TCEQ DOCKET NO. 2010-0252-MIS-U
USE DETERMINATION NO. 8262

APPEAL OF THE EXECUTIVE DIRECTOR'S POSITIVE USE DETERMINATION ISSUED TO MIZUHO CORPORATE BANK APPLICATION NO. 8262	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HARRIS COUNTY APPRAISAL DISTRICT'S APPEAL OF THE EXECUTIVE DIRECTOR'S POSITIVE USE DETERMINATION

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to Harris County Appraisal District's (HCAD or Appellant) appeal of the Executive Director's positive use determination issued to Mizuho Corporate Bank (MHCB) for equipment located at Sunrise Chemical L.L.C.'s (Sunrise Chemical) Bayport facility. The appeal was submitted by Ryan T. Miller, Associate General Counsel, HCAD.

For the reasons described below, the Executive Director respectfully requests that the Commission grant HCAD's appeal and remand the matter back to the Executive Director for the issuance of a negative use determination.

PROGRAM BACKGROUND

This appeal of the Executive Director's positive 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.[1]

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

[1] *See* Tex. Tax Code § 11.31 and 30 Tex. Admin. Code (30 TAC) § 17.25.

establishment and implementation of a process to appeal use determinations.[2] 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.[3] 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.[4] The Appellant is required to explain the basis for the appeal.[5]

PROCEDURAL BACKGROUND

Sunrise Chemical manufactures ethylidene norborne (ENB) that is used as a feedstock in the production of certain kinds of rubber. Sunrise Chemical is currently a joint venture between Nisseki Chemical Texas, Inc. (Nisseki) and Sanam Corporation (Sanam). In January of 2004, Sunrise Chemical sold and then leased back one of its ENB units (ENB2) to MHCB.[6] This transaction generated the funds for Nisseki and Sanam to buy-out another original member of the joint venture.[7] At that time, MHCB became the owner of ENB2 and was responsible for the property taxes associated with that equipment.[8] In February of 2005, Sunrise Chemical mistakenly applied for and received a Tier I 100% positive use determination for pollution control property associated with ENB2.[9] That property consisted of a flare, monitoring equipment on control devices, fugitive emissions monitors, welded pipe joints, hoods and collection systems, stacks, conveyances, pumps, sumps, tanks, basins, a wastewater treatment facility, storm water containment, wastewater impoundments, monitoring and control equipment, and potable water systems. At the time the application was received, all of this property was included on the Predetermined Equipment List (PEL). In December of 2009, MHCB asked the Executive Director to revise the Tier I 100% positive use determination to reflect MHCB's ownership.[10] No application was received or reviewed by Executive Director staff. On December 3, 2009, the Executive Director issued a revised use determination in error.[11] The Executive Director did not mail HCAD notice of the revised use determination. On February 18, 2010, HCAD filed a letter with the TCEQ's Office of the Chief Clerk requesting that the Commission reopen or reconsider the issuance of the positive use determination.

APPELLANT'S CLAIM

HCAD claims that MHCB is not eligible to receive a positive use determination because:

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[2] *See* Tex. Tax Code § 11.31(e) and 30 TAC § 17.25.
[3] *See* Tex. Tax Code § 11.31(g).
[4] *See* Tex. Tax Code § 11.31(e) and 30 TAC § 17.25(a)(2).
[5] *See* 30 Tex. Admin. Code § 17.25(b)(5).
[6] *See* Letter from Mark L. Farley, dated March 5, 2010 (Attached as **ED's Exh. #1**).
[7] Id.
[8] Id.
[9] Id.
[10] *See* Letter from Mark L. Farley, dated March 5, 2010 (Attached as **ED's Exh. #1**).
[11] *See* Use Determination No. 8262 (December 3, 2009).

1. MHCB is leasing the equipment to Sunrise Chemical; and
2. MHCB does not utilize the property at its facility.

LEGAL ANALYSIS

1. AS A LESSOR OF POLLUTION CONTROL PROPERTY, THE COMMERCIAL WASTE MANAGEMENT EXCLUSION PROHIBITS MHCB FROM RECEIVING A POSITIVE USE DETERMINATION

As a lessor of ENB2, the commercial waste management exclusion prohibits MHCB from obtaining a positive use determination. The relevant portion of Section 11.31(a) of the Texas Tax Code reads:

> "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...***" (emphasis added).

30 TAC § 17.6(1) mirrors the second sentence of Section 11.31(a), providing that property is not eligible for a positive use determination "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." These provisions provide the basis for what has come to be known as the "commercial waste management exclusion." TCEQ guidelines describe the commercial waste management exclusion as follows:

> "Commercial Waste Management Facilities: The statute does not allow a facility to receive an exemption solely because it manufactures or produces a good that is used in pollution control or offers a service that monitors, controls, or reduces pollution. For example, suppose a company operates a hazardous-waste incinerator and contracts with other companies to dispose of their hazardous waste for a fee. The incinerator will not be eligible for a positive use determination since it is considered commercial waste disposal equipment. However, pollution control equipment, such as baghouses or scrubbers needed to comply with environmental regulations while operating the unit, would be eligible. If a company installed and operated an incinerator to dispose of its own waste and did not accept others' waste for a fee, the incinerator would be eligible for a positive use determination."[12]

[12] *See* Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, RG-461, p. 4, September 1, 2009 (Attached as **ED's Exh. # 2**).

On November 15, 1996, the Texas Attorney General's Office issued Letter Opinion No. 96-128; which, at the request of Representative Tom Craddick, provided the Texas Attorney General's Office's interpretation of Section 11.31(a) of the Texas Tax Code. In examining the legislative history of Section 11.31(a), the Attorney General's Office noted:

> "A consideration of the legislative history of this provision demonstrates that it was not intended to give tax relief to those who are primarily engaged in the commercial business of pollution control or abatement, but rather ***was intended to give such relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses...***
>
> ***The hearings on H.B. 1920 and H.J.R. 86 before the House Ways and Means Committee, as well as the House Research Organization's bill analysis, make plain that the purpose of the legislation is to insure that businesses required by law to install pollution control equipment which generates no additional profit for them are not taxed on such property.*** H.P. Whitworth of the Texas Chemicals Council, testifying for the bill, said, "The [pollution control] equipment we are talking about today does not produce a penny of revenue. It's in there simply for the welfare as we see it of the general population. And anybody that adds it to his plant or his business cannot expect that investment to return him anything...
>
> The plain language of the second sentence of section 11.31(a), as well as the legislative history of the section as a whole, ***demonstrates clearly that the purpose of the statute is tax relief for businesses required by law to use or possess pollution control devices or equipment. The statue was not intended to provide a tax exemption to businesses which are engaged for profit in the commercial trade of pollution control or abatement.***" (emphasis added).[13]

MHCB owns ENB2 and the associated pollution control equipment which comprises Use Determination No. 8262.[14] MHCB leases ENB2 and the associated pollution control equipment to Sunrise Chemical in return for lease payments. As such, MHCB is providing a service that that prevents, monitors, controls, or reduces air, water, or land pollution at Sunrise Chemical's Bayport Facility; and is ineligible to receive a positive use determination under the plain language of 11.31(a) and 30 TAC §17.6(1).

The Executive Director has consistently applied this interpretation of Tex. Tax Code 11.31(a) to other lessors of pollution control property.[15] For example, Use Determination Application No. 13702 was filed by WAM BE, an asphalt manufacturing equipment

[13] Letter Opinion No. 96-128, Tex. Attorney General's Office (November 15, 1996) (Attached as **ED's Exh. #3**).
[14] Letter from Mark L. Farley, dated March 5, 2010 (Attached as **ED's Exh. #1**).
[15] *See* Use Determination Application No. 13702, June 23, 2009 Notice of Deficiency (NOD), July 21, 2009 Email from Mark Drezda to Ron Hatlett, July 23, 2009 NOD Response, Use Determination No. 13702 Technical Review Document, and Use Determination No. 13702 (Attached as **ED's Exh. #4**).

leasing company, seeking a Tier I 100% positive use determination for a baghouse dust collection system leased to Ironhorse Asphalt, a manufacturer of asphalt. The application was declared administratively complete on June 15, 2009, and technical review began on June 19, 2009.[16] On June 23, 2009, Executive Director staff issued a Technical Notice of Deficiency (NOD) stating, "The business description lists this company as being an equipment leasing company. Who owns the baghouse? Who owns the asphalt plant?"[17] On July 23, 2009, WAM BE's representative responded that "WAM BE owns all property included on this application as well as all property physically located at this facility, which includes both the baghouse and the asphalt plant. WAM BE is the lessor, and Ironhorse Asphalt is the lessee of this equipment."[18] On August 18, 2009, the Executive Director issued a negative use determination, stating "Section 11.31(a) of the Texas Tax Code requires that the person own the property and use it for pollution control. The owner of this property leases it to another party who uses it as pollution control property."[19] The Executive Director's Technical Review Document described the reasoning behind the final negative determination as follows: "The property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for [a] positive use determination."[20] The use determination at issue is analogous to Use Determination No. 13702, and the current appeal should be decided in a manner that is consistent with the Executive Director's decision in that matter.

CONCLUSION

After careful consideration of the appeal filed by HCAD on Use Determination Number 8262, the Executive Director concludes that its positive use determination was issued in error. As a lessor of pollution control equipment, the commercial waste management exclusion prohibits MHCB from obtaining a positive use determination. The Appellant has raised this issue in their appeal, and has provided the legal basis upon which the Commission should reverse the Executive Director's use determination in this case.

Accordingly, the Executive Director respectfully requests that the Commission grant the instant appeal and remand the matter back to the Executive Director for the issuance of a negative use determination.

Respectfully submitted,
Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

[16] *See* Use Determination No. 13702 Technical Review Document (Attached as **ED's Exh. #4**).
[17] *See* June 23, 2009 NOD (Attached as **ED's Exh. #4**).
[18] *See* July 23, 2009 NOD Response (Attached as **ED's Exh. #4**)
[19] *See* Use Determination No. 13702 (Attached as **ED's Exh. #4**).
[20] *See* Use Determination No. 13702 Technical Review Document (Attached as **ED's Exh. #4**).

