TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 23, 2011

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

Re: Sandy Creek Energy Associates, LP et al
TCEQ Docket No. 2011-0273-MIS-U; Use Determination No. 13256
Executive Director's Response to Sandy Creek Energy Associates, LP et al's Appeal of the Executive Director's Negative Use Determination

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the "Executive Director's Response to Sandy Creek Energy Associates, LP et al's Appeal of the Executive Director's Negative Use Determination." I have also attached the following exhibits to assist the Commission in the resolution of this matter:

Exhibit 1 Letter from Rick Barton, Senior Director, Property Tax, Dynegy, Inc. to Minor Hibbs, Special Assistant, Chief Engineer's Office, TCEQ, dated August 6, 2009

Exhibit 2 Amendment to Certificate of Adjudication No. 12-2315C

Exhibit 3 Authorization for Reclaimed Water issued to Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway

Exhibit 4 Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, TCEQ, RG-461, September 1, 2009

If you have any questions, please do not hesitate to contact me at (512) 239-0969.

Sincerely,

Tim Reidy

Timothy J. Reidy, Staff Attorney
Environmental Law Division

TCEQ DOCKET NOS. 2011-0273-MIS-U
USE DETERMINATION NO. 13256

APPEAL OF	**§**	**BEFORE THE**
THE EXECUTIVE DIRECTOR'S	**§**	
NEGATIVE USE DETERMINATION	**§**	**TEXAS COMMISSION ON**
ISSUED TO SANDY CREEK	**§**	
ENERGY ASSOCIATES, LP ET AL	**§**	**ENVIRONMENTAL QUALITY**
USE DETERMINATION NO. 13256	**§**	

EXECUTIVE DIRECTOR'S RESPONSE TO SANDY CREEK ENERGY ASSOCIATES, LP ET AL'S APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to Sandy Creek Energy Associates, LP et al's (Sandy Creek or Appellant) appeal of the Executive Director's negative use determination issued for the raw water pretreatment system at its Sandy Creek Power Generation Facility. The appeal was submitted by Gerald J. Pels, Locke, Lord, Bissell, & Liddell, LLP, on Sandy Creek's behalf.

For the reasons described below, the Executive Director respectfully requests that the Commission deny Sandy Creek's appeal and affirm the Executive Director's Tier I negative use determination for the raw water pretreatment system.

PROGRAM BACKGROUND

This appeal of the Executive Director's negative use determination is filed pursuant to H.B. 3121 (77th Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation. See Tex. Tax Code § 11.31 and 30 Tex. Admin. Code (30 TAC) § 17.25.

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

use determinations. See Tex. Tax Code § 11.31(e) and 30 TAC § 17.25. The amendment also required the Commission to adopt new rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial pollution control use determinations. See Tex. Tax Code § 11.31(g). Appeals under Section 17.25 of the Commission rules may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination. Tex. Tax Code § 11.31(e) and 30 TAC § 17.25(a)(2). The Appellant is required to explain the basis for the appeal. 30 TAC § 17.25(b)(5).

PROCEDURAL BACKGROUND

On January 27, 2009, Sandy Creek filed a use determination application for 21 pieces of equipment located at its Sandy Creek Power Generation Facility, including the raw water pretreatment system. On January 29, 2009, the Executive Director issued an administrative Notice of Deficiency (NOD) on the application; requesting, among other things, that separate applications be submitted for non-integrated equipment. On February 20, 2009, Sandy Creek filed a Tier I application requesting a 100% positive use determination for the raw water pretreatment system at its Sandy Creek Power Generation Facility. In its application, Sandy Creek described the raw water pretreatment system as follows:

> "The raw water pre-treatment system clarifies, disinfects, and neutralizes water from the Waco Metropolitan Area Regional Sewage System ("WMARSS"). The water supplied by WMARSS is grey water that meets the guidelines as Type I Effluent as specified in the TAC. The equipment included in the raw water pre-treatment is the 11 mile intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, and lime and soda ash injection for pH adjustment. Also, a storage pond prior to treatment and a storage tank post treatment are utilized. By treating and utilizing grey water, the Sandy Creek Power Generation Facility ("Sandy Creek" or the "Facility") eliminates the need to utilize fresh water supplies in the area..."[1]

Sandy Creek cited 30 TAC Chapter 288, Water Conservation Plans, Drought Contingency Plans, Guidelines and Requirements, as the environmental law, rule, or regulation that was being met by the installation of the raw water pretreatment system. Sandy Creek cited Item W-58 on Part A of the Equipment and Categories List (ECL) as the applicable listing for the raw water pretreatment system. On August 6, 2009, Rick Barton, Senior Director, Property Tax, Dynegy, Inc., sent a letter on behalf of Sandy Creek to Executive Director staff, supplementing the

[1] *See* Use Determination No. 13256, p. 5.

information in its application.[2] In the August 6th letter, Sandy Creek claimed that the raw water pretreatment system would be used to meet or exceed: 1) Texas Water Code (TWC) § 11.1271, Additional Requirements: Water Conservation Plans, 2) 30 TAC § 288.3, Water Conservation Plans for Industrial or Mining Use, 3) 30 Texas Administrative Code (TAC) § 288.7, Plans Submitted with a Water Right Application for New or Additional State Water, 4) 30 TAC § 210.32, Specific Uses of Reclaimed Water, and 5) 30 TAC § 210.33, Quality Standards for Using Reclaimed Water.

On August 19, 2009, the Executive Director issued an administrative NOD on the application, stating:

> "The application does not provide sufficient information on the components of the reclaimed water system. Please provide a detailed list of all the components that make up this system, as well as a process flow diagram showing this and related systems from the inlet pipeline to the discharge point for wastewater from the facility (if any). Please label each piece of equipment identified in the process flow diagram."[3]

On or about September 8, 2009, Sandy Creek provided Executive Director staff with the appropriate process and instrumentation diagrams, as well as a water balance.[4] On June 3, 2010, the Executive Director declared the application administratively complete. On January 10, 2011, the Executive Director declared the applications technically complete. On January 21, 2011, the Executive Director issued a negative use determination for the raw water pretreatment system on the basis that: 1) the raw water pretreatment system is used for production of electricity, and 2) Sandy Creek failed to cite an applicable federal, state, or local environmental law, rule, or regulation being met or exceeded by the installation of the raw water pretreatment system.[5] On February 2, 2011, Gerald J. Pels, Locke Lord Bissell & Liddell, LLP, timely filed an appeal letter on Sandy Creek's behalf.[6]

APPELLANT'S CLAIM

Sandy Creek argues that the Executive Director erred in determining that Sandy Creek failed to cite an applicable federal, state, or local environmental law, rule, or regulation being met or exceeded by the installation of the raw water pretreatment system. Sandy Creek's appeal letter states:

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[2] *See* Letter from Rick Barton, Senior Director, Property Tax, Dynegy, Inc. to Minor Hibbs, Special Assistant, Chief Engineer's Office, TCEQ, dated August 6, 2009. (Attached as **ED's Exh. #1**).

[3] Administrative NOD, dated August 19, 2009.

[4] Sandy Creek's Response to Administrative NOD, dated September 8, 2009.

[5] Use Determination No. 13256.

[6] Sandy Creek's Appeal of Use Determination No. 13256, dated February 2, 2011.

"The Reclaimed Water System was installed to meet or exceed regulatory requirements, including, without limitation, requirements found at Texas Water Code § 11.1271, 30 Texas Administrative Code § 288.3, 30 Texas Administrative Code § 288.7, and the Amendment to the City of Waco's Certificate of Adjudication (Certificate No. 12-23115C)..."[7]

Additionally, Sandy Creek's appeal letter states that the Executive Director failed to properly consider the record, and failed to distinguish between water conservation plans and drought contingency plans. Sandy Creek claims that the negative use determination has no basis in fact or Texas law. Sandy Creek argues that the Executive Director's negative use determination is arbitrary, capricious, and represents an abuse of discretion.

LEGAL ANALYSIS

1. THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION SHOULD BE AFFIRMED BECAUSE SANDY CREEK FAILED TO CITE AN ENVIRONMENTAL LAW, RULE, OR REGULATION BEING MET OR EXCEEDED BY THE INSTALLATION OF THE RAW WATER PRETREATMENT SYSTEM.

To receive a positive use determination, an applicant must cite to a federal, state, or local environmental law, rule, or regulation being met or exceeded by the use, construction, acquisition, or installation of the property at issue.[8] As previously mentioned, Sandy Creek claims that the raw water pretreatment system was installed to meet or exceed: 1) TWC § 11.1271, Additional Requirements: Water Conservation Plans, 2) 30 TAC § 288.3, Water Conservation Plans for Industrial or Mining Use, 3) 30 TAC 288.7, Plans Submitted with a Water Right Application for New or Additional State Water, 4) 30 TAC § 210.32, Specific Uses of Reclaimed Water, and 5) 30 TAC § 210.33, Quality Standards for Using Reclaimed Water. As explained below, Sandy Creek failed to provide a federal, state, or local environmental law, rule, or regulation that was being met or exceeded by the installation of the raw water pretreatment system.

A. TWC § 11.1271, Additional Requirements: Water Conservation Plans

TWC § 11.1271 requires an applicant for a new or amended water right to prepare and implement a water conservation plan, and submit that plan with its water rights application. In addition to water right applicants, TWC § 11.1271 requires certain water rights holders and water suppliers to develop, submit, and implement a water conservation plan consistent with the approved regional water plan. TWC § 11.1271 also requires that all water conservation plans establish specific quantified 5-year and 10-year targets for water savings. TWC § 11.1271

[7] Id.
[8] 30 TAC § 17.4(a); *Also see* Tex. Tax Code § 11.31(a) and (b).

also requires the TCEQ to adopt rules establishing criteria and deadlines for submission of water conservation plans.

