

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 8, 2013

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

Re: Air Products, LLC
TCEQ Docket No. 2013-1252-MIS-U; Use Determination No. 16632
Executive Director's Response to Air Products, LLC's Appeal of the Executive
Director's Negative Use Determination

Dear Ms. Bohac:

Enclosed for filing, please find an original and 7 copies of the "Executive Director's Response to Air Products, LLC'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 Revised Use Determination Application No. 16632 (dated June 27, 2012)
- Exhibit 2 Response to Notice of Technical Deficiency (March 25, 2013)
- Exhibit 3 Use Determination No. 16632
- Exhibit 4 Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document, TCEQ, RG-461 (January 2008)
- Exhibit 5 Use Determination No. 14241, Application Review Summary for Use Determination No. 14241, First Revise Application No. 14241, and Original Application No. 14241
- Exhibit 6 Letter from Rep. Dennis Bonnen to Mr. Glenn Shankle, Executive Director of the TCEQ, received August 31, 2007
- Exhibit 7 Letter from Rep. Allan Ritter to Mr. Glenn Shankle, Executive Director of the TCEQ, received August 10, 2007; and
- Exhibit 8 Letter Opinion No. 96-128, Tex. Attorney General's Office (November 15, 1996)

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

Sincerely,

A handwritten signature in cursive script that reads "Tim Reidy". The signature is written in black ink and is positioned above the typed name.

Timothy J. Reidy, Staff Attorney
Environmental Law Division

**TCEQ DOCKET NO. 2013-1252-MIS-U
USE DETERMINATION NO. 16632**

APPEAL OF THE EXECUTIVE DIRECTOR'S USE DETERMINATION ISSUED TO AIR PRODUCTS, LLC APPLICATION NO. 16632	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
---	----------------------------------	---

**EXECUTIVE DIRECTOR'S RESPONSE TO AIR PRODUCTS, LLC'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 Air Products, LLC's (Air Products or the Appellant) appeal of the Executive Director's negative use determination issued for property comprising its carbon dioxide (CO₂) capture, separation, purification, transportation, and sequestration monitoring and verification equipment (referred to collectively as either the "Port Arthur CO₂ System" or the "CCS System"). The appeal was submitted by Gerard Thompson, of Air Products and Chemicals, Inc.

For the reasons described below, the Executive Director respectfully requests that the Commission deny Air Products' appeal and affirm the Executive Director's negative use determination for the Port Arthur CO₂ System.

PROGRAM BACKGROUND

This appeal of the Executive Director's positive use determination is filed pursuant to House Bill (HB) 3121 (77th Tex. Legislature, 2001) establishing an appeals process for use determinations and the Commission rules implementing the legislation.¹

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2. Proposition 2 was implemented when Article VIII, § 1-1 was added to the Texas Constitution on November 2, 1993. The amendment allowed the legislature to "exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution."

¹ Tex. Tax Code § 11.31(d), (e) and 30 Tex. Admin. Code (30 TAC) § 17.25.

The Texas Legislature codified the constitutional amendment in 1993 as Tex. Tax Code § 11.31 (effective January 1, 1994). The statutory language in the codified version mirrored the language of Article VIII, § 1-1. In 2001, the legislature amended Tex. Tax Code § 11.31 when it passed HB 3121 (effective September 1, 2001). This bill added several new procedural requirements to Tex. Tax Code § 11.31, including a provision requiring the establishment and implementation of a process to appeal use determinations.² The amendment also required the Commission to adopt new rules establishing specific standards for the Executive Director to follow in making use determinations for property that qualified for either full or partial positive use determinations.³ Appeals under 30 Tex. Admin Code (30 TAC) § 17.25 may be filed by either the applicant seeking the determination, or by the chief appraiser of the tax appraisal district affected by the determination.⁴ The appellant is required to explain the basis for the appeal.⁵

PROCEDURAL HISTORY

On May 31, 2012, Air Products filed an application for a Tier III 90.91% positive use determination for equipment comprising its Port Arthur CO₂ System. The Application described the Port Arthur CO₂ System as a “control system [that] separates CO₂ from the normal plant process syngas, purifies the CO₂, compresses it and transports it to final sequestration via pipeline.”⁶ The Application indicated that this equipment was located in both Jefferson County and Brazoria County.⁷ On June 12, 2012, the Executive Director mailed a Notice of Administrative Deficiency (Admin. NOD) to Air Products; informing Air Products that applications were limited to integrated property located in one county, and requesting that Air Products remove property located in Brazoria County from the Application. On July 2, 2012, the Executive Director received a Revised Application from Air Products that was limited to equipment located in Jefferson County.⁸ On July 23, 2012, the Executive Director declared Air Products’ Revised Application Administratively Complete. On January 24, 2013, the Executive Director mailed a Notice of Technical Deficiency (TNOD) to Air Products, identifying deficiencies in the Revised Application and requesting additional information. On March 25, 2013, Air Products responded to the TNOD and provided a revised application page and additional supplemental information.⁹ On May 30, 2013, the Executive Director issued a negative use

² Id.