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REPRESENTING THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 6, 2010 an original and seven copies of the "Executive Director's Response to Harris County Appraisal District's Appeal of the Executive Director's Positive Use Determination" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, electronic mail or hand-delivery to all persons on the attached mailing list.

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TCEQ Docket No. 2010-0252-MIS-U
Use Determination Application No. 8262

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ED's Exh. #1
Letter from Mark L. Farley, dated March 5, 2010

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March 5, 2010

Mr. Timothy Reidy
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Re: Mizuho Corporate Bank MHCB (USA) Pollution Control Exemption

Dear Mr. Reidy:

We appreciated very much the opportunity to meet with you and others from TCEQ with respect to the above-referenced matter. The purpose of this letter is to provide the agency with additional information regarding our belief that Mizuho Corporate Bank MHCB (USA) ("MHCB") is entitled to the pollution control exemption provided by Section 11.31 of the Texas Tax Code.

As we discussed, the Sunrise Chemical LLC ("Sunrise Chemical") facility is located in Pasadena, Texas. Sunrise Chemical manufactures ethylidene norborne ("ENB") that is used as a feedstock in the production of certain types of rubber. Sunrise Chemical currently is a joint venture between Nisseki Chemical Texas, Inc. ("Nisseki") and Sanam Corporation ("Sanam").

In January 2004, Sunrise Chemical sold and then leased back one of its ENB units (ENB2), including the associated pollution-control equipment, to MHCB. Sunrise Chemical entered into this structured financial transaction to generate funds to allow Nisseki and Sanam to buy-out another original member of the joint venture. When the

agreement was executed, MHCB became the owner of ENB2 and was therefore responsible for the property taxes associated with the equipment.[1]

In February 2005, Sunrise Chemical mistakenly applied for in its own name and obtained a 100% Use Determination for the pollution-control property associated with ENB2. Sunrise Chemical submitted the application in its own name based upon a misunderstanding of the Texas Tax Code and TCEQ's rules. After receiving the 100% Use Determination in 2005, HCAD created a pollution-control property account in Sunrise Chemicals' name, but the pollution-control exemption has never been applied to offset taxes due. In December 2009, TCEQ was asked to correct the Use Determination to reflect MHCB's ownership, which the agency did.

As we understand it, the Harris County Appraisal District ("HCAD") now offers two theories as to why the agency's 100% Use Determination for MHCB should be overturned.[2] For the reasons set forth below, both of these arguments are not supported by Texas law.

In its letter, dated February 15, 2010, HCAD first asserts that MHCB is not eligible for the exemption because another entity (*i.e.*, Sunrise Chemical) operates the pollution control equipment. Such an interpretation is not supported by a reading of the plain language of the statutory provision which provides in part, "[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." *See* Tex. Tax Code § 11.31(a) (emphasis added). As we have discussed, the statute's use of both the active and the passive voice makes clear that the exemption is available to the owner of the pollution control equipment so long as the equipment "is used" for pollution control purposes. It does not matter who uses the equipment. If the legislature had intended for the exemption to be available only if the same entity owned and operated the equipment, the statutory provision would have been written only in the active voice (*e.g.* that the person owns and uses. . .).

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[1] As we discussed, Sunrise Chemical re-purchased the ENB2 unit from MHCB in January 2010. Sunrise Chemical will submit a new application for a use determination now that it again owns the pollution control equipment.

[2] MHCB has been in a protracted dispute with HCAD regarding taxes on the ENB2 unit. No taxes are presently owed, but MHCB is seeking refunds for amounts that it does not believe it owed, including taxes on the value of the pollution control equipment for tax years 2006 through 2009.

HCAD also suggests that MHCB's situation is analogous to the situation of Sartomer, Inc. ("Sartomer") that resulted in the Executive Director issuing a negative use determination for Application No. 13805. As we discussed during our meeting, MHCB's situation is clearly distinguishable from Sartomer's situation. Unlike Sartomer, MHCB owns **both** the chemical manufacturing process equipment and the associated pollution control equipment. In Sartomer, the company was attempting to obtain the tax exemption for pollution control equipment that was owned by another entity (*i.e.*, Lyondell). Accordingly, for the reasons stated above, HCAD's first argument is without merit.

HCAD next asserts that MHCB is ineligible for the exemption because it is providing "services" to Sunrise Chemical. The relevant statutory exclusion provides as follows: "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." Tex. Tax Code § 11.31(a). For this exclusion to apply, MHCB would have to be providing a "service" that "prevents, monitors, controls, or reduces air, water, or land pollution."

As we discussed, the equipment in question is the subject of a Master Equipment Lease between MHCB and Sunrise Chemical. Pursuant to this agreement, which is a lease under the Uniform Commercial Code ("UCC"), Chapter 2A-Leases, MHCB purchased the process equipment and associated pollution control equipment which it then leased back to Sunrise Chemical.[3] Article 2A is intended to codify "the law with respect to leases of **goods**." *See* Tex. Bus. And Com. Code § 2A.101 cmt. (emphasis added). Importantly, the UCC only governs contracts related to the sale or leasing of goods, not contracts for services.

There simply is no basis to assert that the transaction between MHCB and Sunrise Chemical represents a contract for services. The bank does not operate the equipment. It does not inspect the equipment. It does not maintain the equipment. It performs no services. The transaction between MHCB and Sunrise simply relates to the lease of goods.

We believe that the exclusion cited by HCAD is intended to cover situations where an entity is operating pollution control equipment and then contracts with other

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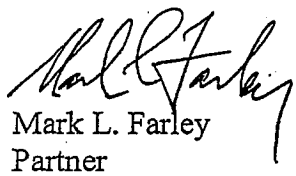
[3] Texas has adopted this chapter of the Uniform Code Commercial Code which is codified at Tex. Bus. And Com. Code §§ 2A.101-.532. Although the Master Equipment Lease is subject to New York law, the pertinent parts of the Uniform Commercial Code are the same in both states.

parties to manage their waste streams (*e.g.*, a commercial hazardous waste incinerator or a waste water treatment plant). This position is supported by TCEQ's own guidance document. *See* TEX. COMM'N ON ENV'T CONTROL, PROPERTY-TAX EXEMPTIONS FOR POLLUTION CONTROL PROPERTY, DRAFT RG 461 (2009). We believe that those situations are quite different from a structured financial transaction where an entity conveys a legal interest to another party to have possession and use of fixed equipment that comprise a chemical manufacturing process unit.

For the aforementioned reasons, MHCB is entitled to the pollution control exemption provided by Section 11.31 of the Texas Tax Code. We look forward to discussing this issue with you and Stephanie Bergeron Purdue.

If you have any questions in the interim, please contact me.

Very truly yours,



Mark L. Farley
Partner

cc. Stephanie Bergeron Perdue, TECQ
Chance Goodin, TCEQ
Guy Henry, TCEQ

ED's Exh. #2
Draft Regulatory Guidance Document 461
(September 1, 2009)

Property-Tax Exemptions for Pollution Control Property

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DISCLAIMER

This document is intended to assist those applying for a use determination, pursuant to Title 30, Texas Administrative Code, Chapter 17 (30 TAC 17). Conforming to these guidelines should 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 regulations and should not be taken as such. Exercise discretion in using this guide; also consider any other relevant information when developing an application.

INTRODUCTION

Purpose of This Document

This document explains how to apply for a property-tax exemption for capital expenditures for **pollution control property**—meaning 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 certain 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 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 exempting certain pollution control property from property taxation. 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 56 and 69 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 create 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 categories of property. The second change required that the list be reviewed at least 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 only property listed on the Part B list.

In 2009, the 81st Legislature amended §11.31 by adding two new sections. New section (g-1) requires that applications containing equipment adopted under §11.31(k) be reviewed using the methods and standards adopted under §11.31(g). New section (n) requires the establishment of a permanent advisory committee which is charged with advising the commission on the implementation of §11.31. In addition the legislation corrected the agency's name allows for appraisal district notifications required by §11.31(d) to be made by electronic means.

The TCEQ adopted Chapter 17 under Title 30 of the Texas Administrative Code (TAC) to establish the procedures and mechanisms for obtaining a use determination. A copy of the current program rules begins on page 54 of this document.

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

1. A facility must first obtain from the TCEQ a determination that the property is used for pollution control. The determination includes the percentage of property use that pertains to pollution control.

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

Benefit to Taxpayers

The filing of an exemption request that results in a positive use determination reduces a facility's appraised value by the value of the pollution control property (the cost of the property and its value may not be the same). 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, to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation. Property or equipment at the facility prior to that date is not eligible.

Eligible Property

Property that is installed (or is being 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 an applicable environmental regulation. For property used **partly** for pollution control, the applicant must perform a cost analysis using the **cost-analysis procedure**, based on 30 TAC §17.17 to determine the percentage of the capital cost that qualifies.

Dedicated-Purpose Vehicles: Vehicles that are used solely for pollution control (such as certain vacuum trucks, street sweepers, surface-watering trucks, and spill-response vehicles) are eligible for positive use determinations.

Qualifying Land: Land **may** be eligible for a positive determination, but only land acquired after Jan. 1, 1994, that actually contains (1) only pollution control property, or (2) property that is used solely for pollution control, or (3) property which was specifically purchased solely for pollution control. An example of (1): the actual square footage of land that contains a baghouse or scrubber. An example of (2): the land used for a storm water– or wastewater-containment pond. An example of (3): the purchase of adjacent land which will be used solely for pollution control.

Buffer Zones: 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:

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

- It must be used wholly or partly as pollution control property.
- It was not taxable prior to January 1, 1994, 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 for recreation (such as sports or camping), parkland, scenic areas, and land used for the development of historical, archeological, or scientific sites.
- Land purchased before January 1, 1994.
- Property subject to a tax-abatement agreement executed before January 1, 1994.