In its application, Sandy Creek has not identified itself as an applicant for a new or amended water right, nor has it claimed to be a water right holder or retail or wholesale water supplier. Based upon the information before the Executive Director, TWC § 11.1271 does not apply to Sandy Creek. Therefore, Sandy Creek cannot meet or exceed TWC 11.1271 by installing a raw water pretreatment system at its Sandy Creek Power Generation Facility.

B. 30 TAC § 288.3, Water Conservation Plans for Industrial or Mining Use

30 TAC Chapter 288 sets out the submittal requirements for water conservation plans and drought contingency plans. The TCEQ is required to determine whether requested appropriations of state water are reasonable and necessary for the proposed use or uses, and that water right applicants will conserve and avoid wasting water. This determination is made through reviewing an applicant's water conservation plan, and this review is considered in the decision to approve or deny a water right application. In addition to water right applicants, water right holders of more than 1,000 acre-feet per year that use the water for industrial or mining uses are required to submit a water conservation plan.

30 TAC § 288.3 sets out the minimal elements of a water conservation plan submitted by a water rights holder using the water for industrial or mining purposes. The water conservation plan must include information on the "application of state-of –the-art equipment and/or process modifications to improve water use efficiency."[9] The water conservation plan must also establish specific quantified five-year and ten-year targets for water savings, and the basis for the development of these water saving goals.[10] These 5 and 10-year goals are not enforceable.[11]

Sandy Creek has not identified itself as a water rights holder using the water for industrial or mining purposes. In Footnote 7 of its August 6th letter, Sandy Creek states:

> "***Pursuant to [Sandy Creek's] contract*** with the City of Waco, the City of Waco obtained an Amendment to its existing Certificate of Adjudication (Certificate No. 12-2315C) (the "Amended Certificate"), authorizing the diversion of an additional 58,200 acre-feet of water per year from Lake Waco on the Bosque River from a diversion structure located on land owned by the City of Robinson. The additional water rights were for industrial uses, and under the aforementioned contract served as a backup water supply in the event that WMARSS was unable to

[9] 30 TAC § 288.3(a)(6).
[10] 30 TAC § 288.3(a)(3)
[11] Id.

provide sufficient quantities of reclaimed water to meet the Facility's needs. ***Further, the Amended Certificate specifically requires the City of Waco to implement a water conservation plan as required by 30 T.A.C. § 288.3, and that any contract customer of the City do the same within 90 days prior to the diversion of water for industrial purposes.*** *See* Amended Certificate, Par. 5.A. and B. Accordingly, installation and use of the Reclaimed Water System as a water conservation measure nonetheless meets or exceeds the requirements of Texas Water Code § 11.1271, 20 T.A.C. § 288.3, and the Amended Certificate." (emphasis added).[12]

Sandy Creek acknowledges that 30 TAC § 288.3 does not apply to them, but to the City of Waco. Sandy Creek relies on the provisions of its water supply contract with the City of Waco and the provisions City of Waco's Amended Certificate of Adjudication[13] to claim that the installation of the raw water pretreatment system at its facility meets or exceeds 30 TAC § 288.3. Citing to the provisions of its water supply contract with the City of Waco and the provisions of the City of Waco's Amended Certificate of Adjudication does not satisfy the requirement that Sandy Creek cite to an applicable federal, state, or local environmental law, rule, or regulation being met or exceeded by the installation of the raw water pretreatment system. Based upon the information before the Executive Director, 30 TAC § 288.3 does not apply to Sandy Creek. Therefore, Sandy Creek cannot meet or exceed 30 TAC § 288.3 by installing a raw water pretreatment system at its Sandy Creek Power Generation Facility.

C. 30 TAC § 288.7, Plans Submitted with a Water Right Application for New or Additional State Water

30 TAC 288.7 sets out the minimal elements of a water conservation plan that must accompany an application for new or additional appropriation of state water. As part of its water conservation plan, a water right applicant must evaluate any other feasible alternative to new water development, including recycling and reuse.[14] A water right applicant bears the burden of demonstrating that no feasible alternative to the proposed appropriation exists, and that the requested amount of the appropriation is necessary and reasonable for the proposed use.

Sandy Creek has not identified itself as an applicant for a new or amended water right. Based upon the information before the Executive Director, 30 TAC § 288.7 does not apply to Sandy Creek. Therefore, Sandy Creek cannot meet or

[12] *See* Letter from Rick Barton, Senior Director, Property Tax, Dynegy, Inc. to Minor Hibbs, Special Assistant, Chief Engineer's Office, TCEQ, dated August 6, 2009, p. 6. (Attached as **ED's Exh. #1**).
[13] *See* Amendment to Certificate of Adjudication No. 12-2315C (Attached as **ED's Exh. #2**).
[14] 30 TAC § 288.7(a)(3).

exceed 30 TAC § 288.7 by installing a raw water pretreatment system at its Sandy Creek Power Generation Facility.

D. 30 TAC § 210.32, Specific Uses of Reclaimed Water and 30 TAC § 210.33, Quality Standards for Using Reclaimed Water

30 TAC Chapter 210 establishes the general requirements, quality criteria, design and operational requirements for the beneficial use of reclaimed water. Subchapter C, 30 TAC Chapter 210 (30 TAC §§ 210.31-210.36) sets out the specific uses, quality standards, monitoring, record keeping, and reporting requirements for reclaimed water. 30 TAC § 210.32 differentiates between Type I and Type II reclaimed water uses. Type I reclaimed water use includes irrigation or other uses in areas where the public may be present and come into contact with the reclaimed water. Type II reclaimed water use includes irrigation or other uses in areas where the public will not be present and come into contact with the reclaimed water. 30 TAC § 210.33 sets out numeric water quality limitations for both Type I and Type II reclaimed water uses. These numeric water quality standards apply to reclaimed water before it is discharged to an initial holding pond or reclaimed water distribution system.[15] It is the responsibility of the reclaimed water producer to establish that the reclaimed water meets the quality limits at 30 TAC § 210.33.[16]

The Chapter 210 Authorization obtained by the Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway designates the City of Waco as the reclaimed water provider and Sandy Creek as the reclaimed water user. The Chapter 210 Authorization provides the following:

> "Reclaimed water from the WMARSS's [sic] Water Treatment Plant (Permit 11071-001) to be used for cooling tower make-up water, boiler makeup water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas, and coal piles; and other Type II uses. Sandy Creek Energy Associates is authorize [sic] to treat the Type II effluent to Type I for fire protection within their facility."[17]

In Footnote 8 of its August 6th letter, Sandy Creek states:

> "We understand that TCEQ acknowledges that, because Sandy Creek is obligated to meet storage requirements under limitation I(e) of the Authorization, the reclaimed water storage pond should be eligible for a positive use determination. It is important to note that [Sandy Creek] is

[15] 30 TAC §§ 210.32 - 210.34.
[16] Id.
[17] *See* Authorization for Reclaimed Water issued to Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway (Attached as **ED's Exh. #3**).

> required to treat Type II effluent to Type I standards for fire protection uses. The system to be installed by [Sandy Creek] will be used to treat all Type II effluent to Type I standards, thus exceeding the minimum usage criteria in the Authorization and the requirements for on-site grey water usage established by the TCEQ. *See* 30 T.A.C. §§ 210.32-33."[18]

First and foremost, Provision I(e) in the Chapter 210 Authorization provides that reclaimed water managed in ponds for storage must be prevented from discharging into waters in the state, except for discharges directly resulting from rainfall events or in accordance with a permit issued by the TCEQ. Sandy Creek's citation of this pond management provision of the Chapter 210 Authorization does not satisfy the requirement that Sandy Creek cite to an applicable federal, state, or local environmental law, rule, or regulation being met or exceeded by the installation of the raw water pretreatment system; and does not make the storage pond eligible to receive a positive use determination.[19] Second, the City of Waco is required to meet the Type II water quality standards prior to transferring the reclaimed water to Sandy Creek.[20] Sandy Creek is not required to meet the Type II standards before utilizing the reclaimed water for process water uses, service water for cleaning floors and equipment, irrigation, and water for dust suppression on road, solid waste disposal areas, and coal piles. Since Sandy Creek is not required to meet the Type II water quality standards, it cannot exceed those standards by treating all of the reclaimed water it receives to Type I water quality standards. Finally, the fact that the Chapter 210 Authorization authorizes Sandy Creek to treat Type II effluent to Type I standards for fire protection does not make the raw water pretreatment system eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property.[21]

2. THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION SHOULD BE AFFIRMED BECAUSE THE RAW WATER PRETREATMENT SYSTEM IS USED FOR PRODUCTION PURPOSES.

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[18] *See* Letter from Rick Barton, Senior Director, Property Tax, Dynegy, Inc. to Minor Hibbs, Special Assistant, Chief Engineer's Office, TCEQ, dated August 6, 2009, p. 6. (Attached as **ED's Exh. #1**).

[19] While the storage pond is not eligible to receive a positive use determination, any storage pond liner may qualify for a positive use determination. In its application, Sandy Creek did not individually list a storage pond liner, cite to the applicable environmental law, rule, or regulation being met or exceeded by the installation of a storage pond liner, provide the ECL number corresponding to a storage pond liner, or the estimated cost of a storage pond liner.