³ Tex. Tax Code § 11.31(g).

⁴ Tex. Tax Code § 11.31(e) and 30 TAC § 17.25(a)(2).

⁵ 30 TAC § 17.25(b)(5).

⁶ Use Determination Application No. 16632, p. 4 (received May 31, 2012).

⁷ Id. at p. 3.

⁸ Revised Use Determination Application No. 16632 (dated June 27, 2012) (Attached as **ED’s Exh. #1**).

⁹ Response to Notice of Technical Deficiency (March 25, 2013) (Attached as **ED’s Exh. #2**).

determination to Air Products for its Port Arthur CO₂ System.¹⁰ Air Products' appeal of the negative use determination was filed with the TCEQ's Office of the Chief Clerk on June 24, 2012.

BACKGROUND AND PROPERTY DESCRIPTION

According to the process description provided in Air Products' Revised Application,¹¹ the Port Arthur CO₂ System consists of CO₂ Capture Units integrated with Valero Energy Corporation's (Valero) Port Arthur 1 (PA1) and Port Arthur 2 (PA2) hydrogen plants. PA1 and PA2 are located within Valero's Port Arthur Refinery. Both PA1 and PA2 utilize Steam Methane Reformers (SMRs). Each CO₂ Capture Unit recovers CO₂ from syngas generated by the SMRs, which is then compressed and dehydrated before it is delivered to the Denbury Resources, Inc. West Hastings oilfield in Brazoria County via a 12.8 mile pipeline.¹²

APPELLANT'S CLAIM

In its appeal, Air Products contends that the Executive Director's negative use determination did not address two central points of its argument for eligibility: First, that the CCS System is entitled to at least a partial positive use determination because it is a category of equipment that is listed in Tex. Tax Code § 11.31(k). Second, that the CCS System is entitled to a positive use determination because it meets or exceeds a rule or regulation adopted to prevent pollution.¹³ Additionally, Air Products' appeal incorporates by reference the arguments contained in its response to the TNOD issued on January 24, 2013. In its TNOD response, Air Products asserts that the CCS System meets or exceeds the following federal and state environmental regulations: 40 Code of Federal Regulations (40 CFR) §§ 51.166, 52.21 and 30 TAC §§ 101.4, 116.115(b), 335.471 *et seq.*¹⁴

LEGAL ANALYSIS

- 1. AIR PRODUCTS IS NOT ENTITLED TO A POSITIVE USE DETERMINATION SIMPLY BECAUSE CO₂ CAPTURE AND GEOLOGICAL SEQUESTRATION EQUIPMENT IS A CATEGORY OF EQUIPMENT LISTED AT TEX. TAX CODE § 11.31(k).**

¹⁰ Use Determination No. 16632 (Attached as **ED's Exh. #3**).

¹¹ Attachment 1, Revised Use Determination Application No. 16632 (dated June 27, 2012) (Attached as **ED's Exh. #1**).

¹² Attachment 4, Response to Notice of Technical Deficiency (March 25, 2013)(Attached as **ED's Exh. #2**)(contains a detailed list of equipment included in the application).

¹³ Air Products' Appeal of Use Determination No. 16632 (received June 24, 2013).

¹⁴ Response to Notice of Technical Deficiency (March 25, 2013) (Attached as **ED's Exh. #2**).

Property listed at Tex. Tax Code § 11.31(k) is not automatically entitled to a positive use determination. Air Products argues that because its Port Arthur CO₂ System falls within one of the 18 categories of property listed at Tex. Tax Code § 11.31(k) it is entitled to a least a partial positive use determination.¹⁵ Air Products summarizes its argument as follows:

[W]ith regard to property listed in [Tex. Tax Code § 11.31(k)], the Executive Director is charged with the responsibility to determine “how much” such property is used for pollution controls, *i.e.* is it used wholly or just in part. But for property not so listed, he must determine “if” it is used “wholly or partly” for pollution control.¹⁶

Essentially, Air Products argues that by enacting Tex. Tax Code § 11.31(k) and (m), the Texas Legislature: 1) determined that property appearing on the § 11.31(k) list is entitled to a positive use determination; 2) exempted property appearing on the § 11.31(k) list from the TCEQ’s review standards at 30 TAC Chapter 17; and 3) limited the Executive Director’s review of property on the § 11.31(k) list to the single task of assigning an appropriate use determination percentage. The Executive Director interprets Tex. Tax Code § 11.31(k) and (m) as exempting certain applicants from providing specified application information and requiring an expedited review of applications containing the 18 categories of equipment listed.¹⁷