Commercial Waste Management Facilities: The statute does not allow a facility to receive an exemption solely because it manufactures or produces a good that is used in pollution control or offers a service that monitors, controls, or reduces pollution. For example, suppose a company operates a hazardous-waste incinerator and contracts with other companies to dispose of their hazardous waste for a fee. The incinerator will not be eligible for a positive use determination since it is considered commercial waste-disposal equipment. However, pollution control equipment, such as baghouses or scrubbers needed to comply with environmental regulations while operating the unit, would be eligible. If a company installed and operated an incinerator to dispose of its own waste and did not accept others' waste for a fee, the incinerator would be eligible for a positive use determination.

Length of Use Determination

A use determination is valid as long as the property:

- is both used for pollution control as described in the application for which the positive use determination was made and
- remains under the same owner.

TYPES OF APPLICATIONS

The applicant can submit four different tiers, or levels, of applications for a use determination. If tax relief is sought for pollution control properties in different tier levels, separate applications must be submitted for each tier level.

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 of the 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 Equipment and Categories List (ECL) may not have been previously reviewed, once several properties for a category have been reviewed—the length of the review will be shortened.

Tier I—ECL Part A Applications

This tier is for property listed on Part A of the ECL (page 32). Part A of the ECL enumerates specific equipment that the TCEQ has determined to be pollution control property. Tier I applications require a

$150 fee. 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 also located at 30 TAC 17.14(a). Additional copies may be obtained by contacting the TCEQ or online at www.tceq.state.tx.us/goto/taxrelief.

The ECL contains property that is used both wholly and partially for pollution control. The equipment listed at less than 100 percent 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 percent. 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 and does not specify brand names. The ECL receives a review and update at least once every three years. An advisory group assists in the review.

Tier II—100 Percent Non-ECL Applications

Tier II is for property that an applicant believes is 100 percent pollution control property, but is not on the ECL. Tier II applications require a $1,000 fee. The applicant bears the responsibility of demonstrating that the property indeed serves 100 percent for pollution control and has no production benefits.

Tier III—Partial-Determination Applications

This tier is for property that is partially used for pollution control and is not listed on the ECL. Tier III applications require a $2,500 fee. Tier III properties offer environmental benefits and improvements to production, safety, or other processes These include new or modified equipment that has both environmental and production elements. An example is the replacement of a reactor vessel with a new reactor that improves mixing and reduces waste. Since the reactor is essential to production but also has environmental benefits, the equipment may qualify as partial pollution control property.

If the property both controls pollution and contributes to the manufacturing process, safety, or other purposes, the application must specify the proportion of the pollution-control aspect of the property. To make this partial determination, the applicant must use the **cost-analysis procedure**, located at 30 TAC §17.17 and described later in this document.

Tier IV—ECL Part B (Nonexclusive) Applications

This tier is for property contained in one of the categories listed on Part B of the ECL. Tier IV applications require a fee of $500. The property items contained in the ECL Part B have unspecified variable percentages that the applicant must calculate. The calculation method is up to the applicant but must produce sufficient information for the TCEQ to determine if the method is appropriate for the property. The use determination may result in a percentage that is different from the applicant's calculated amount if the TCEQ determines that a more appropriate calculation should be used.

DETERMINING THE TIER OF AN APPLICATION

The two decision flowcharts are used by both the applicant and program personnel to determine the proper application level for an item of property. All applicants must first use the chart located in 30 TAC 17.15(a) (page 48). Except for property listed in Part B, each item of pollution control property and process change must be taken step by step through the chart to determine **whether** and if so **how** the particular item will qualify as pollution control property. The determination method is also used for property on the Part B list, but a separate decision flowchart is used.

Decision Flowcharts

Follow these steps for using the flowcharts.

- Prepare a list of all property that you consider to be pollution control property and determine which, if any, are integrated units
- Process each item or group of integrated units on the list through the flowchart 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 offers 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 flowchart.
- Determine if the equipment is only partly used for pollution control. If so, a Tier I application is needed if the property is listed on Part A of the ECL. If the property is used only for pollution control but is not listed on Part A of the ECL, a Tier II application must be filed. If the property is only partially used for pollution control, a Tier III application is needed and the partial-determination calculation must be used.
- For Tier I applications, determine the reference number for the equipment. Include all equipment for the integrated unit in a single list with the application.

Part B Decision Flowchart for Tier IV Applications

Applicants must use the Part B decision flowchart (page 49) for each item of pollution control property or process change that is listed in one of the categories on Part B of the ECL. You must proceed step-by-step through the chart to determine whether, and if so how, the particular equipment will qualify as pollution control property.

Follow these steps:

1. Use the general decision flowchart [30 TAC 17.15(a)] to determine that this is Tier IV property.
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 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.
4. Prepare a property description. Since the use-determination percentage is considered application-specific, you must explain how you calculated the percentage.

CALCULATING A PARTIAL DETERMINATION

Partial use determinations must be calculated for property that is not used wholly for pollution control and for property located in one of the categories in Part B of the ECL. To calculate a partial determination for property other than that in Part B of the ECL, the applicant must use the cost-analysis procedure described below. Partial determinations for items located on Part B of the ECL may be calculated using the Cost Analysis Procedure (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. Any applicant proposing an alternative method must submit supporting documentation to show the method is more effective than the CAP.

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Cost Analysis Procedure

Use the following procedure to determine the creditable partial percentage for a property that is used only in part for pollution control and that is not listed on the ECL.

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

Production Capacity Factor: The ratio of the capacity of the existing equipment or process to the capacity of the new equipment or process.

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

Production capacity **increases**, use PCF to adjust the capacity of the new equipment or process to that of the existing equipment or process. When production capacity **decreases**, use PCF to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In the latter case, modify the method of calculation to apply the PCF to **capital cost old** rather than **capital cost new**.
Capital Cost New: CCN is the estimated total capital cost of the new equipment or process.

Capital Cost Old: CCO is the cost of comparable equipment or a comparable process without the pollution control. The standards used for calculating CCO are:

(1) If comparable equipment without the pollution control feature is on the market in the U.S., then use the average market price of the most recent generation of technology.

(2) If (1) does not apply, and the company is replacing an existing unit, then the company must index the original cost of the unit to current dollars by using a published, industry-specific standard.

(3) If neither (1) nor (2) applies, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then it must use that estimate. The comparable unit must be from the most recent generation of technology.

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

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

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

By-product Value: The retail value of the recovered by-product for one year. 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: The costs to store and transport the by-product that will reduce its market value. Include verification of how these costs were determined and itemized.

n: The estimated useful life in years of the equipment.

Interest Rate: The current prime lending rate—i.e., the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks. The prime lending rate is printed daily in the *Wall Street Journal* and posted on most financial Web sites.

The statute requires that the applicant supply any information requested by the TCEQ's executive director. If an applicant is unable to supply the information required by the formula, then the agency will issue a negative determination.

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

Example: Cost-Analysis Procedure

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 for pollution control, and no further analysis is needed. However, the amine unit and Claus unit are interdependent and have the benefit to the company of generating a marketable product: sulfur. That means that each of those units must be evaluated to determine the partial percentage creditable to 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 percent (0.1) interest rate

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

BP = $8,000,000

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

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

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Thus, 71 percent of the capital cost of the Claus unit and the amine unit would be eligible for a partial determination. In addition, 100 percent of the capital cost of the tail-gas incinerator and the sour-water stripper would be eligible.

ABOUT THE EQUIPMENT AND CATEGORIES LIST

The Equipment and Categories List (ECL) begins on page 32. 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 TTC §11.31(k), 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 brand names or trademarks; for each, the list gives a defined use percentage based on standard uses of the equipment involved. If the executive director determines that the equipment is not being used in a standard manner, he or she may require that the applicant conduct a Tier III analysis, using the cost-analysis procedure, to calculate the appropriate use percentage. The executive director may also use the cost-analysis procedure where it is appropriate to more accurately reflect the environmental benefit at the site.

The commission will review and update the list at least once every three years. An item may be added only if there is compelling evidence that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. An item may be removed from the list only if there is compelling evidence 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. The applicant is required to perform and supply this calculation and explain the source of the value of the comparable equipment.

Part B of the ECL is a list of the categories of pollution control property set forth in TTC 11.31(k). These categories are described in generic terms without brand names or trademarks. Property used solely for product collection or for production is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as *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(k).

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 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 and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems. This category includes injection of a sorbent to reduce NO_x and SO_2 emissions.

3. **Ultra-Supercritical Pulverized Coal Boilers:** Boiler systems designed to operate at minimum steam pressures of 3500 psi and temperatures of at least 1100°F with a 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 boiler 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 boiler 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 fly-ash collection in coal-fired units (Item A-83, Part A).

5. **Syngas Purification Systems and Gas-Cleanup Units:** These purify or clean up synthesis gas generated from gasification to remove sulfur, carbon, or compounds. This property does not include the equipment used to synthesize the gas. Equipment used to transport or store marketable by-products generated by the process is not eligible for a positive determination.

6. **Enhanced Heat-Recovery Systems:** Heating systems 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 a boiler to generate additional steam—consisting of an economizer, an evaporator, a super-heater, and a re-heater.

8. **Heat-Recovery Steam Generators:** Counter-flow heat exchangers consisting of a series of super-heater, boiler (or evaporator) and economizer-tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas-turbine exhaust gas.

9. **Heat-Transfer Sections for Heat-Recovery Steam Generators:** Equipment installed to reduce ambient air temperature for an air stream that will be used for combustion.

10 **Enhanced Steam-Turbine Systems:** Equipment or modifications made to standard steam-turbine generators designed to enhance the operation of the turbine.

11. **Methanation:** Gasification that uses a catalyst to remove carbon and produce methane.

12. **Coal-Combustion or Gasification By-Products and Coproducts:** Equipment used for handling storage or treatment of coal combustion or gasification by-products 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 to enhance carbon capture. Included are property used for storage and distribution, firing systems, and carbon-disposal equipment.

14. **Coal Cleaning or Drying Equipment:** Equipment for processes such as coal drying, moisture reduction, or air jigging used to produce a cleaner-burning coal.

15. This category comprises several items.

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a. **Oxy-Fuel Combustion Technology:** Equipment installed to allow the feeding of O_2 rather than air along with a proportion of recycled flue gases to the boiler to improve combustion.

b. **Amine or Chilled-Ammonia Scrubbers:** Equipment installed to provide capture of carbon after combustion.