[20] *See* 30 TAC §§ 210.32 - 210.34.

[21] *See* 30 TAC § 17.14(a) (repealed December 13, 2010, 35 TexReg 10964); *Also see*, Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, TCEQ, RG-461, p. 32, September 1, 2009 (Attached as **ED's Exhibit #4**).

Sandy Creek's raw water pretreatment system is used to generate electricity and operate the Sandy Creek Power Generation Facility; therefore, it is production equipment that is not eligible for a positive use determination. Sandy Creek will use the raw water pretreatment system to obtain cooling and process waters that are necessary elements of the steam electric power generating process. The raw water pretreatment system will generate process water that will be sent to boilers to produce steam and generate electricity for sale. Sandy Creek's raw water pretreatment system is production equipment that does not control air, water, or land pollution; and thus, is not eligible to receive a positive use determination. Property used solely for product collection or for production is not eligible to receive a positive use determination.[22]

Sandy Creek has applied for a Tier I 100% positive use determination for its raw water pretreatment system, which consists of: 1) 11 miles of intake piping, 2) chlorine treatment system, 3) solids contact units utilizing coagulant and coagulant aids, 4) lime and soda ash injection for pH adjustment, 5) a storage pond for storage prior to treatment, and 6) a storage tank for post treatment storage.

The Chapter 210 Authorization indicates that the reclaimed water will be used by Sandy Creek for process and make-up water at the Sandy Creek Power Generation Facility. Authorized uses of the water include: 1) cooling tower make-up water, boiler make-up water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; 2) service water for cleaning floors and equipment; 3) irrigation; and 4) water for dust suppression on roads, solid waste disposal areas, and coal piles.[23] Cooling tower make-up water is used to replace process water that evaporates in the cooling tower. Boiler make-up water is water used to supply a boiler to generate steam used in generating electricity. Ash quench water is used to cool the ash generated by combustion of coal in the boiler. Process water is also necessary for operation of air pollution control devices such as wet scrubbers, which use the water to remove pollutants from the gas stream. As previously mentioned, these are Type II reclaimed water uses. The City of Waco is responsible for treating effluent to the Type II water quality standards before transferring it to Sandy Creek. Sandy Creek's raw water pretreatment system converts Type II effluent to Type I water quality standards. This is not required by TCEQ's regulations, and does not provide an environmental benefit. Sandy Creek's raw water pretreatment system is production equipment that does not control air, water, or land pollution, and is not eligible to receive a positive use determination.

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[22] *See* 30 TAC § 17.14(a) (repealed December 13, 2010, 35 TexReg 10964); *Also see*, Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, TCEQ, RG-461, p. 32, September 1, 2009 (Attached as **ED's Exhibit #4**).

[23] Authorization for Reclaimed Water issued to Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway (Attached as **ED's Exh. #3**).

CONCLUSION

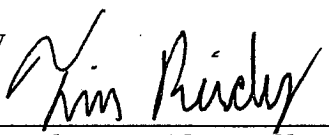
After careful consideration of the appeal filed by Sandy Creek on Use Determination Application Number 13256, the Executive Director concludes that its original Tier I negative use determination was not issued in error. Sandy Creek has failed to provide any legal basis upon which the Commission should reverse the Executive Director's use determination in this case. The Executive Director's use determination is consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Appellant do not alter the findings and final negative use determination issued by the Executive Director in this case.

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

Respectfully submitted,
Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 

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REPRESENTING THE EXECUTIVE DIRECTOR OF THE TEXAS

COMMISSION ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on March 23, 2011 an original and seven copies of the "Executive Director's Response to Sandy Creek Energy Associates, LP et al's Appeal of the Executive Director's Negative 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.

Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069

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TCEQ Docket No. 2010-0273-MIS-U
Use Determination Application No. 13256

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ED's Exhibit #1 – Letter from Rick Barton to Minor Hibbs, dated August 6, 2009

Richard Barton
Senior Director, Property Tax

Dynegy Inc.
133 South Fourth St. Suite 306
Springfield, IL 62701
(217) 492-6612

August 6, 2009

Via email (mhibbs@tceq.state.tx.us)
and Certified Mail/Return Receipt Requested

Mr. Minor Hibbs
Special Assistant, Chief Engineer's Office
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12100 Park 35 Circle
Austin, Texas 78753

Re: Letter for TCEQ Legal Counsel Review of the Sandy Creek Energy Associates LP et al's Use Determination Application SC-2008-8 for Pollution Control Property Tax Exemption of the Reclaimed Water System at the Sandy Creek Power Generation Facility

Dear Mr. Hibbs:

As you are aware, Sandy Creek Energy Associates LP et al. ("SCEA" or "we") has submitted Use Determination Application SC-2008-8 (the "Application") to the Texas Commission on Environmental Quality ("TCEQ"). The Application is a Tier I application pertaining to the Raw Water Pre-treatment System at the Sandy Creek Power Generation Facility ("Sandy Creek" or the "Facility") located in Riesel, McLennan County, Texas. Tier I applications encompass property defined in Part A of the Equipment and Categories List ("ECL").

I. BACKGROUND

We prepared this letter at your request (in a telephone conversation with Rick Barton, Dynegy's Property Tax Manager) for presentation to TCEQ's legal counsel regarding consideration of the Raw Water Pre-treatment System installed at Sandy Creek as property tax exempt pollution control equipment. This pre-treatment system clarifies, disinfects, and neutralizes wastewater received from the Waco Metropolitan Area Regional Sewage System ("WMARSS"). This pre-treatment system is also known as the "Reclaimed Water System" (and will be referred to as such herein) because the wastewater water received from WMARSS is recycled to avoid depleting state surface waters or ground water.

II. RECLAIMED WATER SYSTEM DESCRIPTION

The equipment associated with the Reclaimed Water System covered by the Application for property tax exemption includes only that equipment above and beyond the typical raw water treatment equipment that would normally be used by a coal-fired electric generation facility to produce water for process purposes.

The Reclaimed Water System includes:

- the 11 mile intake piping;
- chlorine treatment system;
- solids contact units utilizing coagulant and coagulant aids; and
- lime and soda ash injection for pH adjustment.

There is also a storage pond for wastewater storage prior to treatment as well as a tank for post treatment storage.

The Application does not include the conventional raw water treatment systems typically found at coal-plants using process water from a potable water source or on-site wells. These conventional water systems (which are not included in the Application) consist of multi-media filters, reverse osmosis units, mixed bed demineralization equipment, and associated tanks and piping used to further treat the water to process standards.

Accordingly, the Reclaimed Water System covered by the Application is used wholly as pollution control equipment for the Facility.

III. DISCUSSION OF PROPERTY TAX EXEMPTION APPLICATION AND ELIGIBILITY

A. Basis for Tier I Application

The first step in the application process is the determination of the appropriate tier level for an application. In this case, the Application is appropriately classified as a Tier I application because the pollution control equipment at issue is specifically listed in Part A of the ECL, 30 T.A.C. § 17.14(a). Specifically, the Reclaimed Water System falls squarely under Item W-58, Water Recycling Systems, which includes:

> *"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." (Emphasis Added.)*

While Item W-58 encompasses a variety of water recycling systems, for purposes of Sandy Creek's Application, it contains three key elements: (1) an installed system that is not a cooling tower, (2) that reuses wastewater, (3) to reduce the amount of new water used as process water or make-up water. The Reclaimed Water System satisfies each of these three elements. To wit:

(1) The Reclaimed Water System as defined in the Application (and as described above) does not include cooling towers.

(2) The Reclaimed Water System "reuses" wastewater, specifically, wastewater from WMARSS. The term "reuse" is defined in TCEQ's water conservation rules (30 T.A.C. § 288.1) as:

> *"The authorized use for one or more beneficial purposes of use of [sic] water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water."*

The WMARSS wastewater that supplies the Reclaimed Water System is wastewater originally used by residents of the Waco metropolitan area that has been treated by WMARSS and would otherwise be discharged in due course into the Brazos River. The purpose of use of the wastewater by the Reclaimed Water System is a "beneficial use" pursuant to the TCEQ's regulations regarding the Use of Reclaimed Water. The TCEQ's regulations define "beneficial use" as "an economic use of wastewater . . . which takes the place of potable and/or raw water that could otherwise be needed from another source." 30 T.A.C. § 210.3. If the Reclaimed Water System had not been installed to permit the Facility to reuse the WMARSS wastewater, then an estimated 8,788 gallons of raw water per minute, or 12,654,720 gallons per day, would be needed from another source (or sources) to satisfy the Facility's water needs. Thus, the Reclaimed Water System reuses wastewater.

(3) As referenced above, the Sandy Creek Facility requires an estimated 8,788 gallons of process water per minute, or 12,654,720 gallons per day. In the absence of the Reclaimed Water System, these very substantial water needs would have to be met with new water obtained either through the pumping of local groundwater or the diversion of surface water pursuant to newly obtained water rights. The Reclaimed Water System is designed specifically for the purpose of reusing wastewater from WMARSS to not just reduce, but eliminate the amount of new water used as process water at the Sandy Creek Facility.

B. Interpretation of Item W-58

We understand that TCEQ has suggested that Item W-58 of the ECL may apply only to systems that reuse wastewater generated exclusively on-site. Respectfully, we believe there is no basis either in the description of Item W-58 itself, Section 11.31 of the Texas Tax Code, TCEQ's regulations in 30 T.A.C. Chapter 17, or TCEQ's guidance on Property Tax Exemptions for Pollution Control Equipment (the "Program Guidance"), for limiting the applicability of the Item in that manner.

