

The ECL begins on page 34. Part A of the ECL is the former Predetermined Equipment List and is a list adopted under TTC, §11.31(g). Part B of the list is the categories of property listed in §11.31(k) of the TTC, where it is referred to as the nonexclusive list.

Part A of the ECL is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site.

The commission will review and update the list at least once every three years. Items may be added only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property with the pollution control feature.

Part B of the ECL is a list of the pollution control property categories set forth in §11.31(k) of the Texas Tax Code. These categories are described in generic terms without the use of brand names or trademarks. Property used solely for product collection or for production purposes is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as a "V", for variable, and must be calculated on an application specific basis. Applicants should first view Part A of the ECL to see if their equipment is already on that list. Part B is a list adopted under TTC, §11.31(m).

The following is a list of the 18 categories with brief descriptions of what property may be located within each category.

1. Coal Cleaning or Refining Facilities: Equipment used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants and equipment used for coal drying, moisture reduction, air jigging, and dry or wet mineral separation
2. Fluidized Bed Combustion Systems: These are combustion systems that use a fluidized bed that can be atmospheric & bubbling or circulating; gasification combined cycle systems; or pressurized & bubbling or circulating systems. This category includes injection of a sorbent to reduce NO_x and SO₂ emissions.
3. Ultra-Supercritical Pulverized Coal Boilers: Boiler system designed to operate at minimum steam pressures of 3500 psi and temperatures of at least 1100°F/1100°F/1100°F with double reheat configuration. For new construction, the value eligible for a positive determination is the cost difference between the installation of a Supercritical Pulverized Coal Boilers and the cost to install an Ultra-Supercritical Pulverized Coal Boiler. For replacement equipment, the value eligible for a positive determination is the cost difference between the cost of the boilers being replaced and the cost to install an Ultra-Supercritical Pulverized Coal Boiler.
4. Flue Gas Recirculation Components: Ductwork, blowers, etc. — used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. Property may include flyash collection in coal fired units. (Item A-83 on Part A)
5. Syngas Purification Systems and Gas-Cleanup Units: Purifies or cleans up synthesis gas generated from gasification in order to remove sulfur, carbon, and or compounds. This property does not include the equipment which is used to generate the synthesis gas. Equipment used to transport or store marketable byproducts generated by the process is not eligible for a positive determination.
6. Enhanced Heat Recovery Systems: A heating system having a secondary steam generator or water heater, at least one economizer, and at least one oxidant heater used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator to increase the quantity of steam generated per quantity of fuel consumed.
7. Exhaust Heat Recovery Boilers: Equipment used to recover waste heat from the boiler to generate additional steam. Equipment consists of economizer, evaporator, super-heater and re-heater.
8. Heat Recovery Steam Generators: A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet in order to maximize heat recovery from the gas turbine exhaust gas
9. Heat Transfer Sections for Heat Recovery Steam Generator: Equipment installed in order to reduce ambient air temperature for an air stream that will be used for combustion.

11. Methanation: Gasification processes that use a catalyst remove carbon and produces methane.
12. Coal Combustion or Gasification Byproducts & Coproduct: Equipment used for handling storage or treatment of coal combustion or gasification byproducts or co-products such as boiler and gasifier slag, bottom ash, flue gas desulfurization material, fly ash, and sulfur.
13. Biomass Co-firing System: Equipment installed to allow the use of biomass as a supplementary fuel in order to enhance carbon capture. Included is property used for storage, distribution, firing systems, and carbon disposal equipment.
14. Coal Cleaning or Drying Processes: Equipment such as coal drying, moisture reduction, or air jigging used to produce a cleaner burning coal.
15. This category included several items.
 - a. Oxy-Fuel Combustion Technology: Equipment installed to allow the feeding of O₂ rather than air and a proportion of recycled flue gases to the boiler in order to improve combustion.
 - b. Amine or Chilled Ammonia Scrubbing: Equipment installed to provide post combustion capture of carbon.
 - c. Catalyst based Fuel or Emission Conversion Systems: Equipment installed to allow the use of catalysts to reduce hazardous air pollutant emissions in fuel or emissions.
 - d. Enhanced Scrubbing Technology used to remove Mercury and other criteria air pollutants: Equipment installed that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.
 - e. Modified Combustion Technologies: Systems such as chemical looping and biomass co-firing that are designed to enhance carbon capture removal.
 - f. Cryogenic Technology: Liquid nitrogen based cooling system that is used to condense VOCs and other possible pollutants out of a gas stream.
16. Carbon Dioxide Capture and Geological Sequestration Equipment: Property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is then geologically sequestered in this state. *(This item is only eligible if the USEPA adopts a final rule or regulation regulating carbon dioxide as a pollutant)*
17. Fuel Cells: Fuel Cells used to generate electricity using hydrogen derived from coal biomass, petroleum coke, or solid waste.
18. Any other equipment designed to prevent, capture, abate or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant. Criteria air pollutants can injure health, harm the environment and cause property damage. The current EPA criteria pollutants are Carbon Monoxide (CO), Lead (Pb), Nitrogen Dioxide (NO₂), Ozone (O₃), Particulate matter (PM), and Sulfur Dioxide (SO₂).

APPLICATION REVIEW

The Flow Chart for Obtaining a Use Determination in this section summarizes the use determination application process. The process begins with an applicant submitting a completed application, along with a complete copy, and the proper fee payment to the TCEQ.

Administrative Review

The TCEQ has 3 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 and the proper fee must have been paid. If some fields are left blank or incomplete, if the proper fee has not been received, or if the company has an outstanding balance with the TCEQ, then a notice of deficiency (NOD) will be mailed. This notice will specify the information that is needed to complete the application. The applicant then has 30 days to submit the requested information. Failure to respond in the allotted time will result in termination of the review and forfeiture of the fee. The applicant may 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 a letter will be sent to notify the applicant that the application is under technical review. In addition, a letter and the copy of the application will be sent to the appropriate 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 application. For Tier I, II, and III applications, the TCEQ has 60 days from the date that an application has been declared administratively complete to request additional technical information. The TCEQ must complete its review of a Tier IV application within 30 days of receipt of the application, provided that there are no technical deficiencies. The 30 day clock is stopped if a technical NOD is sent. The clock restarts after an acceptable response is received and the application is deemed technically complete. 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 a use determination. By statute, 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. It is the applicant's burden to supply the TCEQ with the information necessary to make a use determination. If the applicant is unable to provide the required information, 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.

Obtaining the Tax Exemption

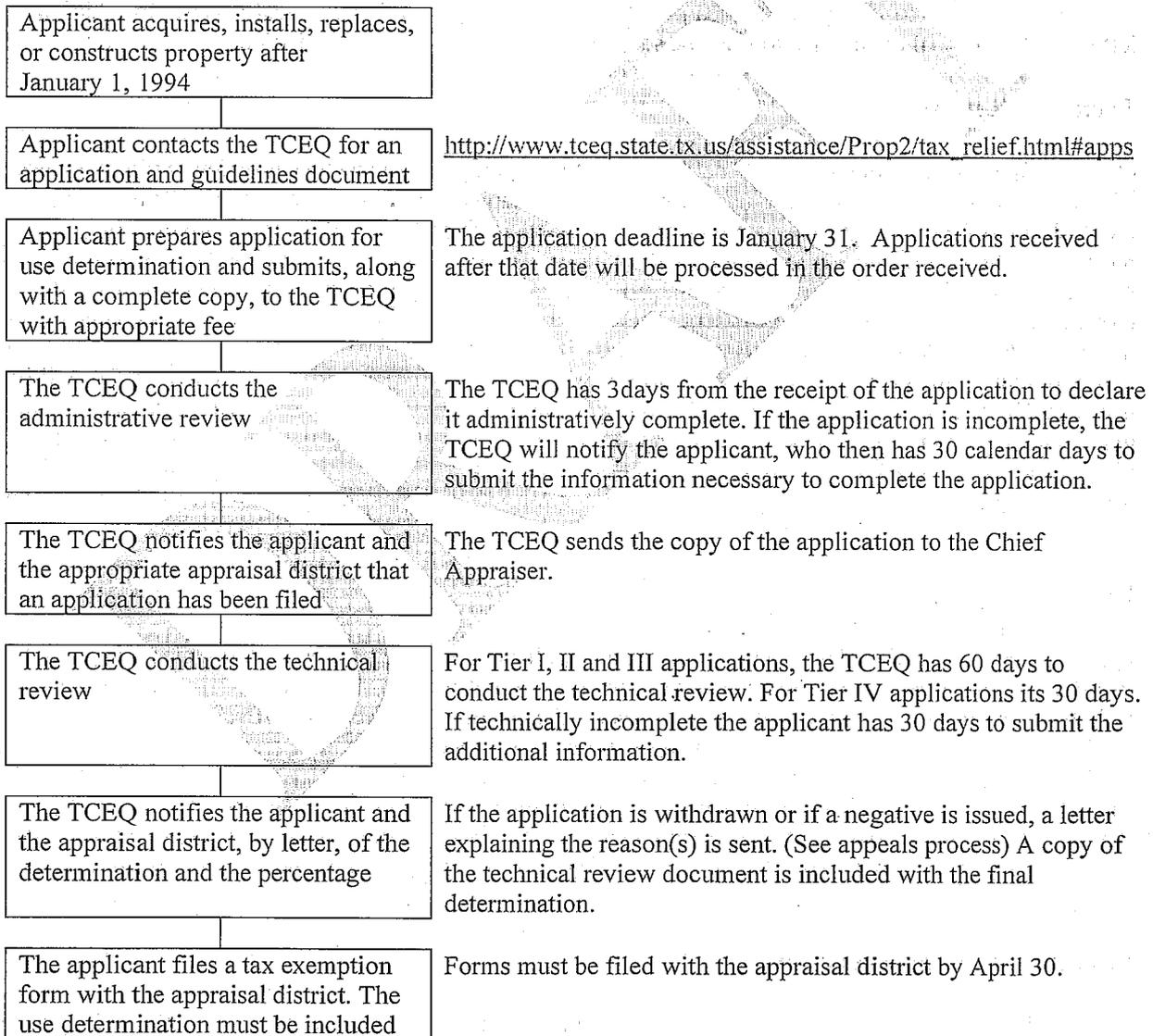
If a positive use determination is made, the applicant must then submit the use determination, along with the appropriate exemption request form, to the appraisal district in order to receive the tax exemption. Exemption request forms can be obtained from the appraisal district. If a negative use determination is

made, the applicant and the chief appraiser will be provided with the reason(s) for the denial. The appraisal districts have a filing deadline for exemption requests by April 30 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 with 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.