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 systems used to condense VOCs and other possible pollutants out of a gas stream.

16. **Carbon Dioxide Capture and Geological Sequesterization 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 U.S. EPA 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 (NO_2), ozone (O_3), particulate matter (PM), and sulfur dioxide (SO_2).

COMPLETING AN APPLICATION

Preparation

If a company has installed equipment or made process changes that are 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 flowcharts** are available to assist applicants in preparing applications. Applicants must use the Decision Flow Chart in 30 TAC 17.15(a) to determine if each device or equipment item qualifies as pollution control property and to determine the proper Tier level. If it is determined that a Tier IV application is appropriate, the Part B Decision Flow Chart in 30 TAC 17.15(b) is used.

The application form and instructions begin on pages 18 and 23. An electronic version of the application 2form is available for download at www.tceq.state.tx.us/goto/taxrelief. Instructions for downloading forms can be found in the section **Obtaining Program Documents** within this document.

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Requirements for Submission

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 *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 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. The TCEQ will review the applications in the order received and 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 county, each appraisal district must be listed on the application. Separate applications are not required, but a copy for each appraisal district should be provided along with the original application.

Multiple Projects at One Site: A separate application must be submitted for each unit of pollution control property or each group of integrated units installed for a common purpose at a facility. If an application covers unrelated units, the agency will return it to the applicant without further processing.

> **Example 1:** A company installs a new dust collector and secondary containment around storage tanks and replaces a gas-fired internal combustion motor in gas-compression service with an electric motor. Based on three separate projects this would require three applications.
>
> **Example 2:** A company installs a new scrubber and a flare. A vent stream is first sent to the scrubber where a toxic substance is removed. The vent stream is then sent to the flare. This should be considered one project or integrated unit and would require only one application.
>
> **Example 3:** A chemical company undertakes a project to eliminate fugitive emissions. The project involves replacement of pump seals, elimination of threaded pipe joints, installation of a collection system which will collect releases from pressure safety valves, and replacement of an existing flare. This would require two applications—one for the fugitive-emission project and one for the replacement flare.

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 prospectively. 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. To receive a positive use determination, the requester will still need to submit an application during or after 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 receive a deficiency letter by mail. TCEQ personnel will not begin the review of the application until the proper fee is received.

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APPLICATION FILING

Send the completed applications and copies to:

U.S. Mail
Cashier's Office, MC 214
Attn: Tax Relief Program
TCEQ
PO Box 13088
Austin TX 78711-3088

Physical Address
Cashier's Office, MC 214
Building A
TCEQ
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 or a copy of the ePay receipt.

APPLICATION REVIEW

Figure 1 shows how to apply for a use determination, and how the TCEQ processes the application. First, the applicant submits a completed application, along with a complete copy, and the proper fee to the TCEQ.

Administrative Review

The TCEQ has three days from the receipt of an application to determine whether it is administratively complete—that is, all of the required fields on the application form have an entry—and whether the proper fee has been paid. If any required fields are left blank or incomplete, if the proper fee has not been included, or if the company has an outstanding balance with the TCEQ, then the agency will mail the applicant a notice of deficiency (NOD) specifying the information or payment needed. The applicant then has 30 days from receipt of the NOD to submit the requested information. Failure to respond in the allotted time will result in the agency terminating its review and the applicant's forfeiture of the fee. The applicant may reapply, but that will be considered as a new application requiring payment of a new fee.

Once the TCEQ has declared an application administratively complete, it will mail the applicant a notice that the application is under technical review. In addition, the TCEQ will mail a notice and the copy of the application to the appropriate appraisal district.

Technical Review

Next is a detailed technical review of the application. For **Tier I, II, and III applications,** the TCEQ has 60 days from the date it declares an application administratively complete to request additional technical information. The TCEQ must complete its review of a **Tier IV application** within 30 days of receipt of a complete 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 agency deems the application 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 TCEQ will return the application to the applicant. If the applicant chooses to refile the application, the agency will treat it as a new application and will require the payment of the appropriate fee.

Use Determination

Once the TCEQ has completed its technical review, it will furnish the applicant with a use-determination letter and a use determination (negative or positive). A copy of the use determination is mailed to the

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Chief Appraiser of the appropriate appraisal district. By statute, the executive director may not determine that the property is pollution control property unless it meets the standards of Chapter 17. 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 the TCEQ cannot issue a partial determination.

Obtaining the Tax Exemption

If the use determination is positive, the applicant must then submit it, along with the appropriate exemption-request form (obtainable from the appraisal district), to the appraisal district to receive the tax exemption. If the use determination is negative, the applicant and the chief appraiser will receive the reason(s) for the denial. The appraisal districts have a filing deadline for exemption requests by April 30 for each tax year. Chief appraisers have the authority to disallow exemption requests that are not filed by the deadline. The TCEQ gives 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 to obtain the tax exemption.

Return of Fees

Fees shall be forfeited for applications which are denied or returned. The TCEQ will refund fees for withdrawn applications if the applicant requests a refund in writing before the agency has completed its technical review.

STEPS FOR OBTAINING A USE DETERMINATION

1. Applicant acquires, installs, replaces, or constructs property after Jan 1, 1994.	
2. Applicant contacts the TCEQ for an application and guidelines document.	www.tceq.state.tx.us/goto/taxrelief
3. Applicant prepares application for use determination and submits, along with a complete copy, to the TCEQ with appropriate fee.	The application deadline is January 31. Applications received after that date will be processed in the order received.
4. The TCEQ conducts an administrative review.	The TCEQ has three days from the receipt of the application to declare it administratively complete. If the application is incomplete, the TCEQ will notify the applicant, who then has 30 calendar days to submit the information necessary to complete the application.
5. The TCEQ notifies the applicant and the appropriate appraisal district that an application has been filed.	The TCEQ sends the copy of the application to the Chief Appraiser.

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6. The TCEQ conducts the technical review.	For Tier I, II, and III applications, the TCEQ has 60 days to request additional information. Tier IV applications must be processed within 30 days of receipt (not counting time for additional information to be provided). If requested by the TCEQ, the applicant has 30 days to submit any additional information.
7. The TCEQ notifies the applicant and the appraisal district, by letter, of the determination and (if positive) the percentage.	If the application is withdrawn or if a negative is issued, a letter explaining the reason(s) is sent. (See Appeals Process, below.)
8. The applicant files a tax-exemption form with the appraisal district. The use determination must be included	Forms must be filed with the appraisal district by April 30.

APPEALS

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 phone number of the person requesting the appeal. (Fax number and e-mail addresses are requested but not required.)
2. Name and address of the applicant and the Chief Appraiser.
3. The application number assigned by the 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 the 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 personnel or the Office of the General Counsel will contact the applicant and the appraiser to discuss the appeal. Both parties will be offered the opportunity to participate in 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.

To contact the Office of the Chief Clerk:

U.S. Mail Address
Office of the Chief Clerk, MC 105
TCEQ
PO Box 13087

Physical Address
Office of the Chief Clerk, MC 105
TCEQ
12100 Park 35 Circle

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Austin TX 78711-3087 Austin TX 78753

Fax: 512-239-3311.

CONFIDENTIAL MATERIAL

The agency suggests that the applicant **not** submit confidential information as part of the use determination application. If doing so cannot be avoided, a general description in non-confidential terms should be included in the application, along with a separate document containing the confidential information as an attachment. Each page of the confidential information should be conspicuously marked *CONFIDENTIAL*. The TCEQ will mail the confidential information along with the copy of the application to the Chief Appraiser.
Reasons for confidentiality include trade secrecy and other related legal concepts that give a business the right to preserve the confidentiality of business information. The TCEQ will maintain information marked as confidential in a separate file.

OBTAINING PROGRAM DOCUMENTS

Current copies of these documents may be downloaded from the TCEQ Web site at www.tceq.state.tx.us/goto/taxrelief

CONTACTING THE PROGRAM

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

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

E-mail <txrelief@tceq.state.tx.us>, call 512-239-6348 or fax 512-239-5678.

DELINQUENT FEE/PENALTY PROTOCOL

In accordance with the TCEQ's Delinquent Fee and Penalty Protocol, the agency will not consider applications administratively complete until all delinquent fees and penalties the applicant owes 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 at www.tceq.state.tx.us/agency/delin/index.html.

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APPLICATION FOR USE DETERMINATION
FOR POLLUTION CONTROL PROPERTY
TCEQ-00611

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 *Property Tax Exemptions for Pollution Control Property* (TCEQ publication RG-461), as well as 30 TAC 17, the rules governing this program. For additional assistance, please call the Tax Relief Program at 512-239-6348. Mail the completed application, along with a complete copy for each listed appraisal district and the appropriate fee, to: Cashier's Office, MC 214, TCEQ, P.O. Box 13088, Austin, TX 78711-3088.

You must supply information for each field unless otherwise noted.

1. GENERAL INFORMATION

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

- ☐ **CORPORATION**
- ☐ **SOLE PROPRIETOR**
- ☐ **PARTNERSHIP**
- ☐ **UTILITY**
- ☐ **LIMITED PARTNERSHIP**
- ☐ **OTHER:**

B. Size of Company: Number of Employees

- ☐ **1 TO 99**
- ☐ **1,000 TO 1,999**
- ☐ **100 TO 499**
- ☐ **2,000 TO 4,999**
- ☐ **500 TO 999**
- ☐ **5,000 OR MORE**

C. Business Description: (Briefly describe the type of business or activity at the facility)

_____

D. Your North American Industry Classification System six-digit code.

2. TYPE OF APPLICATION

- ☐ TIER I **$150 FEE**
- ☐ TIER III **$2,500 FEE**
- ☐ TIER II **$1,000 FEE**
- ☐ 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, ZIP: _____

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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 (*OPTIONAL*): _____

F. COMPANY OR REGISTRATION NUMBER: _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. NAME OF APPRAISAL DISTRICT: _____

B. APPRAISAL DISTRICT ACCOUNT NUMBER: _____

[IF NOT YET ON TAX ROLL, ENTER "NEW PROPERTY"]

6. CONTACT NAME

A. COMPANY/ORGANIZATION NAME: _____

B. NAME OF INDIVIDUAL TO CONTACT: _____

C. MAILING ADDRESS (STREET OR P.O. BOX): _____

D. CITY, STATE, ZIP: _____

E. PHONE NUMBER AND FAX NUMBER:

F. E-MAIL ADDRESS (IF AVAILABLE):

7. PROPERTY DESCRIPTION, APPROPRIATE RULE, AND ENVIRONMENTAL BENEFIT

For each piece, or each category, of pollution control property, answer the following questions.