Item W-58 provides three distinct ways in which a water recycling system may be used for pollution control purposes. They are systems that:

(i) clean, recycle, or reuse wastewater;

(ii) use grey water or storm water to reduce the amount of a facility's discharge; or

(iii) use grey water or storm water to reduce the amount of new water used as process or make-up water. 30 T.A.C. § 17.14(a) (Part A).

The regulation was drafted in the disjunctive. The use of the word "or" makes clear that any of the three uses qualifies as pollution control equipment.[1]

To the extent that the "on-site" interpretation results from a narrow focus on the language in the description of Item W-58 which reads, "...in order to reduce the amount of a facility's discharge...," we point out that such a limited reading disregards the alternative, accepted purpose set forth in Item W-58 for covered water recycling systems. That language reads: "*...or* the amount of new water used as process or makeup water...." (emphasis added). An interpretation disregarding the alternative provision in W-58 is inconsistent with Texas law. The Texas Supreme Court has held that when construing a statute, effect should be given to all words. Words should not be treated as surplusage. *State of Texas v. Shumaker*, 199 S.W.2d 279, 287 (Tex. 2006). Administrative rules are construed in the same manner. *See Rodriguez v. Lloyds Ins. Co.*, 997 S.W. 2d 248, 254 (Tex. 1999). Thus, regulations and statutes must be construed in a manner to give meaning to each of their parts. A narrow reading focusing exclusively on reduction of discharge disregards the other uses set forth in Item W-58. The use of the disjunctive "or" means "in the alternative" and requires that alternatives be treated separately. This is black letter law *In Re BNS.*, 247 S.W. 3d 807, 809 (Tex. App. – Dallas 2008, no. pet).

Further, interpreting ECL Item W-58 to limit its applicability to reuse of wastewater generated on-site is contrary to the State's legitimate interest in conserving precious water supplies, and specifically to the objectives of 30 T.A.C. Chapter 288, which broadly seek to promote the beneficial use of wastewater or other reclaimed water in order to conserve and protect surface waters and groundwater. Finally, we note that in other instances where an Item on the ECL is intended to address a site-specific use of waste water, that intent is specifically articulated.[2]

We respectfully urge TCEQ to recognize the applicability of ECL Item W-58 in light of the compelling environmental benefits provided by the Facility's reuse of the WMARSS wastewater rather than new groundwater or surface water. If TCEQ intends to limit the applicability of Item W-58 solely to wastewater generated on-site, we respectfully request that TCEQ advise us of the statutory or regulatory basis supporting that decision. Moreover, as described below, treatment of wastewater generated off-site provides no less overall benefit to the site or the community generally.

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[1] Similarly, while Reclaimed Water Authorization No. 11071-0001 was issued to WMARSS as a reclaimed water provider, under 30 T.A.C. § 210, the applicant on a Reclaimed Water Authorization cannot be determinative of who may qualify for a pollution control equipment exemption. Further, if this requirement were superimposed on Item W-58, *i.e.*, that wastewater, or storm water, or grey water used to reduce discharge or make-up water is limited to that which is generated on-site, the Item would lack utility. The rule simply does not and cannot reasonably contain such a restriction. For example, the rule allows an exemption for equipment that utilizes "stormwater." An interpretation of the rule to mean that the equipment treat only that stormwater generated exclusively on-site may be a virtual impossibility considering that sheet flow from neighboring properties could and would be captured for use or reuse.

[2] For example, Item W-59 deals with wastewater treatment facilities or plants. To qualify, the facility must be "constructed to process wastewater generated on-site." 30 T.A.C. § 17.14(a) (Part A, Item 59). It is clear that where the control equipment must use wastewater generated on-site, the Item so states.

B. Decision Flow Chart Analysis

The second step in the application process is to evaluate the eligibility of the equipment for which the positive use determination is sought under the TCEQ's Decision Flow Chart, published at 30 T.A.C. § 17.15(a). For purposes of this discussion, the flow chart requires the applicant to make two critical determinations.

The first determination, in Step 3, is whether an adopted environmental rule or regulation is being met (or exceeded). If no, Step 4 stipulates that the equipment is not eligible. If yes, Step 5 asks whether the equipment provides an environmental benefit at the site. As the following discussion indicates, the Reclaimed Water System meets each of these essential criteria and, therefore, should be granted a positive use determination by TCEQ.

1. *Is an adopted environmental rule or regulation being met?*

Section 17.10(d)(4) of TCEQ's regulations requires the use determination application to identify "the specific law, rules, or regulations that are being met or exceeded by the use, installation, construction, or acquisition of the pollution control property." SCEA's original application cited 30 T.A.C. Chapter 288, which contains TCEQ's rules regarding water conservation plans, drought conservation plans, and conservation and reuse of water generally. The application did not identify the specific regulation in Chapter 288, nor did it identify the statute implemented by the relevant provisions of Chapter 288.[3] This may have contributed to TCEQ's questions regarding the eligibility of the Reclaimed Water System for a positive use determination.[4] To address any such questions, we take this opportunity to identify the specific statutory and regulatory provisions the Reclaimed Water System is designed to and will in practice meet or exceed.

(a) Texas Water Code § 11.1271

For reasons described in detail below in the discussion of the environmental benefit provided by the Reclaimed Water System, SCEA desired to avoid the use of groundwater to supply the Facility due to the significant negative environmental impacts groundwater use would entail. The other traditional alternative source of water is surface water. Surface waters within the State of Texas are the property of the State of Texas,[5] and no person may appropriate any state water without first obtaining a permit from TCEQ.[6]

Texas Water Code Section 11.1271 requires an applicant for a new water right to formulate and submit a water conservation plan and adopt reasonable water conservation measures, and directs TCEQ to adopt rules concerning submission of water conservation plans. The term "conservation" is defined in Section 11.002(8)(B) as "those practices, techniques, and technologies that will reduce the consumption of water . . . or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses." The Reclaimed

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[3] To the extent the Agency deems necessary, we will amend our application to provide this greater specificity.

[4] While there is no rule mandating Sandy Creek use the wastewater from WMARSS as a raw water source, any such emphasis would be misplaced, particularly with regard to Item W-58, which addresses recycling of wastewater, grey water, and stormwater. We are not aware of a regulatory requirement mandating that any regulated actor specifically use grey water or stormwater to reduce the amount of a facility's discharge, and for that reason it is unreasonable to hold that Item W-58 as applied to Sandy Creek should be interpreted that way.

[5] Texas Water Code § 11.021(a).

[6] Texas Water Code § 11.121.

Water System falls within this definition of a water "conservation" measure. SCEA identified the Reclaimed Water System as a reasonable technological alternative to reduce the consumption of new water at the site by reusing wastewater from WMARSS. Thus, the Reclaimed Water System not only meets an adopted environmental rule, but eliminates the need to obtain a direct water right that would have permitted SCEA to appropriate state-owned water from the Brazos River or Lake Waco for ongoing and continuous use.[7] Accordingly, the Reclaimed Water System exceeds this adopted environmental statute.[8]

(b) 30 T.A.C. § 288.7

Section 288.7 was adopted to implement Texas Water Code § 11.1271 that requires TCEQ to adopt rules concerning submission of water conservation plans. This regulation stipulates as follows:

> (a) A water conservation plan submitted with an application for a new or additional appropriation of water must include data and information which:
>
> (1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
>
> (2) evaluates conservation as an alternative to the proposed appropriation; and
>
> (3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.
>
> (b) It shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

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[7] Pursuant to SCEA's contract with the City of Waco, the City of Waco obtained an Amendment to its existing Certificate of Adjudication (Certificate No. 12-2315C) (the "Amended Certificate"), authorizing the diversion of an additional 58,200 acre-feet of water per year from Lake Waco on the Bosque River from a diversion structure located on land owned by the City of Robinson. The additional water rights were for industrial uses, and under the aforementioned contract served as a backup water supply in the event that WMARSS was unable to provide sufficient quantities of reclaimed water to meet the Facility's needs. Further, the Amended Certificate specifically requires the City of Waco to implement a water conservation plan as required by 30 T.A.C. § 288.3, and that any contract customer of the City do the same within 90 days prior to the diversion of water for industrial purposes. *See* Amended Certificate, Par. 5.A. and B. Accordingly, installation and use of the Reclaimed Water System as a water conservation measure nonetheless meets or exceeds the requirements of Texas Water Code § 11.1271, 30 T.A.C. § 288.3, and the Amended Certificate.

[8] We understand that TCEQ acknowledges that, because Sandy Creek is obligated to meet storage requirements under limitation I(e) of the Authorization, the reclaimed water storage pond should be eligible for a positive use determination. It is important to note that SCEA is required to treat Type II effluent to Type I standards for fire protection uses. The system to be installed by SCEA will be used to treat all Type II effluent to Type I standards, thus exceeding the minimum usage criteria in the Authorization and the requirements for on-site grey water usage established by the TCEQ. *See* 30 T.A.C. §§ 210.32-33.

Regarding subparagraph (a)(1), given the feasibility of the reuse of WMARSS wastewater through implementation of the Reclaimed Water System, SCEA asserts that proposing the use of surface water as the primary supply for the Facility would not reasonably consider the water conservation goals of the water conservation plan. Thus, implementation of the Reclaimed Water System was necessary to meet the requirement of Section 288.7(a)(1).

Regarding subparagraph (a)(2), any water conservation plan developed in support of a water right application for the Facility that properly evaluated conservation as an alternative to the proposed appropriation would lead to the conclusion that the conservation alternative, *i.e.*, installation of the Reclaimed Water System, is the preferred alternative. Accordingly, implementation of the Reclaimed Water System was necessary to meet the requirement of Section 288.7(a)(2).