The primary objective when construing a statute is to give effect to the Legislature’s intent.¹⁸ We look first and foremost to the plain meaning of the words used, and, if they are clear and unambiguous, we apply the words according to their common meaning in a way that gives effect to every word, clause, and sentence.¹⁹ But when a statute’s meaning is ambiguous, deference is frequently given to the construction of the administrative agency charged with its enforcement.²⁰ An agency’s interpretation of a statute that it is charged with enforcing is entitled to deference so long as the agency’s construction is reasonable and does not conflict with the statute’s language.²¹ An agency’s interpretation of a statute it is charged with enforcing does not have to be the

¹⁵ Air Products’ Appeal of Use Determination No. 16632 (received June 24, 2013); Response to Notice of Technical Deficiency, p. 5 (March 25, 2013) (Attached as **ED’s Exh. #2**).

¹⁶ Response to Notice of Technical Deficiency, p. 4 (March 25, 2013) (Attached as **ED’s Exh. #2**).

¹⁷ 33 TexReg 933 (February 1, 2008)(“Simply because a piece of equipment is on the Equipment and Categories List or purports to fall under a category set forth on the list, does not mean that it will receive a positive use determination.”); *also see* Property Tax Exemptions for Pollution Control Property, Draft Guidelines Document for Preparation of Use Determination Applications, TCEQ, RG-461, p. 7, 22, and 48 (January 2008)(Figure: 30 TAC § 17.15(b), Part B Decision Flow Chart)(Attached as **ED’s Exh. #4**).

¹⁸ In re Missouri Pac. R.R. Co., 998 S.W.2d 212, 216 (Tex. 1999).

¹⁹ First Am. Title Ins. Co v. Combs, 258 S.W.3d 627, 631 (Tex. 2008).

²⁰ R.R. Comm’n. of Tex. v. Texas Citizens for a Safe Future and Clean Water, 336 S.W.3d 619, 624 (Tex. 2011).

²¹ Id.

only—or the best—interpretation.²² An agency's contemporaneous construction of ambiguous statutory language should be given serious consideration, especially when the agency's construction is sanctioned by long acquiescence.²³ However, deference to the enforcing agency's interpretation is not unfettered.²⁴ In order to be afforded deference: 1) the agency's interpretation must appear in formal opinions adopted after formal proceedings; 2) the statutory language at issue must be ambiguous; and 3) the agency's interpretation must be reasonable.²⁵ The Executive Director's interpretation of Tex. Tax Code § 11.31(k) is reasonable and does not conflict with the plain language of the statute; therefore, it is entitled to deference.

The Executive Director's interpretation of Tex. Tax Code § 11.31(k) was formally adopted by the TCEQ during the rulemaking implementing HB 3732 (effective February 7, 2008).²⁶ The TCEQ adopted rules implementing HB 3732 at the Commissioners' January 16, 2008 agenda.²⁷ The TCEQ added to its rules a two-part list.²⁸ The Equipment and Categories List (ECL) was divided into two parts; with Part A consisting of property the Executive Director had determined to be used wholly or partly for pollution control purposes, and Part B consisting of the 18 categories of property listed at Tex. Tax Code § 11.31(k).²⁹ 30 TAC § 17.15(b) reads as follows:

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***

²² First Am. Title Ins. Co v. Combs, 258 S.W.3d 627, 628 (Tex. 2008).

²³ Stanford v. Butler, 181 S.W.2d 269, 273 (Tex. 1944); Rylander v. Fisher Controls Int'l. Inc., 45 S.W.3d 291, 302 (Tex. App.-Austin 2001, no pet.).

²⁴ R.R. Comm'n. of Tex. v. Texas Citizens for a Safe Future and Clean Water, 336 S.W.3d 619, 625 (Tex. 2011).

²⁵ Id.

²⁶ 33 TexReg 932 (February 1, 2008); In 2007, the Texas Legislature enacted HB 3732 during the 80th Legislative Session. HB 3732 amended Tex. Tax Code § 11.31 by adding three new subsections. Subsection (k) required the TCEQ to adopt, by rule, a list of 18 categories of property. Subsection (l) required the TCEQ to adopt a procedure to review the list at least once every three years, and allowed the TCEQ to remove property from the list when there is compelling evidence it does not provide pollution control. Subsection (m) required the Executive Director to review applications containing property on the adopted list, and to issue a determination whether or not the applicant provides the information required by Tex. Tax Code § 11.31(c)(1), within 30 days of receiving the required application information. HB 3732, 80th Leg., R.S. (effective September 1, 2007).

²⁷ 33 TexReg 932 (February 1, 2008).

²⁸ Id., at 933 and 942.

²⁹ Id.

which is listed in Part B of the Equipment and Categories List.