A. **Property Name and Equipment and Categories-List Number**
Name the property. *Example:* Baghouse
What is the appropriate ECL number? *Example:* A-1

Is the ECL percentage based on the incremental cost difference? __ Yes __ No
If the answer is "yes," you must answer the following questions:

1. What is the cost of the new piece of equipment?

2. What is the cost of the comparable equipment?

3. How was the value of the comparable equipment calculated?

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B. **Describe the property. (What is it? Where is it? How is it used?) If the property includes land or environmental paving you must include a plot plan. The requested land or paving must be highlighted and the square footage must be listed. For paving the cost of the paving per square foot must be provided.**
Example: Constructed new baghouse (B-10) which will be used to control fugitive particulate emissions released during the operation of new Kiln 10.

C. **What adopted environmental rule or regulation is being met by the construction or installation of this property?**
Example: The baghouse was constructed in order to meet the requirements of 40 CFR 50(6): National primary and secondary ambient air quality standards fro PM_{10}.

D. **What is the anticipated environmental benefit related to the construction or installation of the property?**
Example: The use of baghouse B-10 will reduce the likelihood of particulate matter being released into the air.

E. **Provide a Process Flow Diagram. The diagram must show where the property is located within the process and list all inputs and outputs. Explain the disposition of the outputs.**

8. 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 instructions. Attach calculations to completed application.

9. PROPERTY CATEGORIES AND COSTS

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

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

10. EMISSION REDUCTION INCENTIVE GRANT

(For more information about these grants, see instructions.)
Will an application for an Emission Reduction Incentive Grant be filed for this property or project?
☐ Yes ☐ No

11. 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

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of deficiency, requesting additional information that must be provided within 30 days of the written notice.

12. **SIGNATURE**

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

PRINTED NAME: _____ **DATE:** _____

_____ _____

SIGNATURE _____

TITLE

COMPANY: _____

Under Texas Penal Code 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.

13. **DELINQUENT FEES AND PENALTIES**

This form will not be processed until all delinquent fees and 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.

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INSTRUCTIONS FOR COMPLETING FORM TCEQ-00611

GENERAL INFORMATION

If you have questions or require additional clarification or assistance please contact the Tax Relief Program by phone at 512-239-6348, or by e-mail at <txrelief@tceq.state.tx.us>.

The TCEQ may request additional information by mailing a deficiency letter. If so, you must supply the requested information within 30 days of receipt of the written request or the agency will return the application.

Applicants who have not included the proper fee or a copy of their ePay receipt will receive a deficiency letter. The TCEQ will not review the application until it receives the proper fee.

OBTAINING COPIES OF THE APPLICATION FORM AND OTHER DOCUMENTS

A copy of the official application form in PDF is available on the TCEQ web page. The Equipment and Categories List appears in the guidance manual (TCEQ publication RG-461). The documents can also be downloaded from www.tceq.state.tx.us/goto/taxrelief.

Filing Information

Send the completed applications and copies to:

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

Physical Address
Cashier's Office, MC 214
Building A
TCEQ
12100 Park 35 Circle
Austin TX 78753

Other Information

All other written correspondence should be sent to Tax Relief Program, MC 110, P.O. Box 13087, Austin, TX 78711-3087, or faxed to 512-239-5678. The phone number is 512-239-6348.

SPECIFIC INSTRUCTIONS

1. General Information

Use this section to enter general information about your company. The TCEQ does not use this information in making use determinations—only to compile a statistical analysis of use determinations it processes.

Select the type of ownership of the facility by placing an *X* in the appropriate space. If you select *Other*, 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 entering a brief description of the nature of the business or activity that occurs at this facility.

Enter your six-digit North American Industrial Classification System (NAICS) code.

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2. Type of Application

Place an *X* on the proper line to identify the type of application being filed. If a project includes installation of both property listed on Part A of the ECL property and property that is not listed, you may list all such property. A Tier IV application must be filed for all equipment that is listed in one of the categories in Part B of the ECL.

The types of applications for pollution control property are—

Tier I: For property that is on Part A of the ECL, 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: For property that is used 100 percent as pollution control property but is not on Part A of the ECL. The fee is $1,000.

Tier III: 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: 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

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

4. Physical Location of Property Requesting a Tax Exemption

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

5. Name of Appraisal District with Taxing Authority over Property

Enter the name of the appraisal district in which the property is located. This information is required and will be used by the TCEQ to notify the appropriate district that an application for use determination has been filed. Enter 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 districts and the associated account numbers. If the property is new and has not been assigned an account number, enter "new property."

6. Contact Name

Enter 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 application. **All correspondence relating to this application will be directed to that person.**

7. Property Description, Appropriate Rule, and Environmental Benefit

For each piece of pollution control property or each category of pollution control property answer the following questions.

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A. **Property Name and Equipment and Categories List Number**
What is the name of the property?
What is the appropriate ECL number?

Indicate whether the ECL percentage is based on an incremental cost differential, and if so, answer the three related questions.

B. **Describe the property. (What is it? Where is it? How is it used?)** If the property includes land or environmental paving you must include a plot plan. The requested land or paving must be highlighted and the square footage must be listed. For paving, the cost of the paving per square foot must be provided.

Do not simply repeat the description from the ECL. Describe the property and how it is 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 describe the scrubber and what emissions it controls. You do not need to list each individual piece of the scrubber. If necessary, please attach sketches and flow diagrams to assist agency personnel in the review. If the property involves an incremental cost, show the calculation describing the original cost and the difference.

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 VOC emissions by controlling evaporation of product.

C. **What adopted environmental rule or regulation is being met by the construction or installation of this property?**

Provide a narrative that cites the **specific** (section, subsection, paragraph, etc.) environmental rule, regulation, or law that is being met or exceeded by the installation of this property and how the property meets or exceeds the requirements.

To receive a positive use determination, the application must describe how the property meets or exceeds a rule, regulation, or statutory provision that has been adopted by the United States Environmental Protection Agency, the State of Texas, or a political subdivision of Texas. Regulations adopted by health and safety agencies, such as the Occupational Safety and Health Administration, do not meet this criterion.

If the applicant is uncertain of a specific rule to list in this section, many resources are available online. State rules are located in the Texas Administrative Code: Title 1, Division 1 contains rules from the Railroad Commission, Title 25, the Department of State Health Services; Title 30, the TCEQ. Other chapters may include other relevant regulations. The federal rules are in the Code of Federal Regulations: Title 40 contains EPA regulations; relevant regulations from other federal agencies are in other titles. Ordinances from cities and counties are often available at their Web sites. The following sites may be helpful:

Code of Federal Regulations (CFR)	www.gpoaccess.gov/cfr/index.html
Title 40 CFR Chapter Index:	www.epa.gov/lawsregs/search/40cfr.html
State rules (TCEQ is Title 30)	www.sos.state.tx.us/tac/index.shtml

D. **What is the anticipated environmental benefit related to the construction or installation of the property?**

Describe the anticipated environmental benefit.

E. **Provide a Process Flow Diagram. The diagram must show where the property is located within the process and list all inputs and outputs. Explain the disposition of the outputs.**

8. Partial-Percentage Calculation

The cost-analysis procedure (CAP) is used to calculate the partial determination for Tier III applications. The TCEQ also encourages applicants to use the CAP for calculating use-determination percentages for Tier IV applications. If using a method other than the CAP 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 guidance manual on page 9.

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. Use the following standards used for calculating it—

- 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 30 TAC 17.17(b) do not apply and the company is replacing an existing unit, then the company must 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 to reduce CCO to reflect the same capacity as CCN.
- If the conditions in variables 3.1 and 3.2 of 30 TAC 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 of manufacturing 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. PCF is only used when there is an increase in production capacity.

By-Product: For property that generates a marketable by-product, the net present value of the by-product is used to reduce the partial determination. The value of the by-product is calculated by subtracting the cost of transportation and storage for the by-product from its market value. This value is then used to calculate the net present value of the by-product over the lifetime of the equipment.

By-Product Value: The retail value of the recovered by-product for a one year period. Typically, use the most recent three-year average price of the material as sold on the open market in the calculation. If the price varies from state to state, the applicant must calculate an average and explain how the figures were determined.

Storage and Transport: The costs to store and transport the by-product, which will reduce its market value. The applicant must show how these costs were determined and must itemize them fully.

n: The estimated useful life in years of the equipment being evaluated.

Interest Rate: The current Prime Lending Rate—i.e., the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks—in effect at the time the application is submitted. The Prime Lending Rate is posted daily in the *Wall Street Journal* and at many Web sites about finance or investing.

To receive a partial-use 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, include a response to each of the following sections:

1. *Production Capacity Factor.* Describe 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.* Describe how the estimated dollar value was calculated.

3. *Capital Cost—Old.* Describe how the estimated dollar value was calculated. Explain which of the three options was used to determine capital cost—old.

4. *By-Product.* Does the installation of this property result in the creation of a by-product? If so, describe the by-product and use the following equation to calculate its value. 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.

9. Property Categories and Costs

The first column of this table is for the name of the property. List the property or equipment that was described in section 8.

The second column is used to certify that the property listed in the first column was not taxable on or before Jan. 1, 1994. Enter "No" in this column to show that the property was not purchased, constructed, or installed on or before Jan. 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. Enter the appropriate ECL item numbers in this column.

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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 percentage. For property that is not used wholly for pollution control, enter the estimated pollution control percentage calculated above in section 10 of the application or the percentage listed on the ECL.

10. Emission Reduction Incentive Grant

The Texas Emission Reduction Plan 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 or 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. For more information about the TERP program, call 512-239-4900 or e-mail <terp@tceq.state.tx.us>.