Regarding subparagraph (a)(3), SCEA determined that recycling and reuse of the WMARSS wastewater through implementation of the Reclaimed Water System was a feasible alternative to new water development. Accordingly, implementation of the Reclaimed Water System was required to meet the requirement of Section 288.7(a)(3).

Finally, in light of the foregoing analysis, SCEA would not have been able to meet the burden of proof established in Section 288.7(b) to demonstrate that no feasible alternative to an appropriation of new water rights existed concerning the Facility, or that a new appropriation was necessary or reasonable.

In conclusion, given the already impaired groundwater resources in McLennan County and the water conservation requirements of Section 11.1271 of the Texas Water Code and Section 288.7 of TCEQ's regulations implementing that statute, installation of the Reclaimed Water System was effectively required to provide a source of water for the Sandy Creek Facility.

2. *Is there an environmental benefit at the site?*

Section 11.31(c)(1) of the Texas Tax Code requires that an applicant for a tax exemption for pollution control property submit information in its application detailing "the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution." In Box 5 of the Decision Flow Chart, TCEQ has interpreted this provision to require the pollution control property provide an "environmental benefit at the site."

In previous discussions with SCEA, TCEQ has indicated that it believes the Reclaimed Water System does not provide an environmental benefit at the site because the wastewater being treated does not come from the site. This interpretation, however, focuses exclusively on the reduction in volumetric wastewater discharge or the treatment of wastewater. A significant environmental benefit of the Reclaimed Water System, however, is the elimination of the need to withdraw more than 12 million gallons per day from the already heavily stressed groundwater supplies in McLennan County.

(a) **Environmental benefit of avoided groundwater pumping**

The Sandy Creek Facility requires an estimated 12,654,720 gallons of water per day. The first option for obtaining this raw water would be to install groundwater wells at the site to withdraw the volume necessary for the Facility's operations. Withdrawal of this volume of groundwater (or any material volume of groundwater), however, would severely and detrimentally impact the

Trinity Aquifer, a significant source of groundwater in McLennan and 12 other counties, which has already been identified by TCEQ and the Texas Legislature as one of the most critically stressed aquifers in the state.

Conditions facing the Trinity Aquifer are severe. In 2008, TCEQ issued an order designating a five-county area including McLennan County as the Central Texas – Trinity Aquifer – Priority Groundwater Management Area. The designation was based on extensive research and evaluation of the history and condition of the aquifer and the threats facing the aquifer from increasing development in the region. TCEQ studies found that historical pumpage in a 16-county study area has exceeded effective recharge, resulting in declining water levels, removal of water from aquifer storage, and possible deterioration of chemical quality.[9] The impact of this reduction in groundwater reserves also impacts natural springs, reducing surface water supplies and quality, and impacting species that rely on surface water.[10] The greatest groundwater level declines in the study area are from wells completed in the Trinity Aquifer Hosston Formation in the Waco metropolitan area of McLennan County, with declines of over 400 feet.[11] Likewise, the 2007 State Water Plan illustrated that the most significant historical water-level declines in the state have occurred in the Trinity aquifer in the study area centered in McLennan County.[12] Consistent with these historical findings, TCEQ found that present pumping rates in McLennan and 11 surrounding counties is already at or above the estimated long-term sustainable supply.[13] The TCEQ concluded that McLennan is one of five counties in the study area experiencing or expected to experience critical groundwater problems in the next 25 years.[14]

Currently, there are no federal or state agencies with the authority to regulate groundwater in the McLennan County area, and TCEQ determined that local governments cannot provide the type of groundwater regulation required to protect groundwater resources.[15] The task of regulating groundwater resources falls to groundwater conservation districts ("GCDs"), which are charged by statute with the power to enact rules requiring well permits, regulating spacing of wells, and regulating groundwater transfer.[16] However, while a McLennan County GCD was authorized by the 80th Legislature, it has yet to be confirmed by voters. Further, its authorizing legislation requires that the GCD include at least one adjacent county by September 1, 2011 or the GCD will be dissolved.[17] The GCD also must be authorized by voters by September 1, 2012.[18]

In response to the critical issues facing the Trinity Aquifer in McLennan County, TCEQ issued an Order on October 21, 2008 establishing the Central Texas – Trinity Aquifer – PGMA to cover McClennan, Bosque, Coryell, Hill and Somervell Counties. Under Section 35.007(a) of the Texas Water Code, PGMA's are "those areas of the state that are experiencing or that are

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[9] An Order Designating the Central Texas – Trinity Aquifer – Priority Groundwater Management Area and Approving the Executive Director's Recommendations Regarding Groundwater Conservation Districts in the PGMA, TCEQ Docket No. 2008-0099-MIS; SOAH Docket No. 582-08-1502 ("PGMA Order"), Findings of Fact ¶ 22.
[10] *Id.*, ¶ 35.
[11] *Id.*, ¶ 23.
[12] *Id.*, ¶ 23.
[13] PGMA Order, Findings of Fact ¶ 25.
[14] *Id.*, ¶ 37.
[15] *Id.*, ¶ 40.
[16] *Id.*, ¶ 41.
[17] *Id.*, ¶ 57.
[18] *Id.*, Conclusions of Law – Creation of a District ¶ 7.

expected to experience, within the immediately following 25-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies."

The TCEQ's designation of a PGMA for the area including McLennan County is definitive evidence of the environmental harm that would result if the Sandy Creek Facility installed groundwater wells to supply some or all of the more than 12 million gallons of water per day that are required by the Facility. Thus, by drawing process water from the WMARSS wastewater discharge rather than using groundwater, the Reclaimed Water System is providing a highly significant environmental benefit, which also occurs at the site.

(b) **Environmental benefit is occurring "at the site"**

There can be no dispute that the environmental benefit produced by eliminating the need for groundwater use is occurring "at the site," because the site is located in McLennan County, where the most significant groundwater level declines in the state are occurring, according to TCEQ.

While it is true that the environmental benefit provided by the Reclaimed Water System will be shared across the entire PGMA, that cannot be a basis to reject an application. In fact, the authorizing statute (Texas Tax Code § 11.31(1)(c)) does not expressly require a showing that the environmental benefit be "at the site," let alone exclusively at a site. The requirement that the environmental benefit occur at the site is included in TCEQ's decision flow chart at 30 T.A.C. § 17.15(a), but nowhere is it required that the environmental benefit be *restricted* to the site itself. Not only would such a restriction be contrary to the purpose of the statute and the goals of the legislature, it would be inconsistent with TCEQ's own application of the requirement. For example, TCEQ has issued property tax exemptions for the installation of emissions scrubbing equipment at facilities. While this equipment cleans the emissions from the site at which it installed, the benefit of reduced emissions is experienced across the local area and airshed in which the site is located. In the case of Sandy Creek, the Reclaimed Water System is eliminating the need for groundwater pumping at the site, which benefits both the site and the entire PGMA. Preserving the groundwater resources (as well as surface water resources) provides benefits to the region and at the site itself. While the benefits to the region and the site[19] itself may not be susceptible to precise quantification, there can be no doubt that the benefits exist (and TCEQ's rules do not require that the benefit be quantifiable[20]).

Furthermore, in previous cases addressing TCEQ's imposition of the "at the site" requirement for the environmental benefit, the Executive Director stated that the purpose of the requirement is to "ensure[] that the taxpayers who absorb the pollution tax burden immediately benefit from the pollution being controlled as a result of installation of the equipment. . . . Environmental benefit at the site provides the quid pro benefit to the counties deprived of tax revenues when an item is

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[19] The system provides other benefits to the site as well. As discussed above, SCEA intends to treat the Type II effluents it receives to Type 1 standards. The treatment to Type 1 standards will meet or exceed other rules and standards and provide benefits to the site. Additionally, potential human exposure to constituents typically found in Type II effluent from fugitive emissions will be further limited by the treatment to Type 1 standards.

[20] *See, e.g., Executive Director's Response Brief to Valero Refining - Texas, L.P., Diamond Shamrock Refining Company, L.P., and the Premcor Refining Group, Inc.'s Appeal of the Executive Director's Negative Use Determinations*, TCEQ Docket Numbers 2007-0732-MIS-U through 2007-0740-MIS-U (2007) at 24 (discussing the origin of the TCEQ's environmental benefit "at the site" requirement and noting that the Executive Director heeded comments to remove a qualifier that would have required the benefits at the site to be "quantifiable").

taken off the tax roll as a result of a positive use determination."[21] The Executive Director's statement confirms that the benefit must not be restricted to the site; reading it otherwise would deprive those taxpayers in the vicinity of the site from the very benefit that the requirement is designed to ensure. The benefits provided by the Sandy Creek Facility's use of reuse of wastewater from WMARSS in place of raw water from the region's critically stressed aquifer, which prevents further degradation of the quality and availability of the primary source of drinking water for McLennan County as well as contributing to further subsidence in the region, provides precisely the type of immediate and significant benefit at the site that TCEQ's rule requires.

The broad environmental benefits provided by the Reclaimed Water System both at the Sandy Creek Facility itself and to the Central Texas – Trinity Aquifer PGMA generally, are precisely the sort of environmental benefit that provides significant value to the State of Texas and for which a property tax exemption should be granted.