(emphasis added).³⁰

The Part B Decision Flow Chart was found in Figure 30 TAC § 17.15(b).³¹ The Part B Decision Flow Chart made it clear that the Executive Director intended to subject property listed at § 11.31(k) to the same eligibility requirements as all other use determination applications, including the requirement that the equipment be installed to meet or exceed an adopted environmental regulation.³² Consistent with this interpretation, the Executive Director issued a negative use determination to El Paso Electric Company for its installation of solar photovoltaic panels at its Newman Power Plant facility on the basis that the installation of the panels did not meet or exceed an environmental regulation.³³

The statutory language at Tex. Tax Code § 11.31(k) and (m) is ambiguous. The Executive Director's interpretation of Tex. Tax Code § 11.31(k) and (m) is reasonable, and does not conflict with the statute's language; therefore, it is entitled to deference. If statutory language is clear and unambiguous, then that is the end of the inquiry and the language is applied according to its common meaning.³⁴ Statutory language is ambiguous if it supports more than one reasonable interpretation.³⁵ A statute must be read as a whole, and interpreted to give effect to every part.³⁶

Tex. Tax Code § 11.31(k) reads, in part, as follows:

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...if the United States Environmental Protection Agency adopts a 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.³⁷

³⁰ 33 TexReg 943 (February 1, 2008).

³¹ *Id.* at 971.

³² *Id.*

³³ Use Determination No. 14241, Application Review Summary for Use Determination No.14241, and Second Revised Application No. 14241, First Revised Application No. 14241, and Original Application No. 14241 (Attached as **ED's Exh. #5**).

³⁴ *First Am. Title Ins. Co v. Combs*, 258 S.W.3d 627, 631 (Tex. 2008).

³⁵ *In re Missouri Pac. R.R. Co.*, 998 S.W.2d 212, 216 (Tex. 1999).

³⁶ *R.R. Comm'n. of Tex. v. Texas Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011); *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 441 (Tex. 2011).

³⁷ Tex. Tax Code § 11.31(k)(16).

Tex. Tax Code § 11.31(m) provides:

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.

Tex. Tax Code § 11.31(a) establishes the scope of the ad valorem tax exemption.

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.

Tex. Tax. Code § 11.31(b) defines “facility, device, or method for the control of air, water, or land pollution” as:

land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed 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.

Air Products argues that the language in Tex. Tax Code § 11.31(m) mandates that the Executive Director award at least a partial positive use determination to any property appearing on the § 11.31(k) list.³⁸

³⁸ Response to Notice of Technical Deficiency, p. 2 (March 25, 2013) (Attached as **ED's Exh. #2**).

Subsection (k) sets forth a list of property “for the control of air, water, or land pollution.” Per subsection (m), when TCEQ receives a tax relief application for property listed in subsection (k), the Executive Director “*shall* determine” that the property “is used *wholly or partly*” for pollution control. Thus, by the express language of the Tax Code, such equipment must qualify at least in part for a positive case [sic] determination.

(emphasis in original).³⁹

The Executive Director interprets Tex. Tax Code § 11.31(m) as exempting applicants who submit applications containing property on the § 11.31(k) list from the requirement of providing the Executive Director with information detailing the anticipated environmental benefit from the installation of the property. The Executive Director also interprets Tex. Tax Code § 11.31(m) as imposing a 30-day review period for applications containing property on the § 11.31(k) list. The Executive Director does not interpret subsection (m) as exempting § 11.31(k)-listed property from the TCEQ’s review standards at 30 TAC Chapter 17 or mandating the issuance of a positive use determination.

The ambiguity in Tex. Tax Code § 11.31(m) stems from the phrase “in the event that such a determination is made.” This language would be meaningless if the Executive Director did not retain the authority to subject § 11.31(k)-listed property to the review standards at 30 TAC Chapter 17 and issue a positive or negative use determination. When interpreting statutory language, meaning should be attributed to each word and treating statutory language as surplusage should be avoided where possible.⁴⁰ If the legislature intended, as Air Products contends, to mandate that the Executive Director issue positive use determinations for all § 11.31(k)-listed property, subsection (m) would direct the Executive Director to provide public notice of a positive use determination in all instances. However, by directing the Executive Director to provide public notice only “in the event such a determination is made,” subsection (m) implies that there are instances where § 11.31(k)-listed property will not receive a positive use determination, and, therefore, no public notice is necessary.

The ambiguity in Tex. Tax Code § 11.31(k) is also reflected in comments from members of the Texas Legislature received by the Executive Director during the 2008 rulemaking implementing HB 3732.⁴¹ Representative Dennis Bonnen, then

³⁹ *Id.*

⁴⁰ *Fresh Coat, Inc. v. K-2, Inc.*, 318 S.W.3d 893, 901 (Tex. 2010).

⁴¹ While the Executive Director acknowledges that the post-enactment statements from individual legislators do not constitute legislative history reflecting the legislature’s collective intent, the Executive Director has included the individual legislators’ comments as persuasive authority evidencing the ambiguity of Tex. Tax Code § 11.31(k) and (m).