11. Application Deficiencies (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.

12. Signature

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

13. Delinquent Fees and Penalties
This form will not be processed until all delinquent fees and 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.

You can obtain additional information about the Delinquent Fee Protocol, including contact information, at <www.tceq.state.tx.us/agency/delin/index.html>.

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TITLE 30, TEXAS ADMINISTRATIVE CODE, 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 TTC, §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 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.

(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 title.

(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.

(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.

§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 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.

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(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 title (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.

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(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).

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 Ignitors	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_2S) or Nitrogen Oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or	100

		Control Device	waste liquid stream. Stripper associated with product or by-product improvement does not qualify.	
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. 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-	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or	100

		Driven Internal Combustion Engines	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 NOx 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 NOx 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 of existing burners on electric power generating units with components for reducing NOx	100

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		Retrofit	including directly related equipment.	
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx 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 NOx control.	100
Volatile Organic Compounds (VOC) Control				
A-110	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-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 an ultraviolet light from a mercury lamp to	100

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			provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury.	
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 articulate 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
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	Particulate control device and blast material recycling	100

		– Connected to a Control Device	system.	
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 wastewater.	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 wastewater.	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

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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 storm water.	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	%
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/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	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 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	100

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			devices at other points.	
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 waste.	100
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, wastewater, 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

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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' storm water 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	100

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			and fill pipe.	
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(k).

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,	V

	precombustion decarbonization, and coal flow balancing technology	
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 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.

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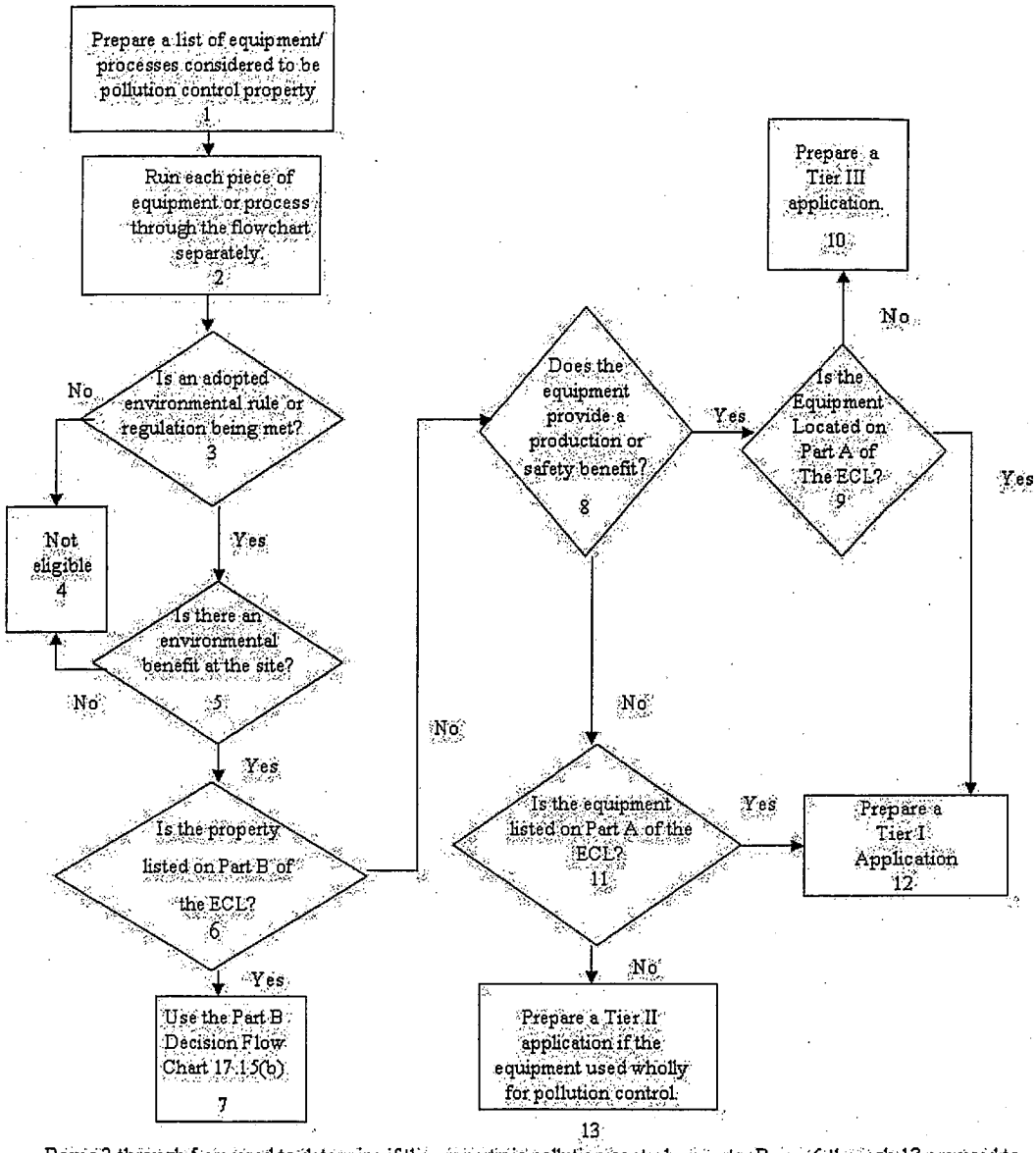
Figure: 30 TAC §17.15(a) **Decision Flow Chart**

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).



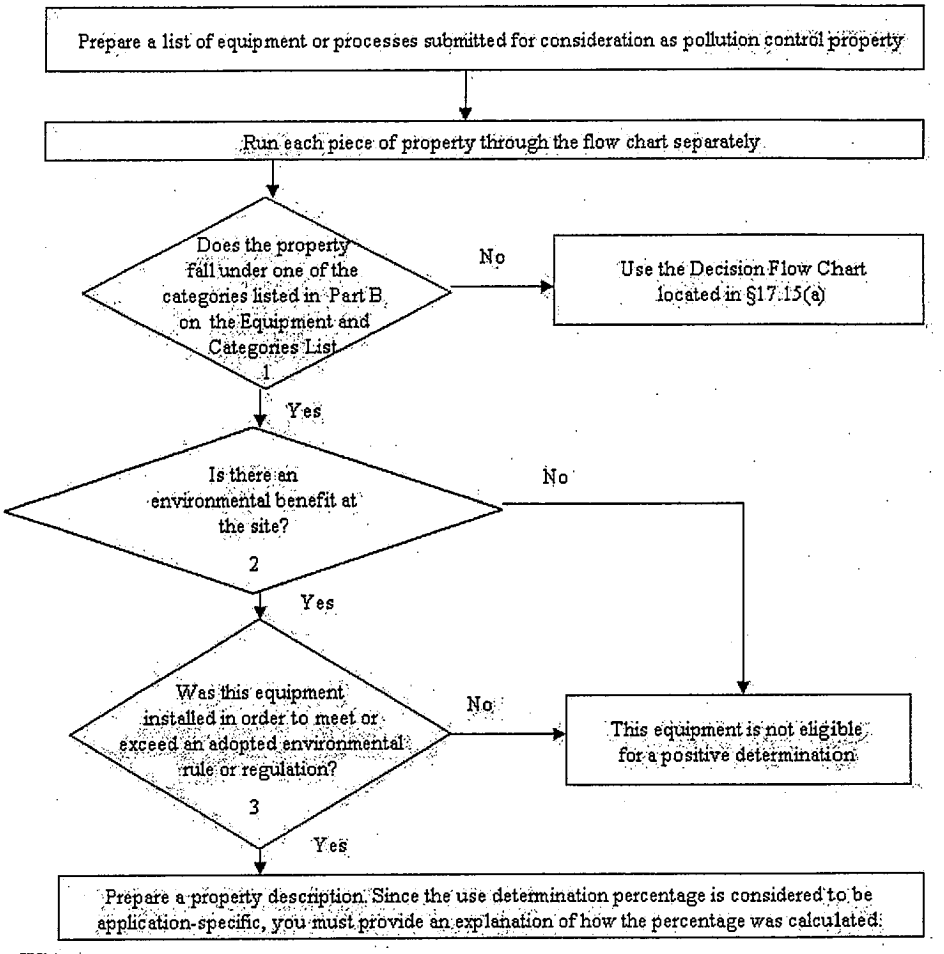
Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

(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)

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

Where:

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

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

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

> [3.1] If comparable equipment without the pollution control feature is on the market in the United States, then an average market price of the most recent generation of technology must be used.
>
> [3.2] If the conditions in variable 3.1 of §17.17(b) do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF in order to reduce CCO to reflect the same capacity as CCN.
>
> [3.3] If the conditions in variables 3.1 and 3.2 of §17.17(b) do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.

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

Figure: 30 TAC §17.17(c)

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

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

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

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

[iv] **Interest rate**--This is the current Prime Lending Rate that is in effect at the time the aication 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) 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 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 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.

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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 Commission on Environmental Quality 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 Commission on Environmental Quality 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 or by electronic means 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 or by electronic means 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 Commission on Environmental Quality. 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

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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.

(g-1) The standards and methods for making a determination under this section that are established in the rules adopted under Subsection (g) apply uniformly to all applications for determinations under this section, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution included on a list adopted by the Texas Commission on Environmental Quality under Subsection (k).

(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 Commission on Environmental Quality 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.

(n) The Texas Commission on Environmental Quality shall establish a permanent advisory committee consisting of representatives of industry, appraisal districts, taxing units, and environmental groups, as well as members who are not representatives of any of those entities but have substantial technical expertise in pollution control technology and environmental engineering, to advise the commission regarding the implementation of this section. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

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THE TEXAS CONSTITUTION
Article 8 - TAXATION AND REVENUE
Section 1-l - PROPERTY USED FOR CONTROL OF AIR, WATER, OR LAND POLLUTION; EXEMPTION FROM AD VALOREM TAXATION

(a) The legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

(b) This section applies to real and personal property used as a facility, device, or method for the control of air, water, or land pollution that would otherwise be taxable for the first time on or after January 1, 1994.