IV. CONCLUSION

In conclusion, SCEA believes that the Reclaimed Water System falls squarely within the parameters of Item W-58 of the ECL, Water Recycling Systems, because it is an installed system that reuses wastewater in order to reduce the amount of new water used as process water or make-up water at the Facility. SCEA believes that no valid, legal basis exists to disregard the plain language of Item W-58 and limit its applicability solely to systems that reuse wastewater generated exclusively on-site. Accordingly, the Application is appropriately classified as a Tier I application under Item W-58.

As required by TCEQ's flowchart, published at 30 T.A.C. § 17.15(a), the Reclaimed Water System meets or exceeds an adopted environmental rule or regulation and provides an environmental benefit at the site. The adopted rules being met or exceeded include, without limitation, the water conservation requirements of Texas Water Code Section 11.1271 and 30 T.A.C. Chapter 288 (specifically, Section 288.3 and 288.7). The Reclaimed Water System meets or exceeds these rules because it implements a reasonable, technological alternative to reduce consumption of new water at the site by reusing wastewater from WMARSS, thereby eliminating the need to obtain or draw upon a surface water right. The Reclaimed Water System provides a significant environmental benefit at the site by also eliminating the need to withdraw massive quantities of groundwater to meet the Facility's needs. In light of the significant depletion of the Trinity Aquifer already occurring at the site and in the surrounding region, which has led to the designation of the Central Texas – Trinity Aquifer – Priority Groundwater Management Area, use of groundwater rather than reclaimed water avoids inflicting further pressure on an already critically stressed groundwater supply.

In light of the above, SCEA believes that the Application clearly meets the requirements of Section 11.31 of the Texas Property Tax Code.

We very much appreciate the opportunity to present this additional information in support of our exemption application. If the Agency continues to have any questions or concerns regarding our application, we would appreciate the opportunity to meet personally with you and your staff. We would be pleased to meet at any time that is convenient for you.

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[21] *Id.* at 25.

Thank you again for your consideration.

Sincerely,

Rick Barton
Sr. Director – Property Tax

ED's Exhibit #2 – Amendment to Certificate of Adjudication No. 12-2315C

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-2315C CERTIFICATE NO. 12-2315C TYPES §§11.122, 11.042

Owner:	City of Waco	Address:	P.O. Box 2570 Waco, TX 76702
Filed:	July 21, 2004	Granted:	JAN 20 2005
Purpose:	Municipal, agricultural, and industrial	County:	McLennan
Watercourse:	Bosque River, tributary of the Brazos River and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-2315 authorizes the City of Waco to impound 104,100 acre-feet of water in Lake Waco on the Bosque River, tributary of the Brazos River, Brazos River Basin, in McLennan County (the lake is owned by the USA and operated by the US Corps of Engineers); and

WHEREAS, the City is also authorized to divert and use not to exceed 58,200 acre-feet of water per year from the reservoir for municipal and industrial purposes and 900 acre-feet of water per year for agricultural (irrigation) purposes; and

WHEREAS, several time priorities exist; and

WHEREAS, the City is further authorized to release 7,700 acre-feet of water per year from the dam at a rate of 12.0 cfs (5385.6 gpm), use the bed and banks of the Bosque and Brazos Rivers to convey that water, and subsequently divert 7,000 acre-feet of water at a rate of 11.5 cfs (5161.2 gpm) for industrial purposes in Fort Bend County; and

WHEREAS, the applicant seeks an amendment to Certificate of Adjudication No. 12-2315 for authorization to increase the amount of water released from the lake to 16,869 acre-feet of water, increase the discharge rate to 23.9 cfs (10,726 gpm), and use the bed and banks of the Bosque and Brazos Rivers to convey that water to a proposed diversion point approximately 12.13 river miles downstream; and

WHEREAS, the applicant further seeks to increase the amount of water subsequently diverted from the proposed point to 16,802 acre-feet of water at a rate of 23.2 cfs (10,412 gpm) for industrial purposes pursuant to a Reclaimed Water and Raw Water Supply Agreement between the City and Sandy Creek Energy Associates, L.P. dated January 1, 2004; and

WHEREAS, the City of Robinson owns and operates the proposed diversion point which is authorized under Water Use Permit No. 5085 and has provided consent to the City of Waco to add this point under this application; and

WHEREAS, the applicant has estimated a 0.4 % carriage loss in the 12.13 mile reach between the release and diversion point, and to insure that only the water released is being diverted, the rate of diversion will never exceed the rate of discharge; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment; and

WHEREAS, the Executive Director recommends special conditions be included to address the losses and diversion rate;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-2315, designated as Certificate of Adjudication No. 12-2315C, is issued to the City of Waco subject to the following terms and conditions:

1. USE

In lieu of the previous authorizations, the owner is now authorized to:

A. Divert and use not to exceed 58,200 acre-feet of water per year from Lake Waco for municipal and industrial purposes and 900 acre-feet of water per year for agricultural (irrigation) purposes.

B. Discharge 16,869 acre-feet of water, use approximately 12.13 river miles of the bed and banks of the Bosque and Brazos Rivers to convey that water to a diversion point in McLennan County, and subsequently divert 16,802 acre-feet of water for industrial purposes.

2. DISCHARGE AND DIVERSION

A. Discharge

i. Point: Located at 31.5931°N Latitude, 97.2089°W Longitude, also being approximately 4.08 miles in a northwest direction from the McLennan County Courthouse, Texas.

ii. Rate: In lieu of the previous discharge rate, the owner is now authorized a maximum discharge rate from Lake Waco of 23.9 cfs (10,726 gpm).

B. Diversion

i. Point : owner is authorized to divert the 16,802 acre-feet of water from the southwest, or right, bank of the Brazos River at Latitude 31.5200°N, Longitude 97.0700°W, the same being S15.7500°E, 5,600 feet from the Carlos O'Campo Grant, Abstract 32, McLennan County.

ii. Maximum diversion rate is 23.2 cfs (10,412 gpm).

3. TIME PRIORITY

The time priority of the owner's right is January 10, 1929 for the diversion and use of 39,100 acre-feet of water for municipal and industrial use; April 16, 1958 for an additional 19,100 acre-feet of water for municipal and industrial use; and February 21, 1979 for the diversion and use of 900 acre-feet of water for agricultural use (irrigation). The time priority for the bed and banks authorizations retains the original priority date for the released water.

4. SPECIAL CONDITIONS

A. To insure that only the water released is being diverted, the rate of diversion will never exceed the rate of discharge.

B. Use of the diversion point described above, owned and operated by the City of Robinson, is contingent upon the maintenance of an agreement between the certificate owner and the City of Robinson.

5. CONSERVATION

A. Certificate owner shall implement a conservation plan that provides for the utilization of water conservation practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

B. Within 90 days prior to the diversion of water for industrial/mining purposes, the owner or contract customer must submit an industrial/mining water conservation plan to comply with Title 30 Texas Administrative Code (TAC) Chapter §288.3.

C. Within 90 days prior to the diversion of water for agricultural (irrigation) purposes, the owner or contract customer must submit an irrigation water conservation plan to comply with Title 30 TAC Chapter §288.4.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-2315, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

Date issued: JAN 20 2005

ED's Exhibit #3 – Authorization for Reclaimed Water issued to Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway

Authorization No. R 11071-001
This authorization supersedes
and replaces R 1107-001
approved October 15, 2004

AUTHORIZATION FOR RECLAIMED WATER

Producer: Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
P.O. Box 2570
Waco, Texas 76702-2570

Providers: City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

Users: Sandy Creek Energy Associates
400 Chesterfield Center, Suite 110
St. Louis, Missouri 63017

Location: The wastewater plant site is located on the south bank of the Brazos River, approximately 4.5 mile downstream from the crossing of Interstate Highway 35 and the Brazos River in McLennan County, Texas.

Authorization: Reclaimed water from the WMARSS's Water Treatment Plant (Permit 11071-001) to be used for cooling tower make-up water, boiler makeup water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas and coal piles; and other Type II uses. Sandy Creek Energy Associates is authorize to treat the Type II effluent to Type I for fire protection within their facility. The service area is shown on Attachment A.

This authorization contains the conditions that apply for the uses of the reclaimed water. The approval of a reclaimed water use project under Chapter 210 does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

This action is taken under authority delegated by the Executive Director of the Commission on Environmental Quality.

Issued Date: December 11, 2006

For the Commission

Limitations: The authorization is subjected to the following requirements:

I. General Requirements.

(a) No water treatment plant operator (producer) shall transfer to a user reclaimed water without first notifying the commission.

(b) Irrigation with untreated wastewater is prohibited.

(c) There shall be no nuisance conditions resulting from the distribution, the use, and/or storage of reclaimed water.

(d) Reclaimed water shall not be utilized in a way that degrades ground water quality to a degree adversely affecting its actual or potential uses.

(e) Reclaimed water managed in ponds for storage must be prevented from discharge into waters in the state, except for discharges directly resulting from rainfall events or in accordance with a permit issued by the commission. All other discharges are unauthorized. If any unauthorized overflow of a holding pond occurs causing discharge into or adjacent to waters in the state, the user or provider, as appropriate, shall report any noncompliance. A written submission of such information shall also be provided to the commission regional office and to the Austin Office, Water Enforcement Section (MC-149), within five (5) working days of becoming aware of the overflow. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(f) Unless otherwise provided in this authorization, there shall be no off-site discharge, either airborne or surface runoff, of reclaimed water from the user's property except to a water treatment system or wastewater treatment collection system unless the reclaimed water user applies for and obtains a permit from the commission which authorizes discharge of the water.

(g) Signs in both English and Spanish shall be posted at storage areas, hose bibs and faucets reading "Reclaimed Water, Do Not Drink" or similar warnings. Alternately, the area may be secured to prevent access by the public.