FLOW CHART FOR OBTAINING A USE DETERMINATION



APPEALS PROCESS

A use determination may be appealed by the applicant or the chief appraiser. A written appeal request must be received by the TCEQ Chief Clerk within 20 days after receipt of the use determination letter. The use determination is presumed to have been received on the third working day after it was mailed.

The appeal request must contain the following information:

1. Name, address, and daytime telephone of the person requesting the appeal.
(Fax number and email addresses are requested but not required)
2. Name and address of the applicant and the Chief Appraiser.
3. The application number assigned by TCEQ and a copy of the use determination.
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 TCEQ's General Counsel. The General Counsel will develop the briefing schedule and set the agenda date. The chief clerk will mail a copy of the appeal to whichever party did not request the appeal.

Program staff or the General Counsel's office will contact the applicant and the appraiser to discuss the appeal. Both parties will be offered the opportunity to participate on Alternative Dispute Resolution.

The applicant and the chief appraiser may testify at the commission meeting. The commission may either deny the appeal or remand the matter to the executive director. If remanded, the executive director will conduct a new technical review 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

The Chief Clerk's fax number is 512-239-3311.

CONFIDENTIAL MATERIAL

The agency suggests that the applicant **NOT** submit confidential information as part of the use determination application. If it cannot be avoided, a general description should be provided in non-confidential terms as part of the application. A separate document containing the confidential information should be submitted as an attachment. Each page of the confidential information should be conspicuously marked "CONFIDENTIAL." The confidential information will be mailed along with the copy of the application to the Chief Appraiser.

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 PROGRAM DOCUMENTS

Current copies of these documents may be downloaded from the TCEQ web site. The main web page URL is www.tceq.state.tx.us. Click on the Subject Index link, then the letter T, and then click on the link for Tax Exemptions for Pollution Control. That page has the document with Program Information and all of the available forms and instructions.

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

By email at: txrelief@tceq.state.tx.us, by fax: (512) 239-5678, or by telephone: (512) 239-3100.

APPLICATION FILING

Filing Information

Send the completed applications and copies to:

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

Physical Address
TCEQ Cashiers Office MC214
Building A
12100 Park 35 Circle
Austin, TX 78753

Each application must include a signature page with an original signature, preferably in a color other than black, and the proper fee payment or a copy of the ePay receipt.

DELINQUENT FEE/PENALTY PROTOCOL

In accordance with the TCEQ's Delinquent Fee and Penalty Protocol, applications will not be declared administratively complete until all delinquent fees and/or penalties owed to the TCEQ or to the Texas Attorney General on behalf of the TCEQ are paid.

Information about the Delinquent Fee Protocol can be found here:

<http://www.tceq.state.tx.us/agency/delin/index.html>

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

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and the appropriate fee, to: TCEQ MC-214, Cashiers Office, PO Box 13088, Austin, Texas 78711-3088.

Information must be provided for each field unless otherwise noted.

1. GENERAL INFORMATION

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

- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietor |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Utility |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Other: |

B. Size of company: Number of Employees

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> 1 to 99 | <input type="checkbox"/> 1,000 to 1,999 |
| <input type="checkbox"/> 100 to 499 | <input type="checkbox"/> 2,000 to 4,999 |
| <input type="checkbox"/> 500 to 999 | <input type="checkbox"/> 5,000 or more |

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

2. TYPE OF APPLICATION

- | | |
|--|---|
| <input type="checkbox"/> Tier I \$150 Fee | <input type="checkbox"/> Tier III \$2,500 Fee |
| <input type="checkbox"/> Tier II \$1,000 Fee | <input type="checkbox"/> Tier IV \$500 Fee |

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt 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, and 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, and Zip: _____

E. Tracking Number (Optional): _____

F. Company or Registration Number (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: _____

B. Appraisal District Account Number: _____

6. CONTACT NAME

A. Company/Organization Name _____

B. Name of Individual to Contact: _____

C. Mailing Address (Street or P.O. Box): _____

D. City, State, and Zip: _____

E. Telephone number and fax number: _____

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

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

For each media, please list the specific environmental rule or regulation that is met or exceeded by the installation of this property.

MEDIUM	Rule/Regulation/Law
Air	
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

Describe the property and how it will be used at your facility. **Do not simply repeat the description from the Equipment & Categories List.** Include sketches of the equipment and flow diagrams of the processes where appropriate. Use additional sheets, if necessary.

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question.

9. PARTIAL PERCENTAGE CALCULATION

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial percentage calculation, see the application instructions document. Attach calculation documents to completed application.

10. PROPERTY CATEGORIES AND COSTS

List each control device or system for which a use determination is being sought. Provide additional attachments for more than 3 properties.

Property	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property					
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Totals					

11. EMISSION REDUCTION INCENTIVE GRANT

(For more information about these grants, see the Application Instruction document).

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

Yes No

12. 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.

13. 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.

14. 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) 239-3100, 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 or a copy of the ePay receipt 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 in Microsoft Word format is available on the TCEQ Web page. The Equipment and Categories list (ECL) is included in both the Application Instructions and the guidance document (RG-??). 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 and copies 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) 239-5678. The telephone number for direct contact is (512) 239-3100.

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. If a project includes the installation of both property listed on Part A of the ECL property and property which is not listed, the property may be listed on one application. A Tier IV application must be filed for all equipment that is contained in one of the categories list on Part B of the ECL.

The types of applications for pollution control property are:

Tier I: This is for property that is on Part A of the ECL and as long as no variance from the listed percentage is requested.. The fee is \$150. The application can only include items that are on Part A of the ECL or are necessary for the installation or operation of that property.

Tier II: This is for property that is used 100% as pollution control property but is not on Part A of the ECL. The fee is \$1,000.

Tier III: This is for property that is partially used as pollution control property but is not listed on Part A of the ECL. The fee is \$2,500.

Tier IV: This is for property that is contained in one of the categories listed on Part B of the ECL. The fee is \$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 Appraisal District Account Number for the facility or property. 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 the 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 internet as references. Most, if not all, of the applicable environmental rules should be located in the Texas Administrative Code 30 or in the Code of Federal Regulations, Title 40. The following sites may be helpful:

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

8. Description of Property

Do not simply repeat the description from the ECL. 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.

Example of a Property Description:

The project 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 Charts

The Decision Flow Charts (DFC) are used to determine the correct application tier for pollution control property. Each piece of equipment or process change must be processed through the Decision Flow Chart (Figure 17.15(a) page 45). If it is determined that the property is contained in one of the categories listed on Part B of the ECL the Part B DFC (Figure 17.15(b) page 47) is used. Each item of property listed on the application must result in a yes answer to boxes 3 and 5 on the DFC or boxes 2 and 3 on the Part B DFC. Use the table in section 10 to document which box was the final destination of each piece of equipment.

(b) For applications containing only property located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List); the Part B Decision Flow Chart shall be used for each item or process to determine whether the particular item will qualify as pollution control property. The

executive director shall apply the standards in the Part B Decision Flow Chart when acting on an application containing only property that is listed in Part B of the Equipment and Categories List.

10. Partial Percentage Calculation

The Cost Analysis Procedure (CAP) is used to calculate the partial determination for Tier III applications. The TCEQ encourages applicants to use the CAP for calculating use determination percentages for Tier IV applications. If a method other than the CAP is used to determine the use determination percentage for a Tier IV application, the applicant must supply an explanation and justification of the method. An example using the CAP is provided in the technical guidance document on page 12.

The variables used in the CAP 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 Capital 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 Production Capacity Factor (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 - is equal to 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:

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

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:

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

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.

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

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.

The fourth column is used for property that is listed on the ECL. Place the appropriate ECL 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 ECL.

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 for 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)

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

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, have been paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective September 1, 2006)

Additional information about the Delinquent Fee Protocol including contact information can be found here: <http://www.tceq.state.tx.us/agency/delin/index.html>

CHAPTER 17: TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

§17.1. Scope and Purpose.

The purpose of this chapter is to establish the procedure and mechanism for an owner of pollution control property, to apply to the commission for a determination of pollution control use.

§17.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), 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, TTC, 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, which is not listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination as pollution control property.

(6) ePay--The commission's electronic payment system which is located on the TCEQ's web page at www.tceq.state.tx.us.

(7) Equipment and Categories List--A list of property or categories of property used either wholly or partially for pollution control purposes or that is listed in TTC, §11.31(k).

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

(9) Part B decision flow chart--A flow chart which is used to determine if a property or process, which falls under a category listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination or a negative use determination as pollution control property.

(10) Partial Determination--A determination that an item of property or a process is not used wholly as pollution control.

(11) 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).

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

(13) Tier I--An application which contains property that is in Part A of the figure in §17.14(a) of this title (relating to Equipment and Categories List) or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List.

(14) Tier II--An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the Equipment and Categories List, located in §17.14(a) of this title (relating to Equipment and Categories List).

(15) Tier III--An application for property used partially for the control of air, water, and/or land pollution but that is not included on the Equipment and Categories List, located in §17.14(a) of this chapter.

(16) Tier IV--An application containing only pollution control property which falls under a category located in Part B of the figure in §17.14(a) of this title, (relating to Equipment and Categories List).

(17) 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.

(18) 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;

(E) in the case of a Tier IV application, a copy of the worksheet explaining the calculation of the use percentage; and

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

(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.

§17.6. Property Ineligible for Exemption from Taxation

The following are not exempt from taxation and are not entitled to a positive use determination under this chapter:

(1) property is not entitled to an exemption from taxation solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;

(2) property that is used for residential purposes, or for recreational, park, or scenic uses as defined by Tax Code, §23.81;

(3) motor vehicles; and

(4) property that was subject to a tax abatement agreement executed before January 1, 1994. However, property acquired, constructed, or installed after expiration of a tax abatement agreement could be eligible for a positive use determination.