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

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ED's Exh. #3
Letter Opinion No. 96-128
Texas Attorney General's Office
(November 15, 1996)

Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1996

The Honorable Tom Craddick
Chair, House Committee on Ways and Means
House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-128

Re: Applicability of section 11.31(a), Tax Code, to a commercial injection well that is operated solely for the purpose of treating and disposing of waste generated by third parties (ID# 38908)

Dear Representative Craddick:

You have asked this office to interpret section 11.31(a) of the Tax Code. Specifically, you ask whether a commercial enterprise engaged solely in the business of treating, handling, and disposing of waste generated by third parties is entitled to the property tax exemption enacted by that section. In our view, based on the legislative history of section 11.31(a), such a commercial enterprise is not entitled to the exemption solely on the basis of the nature of its business.

Section 11.31(a) of the Tax Code provides:

> 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.

A consideration of the legislative history of this provision demonstrates that it was not intended to give tax relief to those who are primarily engaged in the commercial business of pollution control or abatement, but rather was intended to give such relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses.

Moreover, the language of article VIII, section 1-*l* of the Texas Constitution, upon the approval of which by the people the effectiveness of section 11.31(a) was contingent, is to the same effect. Article VIII, section 1-*l*, proposed by House Joint Resolution 86 of the Seventy-third Legislature, permits the exemption from ad valorem taxation of real or personal property "used, constructed, acquired or installed wholly or partly to meet or

exceed" environmental pollution rules "adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state."

As originally presented as part of House Bill 1920, in the Seventy-third Legislature's regular session in 1993, section 11.31(a) contained only what is now its first sentence. The hearings on H.B. 1920 and H.J.R. 86 before the House Ways and Means Committee, as well as the House Research Organization's bill analysis, make plain that the purpose of the legislation is to insure that businesses required by law to install pollution control equipment which generates no additional profit for them are not taxed on such property. H. P. Whitworth of the Texas Chemicals Council, testifying for the bill, said, "The [pollution control] equipment we are talking about today does not produce a penny of revenue. It's in there simply for the welfare as we see it of the general population. And anybody that adds it to his plant or his business cannot expect that investment to return him anything."[1] Similarly, the bill analysis, in its précis of supporting arguments for the bill, includes:

> [I]t is impossible to predict what proportion of new pollution control equipment would be reflected in the tax rolls. Since this equipment does not add to the profitability of a plant, many appraisers currently do not add the cost of environmental devices to the tax value of a business. . . . It would be unfair to tax businesses on property they are required by law to purchase.[2] [Footnote added.]

Further evidence that it was to correct such perceived unfairness, rather than to provide relief to those engaged in the pollution control business, that the bill was introduced, is provided by the remarks of Representative Stiles, the sponsor, in response to the question of whether the section exempted automobile inspection stations:

> No, sir, I think they are in the business to do, provide that service . . . but I would tell you that I would be glad to accept an amendment that somebody's in the business to make money with a service like that, that would not be applicable under this law.[3] [Footnote added.]

To address such concerns as these, Representative Berlanga offered an amendment which is now substantially the second sentence of section 11.31(a), save for the clause "or provides a service." In introducing this language, Representative Berlanga said, "This

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[1]Hearings on H.B. 1920 & H.J.R 86 Before the House Ways and Means Comm., 73d Leg. (March 24, 1993) (tape available from House/Video Services Office).

[2]House Research Organization, Bill Analysis, H.B. 1920, 73d Leg. (1993).

[3]Hearings on H.B. 1920 & H.J.R. 86 Before the House Ways and Means Comm., *supra* note 1.

amendment clarifies that a person cannot get the exemption just because the person manufactures a product that is used for pollution control purposes."[4]

The language "or provides a service" was added to section 11.31(a) in the senate for the same reason. Senator Whitmire, in the public hearing on the bill held by the Intergovernmental Relations Committee, asked, "What if their entire plant has to do with pollution control such as landfill or more specifically a hazardous waste incinerator . . . are they going to be exempt?"[5] The senate sponsor, Senator Armbrister, asked Bill Allaway of the Texas Association of Taxpayers to respond. Mr. Allaway said:

> I don't believe [the] entire facility would be exempt. What is exempt is land, processes or facilities which are used to meet or exceed a requirement of federal government. The business itself would not be exempt. The property that is covered by the bill is property that prevents that business from pollution--not the property that they use to conduct business.[6] [Footnote added.]

In introducing the language "or provides a service" on the senate floor, Senator Armbrister once again underlined that the statute is not intended as tax relief for persons engaged for profit in the pollution control business:

> What this device does is only if you have a pollution control device that is drafting off any emissions of the landfill, that device only, not the entire landfill or incinerator would get an exemption . . . only the device used to pull off a by-product of that device would be.[7] [Footnote added.]

The plain language of the second sentence of section 11.31(a), as well as the legislative history of the section as a whole, demonstrates clearly that the purpose of the statute is tax relief for businesses required by law to use or possess pollution control devices or equipment. The statute was not intended to provide a tax exemption to businesses which are engaged for profit in the commercial trade of pollution control or abatement. Accordingly, while a device employed by a business to reduce environmental pollution as mandated by law is exempted from property tax by the statute, a business

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[4]Debate on H.B. 1920, on the Floor of the House, 73d Leg. (April 20, 1993) (tape available from House Video/Audio Services Office).

[5]Hearings on H.B. 1920 & H.J.R. 86 Before the Senate Comm. on Intergovernmental Relations, 73d Leg., (April 28, 1993) (tape available from Senate Staff Services Office).

[6]*Id.*

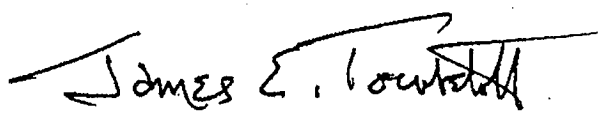
[7]Debate on H.B. 1920 on the Floor of the Senate, 73d Leg. (April 30, 1993) (tape available from Senate Staff Services Office).

engaged, as you put it, in "treating, handling, and disposing of waste generated by third parties" for which such third parties are charged a fee, is not entitled on that basis to an exemption under section 11.31(a) of the Tax Code.

SUMMARY

A business engaged in treating, handling, and disposing of waste generated by third parties, for which it charges such third parties a fee, is not entitled on that basis to an exemption from property taxes under section 11.31(a) of the Tax Code.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

ED's Exh. #4
Use Determination
Application No. 13702 &
Associated Documents

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?

- ☐ Corporation
- ☐ Partnership
- ☐ Limited Partnership
- ☐ Sole Proprietor
- ☐ Utility
- ☒ Other: LLC

B. Size of company: Number of Employees

- ☒ 1 to 99
- ☐ 100 to 499
- ☐ 500 to 999
- ☐ 1,000 to 1,999
- ☐ 2,000 to 4,999
- ☐ 5,000 or more

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

Asphalt manufacturing equipment leasing company

2. TYPE OF APPLICATION

- ☒ **Tier I** $150 Fee
- ☐ **Tier II** $1,000 Fee
- ☐ **Tier III** $2,500 Fee
- ☐ **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: WAM, BE

B. Mailing Address (Street or P.O. Box): c/o: Industrial Tax Consulting
901 S Mo Pac Expy, Ste 4-300

C. City, State, and Zip: Austin, TX 78746

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: SEE ATTACHED

B. Type of Mfg. Process or Service: SEE ATTACHED

C. Street Address: SEE ATTACHED

D. City, State, and Zip: SEE ATTACHED

E. Tracking Number (*Optional*):

F. Company or Registration Number (*Optional*):

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: SEE ATTACHED

B. Appraisal District Account Number: SEE ATTACHED

6. CONTACT NAME

A. Company/Organization Name	Industrial Tax Consulting
B. Name of Individual to Contact:	Kevin Grimm
C. Mailing Address (Street or P.O. Box):	901 S Mo Pac Expy, Ste 4-300
D. City, State, and Zip:	Austin, TX 78746
E. Telephone number and fax number:	512-732-9898 / Fax: 512-732-9899
F. E-Mail address (if available):	kevin@itctax.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	SEE ATTACHED
Water	SEE ATTACHED
Waste	SEE ATTACHED

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.

SEE ATTACHED

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

N/A

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 SEE ATTACHED					
Property SEE ATTACHED					
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: 4/29/2009

Title: Kevin Grimm, Sr. Manager

Company: Industrial Tax Consulting

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)

WAM, BE
Property Tax Year 2009

Name of Facility: Belton Plant

AMENDED

Texas Commission on Environmental Quality
Pollution Control Equipment List

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION		5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY	
Process or Service	Street Address, City, State, and Zip	Name of Appraisal District	Appraisal District Account Number
Asphalt manufacturing	2201 Taylors Valley Rd, Belton	Bell	405934

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION		8. DESCRIPTION OF PROPERTY		10. PROPERTY CATEGORIES AND COSTS				
Medium	Rule, Regulation, or Law	Description	Purpose	Taxable on 1/1/94?	DFC Box Number	ECL Number	Estimated Purchase Cost	Partial Percentage
Air	30 TAC 111.111(a) 30 TAC 111.151(a)	Dust collection devices	Baghouse, filter, cyclone, air blowers, valves, and piping manufactured by Astec Industries, installed on hot mix asphalt plant to capture hot asphalt dust particulate matter in mixer exhaust gas stream and return it to the mixer. Reduces air contamination.	No	12	A-1	$367,850	100%
			Totals:				$367,850	100%

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

June 23, 2009

INDUSTRIAL TAX CONSULTING LLC
KEVIN GRIMM
901 S MOPAC EXPY IV300
AUSTIN TX 78746 5776

This letter is to inform you that during the technical review of Use Determination Application, 13702, for:

WAM, BE BELTON PLANT
2201 TAYLORS VALLEY RD
BELTON TX

the reviewer has determined that the following information is missing and/or incomplete:

The business description lists this company as being an equipment leasing company. Who owns the baghouse? Who owns the asphalt plant?