Chairman of the House Committee on Environmental Regulation, provided the following comments regarding the TCEQ's implementation of HB 3732:

The legislation requires TCEQ to adopt rules to include a “non-exclusive list of facilities, devices, or methods for the control of air, water, or land pollution.” The language requires that the list include 18 categories of technologies. I understand that some parties are pushing for this list to require an automatic exemption determination without any deliberation by TCEQ. The language itself, however, requires that the item must be a facility device, or method for control of pollution. It does not supersede the TCEQ's obligation to review application-specific information to ensure that the equipment does in fact qualify as pollution control equipment. If the TCEQ does not have sufficient evidence to demonstrate that something is pollution control equipment, it should not qualify for the exemption even if it is in a category on the list.⁴²

Representative Allan Ritter also provided the following comments:

Although new subsection (k) provides a list of equipment to be included on the nonexclusive list, this should not be interpreted to require the TCEQ to approve the equipment if it fails to meet the pollution control standards established by the agency. TCEQ retains the final discretion to determine the items that are eligible for an exemption under section 11.31. This authority was reinforced by the inclusion of new subsection (l), which specifies that an item may be removed from the nonexclusive list if the commission finds that it does not provide pollution control benefits.

It must also be pointed out that the legislature did not repeal an existing provision (Subsection 11.31(h)) that clearly prohibits the TCEQ from making a determination that property is pollution control property unless it meets the standards established by TCEQ. To interpret subsection (k) as requiring TCEQ to make a positive pollution control determination on all the items listed by the legislature regardless of whether they meet the standards would render subsection (h) meaningless.⁴³

These legislators' comments indicate the ambiguity inherent in Tex. Tax Code § 11.31(k). This ambiguity compelled the Executive Director to interpret Tex. Tax Code § 11.31(k) and (m) in a manner that harmonizes those subsections with the

⁴² Letter from Rep. Dennis Bonnen to Mr. Glenn Shankle, Executive Director of the TCEQ, received August 31, 2007 (Attached as **ED's Exh. #6**).

⁴³ Letter from Rep. Allan Ritter to Mr. Glenn Shankle, Executive Director of the TCEQ, received August 10, 2007 (Attached as **ED's Exh. #7**).

existing statutory language to achieve the purpose of the exemption: to provide tax relief to businesses compelled by law to install or acquire pollution control equipment that generates no revenue for such businesses.⁴⁴

The Texas Legislature has accepted the Executive Director's interpretation of Tex. Tax Code § 11.31(k) and (m). The doctrine of legislative acceptance provides that a statute of doubtful meaning that has been construed by the proper administrative officers, when re-enacted without any substantial change in verbiage will ordinarily receive the same construction.⁴⁵ Statutes are presumed to be enacted by the legislature with complete knowledge of the existing law and with reference to it.⁴⁶ The legislature amended Tex. Tax Code § 11.31 in 2009, passing HB 3206 and HB 3544.⁴⁷ While the legislature left the verbiage of subsections (k) and (m) unchanged, HB 3206 and HB 3544 added subsection (g-1); which explicitly accepts the Executive Director's interpretation of those subsections. Tex. Tax Code § 11.31(g-1) reads:

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).

Subsection (g-1) explicitly adopts the Executive Director's statutory interpretation that § 11.31(k)-listed equipment is subject to TCEQ's review standards at 30 TAC Chapter 17.

Finally, even if the Commission finds that the statutory language in Tex. Tax Code § 11.31(k) and (m) is unambiguous, adopting Air Products' construction would lead to absurd results. If statutory text is unambiguous, an interpretation supported by the statute's plain language should be adopted unless that interpretation would lead to absurd results.⁴⁸ Again, Air Products argues that the plain language of Tex. Tax Code § 11.31(m) requires the Executive Director to award at least a partial positive determination to any property appearing on the § 11.31(k) list without reference to other subsections of Tex. Tax Code § 11.31 or the

⁴⁴ Op. Tex. Att'y Gen. No. 96-128, p. 1 (1996)(Attached as **ED's Exh. #8**).

⁴⁵ Fleming Foods of Texas, Inc. v. Rylander, 6 S.W.3d 278, 282 (Tex. 1999).

⁴⁶ Acker v. Tex. Water Comm'n., 790 S.W.2d 299, 301 (Tex. 1990).

⁴⁷ HB 3206, 81st Leg., R.S. (2009); HB 3544, 81st Leg., R.S. (2009).

⁴⁸ Tex. Dept. of Regulatory and Protective Services v. Mega Child Care, 145 S.W.3d 170, 177 (Tex. 2004); Faulk v. State, 608 S.W.2d 625, 630 (Tex. Cr. App. 1980)("Thus, when construing a statute, its subject matter, reason and effect must be looked to, and when literal enforcement would lead to consequences which the Legislature could not have contemplated, courts are bound to presume that such consequences were not intended and adopt a construction which will promote the purpose for which the legislation was passed.").