§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 commission application form or a similar reproduction and one copy; 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 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 are completed and without regard for any appraisal district deadlines.

(d) Except for paragraph (1) of this subsection, all use determination applications shall contain at least the following:

(1) for Tier I, II, and III use determination applications, 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 Equipment and Categories List, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this chapter (relating to Partial Determination), and explaining each of the variables;

(6) if the pollution control property contains equipment which falls under one of the categories listed in Part B of the Equipment and Categories List, located in §17.14 of this title (relating to Equipment and Categories List), a worksheet showing the method and the calculation used to calculate the use percentage;

(7) any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(8) 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;

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

(10) the appropriate Decision Flow Chart, §17.15 of this title (relating to Review Standards), showing how each piece of pollution control property flows through the applicable 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 three 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 not administratively complete, 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) For Tier I, II and III applications, 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) For Tier IV applications the executive director will complete the technical review of the application within 30 days of receipt of the required application documents.

(4) The executive director shall determine whether the property is or is not 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 determination shall be sent by regular mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.14. Equipment and Categories List.

(a) The Equipment and Categories List (ECL) is a two-part list. Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in Texas Tax Code (TTC), §11.31(k).

Figure: 30 TAC §17.14(a)



Equipment and Categories List Part A

Part A of the Equipment and Categories List is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site. The commission will review and update the list at least once every three years. Items may be added only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property with the pollution control feature. Part A was formerly referred to as the Predetermined Equipment List. Part A is a list adopted under TTC, §11.31(g).

Air Pollution Control Equipment

No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork—used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges — used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection by creating an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators, with blowers, ductwork, etc. used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	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 fugitive particulate emissions.	100
A-7	Air	Smokeless Igniters	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control (VOC) Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H ₂ S) or Nitrogen Oxides (NO _x) from a waste gas	100

No.	Media	Property	Description	%
			stream.	
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream. Stripper associated with product or by-product improvement does not qualify.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50
A-44	Air	Halogen Replacement Projects	All necessary equipment needed to replace the Halogen in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, gas find Infrared (IR) Cameras, etc. constituting a monitoring system required to demonstrate compliance with emission limitations of regulated air contaminants. (Including flow and diluent gas monitors and dedicated buildings).	100
A-62	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-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, gas find IR Cameras, etc. used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing of fleet vehicles in order to reduce emissions.	100
Control of Nitrogen Oxides				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide (NO _x) emissions from engines/boilers. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO _x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO _x formation for fuel injected, naturally aspirated, or	100

No.	Media	Property	Description	%
			turbocharged engines.	
A-83	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-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO _x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	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-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NO _x formation.	20
A-88	Air	Low-NO _x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO _x burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO _x .	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NO _x emissions from existing internal combustion engines used to drive natural gas compressors. These kits include igniter 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 igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO _x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO _x including directly related equipment.	100
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NO _x and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO _x control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers,	100

No.	Media	Property	Description	%
			pipng, condensers - used to remove VOCs or odors from exhaust gas streams.	
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from above ground storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints in order to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100
Mercury Control				
A-133	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, particulate collection devices, etc. needed for the equipment to function.	100
A-134	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-135	Air	Mercury Absorbing Filters	Filters which absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-136	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives which can be added to the flue gas or directly to the fuel.	100
A-138	Air	Photochemical Oxidation	Use of a ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury.	100
A-141	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive which is then removed in a particulate removal device.	100
Control of Sulfur Oxides				
A-168	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. - used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions. In order to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100

No.	Media	Property	Description	%
A-183	Air	Stack Repairs	Repairs made to an existing stack in order for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment for Fugitive Emissions	Hoods or other enclosures including 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.	100
A-185	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. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
A-186	Air	Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention or control)	The incremental cost difference between the new paint booth and the replaced paint booth.	100
A-187	Air	Paint Spray Booth Attached to a Final Control Device (New Construction)	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-188	Air	Powder Coating System - Installed to replace an existing paint booth.	The incremental cost difference between the Powder Coating System and the Paint Spray Booth which was replaced.	100
A-189	Air	Powder Coating System - New construction	Powder recovery system.	100
A-190	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
Dry Cleaning Related Equipment				
A-200	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-201	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40
A-202	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60
A-203	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60
A-204	Air	Refrigerated Vapor Condenser. (Includes only the components that recover the vapors.)	A device that uses refrigerants to condense recovered vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	90
A-205	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100
A-206	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100

Wastewater Pollution Control Equipment

No.	Media	Property	Description	%
Solid Separation and De-watering				
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator.	100

W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Hydrocarbon.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or waste water.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of waste water.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100
Biological Systems				
W-30	Water	Activated Sludge	Biologically activating carbon matter in waste water by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100
Other Equipment				
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from waste water. May be used in either fixed or fluidized beds.	100

W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	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	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-65	Water	Stormwater Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen, Meter, Chart Recorder, etc.	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or Carbon Dioxide (CO ₂) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
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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 vehicles which leave the facility.	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. in waste treatment system (Does not include fire alarms).	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent ground water or soil contamination.	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/ Water	Final Cover Systems for Landfills (Non-Commercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	100
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-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 (used for disposal of self generated waste materials) 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 used to manage the disposal of waste in the landfill.	100
S-19	Land/	Resource Conservation	Pads, structures, solid waste treatment equipment used to	100

	Water	Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal 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	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, 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 loading and unloading activities, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (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 include 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 Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	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	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant.	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal.	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. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	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 waste solvents by heat, vaporization, and condensation. The recycled solvents must be reused at the facility generating the	100

			waste.	
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-8	Air/ Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	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 dispose of poultry carcasses.	100
M-12	Land/ Water	Structures, Enclosures, Containment Areas, Pads	Required in order to meet 'no contact' stormwater regulations.	100
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100
M-15	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, & Degasser.	100
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Unit and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-19	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-20	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion of metal tanks and piping.	100
M-22	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-23	Water /Land	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
M-24	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges.	100

Equipment Located at Service Stations

No.	Media	Property	Description	%
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 to prevent backflow through vents.	100
Secondary Containment				
T-11	Water	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges or leaks.	100
T-12	Water	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 or leaks.	100
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 containment sumps.	100
T-16	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the Service Station. This item only applies to Service Stations.	100
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	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-25	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. 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
Emissions Control Equipment				
T-40	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. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Part B

Part B of the Equipment and Categories List is a list of the pollution control property categories set forth in §11.31(k) of the Texas Tax Code. These categories are described in generic terms without the use of brand names or trademarks. Property used solely for product collection or for production purposes is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as a "V", for variable, and must be calculated on an application specific basis. Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list. Part B is a list adopted under TTC, §11.31(m).

No.	Property	%
B-1	Coal Cleaning or Refining Facilities	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	V
B-3	Ultra-Supercritical Pulverized Coal Boilers	V
B-4	Flue Gas Recirculation Components	V
B-5	Syngas Purification Systems and Gas-Cleanup Units	V
B-6	Enhanced Heat Recovery Systems	V
B-7	Exhaust Heat Recovery Boilers	V
B-8	Heat Recovery Steam Generators	V
B-9	Super heaters and Evaporators	V
B-10	Enhanced Steam Turbine Systems	V
B-11	Methanation	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	V
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology.	V
B-15	Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology	V
B-16	If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.	V
B-17	Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste.	V
B-18	Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.	V

(b) The commission shall review and update the ECL at least once every three years.

(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§17.15. Review Standards.

(a) The Decision Flow Chart shall be used for each item of [pollution control] property or process, submitted in a non-Tier IV use determination application to determine whether the particular

item will qualify as pollution control property. The executive director shall apply the standards in the Decision Flow Chart when acting on a non-Tier IV use determination application.