Please provide this additional information as soon as possible. As per 30 TAC 17.12(2) the applicant must respond to a notice of deficiency (NOD) by providing the additional information required within 30 days of receipt of the NOD or the application will be returned. Once the additional information has been received the technical review of this application will resume. If you have any questions or require assistance in developing the additional required information please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348. Your response may be faxed to 512/239-5678, electronically mailed to rhatlett@tceq.state.tx.us, or sent by U.S. Mail to:

Tax Relief for Pollution MC110
PO Box 13087
Austin TX 78711-3087

Sincerely,

Ronald Hatlett
Tax Relief for Pollution Control Property Program

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 13702 Review Start Date: 6/19/2009
Company Name: WAM, BE
Facility Name: WAM, BE BELTON PLANT
County: BELL Outstanding Fees: N
Batch/Voucher Number:509369 Receipt Number:924115
ADMINISTRATIVE REVIEW
Administrative NOD Issued: 1. Only an original application was provided. Per 30 TAC 17.10(a)(1), an original and a copy must be provided. Provide a copy. 2. Under 'Description' it says dust collection devices. What devices were installed? What emission are being controlled. If there are multiple devices provide a process flow diagram showing each device.
Response to NOD:Information provided.
Administrative Complete Date:6/15/2009

TIER LEVEL
What Tier is this application? Is this the appropriate level?
The property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is: 30 TAC 111.111
Explain why this is the appropriate rule?
The property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

BRIEF DESCRIPTION OF PROPERTY
The property is described as:
Installed an Astec Industries baghouse dust collection system including a baghouse, filter, cyclone, air blowers, valves and piping.

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 property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

DECISION FLOWCHART(30 TAC 17.15(a)) [Old DFC I=7, II=9, III=10]
PART B DECISION FLOWCHART (17.15(b))

Describe how the property flowed through the Decision Flowchart:
The property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants?
The property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

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 property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

TECHNICAL DEFICIENCIES

Provide the language to be used in the Notice of Deficiency (NOD) letter:
The business description lists this company as being an equipment leasing company. Who owns the baghouse? Who owns the asphalt plant?
Summarize the NOD response:
WAM Be owns all of the property and leases it to Ironhorse Asphalt.
Provide the language used in the second NOD letter:
Summarize the second NOD response:
Provide the language used in the third NOD letter:
Summarize the third NOD response:

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:
LEASED ~~Installed~~ an Astec Industries baghouse dust collection system including a baghouse, filter, cyclone, air blowers, valves and piping.

Provide the reason for your final determination:
The property is owned by WAM BE and leased to Ironhorse Asphalt which operates the facility. As the owner of the baghouse WAM BE is providing a service of controlling pollution and the property is not eligible for positive use determination.

Provide the language for the final determination.
A negative determination. Section 11.31(a) of the Texas Tax Code requires that the person own the property and use it for pollution control. The owner of this property leases it to another party who uses it as pollution control property.

Required signatures and date signed.

Reviewed: [signature] **Date Signed:** 7/24/2009

Peer Reviewed: [signature] **Date Signed:** 7/31/09

Work Lead: [signature] **Date Signed:** 8/3/09

Ronald Hatlett - Responses to NOD Issued 6-23-09 - Ironhorse Asphalt (Sewer Jct, South, Manor, Kempner), WAM BE, Austin Reclaimed

From: Kevin Grimm <kevin@itctax.com>
To: Ron Hatlett <RHATLETT@tceq.state.tx.us>
Date: 7/23/2009 10:46 AM
Subject: Responses to NOD Issued 6-23-09 - Ironhorse Asphalt (Sewer Jct, South, Manor, Kempner), WAM BE, Austin Reclaimed
Attachments: 4209_001.pdf; 4209_002.pdf; 4209_003.pdf; 4209_004.pdf; 4209_005.pdf; 4209_006.pdf

July 23, 2009

TCEQ Tax Relief for Pollution Control Property (MC-110)
P.O. Box 13087
Austin, TX 78711-3087
E-mail: RHATLETT@tceq.state.tx.us
Phone: 512-239-6348
Fax: 512-239-5678

Re: Responses to NOD Notices Issued 6-23-09 for TCEQ Use Determination Applications for: IRONHORSE ASPHALT: TCEQ #13691 - Sewer Junction Plant
IRONHORSE ASPHALT: TCEQ #13693 - Manor Plant
IRONHORSE ASPHALT: TCEQ #13692 - South Plant
IRONHORSE ASPHALT: TCEQ #13695 - Kempner Plant
WAM, BE: TCEQ #13702 - Belton Plant
AUSTIN RECLAIMED MATERIALS: TCEQ #13689 - Ramires Ln Plant

Ron:

Below are responses to the attached 2nd set of NOD notices issued 6-23-09 for Ironhorse Asphalt (4 locations), WAM BE, and Austin Reclaimed Materials. Since many applications involved an identical set of questions, these responses have been grouped by company, then by the affected TCEQ application number(s), then by the individual question(s).

IRONHORSE ASPHALT

- **TCEQ #13691 - Sewer Junction Plant**
- **TCEQ #13693 - Manor Plant**
- **TCEQ #13692 - South Plant**
- **TCEQ #13695 - Kempner Plant**

1. Question: You have listed six regulation for the compactor. All six of the regulations are for the control of air pollution. How does the compression of waste asphalt material prevent the release of a hazardous air pollutant? How is the compacted material disposed of?

   Response: **The compactor is part of a waste asphalt removal system that compresses the waste asphalt material prior to disposal. This system reduces the space occupied by the waste material and prepares it for safe and proper disposal using the minimum amount of land space. This system minimizes the volume**

of landfill space required for disposal of this waste material and thereby benefits the environment by preserving landfill space as landfill space is a limited natural resource. An applicable regulation is 30 TAC 328.8(e)(11)(A) that specifically requires the minimization of asphalt waste material. Previously a regulation for control of air pollution was used erroneously in this application.

2. Question: The asphalt crusher appears to be a piece of production equipment. Why should it be considered pollution control property? How does the crusher reduce particulate emmissions?

   Response: The asphalt crusher is allows for the reclamation and reuse of otherwise worthless material that would be disposed of as industrial waste. This system reduces the accumulation of waste material that would otherwise be disposed of in a landfill. This minimizes waste and enables material to be recycled into a useful form. The correct regulations are 16 TAC 3.8(b) and 40 CFR 715.17(c)(2) as they relate to prohibition of ground water contamination, requirements to dispose of oil and gas related waste material in pits that are isolated by naturally occurring impervious barriers that will prevent the contamination of the ground water system in the event of oil and gas chemical runoff escaping from the pit as the result of a flood or other environmental incident affecting the water table, and requirements to protect the hydrologic system and prevent contamination of ground water. The most applicable regulation is 30 TAC 328.8(e)(11)(A) that specifically requires the minimization of asphalt waste and the maximum recycling to the extent possible for asphalt waste material. A particulate emission control regulation was listed erroneously on the original application.

3. Question: The Green System is listed as ECL item A-87 and requests a 100% determination, Item A-87 allows for a 20% determination. If the Green System was installed in order to reduce NOx formation why is a particulate control regulation listed?

   Response: The correct ECL item is A-87, and the correct exemption percentage is 20%. Applicable regulations are 30 TAC 101.221(a) and 30 TAC 101.506 that require minimization of air pollution generally and pollution from NOx compounds specifically. A particulate control regulation was listed erroneously on the original application.

WAM, BE

- TCEQ #13702 - Belton Plant

1. Question: The business description lists this company as being an equipment leasing company. Who owns the baghouse? Who owns the asphalt plant?

   Response: WAM BE owns all property included on this application as well as all property physically located at this facility. which includes both the baghouse and the asphalt plant. WAM BE is the lessor, and Ironhorse Asphalt is the lessee of this equipment.

AUSTIN RECLAIMED MATERIALS

- TCEQ #13689 - Ramires Ln Plant

1. Question: You have listed S-21 as the ECL number on this application. Since the waste material is wastewater W-57 is the appropriate listing. If you agree we will make the change for you.

Response: **Agreed. Please make this change.**

Please let me know if any additional information is needed or if you have any questions regarding any of this information.

Thank you for your assistance.

Regards,

Kevin Grimm
Senior Manager
INDUSTRIAL TAX CONSULTING
901 S Mo Pac Expy Ste 4-300
Austin, TX 78746
(512) 965-3967 Office
(512) 732-9899 Fax
kevin@itctax.com

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

August 18, 2009

INDUSTRIAL TAX CONSULTING LLC
KEVIN GRIMM
901 S MOPAC EXPY IV300
AUSTIN TX 78746 5776

This letter is to inform you that the technical review of Use Determination Application 13702 has been completed. This application is for:

WAM, BE BELTON PLANT
2201 TAYLORS VALLEY RD
BELTON TX

The outcome of this review is as follows:

A negative determination. Section 11.31(a) of the Texas Tax Code requires that the person own the property and use it for pollution control. The owner of this property leases it to another party who uses it as 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) 239-6348.

Sincerely,

Susana M. Hildebrand, P.E.
Chief Engineer

Ronald Hatlett - WAM, BE Belton Plant TCEQ Application #13702

From: "Mark Dzeda" <mark@itctax.com>
To: <rhatlett@tceq.state.tx.us>
Date: 8/21/2009 10:00 AM
Subject: WAM, BE Belton Plant TCEQ Application #13702
CC: <kevin@itctax.com>, <rmorrison@wheelercoatings.com>
Attachments: 4789_001.pdf

Ron:
We filed on behalf of the owner, WAM BE. WAM BE is not in the pollution control equipment business. They are in the asphalt business.
We did not file in the name of the lessee.
The law in Section 11.31 a entitles an owner of property used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. We filed in the name of the owner, WAM BE. The law does not state the equipment or facility cannot be leased in Section 11.31 a.
WAM BE does not produce pollution control products.
Is there some confusion as to what the ownership of this equipment is or the business the lessor is in? I do not see anything precluding leased equipment from being exempt.
Can you help me out here?
Thanks,

Mark S. Dzeda, CPA, CMI
Industrial Tax Consulting
901 S MoPac Expy, Ste. IV-300
Austin, TX 78746-5776
Phone: 512.732.9898
Fax: 512.732.9899
Mobile: 512.965.3963
e-mail: mark@itctax.com