TCEQ's review standards at 30 TAC Chapter 17.⁴⁹ Coal drying equipment is listed at Tex. Tax Code § 11.31(k)(14). When a lignite-fired power plant utilizes coal drying equipment, the moisture reduction in the fuel source improves boiler performance and unit heat rate; thereby, reducing air emissions. However, this same coal drying equipment in the hands of a mining company that intends to sell coal that has undergone the moisture reduction process to a lignite-fired power plant is not eligible to receive a positive use determination under Tex. Tax Code § 11.31(a) and 30 TAC § 17.6. Air Products' construction of Tex. Tax Code § 11.31(k) and (m) would prohibit the Executive Director from distinguishing between these two applicants; requiring that a positive use determination be issued in both instances. Keeping in mind that the purpose of Tex. Tax Code § 11.31 is to provide tax relief to businesses that are compelled by law to install or acquire pollution control equipment that generates no revenue for such businesses,⁵⁰ it is apparent that the legislature could not have possibly intended this result.

2. AIR PRODUCTS IS NOT ENTITLED TO A POSITIVE USE DETERMINATION BECAUSE ITS PORT ARTHUR CO₂ SYSTEM IS NOT USED TO MEET OR EXCEED AN ENVIRONMENTAL LAW, RULE, OR REGULATION.

In order to be eligible for a positive use determination, the subject property must be used, constructed, acquired, or installed wholly or partly to meet or exceed federal, state, or local environmental laws, rules, or regulations for the prevention, monitoring, control, or reduction of air, water, or land pollution.⁵¹ Air Products' asserts that its Port Arthur CO₂ System meets or exceeds the following federal and state environmental regulations: 40 CFR §§ 51.166, 52.21 and 30 TAC §§ 101.4, 116.115(b), 335.471 *et seq.*⁵²

Air Products' Port Arthur CO₂ System is not used to meet 40 CFR § 51.166, Prevention of Significant Deterioration of Air Quality. 40 CFR § 51.166 requires states and tribal authorities to develop a plan to implement the prevention of significant deterioration requirement of Part C of the Federal Clean Air Act to submit to the U.S. Environmental Protection Agency (EPA). Since 40 CFR § 51.166 is an obligation for state and tribal authorities, it is not applicable to Air Products or its Port Arthur CO₂ System. Air Products argues that the use and installation of its Port Arthur CO₂ System exceeds 40 CFR § 52.166.⁵³ A use determination applicant cannot exceed a regulation that it is not required to meet.

⁴⁹ Response to Notice of Technical Deficiency, p. 2 (March 25, 2013) (Attached as **ED's Exh. #2**).

⁵⁰ Op. Tex. Att'y Gen. No. 96-128, p. 1 (1996)(Attached as **ED's Exh. #8**).

⁵¹ Tex. Tax Code § 11.31(a), (b); 30 TAC § 17.4(a).

⁵² Response to Notice of Technical Deficiency (March 25, 2013) (Attached as **ED's Exh. #2**).

⁵³ *Id.* at p. 7.

Air Products' Port Arthur CO₂ System is not subject to 40 CFR § 52.21, Prevention of Significant Deterioration of Air Quality. 40 CFR § 52.21 prohibits the construction a new major stationary source of regulated NSR pollutants or a major modification of an existing major stationary source of regulated NSR pollutants except in accordance with the terms and conditions of a PSD permit. Air Products does not have a PSD permit governing emissions from its Port Arthur CO₂ System. Air Products' acknowledges that its Port Arthur CO₂ System was constructed prior to the effective date of Phase II of the Greenhouse Gas Tailoring Rule, and, therefore, it was not required to obtain a PSD permit.⁵⁴ The Executive Director acknowledges that if at some point in the future Air Products' Port Arthur CO₂ System undertakes a physical change or a change in its method of operation that will result in an emissions increase of 75,000 tons per year (tpy) of CO₂ or more, it will become subject to PSD permitting and 40 CFR § 55.21.⁵⁵ Should such a change occur, Air Products may submit a new use determination application reflecting this change. However, at this time, Air Products' Port Arthur CO₂ System is not subject to 40 CFR § 52.21. Air Products argues that it has exceeded 40 CFR § 52.21 by voluntarily implementing CO₂ capture and sequestration measures before it is required to do so.⁵⁶ Again, a use determination applicant cannot exceed a regulation that it is not required to meet.

Air Products' Port Arthur CO₂ System is not used to meet 30 TAC § 101.4, Nuisance. 30 TAC § 101.4 is a general prohibition against creating an air quality nuisance. This general prohibition does not compel the use, construction, acquisition, or installation of pollution control equipment, nor does it explicitly limit CO₂ emissions.