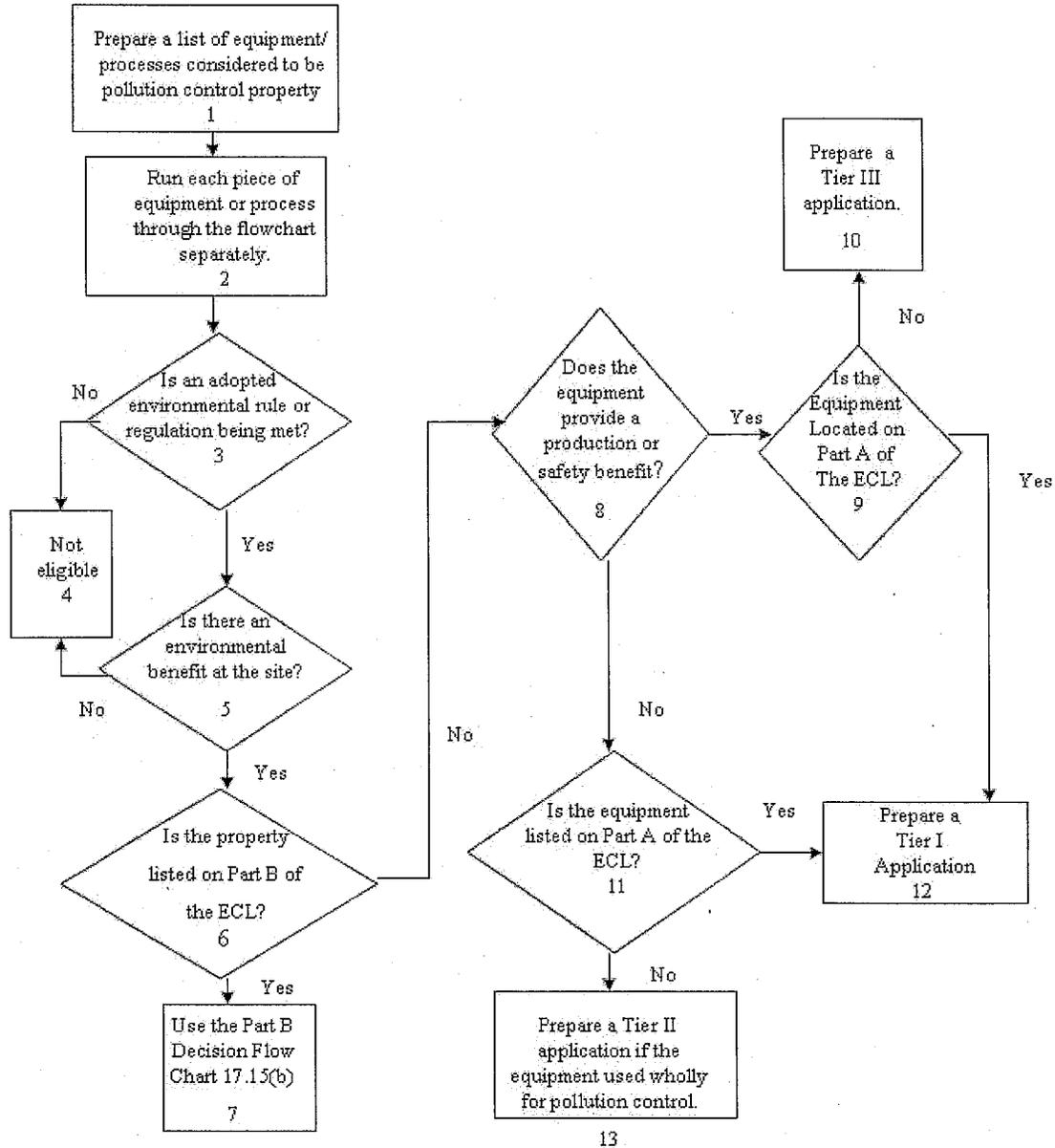


Figure: 30 TAC §17.15(a)

Figure: 30 TAC §17.15(a)

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. ECL means the Equipment and Categories List adopted under Texas Tax Code, §11.31(g).



Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

Where:

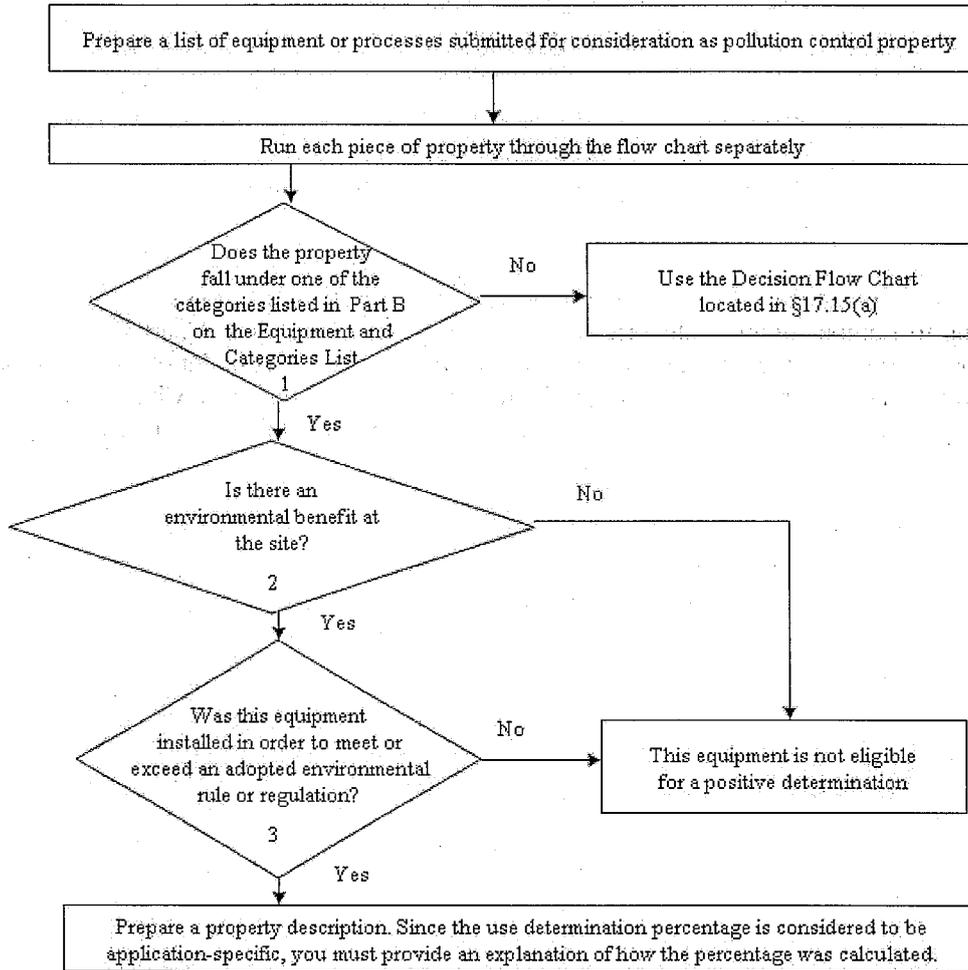
- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
- Determine the environmental benefit that this property provides at the site where it is installed.
- Determine if the property is listed on Part B of the ECL
- Determine if the equipment is only partly used for pollution control. If it is used only partly, and is not listed on Part A of the Equipment and Categories List (ECL), then a Tier III application must be filed and the partial determination calculation detailed in §17.17 Partial Determinations must be used.
- If the equipment is listed in Part A on the ECL, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application
- If the equipment is not in Part A on the list prepare a Tier II application.

(b) For applications containing only property located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), the Part B Decision Flow Chart shall be used for each item or process to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Part B Decision Flow Chart when acting on an application containing only property which is listed in Part B of the Equipment and Categories List.

Figure: 30 TAC §17.15(b)

PART B DECISION FLOW CHART

For Applications Containing Only Equipment listed in Part B on the
Equipment And Categories List



Where:

1. Determine if the property is listed in Part B on the Equipment and Categories List. If not, then use the Decision Flow Chart located in §17.15(a).
2. Is there an environmental benefit at the site? If the answer is no then the property is not eligible for a positive use determination.
3. Determine if the equipment was installed in order to meet or exceed an adopted environmental rule or regulation. If the answer is no then the property is not eligible for a positive use determination.

§17.17. Partial Determinations.

(a) A partial determination must be requested for all property that is either not on Part A of the Equipment and Categories List located in §17.14(a) of this title (relating to Equipment and Categories List) or does not fully satisfy the requirements for a 100% positive use determination under this chapter. In order to calculate a partial determination percentage for pollution control property submitted in a Tier IV application, the cost analysis procedure described in subsection (d) of this section must be used. For all other property for which a partial use determination is sought, the cost analysis procedure described in subsection (b) of this section must be used.

(b) Consistent with subsection (a) of this section, the following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property submitted in a non-Tier-IV application:

Figure 30 TAC §17.17(b)

$$\frac{[(Pr\ odu\ c\ t\ i\ o\ n\ C\ a\ p\ a\ c\ i\ t\ y\ F\ a\ c\ t\ o\ r \times C\ a\ p\ i\ t\ a\ l\ C\ o\ s\ t\ N\ e\ w) - C\ a\ p\ i\ t\ a\ l\ C\ o\ s\ t\ O\ l\ d - B\ y\ p\ r\ o\ d\ u\ c\ t]}{C\ a\ p\ i\ t\ a\ l\ C\ o\ s\ t\ N\ e\ w} \times 100$$

$$Pr\ odu\ c\ t\ i\ o\ n\ C\ a\ p\ a\ c\ i\ t\ y\ F\ a\ c\ t\ o\ r = \frac{Pr\ odu\ c\ t\ i\ o\ n\ C\ a\ p\ a\ c\ i\ t\ y\ o\ f\ O\ l\ d\ P\ r\ o\ p\ e\ r\ t\ y}{Pr\ odu\ c\ t\ i\ o\ n\ C\ a\ p\ a\ c\ i\ t\ y\ o\ f\ N\ e\ w\ P\ r\ o\ p\ e\ r\ t\ y}$$

(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)

$$BP = \sum_{t=1}^n \frac{[(By\ p\ r\ o\ d\ u\ c\ t\ V\ a\ l\ u\ e) - (S\ t\ o\ r\ a\ g\ e\ \&\ T\ r\ a\ n\ s\ p\ o\ r\ t)]_t}{(1 + Interest\ R\ a\ t\ e)^t}$$

(d) For applications containing only property falling under a category listed in Part B of the Equipment and Categories List, located in §17.14(a) of this title (relating to Equipment and Categories List), a use determination must be calculated. It is the responsibility of the applicant to propose a reasonable method for determining the use determination percentage. It is the responsibility of the executive director to review the proposed method and make the final determination.

(e) If the cost analysis procedure or the method accepted by the executive director under subsection (d) of this section 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) - (4) of this subsection.

(1) Tier I Application--A \$150 fee shall be charged for applications for property that is located in the figure in §17.14(a) of this title (relating to Equipment and Categories 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 in the figure in §17.14(a) of this title (relating to Equipment and Categories 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.

(4) Tier IV Application--A \$500 fee shall be charged for applications containing only property which is located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List).

(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 administratively complete.

(c) All fees shall either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality (TCEQ) or by electronic funds transfer by using the commission's ePay system.

(d) The check, money order, or electronic funds transfer receipt must be delivered with the application to the commission, 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 subchapter.

(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.

(k) The Texas Commission on Environmental Quality shall adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include:

- (1) coal cleaning or refining facilities;
- (2) atmospheric or pressurized and bubbling or circulating fluidized bed combustion systems and gasification fluidized bed combustion combined cycle systems;
- (3) ultra-supercritical pulverized coal boilers;
- (4) flue gas recirculation components;
- (5) syngas purification systems and gas-cleanup units;
- (6) enhanced heat recovery systems;
- (7) exhaust heat recovery boilers;
- (8) heat recovery steam generators;
- (9) superheaters and evaporators;
- (10) enhanced steam turbine systems;
- (11) methanation;
- (12) coal combustion or gasification byproduct and coproduct handling, storage, or treatment facilities;
- (13) biomass cofiring storage, distribution, and firing systems;
- (14) coal cleaning or drying processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology;
- (15) oxy-fuel combustion technology, amine or chilled ammonia scrubbing, fuel or emission conversion through the use of catalysts, enhanced scrubbing technology, modified combustion technology such as chemical looping, and cryogenic technology;

(16) if the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state;

(17) fuel cells generating electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste; and

(18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(l) The Texas Commission on Environmental Quality by rule shall update the list adopted under Subsection (k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.