(h) Reclaimed water piping shall be separated from potable water piping when trenched by a distance of at least nine feet. Exposed piping shall be painted purple and all piping shall be marked in accordance with 30 Texas Administrative Code (TAC) 210.25(g).

(i) The design of distribution systems which will convey reclaimed water to a user shall be approved by the executive director. Materials shall be submitted for approval by the executive director in accordance with the Texas Engineering Practice Act (Article 3271a, Vernon's Annotated Texas Statutes). The plans and specifications for the distribution systems authorized by this authorization must be approved pursuant to state law, and failure to secure approval before commencing construction of such works or making a transfer of reclaim water therefrom is a violation of this authorization, and each day of a transfer is an additional violation until approval has been secured.

(j) Nothing in this authorization modifies any requirements of the Texas Department of Health found in Title 25 TAC, Chapter 337.

(k) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

(1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;
(2) the addition of a new producer;
(3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or
(4) changes from either Type I or Type II uses to the other.

(l) The reclaimed water producer and user shall maintain on the sites a current operation and maintenance plan. The operation and maintenance plan which shall contain, as a minimum the following:
(1) a copy of a signed contracts between the user, producer and provider and ;
(2) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;
(3) the measures that will be implemented to prevent unauthorized access to reclaimed water facilities (eg., secured valves);
(4) procedures for monitoring reclaimed water;
(5) a plan for how reclaimed water use will be scheduled to minimize the risk of inadvertent human exposure;
(6) schedules for routine maintenance;
(7) a plan for worker training and safety; and
(8) contingency plan for system failure or upsets.

II. Storage Requirements for Reclaimed Water.

(a) All initial holding ponds designed to contain Type II effluent, located in areas in the state not identified as a vulnerable area as defined by a rating of 110 or greater on the statewide *"Ground-Water Pollution Potential - General, Municipal, and Industrial Sources"* (DRASTIC) map shall conform to the following requirements:

(1) The ponds, whether constructed of earthen or other impervious materials, shall be designed and constructed so as to prevent groundwater contamination;

(2) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks;

(3) All soil liners must be of compacted material having a permeability less than or equal to 1×10^{-4} cm/sec, at least 24 inches thick, compacted in lifts no greater than 6 inches each;

(4) Synthetic membrane linings shall have a minimum thickness of 40 mils. In situ liners at least 24 inches thick meeting a permeability less than or equal to 1×10^{-4} cm/sec are acceptable alternatives;

(5) Certification shall be furnished by a Texas Registered Professional Engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities; and

(6) Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.

(7) An alternative method of pond lining which provides equivalent or better water quality protection than provided under this section may be utilized with the prior approval of the executive director.

(8) A specific exemption may be obtained from the executive director if, after the review of data submitted by the reclaimed water provider or user, as appropriate, the executive director determines containment of the reclaimed water is not necessary, considering:

(A) soil and geologic data, and ground water data, including its quality, uses, quantity and yield; and

(B) adequate demonstration that impairment of ground water for its actual or potential use will be prevented.

(b) Reclaimed water may be stored in leak-proof, fabricated tanks.

III. Specific Uses and Quality Standards for Reclaimed Water.

Numerical parameter limits pertaining to specific reclaimed water use categories are contained in this section. These limits apply to reclaimed water before discharge to initial holding ponds or a reclaimed water distribution system. It shall be the responsibility of the reclaimed water producer to establish that the reclaimed water meets the quality limits at the sample point for the intended use in accordance with the monitoring requirements identified in Section IV relating to Sampling and Analysis.

(a) Reclaimed Water Use, Type II where the public would not likely come in contact with the reclaimed water. The following use is allowed by this authorization: cooling tower make-up water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas and coal piles; and other Type II uses.

(b) The following conditions apply to this type of use of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use, reclaimed water on a 30-day average shall have a quality of:

$CBOD_5$	15 mg/l
Fecal Coliform	200 CFU/100 ml*
Fecal Coliform (not to exceed).	800 CFU/100 ml**

* geometric mean
** single grab sample

IV. Sampling and Analysis.

The reclaimed water producer shall sample the reclaimed water prior to distribution to user to assure that the water quality is in accord with the intended contracted use. Analytical

methods shall be in accord with those specified in 30 TAC Chapter 319 (relating to Monitoring and Reporting). The minimum sampling and analysis frequency for reclaimed water is weekly.

The monitoring shall be done after the final treatment unit. These records shall be maintained on a monthly basis and be available at the plant site for inspection by authorized representatives of the Commission for at least five years.

V. Record keeping and Reporting.

(a) The reclaimed water provider and user shall maintain records on site for a period of five years.
  (1) Records to be maintained by the provider include:
    (A) copies of notifications made to the commission concerning reclaimed water projects.
    (B) as applicable, copies of contracts made with each reclaimed water user (this requirement does not include reclaimed water users at residences that have separate distribution lines for potable water).
    (C) records of volume of water delivered to each reclaimed water user per delivery.
    (D) reclaimed water quality analyses.

(b) The reclaimed water producer shall report to the commission on a monthly basis the following information on forms furnished by the executive director. Such reports are due to the commission by the 20th day of the month following the reporting period.
  (1) volume of reclaimed water delivered to provider.
  (2) quality of reclaimed water delivered to a user or provider reported as a monthly average for each quality criteria except those listed as "not to exceed" which shall be reported as individual analyses.

(c) Monitoring requirements contained in the authorization are suspended from the effective date of the authorization until the reclaim water is transferred. The provider shall provide written notice to the Austin Office, Registration, Review & Reporting Division, Water Quality Application Team (MC 161) and the Region 9 Office of the Commission thirty (30) days prior to transfer.

VI. Transfer of Reclaimed Water.

Reclaimed water transferred from a provider to a user shall be done on a demand only basis. This means that the reclaimed water user may refuse delivery of such water at any time. All reclaimed water transferred to a user must be of at least the treatment quality specified in Section IV. Transfer shall be accomplished via pipes or tank trucks.

VII. General Prohibitions.

Except for on-channel ponds, storage facilities for retaining reclaimed water prior to use shall not be located within the floodway and shall be protected from the 100-year flood.

VIII. Restrictions.

This authorization does not convey any property right and does not grant any exclusive privilege.

IX. Responsibilities and Contracts.

(a) The producer of reclaimed water will not be liable for misapplication of reclaimed water by users, except as provided in this section. Both the reclaimed water provider and user have, but are not limited to, the following responsibilities:

(1) The reclaimed water producer shall:

(A) transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user for the specified use;

(B) sample and analyze the reclaimed water and report such analyses in accordance with Sections IV and V, relating to Sampling and Analysis and Record keeping and Reporting, respectively; and

(C) notify the executive director in writing within five (5) days of obtaining knowledge of reclaimed water use not authorized by the executive director's reclaimed water use approval.

(2) The reclaimed water provider shall:

(A) assure construction of reclaimed water distribution lines/systems in accordance with 30 TAC Chapter 317 and in accordance with approved plans and specifications;

(B) transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user for the specified use;

(C) notify the executive director in writing within five (5) days of obtaining knowledge of reclaimed water use not authorized by the executive director's reclaimed water use approval; and

(D) not be found in violation of this chapter for the misuse of the reclaimed water by the user if transfer of such water is shut off promptly upon knowledge of misuse regardless of contract provisions.

(3) The reclaimed water user shall:

(A) use the reclaimed water in accordance with this authorization; and

(B) maintain and provide records as required by Section III relating to Record keeping and Reporting.

X. Enforcement.

If the producer, provider and/or user fails to comply with the terms of this authorization, the executive director may take enforcement action provided by the Texas Water Code, §§26.019 and 26.136.

XI. Special Provisions.

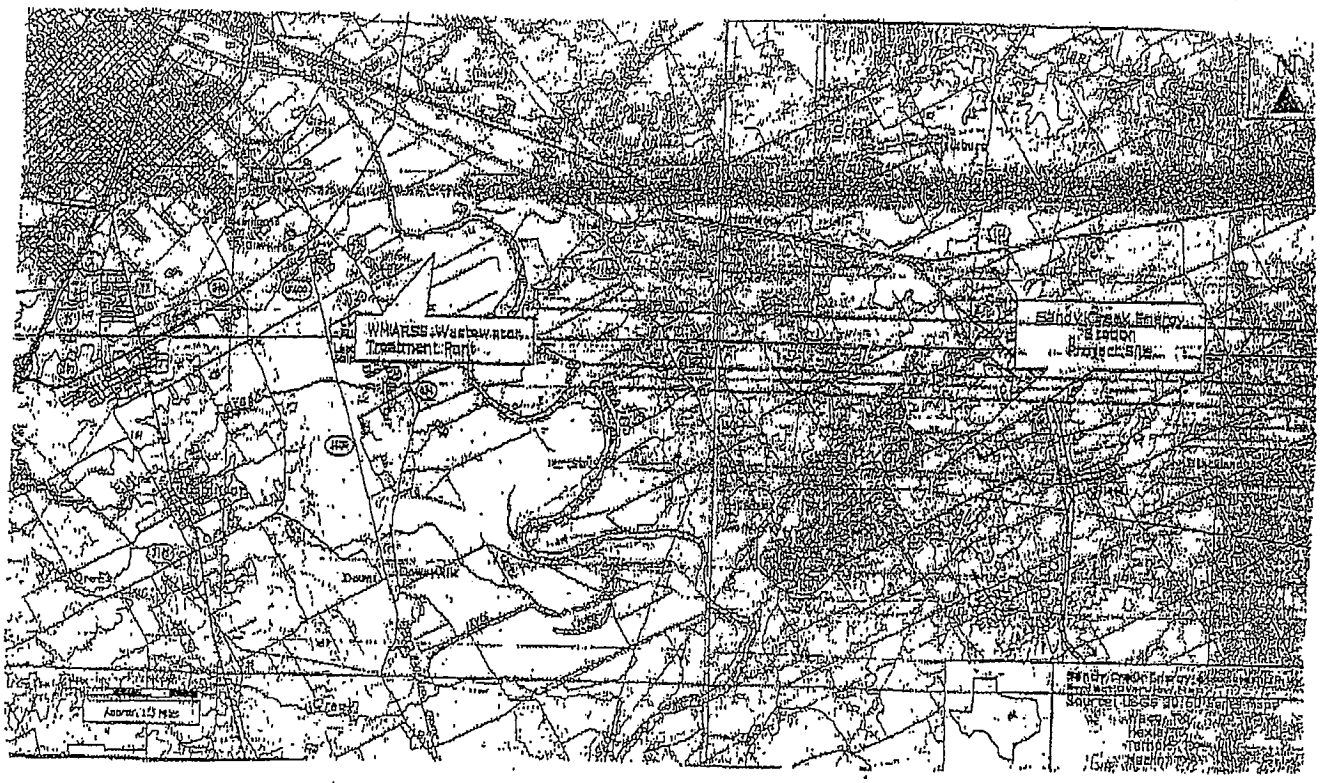
The Sandy Creek Energy Associates is authorize to treat the Type II effluent to Type I that are outline under 30 TAC Chapter 210 for fire protection within their facility.