Air Products' Port Arthur CO₂ System is not used to meet 30 TAC § 116.115(b), General and Specific Conditions. 30 TAC § 116.115(b) requires an air quality permit holder to comply with the general conditions of the permit. General permit conditions include Maximum Allowable Emission Rates, which are maximum emission values included on a table attached to an air quality permit.⁵⁷ Air Products' air quality permit does not contain a Maximum Allowable Emission Rate for the control of CO₂.⁵⁸ As such, Air Products' Port Arthur CO₂ System is not being used to meet a general condition of its air quality permit. Air Products argues that the lack of a Maximum Allowable Emission Rate for CO₂ in its air quality permit can be interpreted in one of two ways: 1) that CO₂ emissions are not limited, in which case it is using the Port Arthur CO₂ System to exceed its air quality permit requirements; or 2) that CO₂ emissions are prohibited, in which case it is using the Port Arthur CO₂ System in an effort to comply with its air

⁵⁴ Id.

⁵⁵ 40 CFR § 52.21(b)(49)(v)(b).

⁵⁶ Response to Notice of Technical Deficiency, p. 7 (March 25, 2013) (Attached as ED's Exh. #2).

⁵⁷ 30 TAC 116.115(b)(2)(F).

⁵⁸ Air Quality Permit Nos. 39693 and N63.

quality permit.⁵⁹ Again, Air Products' Port Arthur CO₂ System is not being used to meet 30 TAC § 116.115(b); and a use determination applicant cannot exceed a regulation that it is not required to meet.

Air Products' Port Arthur CO₂ System is not used to meet 30 TAC § 335.471 *et seq.*, Pollution Prevention: Source Reduction and Minimization. Subchapter Q of 30 TAC Chapter 335 requires certain regulated entities to develop a Pollution Prevention (P2) Plan in accordance with the Waste Reduction Policy Act (WRPA) of 1991.⁶⁰ Subchapter Q of 30 TAC Chapter 335 does not impose source reduction or waste minimization requirements; nor does it compel the use, construction, acquisition, or installation of pollution control equipment. 30 TAC § 335.474 sets out the minimum elements of a P2 Plan, while 30 TAC § 335.476 requires the submission of an annual report detailing a facility's progress implementing its P2 Plan. This reporting requirement is not being met or exceeded by Air Products' construction or use of its Port Arthur CO₂ System. The Commission has previously affirmed the Executive Director's issuance of a negative use determination on the basis that Subchapter Q of 30 TAC Chapter 335 is not an appropriate regulatory citation.⁶¹

CONCLUSION

After careful consideration of the Appeal filed by Air Products on Use Determination Application Number 16632, the Executive Director concludes that its negative use determination for the Port Arthur CO₂ System was not issued in error. The Appellant has failed to provide any legal basis upon which the Commission should reverse the Executive Director's use determination in this case. The Executive Director's use determination is consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Appellant do not alter the findings and final negative use determination issued by the Executive Director in this case.

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

Respectfully submitted,
Texas Commission on Environmental
Quality

Zak Covar

⁵⁹ Response to Notice of Technical Deficiency, p. 8 (March 25, 2013) (Attached as **ED's Exh. #2**).

⁶⁰ 30 TAC § 335.473.

⁶¹ Appeal filed by Encore Wire Corporation with regard to the Executive Director's Negative Use Determination for Application No. 14259; TCEQ Docket No. 2010-1585-MIS-U (considered on November 18, 2010).

Executive Director

Robert Martinez, Director
Environmental Law Division



By _____
Timothy J. Reidy, Staff Attorney
Environmental Law Division
State Bar No. 24058069
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Tel: (512) 239-0969
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I certify that on August 8, 2013, an original and seven copies of the "Executive Director's Response to Air Products, LLC'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

Mailing List
Air Products, LLC
TCEQ Docket No. 2013-1252-MIS-U
Use Determination No. 16632

Gerard Thompson
Environmental Group
Air Products and Chemicals, Inc.
7201 Hamilton Blvd.
Allentown, Pennsylvania 18195-1501
610/481-5154 FAX 610/481-5900

Gerald D. Higdon
Locke Lord, LLP
2800 JPMorgan Chase Tower, 600 Travis
Houston, Texas 77002
713/238-3709 FAX 713/229-2535
jhigdon@lockelord.com

Roland Bieber, Chief Appraiser
Jefferson County Appraisal District
P.O. Box 21337
Beaumont, Texas 77720
409/840-9944 FAX 409/727-5621
rbieber@jcad.org

Ron Hatlett
TCEQ Office of Air MC 206
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6348 FAX 512/239-6188
ronald.hatlett@tceq.texas.gov