(m) Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

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

**ED's Exhibit #2 –
December 2006 Draft
Guidelines**

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

printed on
recycled paper



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	Page 1
ELIGIBILITY AND EXCLUSIONS	Page 2
COMPLETING AN APPLICATION	Page 3
TIER I - PREDETERMINATIONS	Page 7
TIER II - 100% NON-PREDETERMINED PROPERTY	Page 8
TIER III - PARTIAL DETERMINATIONS	Page 8
APPLICATION REVIEW	Page 10
APPEALS PROCESS	Page 12
CONFIDENTIAL MATERIAL	Page 13
OBTAINING PUBLICATIONS	Page 13
CONTACTING THE PROGRAM	Page 14
APPLICATION FILING	Page 14
Appendix A PREDETERMINED EQUIPMENT LIST	Page A-1
Appendix B APPLICATION FORM AND INSTRUCTIONS	Page B-1
Appendix C SAMPLE CALCULATIONS	Page C-1
Appendix D FREQUENTLY ASKED QUESTIONS	Page D-1
Appendix E 30 TAC 17, Tax Code §11.31 & 26.045, §1-1, Article VIII Texas Constitution:	Page E-1

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.

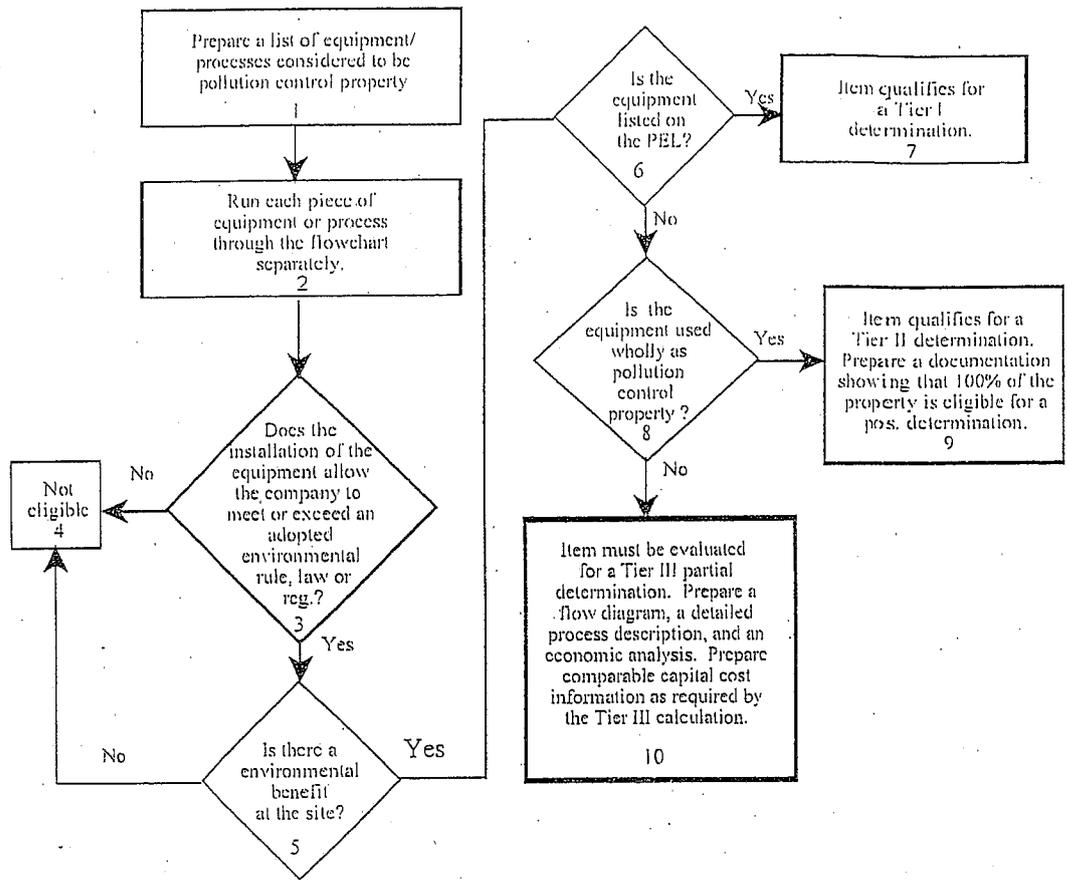
Note: The numbers in the chart and instructions listed here do not match exactly with the Decision Flow Chart as adopted in Chapter 17. These instructions are intended to explain, in more detail, the process of using the chart in preparing a tax exemption application.

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:

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

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

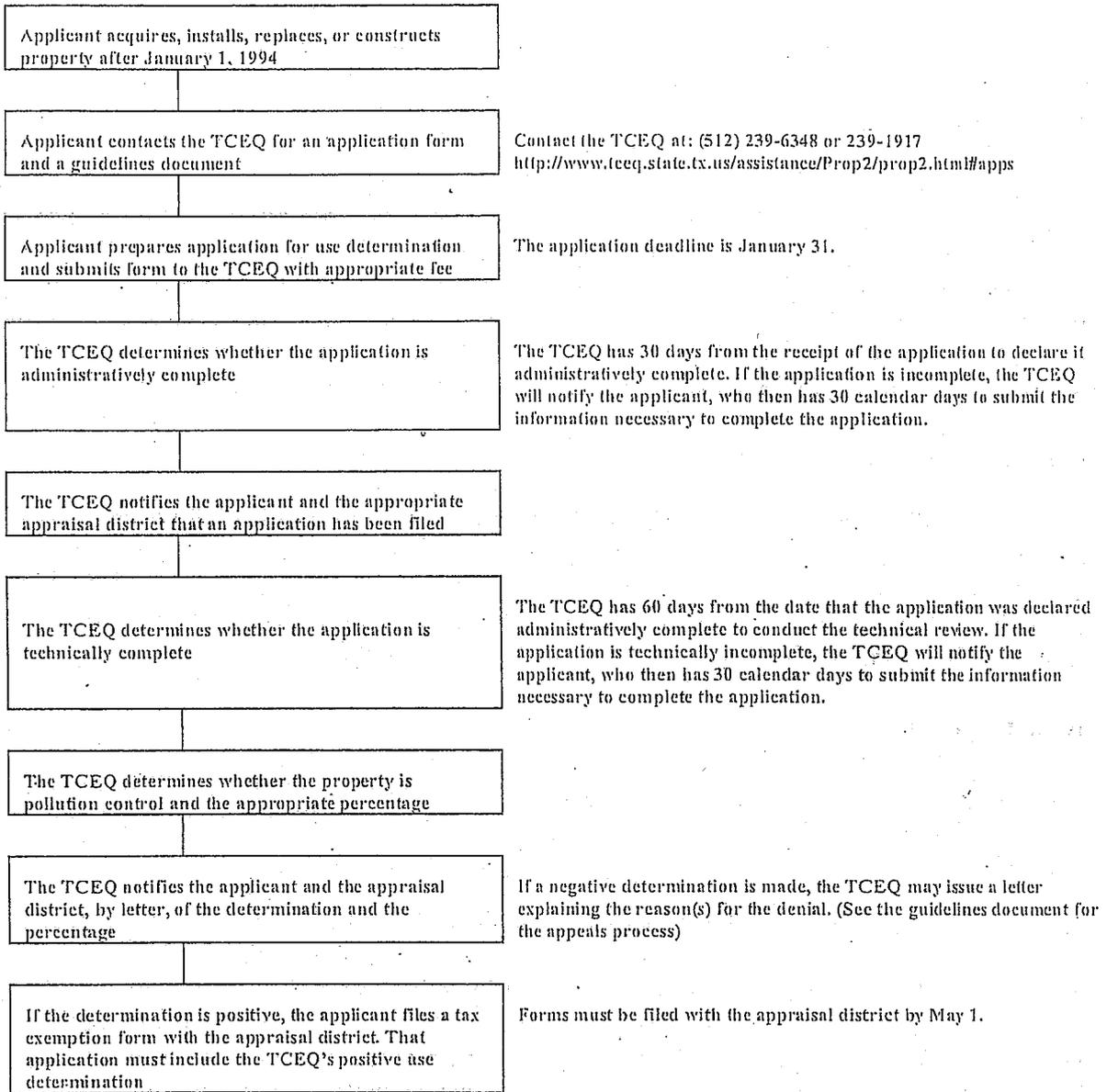
The appraisal districts have a filing deadline for exemption requests of May 1 for each tax year. The chief appraiser has the authority to disallow exemption requests that are not filed by the deadline. The TCEQ provides written notice to the appraisal district when a use determination is filed and a 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 it 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 site. 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 Igniters	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 ₂ S	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 NO _x 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 NO _x 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 NO _x 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	pipng 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 include 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/W- ater	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	%
	Water	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:

- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietor |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Utility |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Other _____ |

B. Size of company: Number of Employees

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> 1 to 99 | <input type="checkbox"/> 1,000 to 1,999 |
| <input type="checkbox"/> 100 to 499 | <input type="checkbox"/> 2,000 or more |
| <input type="checkbox"/> 500 to 999 | |

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.