XII. Standard Provisions.

(a) This authorization is granted in accordance with the Texas Water Code and the rules and other Orders of the Commission and the laws of the State of Texas.

(b) Acceptance of this authorization constitutes an acknowledgment and agreement that the provider and user will comply with all the terms, provisions, conditions, limitations and restrictions embodied in this authorization and with the rules and other Orders of the Commission and the laws of the State of Texas. Agreement is a condition precedent to the granting of this authorization.

Attachment "A"



ED's Exhibit #4 – Property Tax Exemptions for Pollution Control Property Draft Guidelines Document

Property-Tax Exemptions for Pollution Control Property

Table of Contents

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.

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.

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

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

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.

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.

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.

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

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.

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

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.

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: _____

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?

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

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.

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.

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.

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:

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

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.

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

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.

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>.

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.

(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.

(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

		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

			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

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

			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

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

			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.

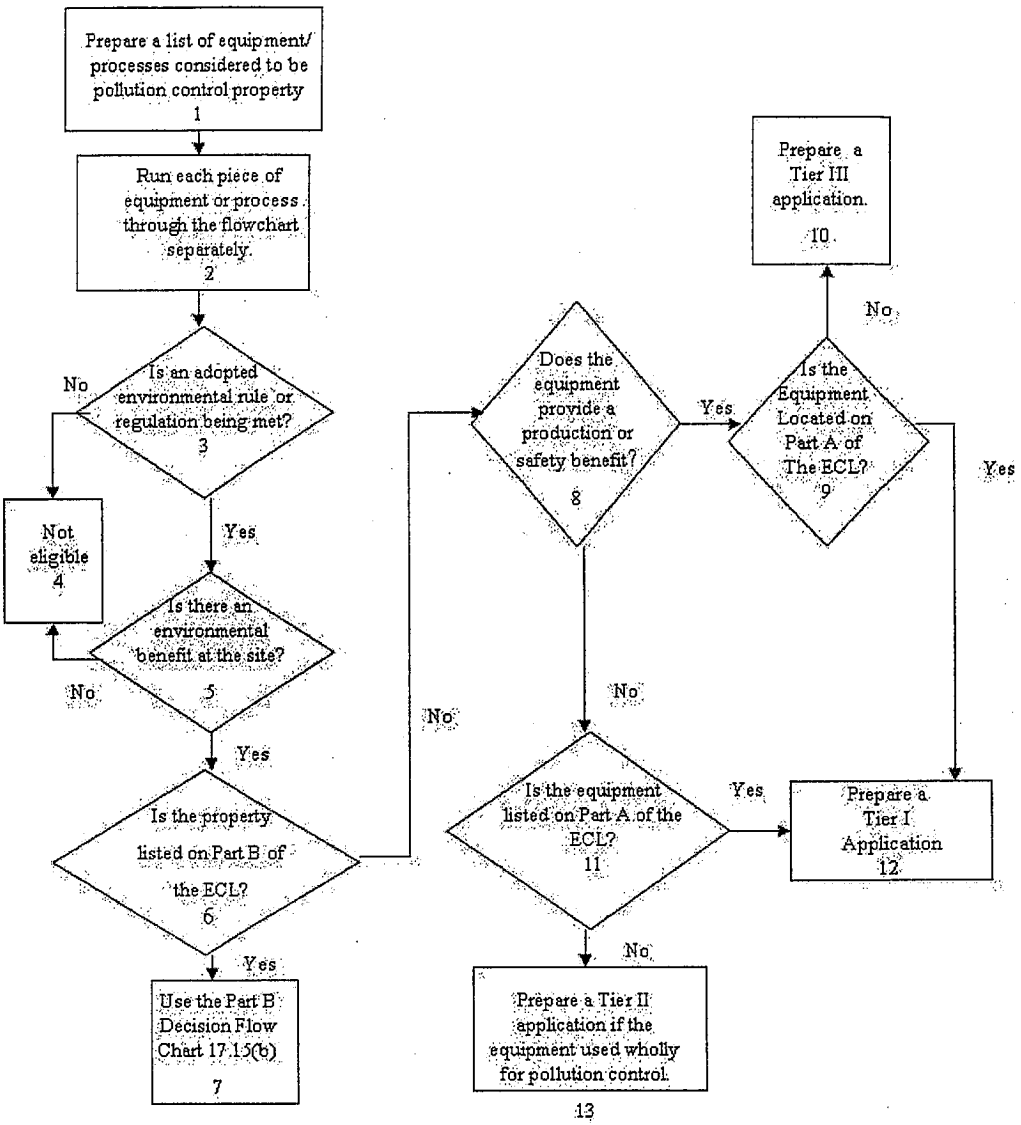
(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

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.

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

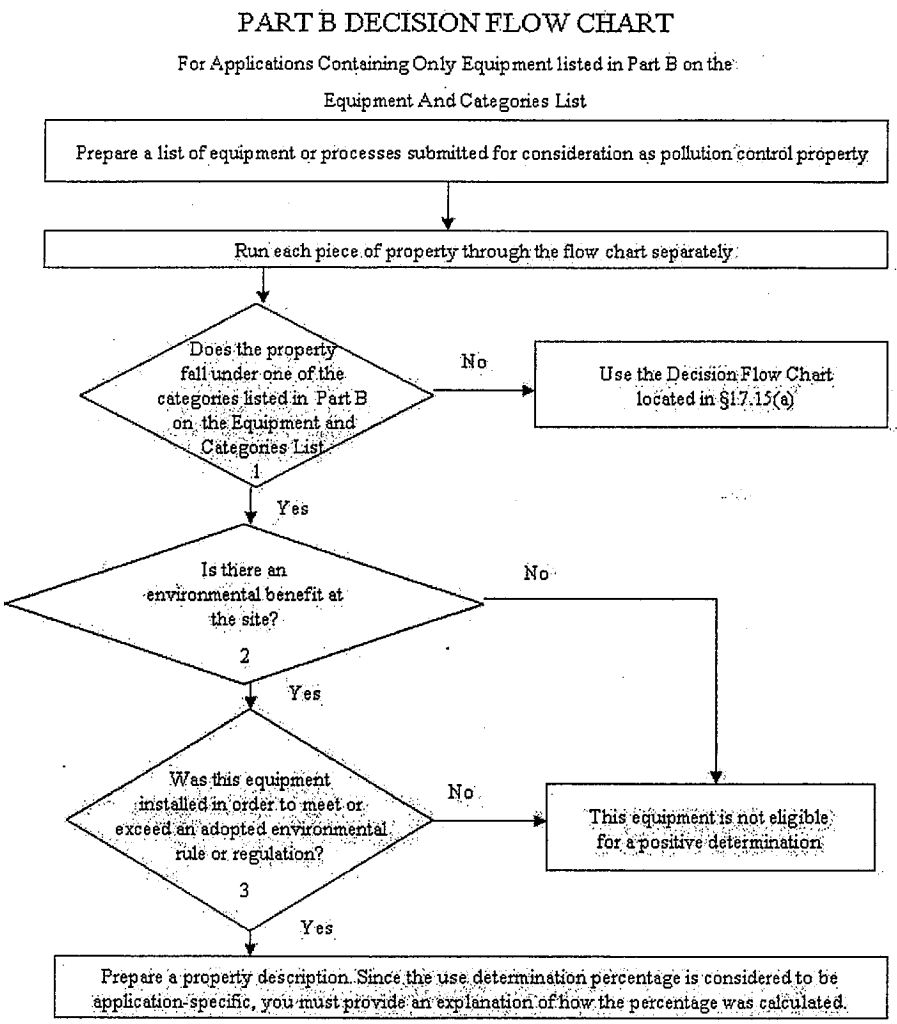
Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5. ECL means the Equipment and Categories List adopted under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



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)

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

Where:

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

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

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

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

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

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

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

Figure: 30 TAC §17.17(c)

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

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

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

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

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

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

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.

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.