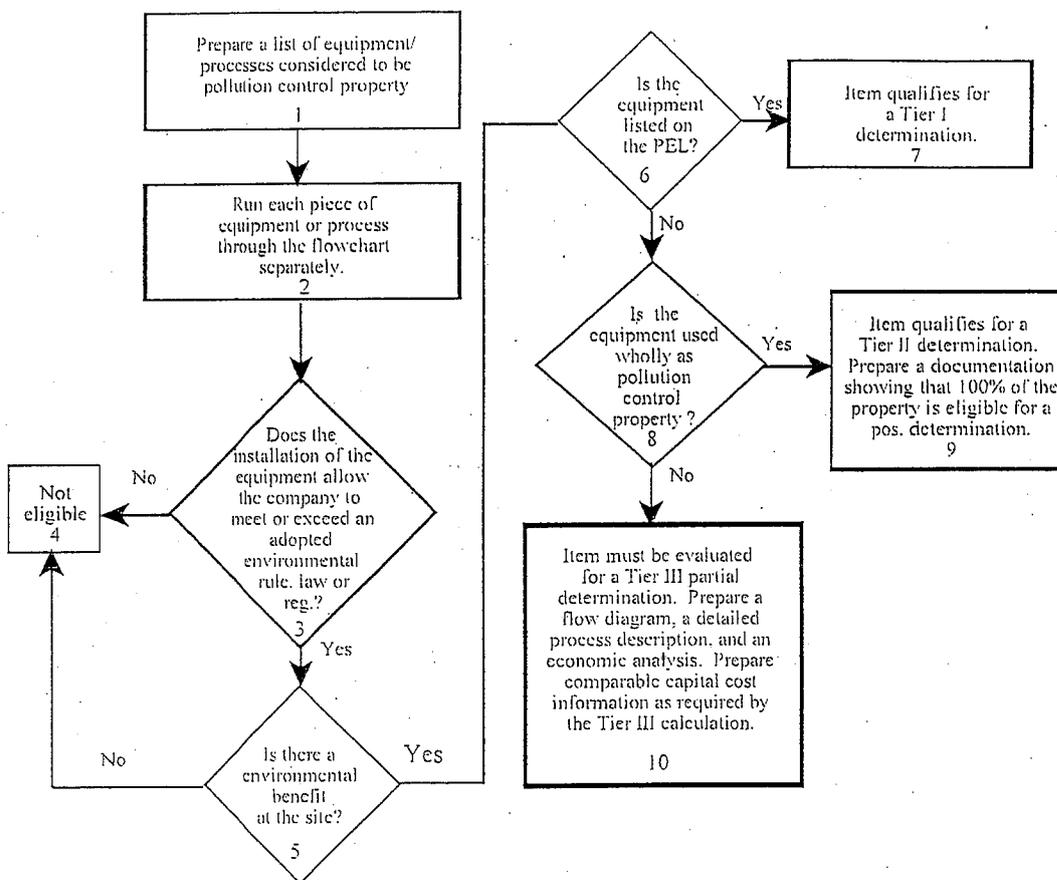
Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question. Only that land which was purchased after January 1, 1994, and which is actually used for pollution control purposes or that houses pollution control property is eligible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

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

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:

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

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.

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

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 for 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:

$$CF = 1 \quad CCN = \$28,000,000 \quad CCO = 0$$

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

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 from 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.

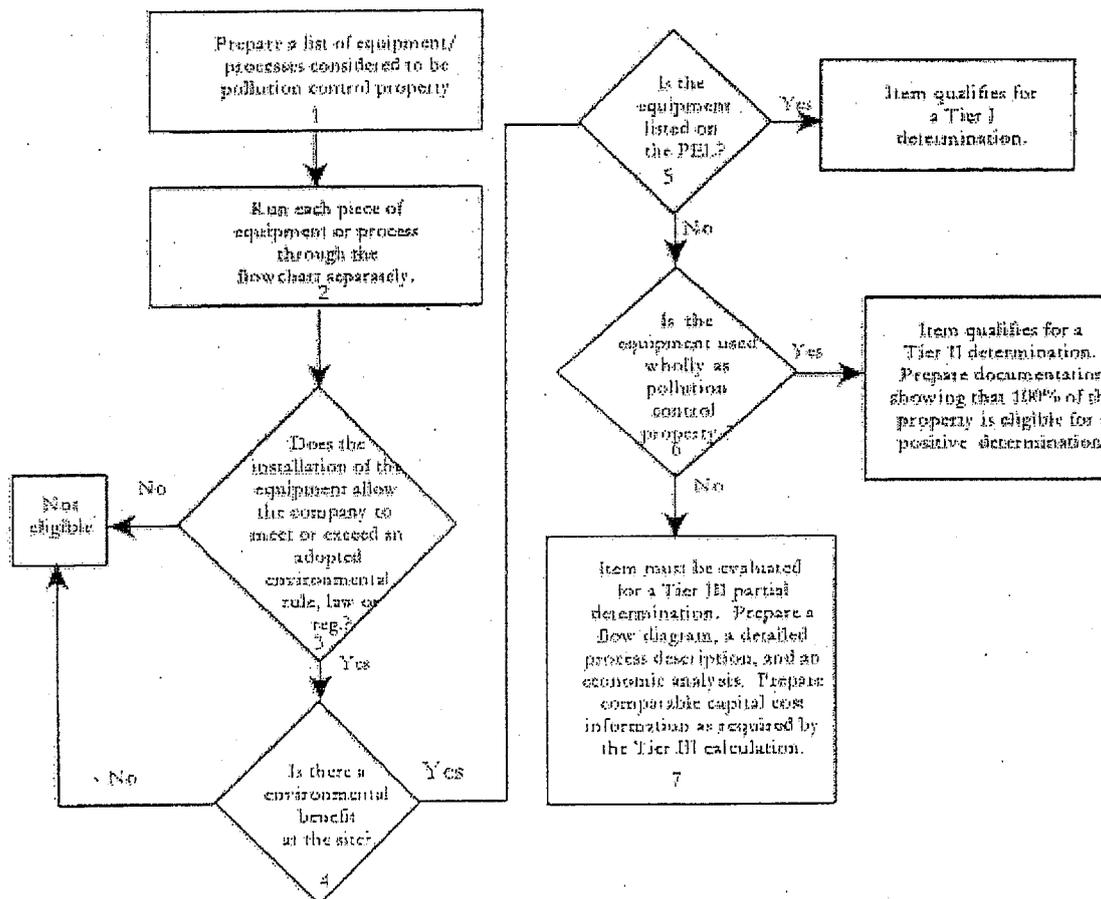


Figure: 30 TAC §17.15 (see above)

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 Capital 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)

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

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 director's 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 1-1 - 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.)

**ED's Exhibit #3 –
Pit Permit No. P011287**



RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION PERMIT TO MAINTAIN AND USE A PIT

Pit Permit No. P011287

ENTERPRISE PRODUCTS OPERATING LP
ATTN LEGAL DEPT
P O BOX 4324
HOUSTON TX 77210 4324

Based on information contained in your application (Form H-11) dated December 19, 2005 and subsequent information received to date, you are hereby authorized to maintain and use the pit designated herein:

Type of Pit: Brine Pit
North Storage Facility, Pond #3
Enterprise East (11102) Lease
1775 feet FSL and 1535 feet FWL of Dan Jergins Survey, A-599
Chambers County, RRC District 03

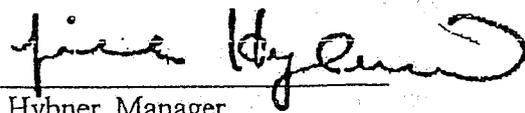
Authority is granted to maintain and use the pit in accordance with ~~Statewide Rule 8~~ and subject to the following conditions:

1. The Houston District Office must be notified upon completion of construction. The permittee may not begin using the pit until the District Office has inspected the pit and verified that the pit is constructed in accordance with the application and permit.
2. Use of the pit is limited to storage of brine used to displace hydrocarbons from the Enterprise East underground storage facility. No other oil field fluids or oil and gas wastes may be stored or disposed of in the pit.
3. The capacity of the pit may not exceed 3,911,600 barrels.
4. At least 2 feet of freeboard must be maintained between the fluid level in the pit and the top of the pit dikes.
5. The pit must be lined with a high density polyethylene primary liner with a thickness of at least 60 mils and a high density polyethylene secondary liner with a thickness of at least 40 mils.
6. The liner must be installed in accordance with the liner manufacturer's specifications and sound engineering practices.

7. The pit must be equipped with a leak detection system including a 200 mil high density polyethylene drainage net between the liners and a collection system to collect and return any leakage from the primary liner to the pit. The leak detection system must be monitored at least monthly.
8. If the leak detection system indicates liner failure, the District Office must be notified of that fact within 24 hours of detection of liner failure. Liner system failure is defined as any of the following:
 - A leak rate from the primary liner greater than 23,000 gallons per day.
 - Any failure in the leak detection and return system or any component thereof.
 - Any detected damage to or leakage from the secondary liner.
9. If a liner system failure is detected, the affected component must be inspected for deterioration and leaks within 10 days of detection of liner failure. After inspection, the affected component must be replaced or repaired before use of the pit is resumed.
10. The permittee must maintain a record of when the leak detection system and the liner is inspected and the results of each inspection. This record must be maintained by the permittee for the life of the liner, and, upon request of the Commission, the record shall be filed with the Commission.
11. Unless otherwise required by conditions of this permit, construction, use, and maintenance of the pit shall be in accordance with the information represented on the application (Form H-11) and attachments thereto.
12. A sign shall be posted at the pit which shall show the pit permit number in numerals at least one inch in height.
13. The pit must be dewatered, emptied, backfilled, and compacted within 120 days of final cessation of use of the pit. Final closure of the pit must be accomplished in such a manner that rainfall will not collect at the pit location after pit closure. Upon final closure, the District Office shall be notified in writing.
14. This permit will automatically transfer to a new operator when the P-4 is filed and approved by the Commission.
15. This permit does not authorize the discharge of any oil and gas wastes from the pit.

This authorization is granted subject to review and cancellation should investigation show that such authorization is being abused.

APPROVED AND ISSUED ON: March 21, 2006.



Jill Hybner, Manager
Surface Waste Management Section
Environmental Services

**ED's Exhibit #4 –
Commission Order
TCEQ Docket No. 2009-
0940-MIS-U**

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 16, 2008

TO: Persons on the attached mailing list.

RE: Mont Belvieu Caverns, LLC
TCEQ Docket No. 2008-0940-MIS-U; Use Determination Application No. 07-11881

Enclosed is a copy of an order issued by the Commission regarding the above-referenced matter.

Should you have any questions, please contact Melissa Schmidt of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3317.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosure

MAILING LIST
for
Mont Belvieu Caverns, LLC
TCEQ Docket No. 2008-0940-MIS-U

Edward Kliewer, III
Fulbright & Jaworski L.L.P.
300 Convent, Suite 2200
San Antonio, Texas 78205

Edward C. Lewis
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010

Chris G. Cisneros
Mont Belvieu Caverns LLC
Ad Valorem Tax
P.O. Box 4018
Houston, Texas 77210

Michael L. Fregia, Chief Appraiser
Chambers County Appraisal District
P.O. Box 1520
Anahuac, Texas 77514

FOR THE EXECUTIVE DIRECTOR:

D. A Chris Ekoh, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Ron Hatlett, Technical Staff
Texas Commission on Environmental Quality
Chief Engineer's Division MC-112
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Garrett Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Kyle Lucas, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-222
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER concerning the Appeal filed by Mont Belvieu Caverns, LLC with regard to the Executive Director's Negative Use Determination for application No. 07-11881; TCEQ Docket No. 2008-0940-MIS-U.

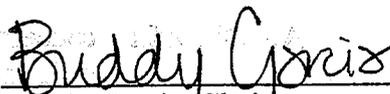
On December, 10, 2008, the Texas Commission on Environmental Quality (Commission) considered the appeal filed by Mont Belvieu Caverns, LLC (Appellant) with regard to the Executive Director's Negative Use Determination for the application assigned No. 07-11881. The Commission also considered the Executive Director's Response to the Appeal, the Office of Public Interest Counsel's Response to the Appeal, the Appellant's Reply to the Responses, and oral arguments made by the parties. The appeal was evaluated under applicable statutes and Commission rules, including Texas Tax Code § 11.31 and 30 Texas Administrative Code Chapter 17.

After considering the written filings and arguments made by the Appellant, the Executive Director, and the Office of Public Interest Counsel, the Commission determined to deny the appeal and affirm the Executive Director's Negative Use Determination having concluded that the Executive Director's Determination was in accordance with the applicable statutes and rules.

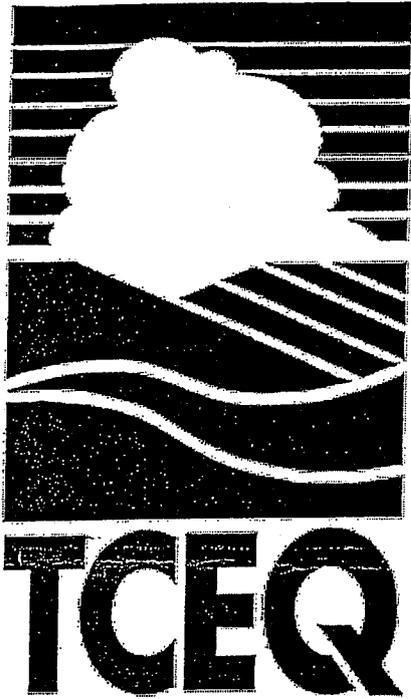
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that the Appeal is hereby DENIED and the Executive Director's Negative Use Determination on the Mont Belvieu Caverns, LLP's application assigned No. 07-11881 is AFFIRMED.

Issue date: **DEC 12 2008**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Buddy Garcia, Chairman

**ED's Exhibit #5 –
Use Determination
Application No. 07-11881**



Tax Relief for Pollution Control Property

Application Form – Effective January 2008

07-11881

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.

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

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or 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 Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and the appropriate fee, to: TCEQ MC-214, Cashiers Office, PO Box 13088, Austin, Texas 78711-3088.

Information must be provided for each field unless otherwise noted.

1. GENERAL INFORMATION

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

- | | |
|---|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietor |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Utility |
| <input checked="" type="checkbox"/> Limited Partnership | <input type="checkbox"/> Other: |

B. Size of company: Number of Employees

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> 1 to 99 | <input checked="" type="checkbox"/> 1,000 to 1,999 |
| <input type="checkbox"/> 100 to 499 | <input type="checkbox"/> 2,000 to 4,999 |
| <input type="checkbox"/> 500 to 999 | <input type="checkbox"/> 5,000 or more |

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

Natural Gas Liquids Transportation and Storage

2. TYPE OF APPLICATION

- | | |
|--|---|
| <input checked="" type="checkbox"/> Tier I \$150 Fee | <input type="checkbox"/> Tier III \$2,500 Fee |
| <input type="checkbox"/> Tier II \$1,000 Fee | <input type="checkbox"/> Tier IV \$500 Fee |

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

3. NAME OF APPLICANT

- A. Company Name: Mont Belvieu Caverns, LLC
- B. Mailing Address (Street or P.O. Box): PO Box 4018
- C. City, State, and Zip: Houston, Texas 77210-4018

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- A. Name of Facility or Unit: Mont Belvieu North Storage
- B. Type of Mfg. Process or Service: Product Pipeline and Storage Service
- C. Street Address: 1027 FM 1942
- D. City, State, and Zip: Mont Belvieu Texas, 77580
- E. Tracking Number (Optional): _____
- F. Company or Registration Number (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

- A. Name of Appraisal District: Chambers County Appraisal District
- B. Appraisal District Account Number: New Account

6. CONTACT NAME

A. Company/Organization Name Mont Belvieu Caverns, LLC
 B. Name of Individual to Contact: Al Noor
 C. Mailing Address (Street or P.O. Box): PO Box 4018
 D. City, State, and Zip: Houston, Texas 77210-4018
 E. Telephone number and fax number: (713)803-88253
 F. E-Mail address (if available): anoor@eprod.com

7. **RELEVANT RULE, REGULATION, OR STATUTORY PROVISION**

For each media, please list the specific environmental rule or regulation that is met or exceeded by the installation of this property.

MEDIUM	Rule/Regulation/Law
Air	
Water	30 TAC 305
Waste	

8. **DESCRIPTION OF PROPERTY (Complete for all applications)**

Describe the property and how it will be used at your facility. **Do not simply repeat the description from the Equipment & Categories List.** Include sketches of the equipment and flow diagrams of the processes where appropriate. Use additional sheets, if necessary.

Project Description : This Project consist of one 4.0 million barrel HDPE double lined brine pond, instrumentation, pond piping, electrical substation and associated equipment. The brine pond will accomplish two significant purposes, waste minimization and prevention of salt water intrusion into inland waters. Also by recycling brine, rather than using fresh water which would become brine through salt dissolution in daily operation of the cavern system, the total quantity of waste generated will be significantly reduced by constructing this brine pond. The current scope of this project includes the construction of one 35ft X 70ft concrete pump pit, and the installation of one 600 HP transfer pump. Also included is 3,500 of 30" HDPE piping from the new pond to North Stroe.

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question.

9. **PARTIAL PERCENTAGE CALCULATION**

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial percentage calculation, see the application instructions document. Attach calculation documents to completed application.

10. **PROPERTY CATEGORIES AND COSTS**

List each control device or system for which a use determination is being sought. Provide additional attachments for more than 3 properties.

Property	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
<u>Property</u> Construction of brine pond with total capacity of 4 million barrels	NO _____ _____	12 _____ _____	S-20 _____ _____	23,000,000 _____ _____	100% _____ _____
Totals					

11. **EMISSION REDUCTION INCENTIVE GRANT**

(For more information about these grants, see the Application Instruction document).

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

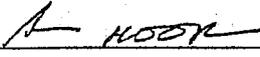
Yes No

12. **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.

13. **FORMAL REQUEST FOR SIGNATURE**

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

Name: Al Noor  Date: 02/12/2008

Title: Tax Manager

Company: Mont Belvieu Carverns LLC

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.

14. **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)

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 20, 2008

MONT BELVIEU CAVERNS LLC
AL NOOR
PO BOX 4018
HOUSTON TX 77210 4018

This letter is to inform you that the technical review of Use Determination Application 07-11881 has been completed. This application is for:

MONT BELVIEU NORTH STORAGE
1027 FM 1942
MONT BELVIEU TX 77580

The outcome of this review is as follows:

A negative determination for the equipment and installation costs of the Brine Storage Pond Project. This equipment is considered to be production equipment and not pollution control property.

House Bill 3121, enacted during the 77th Legislature Session, established a process for appealing a use determination. The Texas Commission on Environmental Quality (TCEQ) rules that implement the appeals process are at 30 TAC 17.25. Pursuant to 17.25(a)(1), an appeal must be filed within 20 days of receipt of the use determination. Should you choose to appeal the use determination, please submit a copy of your appeal to the TCEQ Tax Relief for Pollution Control Property program at the time of filing the appeal with the Chief Clerk of the commission.

If you have any questions or require any additional information please contact the TCEQ Tax Relief for Pollution Control Property program at (512) 239-3100.

Sincerely,

A handwritten signature in black ink, appearing to read "David Greer".

David Greer
Team Leader, Pollution Prevention

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 20, 2008

CHIEF APPRAISER
CHAMBERS COUNTY APPRAISAL DISTRICT
PO BOX 1520
ANAHUAC TX 77514

This letter is to inform you that the technical review of Use Determination Application 07-11881 has been completed. This application is for:

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1027 FM 1942
MONT BELVIEU TX 77580

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Sincerely,

A handwritten signature in black ink, appearing to read "David Greer".

David Greer
Team Leader, Pollution Prevention

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLE App. No.: 07 - 11881 Review Start Date: 3/4/2008
Company Name: MONT BELVIEU CAVERNS LLC
Facility Name: MONT BELVIEU NORTH STORAGE
County: CHAMBERS Outstanding Fees: N

ADMINISTRATIVE REVIEW

Administrative Complete Date: 2/26/2008

TIER LEVEL

What Tier is this application? The application was filed as a Tier I application. Is this the appropriate level?

This application is for a Brine Storage Pond which is item S-20 on the Equipment and Categories List. This is a Tier I application.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

The rule listed in the application is: 30 TAC 305

The appropriate rule is: 16 TAC 3.8

Explain why this is the appropriate rule?

16 TAC 3.8 is the correct rule for this application. This change was approved by the applicant.

BRIEF DESCRIPTION OF PROPERTY

The property is described as:

This project consists of one 4.0 million barrel HDPE double lined brine pond, instrumentation, pond piping, electrical substation and associated equipment. The current scope of the project includes the construction of one 35ft x 70ft concrete pump pit, and installation of one 600 hp transfer pump. Also included is 3,500' of 30" HDPE piping from the new pond to North Storage.

Is an adequate description and purpose of the property provided? Does it list the anticipated environmental benefits? Are sketches and flow diagrams provided if needed?

The description is adequate. The environmental benefits of this project are listed.

DECISION FLOWCHART

Mark the appropriate boxes: Box 3 Box 5 Box 6(IV) Box 10(III) Box 12(I) Box 13(II)

Describe how the property flowed through the Decision Flowchart:

The installation of the property listed on this application does not meet the requirements of an environmental regulation. The installation of this property does not provide an environmental benefit at the site. The property does not meet the description of the item listed on the ECL. This is not a brine disposal pond. The brine in this pond is used to move hydro carbons into and out of the salt cavern.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?

This is a Tier I application.

PROPERTY CATEGORIES AND COSTS

Is the table completed correctly? Has the applicant certified that all listed property became taxable for the first time after January 1, 1994? Is all information necessary for conducting the technical review included.

The table is completed correctly.

TECHNICAL DEFICIENCIES

Is the application complete as received: N If the application was not administratively complete explain below when justifying the final decision in the final determination section. If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter:

Section 7 lists the rule as 30 TAC 305 which is titled Consolidated Permits. What specific subsection of 305 is being met by the installation/construction of this brine storage pond.

Summarize the NOD response:

Correct rule is 16 TAC 3.8. Application is now technically complete.

Provide the language used in the second NOD letter:

Summarize the second NOD response:

Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

This project consists of one 4.0 million barrel HDPE double lined brine pond, instrumentation, pond piping, electrical substation and associated equipment. The current scope of the project includes the construction of one 35ft x 70ft concrete pump pit, and installation of one 600 hp transfer pump. Also included is 3,500' of 30" HDPE piping from the new pond to North Storage.

Provide the reason for your final determination:

This application is for equipment that has been installed as part of a project to construct a 4.0 million barrel brine storage pond. Item S-20 on the ECL is Surface Impoundments and Ancillary Equipment (including Brine Disposal Ponds). Since this is not a disposal pond this ECL number does not apply. The part of the project being requested is: the construction of one 35ft x 70ft concrete pump pit, and installation of one 600 hp transfer pump, and the installation of 3,500' of 30" HDPE piping from the new pond to North Storage. All of this equipment is in place in order to move the brine and is not considered to be pollution control property. A negative determination should be issued.

Provide the language for the final determination.

A negative determination for the equipment and installation costs of the Brine Storage Pond Project. This equipment is considered to be production equipment and not pollution control property.

Highlight the required signatures and establish the appropriate due dates.

Reviewed: *Ronald Hatfield*

Date Signed: 4/1/08

Peer Reviewed: *G. M. Arthur*

Date Signed: 4-1-08

Team Leader: *David L.*

Date Signed: 5/16/08

Section Manager:

Date Signed:

Division Director:

Date Signed:

**ED's Exhibit #6 –
Excerpt from December 10,
2008 Agenda**

USE DETERMINATION APPEAL
December 10, 2008, Item 73 (New Business, 9:30 A.M.)
Docket No. 2008-0940-MIS-U
Consideration of the appeal filed by Mont Belvieu Caverns, LLC

Garcia:

"Well, we do try to include, in the Public Register, and other ways, as you alluded to whenever we have changes around here so folks around the state know specifically what is expected of them when they apply for anything before this agency. I do believe that these folks might be able to better accurately describe the pollution benefits of their control equipment or some of the merits. I guess I am a little perplexed as to why that wasn't done in the first place, especially if you are seeking a positive use determination. But, I am open to my colleague's thoughts on this and what direction you wish to go, if remand is even worth the effort as staff is suggesting maybe that may not get them there. A more detailed description at this point may require a whole new application, so what are your thoughts?"

Soward:

"I wanted to ask, is it Mr. Kliever? Do you understand what we are talking about? We think your client didn't file what they needed to file. You know the rules changed and the rules changed before this was filed. Correct?"

Kliever:

"Yes, well, I disagree that we didn't file what we needed to file."

Soward:

"You filed a 100% positive use determination..."

Kliever:

"That is correct."

Soward:

"...and the rules don't allow that."

Kliever:

"Well, we think the rules do allow it."

Soward:

"Well, we disagree with you."

Kliever:

"I understand you disagree, that is clear."

Soward:

"I guess what we're saying is... we think there are some things that may qualify for a positive use determination, but not 100% of this facility. So we are just wondering..."

why did the company file knowing that the rules had changed? Now, I guess what you are saying is that they didn't believe that we meant what we said we meant in the rules."

Kliewer:

"Well, I mean no disrespect to this Commission, but we read the rules to mean that we could still qualify under S-20. Under S-20 excavation ponds, clay and synthetic liners, and it starts out with excavations [sic] ponds, which we have, and then it goes on to talk about the ancillary equipment...and.."

Soward:

"S-20 is the old list...It's both? Okay. But you know that it was changed. It use to say, "disposal," I mean it use to say "storage" and now it says "disposal.""

Kliewer:

"Well our position is..."

Soward:

"That those two are the same?"

Kliewer:

"...that those two are the same when you look at the Railroad Commission Rule 8, those phrases are used interchangeably."

Soward:

"Well, except their permit to you says it is limited to the storage of brine used to displace hydrocarbons from the underground storage facility."

Kliewer:

"But when you look at the rule itself, the way the Railroad Commission uses that phrase, if... in our brief... if you'll read our brief..."

Soward:

"I've read your brief."

Kliewer:

"It points out that those phrases are used interchangeably, and if you'll look at the facts, at the way that the ponds are actually being utilized, they do not create additional production."

Soward:

"I guess, the Railroad Commission may read them interchangeably, we don't."

Kliewer:

"You... the Commission has turned over this type of regulation to the Railroad Commission."

Soward:
"Of the ponds."

Kliewer:
"Of the ponds."

Soward:
"Right."

Kliewer:
"And as such, it is our position, with all due respect to this Commission, that deference should be given to the way the Railroad reads and deals with these ponds."

Soward:
"I agree and their permit to you basically says that they are production facilities, and that no waste can be put into them."

Kliewer:
"We...there is a lot of weight being given to a word."

Soward:
"Yes."

Kliewer:
"And we say that word is being used interchangeably by the Railroad Commission and we say more importantly, Commissioner, we say more importantly that the purpose of 11.31 is to encourage business to utilize equipment, and this...it is hard to call an excavation pit a piece of equipment, but analogizing, equipment, like Tier IV, that is what the legislature was trying to do for power plants, was to encourage coal fired plants so they use equipment that would minimize pollution. They want to encourage business to do what my client has done. They didn't have to do this. They could have dumped that brine right back in the earth. But what they did, they did these ponds that did two things. It allowed them to reuse the brine. It saved fresh water, and it saved salt."

Soward:
"And it saved expenses."

Kliewer:
"It did that."

Soward:
"As a business decision."

Kliewer:
"It was as business decision. Just like when you build a coker."

Soward:

"Right, I understand."

Kliwer:

"You want to...but at the same time you are going to put the pollution control..."

Soward:

"That is why the legislature allows us to balance between business use and environmental protection when we give positive use determinations."

Kliwer:

"And that is absolutely true, but when you look right here, what we did didn't increase our production at all, so to say that we did this for production purposes is wrong."

Soward:

"Do you use that water for production purposes?"

Kliwer:

"Of course we use it for production purposes, well, just like you use a coker to make..."

Soward:

"Absolutely."

Kliwer:

"So under that reasoning you wouldn't have any pollution control at all on the pollution control equipment on a coker."

Soward:

"No, you would on pollution control equipment on the item, but you may not on the entire unit. We see that all time."

Kliwer:

"Well there is a lot of stuff out there at that storage facility that is not exempt."

Garcia:

"And the reason why I think we are going down this line is questioning is with the new rules we are trying to get a more detailed description of what pollution equipment so we can assign the appropriate percentage of positive use determination. What I was trying to get to is that if ya'll describe some of this equipment in more detail you may not get 100% as the old rules, but you definitely, I think, have made a strong argument that there is some environmental benefits. So for that purpose I was trying to get to that the way that ya'll would give us that information so that if we were going to make a positive use determination, we have something more to rely on, but what I am looking at was very, very basic. You just wanted 100% use based on the way it used to be."

Kliwer:

“Well, we think we are still entitled to 100%.”

Garcia:

“Yeah, well, it is not like that anymore. It is going to be a different way of processing and we need as much information... to make that determination. Maybe it does come out to 100%, but how we move forward requires...that is why I ask, were these rules made clear to everybody.”

Kliewer:

“We understood the rules and we felt we still qualified for 100%.”

Garcia:

“Okay. Commissioner Shaw, do you have any questions?”

Shaw:

“No. I think the key thing is looking at the new rules and where we are... figuring out where to move forward, and it sounds like the ED has indicated that their not certain that moving...that remanding this back and requesting that information would be expeditious to get us to the point... and I’m not sure if the Applicant is interested in providing that data either. So I guess I’m curious if the... will the Commission...whether this should be remanded or just denied based on the application of our current rules. Because, I understand...and want to encourage saving fresh water, and I also understand the issue of the fact that you are not injecting that brine and that is a good component to this, but under out existing rules that no longer has 100% determination, use determination for that, so we need to be able to separate out the environmental component from the production component, and that would require a more detailed breakdown of the different equipment, the cost for the liner, the cost for the excavation, the cost for the different components then that would then be evaluated against their environmental benefit, so one, I guess I’ll ask the Applicant... are you interested in providing that additional information to follow that road or would you rather us move on this and you take the actions before you at that point?”

Kliewer:

“We believe we are entitled to 100%.”

Soward:

“Let’s do it. Mr. Chairman, I move we deny the appeal and uphold the Executive Director’s negative use determination.”

Shaw:

“Second.”

Garcia:

All in favor?

Garcia, Soward, & Shaw:
"I."