Chance Goodin
TCEQ Office of Air MC 206
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6335 FAX 512/239-6188
chance.goodin@tceq.texas.gov

Steve Hagle, Deputy Director
TCEQ Office of Air MC 122
P.O. Box 13087
Austin, Texas 78711-3087
512/239-2104 FAX 512/239-3341
steve.hagle@tceq.texas.gov

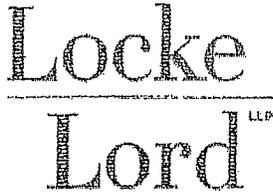
Robert Martinez
TCEQ Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600 FAX 512/239-0606
robert.martinez@tceq.texas.gov

Blas Coy
TCEQ Office of Public Interest Counsel MC
103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-6363 FAX 512/239-6377
blas.coy@tceq.texas.gov

Garrett Arthur
TCEQ Office of Public Interest Counsel MC
103
P.O. Box 13087
Austin, Texas 78711-3087
512/239-5757 FAX 512/239-6377
garrett.arthur@tceq.texas.gov

Docket Clerk
TCEQ Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3300 FAX 512/239-3311

ED's Exh. # 1 –
Revised Use Determination Application
No. 16632 (dated June 27, 2012)



Attorneys & Counselors

2800 JPMorgan Chase Tower, 600 Travis
Houston, TX 77002
Telephone: 713-226-1200
Fax: 713-223-3717
www.lockelord.com

Gerald D. Higdon
Direct Telephone: 713-238-3709
Direct Fax: 713-229-2535
jhigdon@lockelord.com

May 30, 2012

Texas Commission on Environmental Quality
Tax Relief for Pollution Control Property Program
Building F, Mail Code 110
12100 Park 35 Circle
Austin, Texas 78753

Re: *Air Products LLC*; Use Determination for Pollution Control Property Applications

Ladies and Gentlemen:

We represent Air Products LLC. We have enclosed the following documents:

- (1) Completed Use Determination for Pollution Control Property Application for Plants 1 and 2 CO₂ separation, purification, delivery and sequestration system, with the following Attachments ("Application No. 1"):
 - (a) Attachment 1;
 - (b) Attachment 2;
 - (c) Attachment 3;
 - (d) Memorandum, dated May 25, 2012, by Locke Lord LLP; and
 - (e) Air Products Check No. 1000030935 in the amount of \$2,500.00 (tendered to the Cashier's Office only).

- (2) Completed Use Determination for Pollution Control Property Application for Low NO_x burners, Selective Catalytic Reduction, an ammonia analyzer and a NO_x gas analyzer with the following Attachments ("Application No. 2"):
 - (a) Attachment 1;
 - (b) Attachment 2;
 - (c) Attachment 3; and

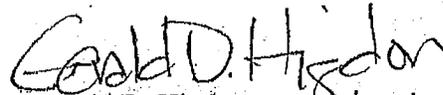
Atlanta, Austin, Chicago, Dallas, Hong Kong, Houston, London, Los Angeles, New Orleans, New York, Sacramento Washington DC

HOU:0026269/00001:1599705v1

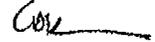
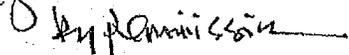
- (d) Air Products Check No. 1000030936 in the amount of \$150.00 (tendered to the Cashier's Office only).
- (3) Two complete copies of completed Application No. 1 (for equipment located in two appraisal districts); and
- (4) A complete copy of completed Application No. 2.

We will follow up with your office regarding these applications in due course. We appreciate the commission's consideration of the enclosed applications.

Very truly yours,



Gerald D. Higdon
For the Firm



GDH/cms
Enclosures

cc: Mr. Jack Chernobyl, Air Products LLC
Gerald J. Pels, Locke Lord LLP

16682 Revision 1

Texas Commission on Environmental Quality

Use Determination for Pollution Control Property Application

A person seeking a use determination must complete this application form. For assistance in completing the application form please refer to the *Instructions for Use Determination for Pollution Control Property Application Form TCEQ-00611*, as well as the rules governing the Tax Relief Program in Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Information relating to completing this application form is also available in the TCEQ regulatory guidance document, *Property-Tax Exemptions for Pollution Control Property, RG-461*. For additional assistance, please call the Tax Relief Program at 512-239-4900.

You must supply information for each field of this application form unless otherwise noted.

Section 1. Eligibility

1. Is the property/equipment subject to any lease or lease-to-own agreement? Yes No
2. Is the property/equipment used solely to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water or land pollution?
Yes No
3. Was the property/equipment acquired, constructed, installed, or replaced before January 1, 1994? Yes No

If the answer to any of these questions is 'Yes', then the property/equipment is not eligible for a tax exemption under this program.

Section 2. General Information

1. What is the type of ownership of this facility?
Corporation Limited Partner Other: Limited Liability Company
Sole Proprietor Utility Company
Partnership
2. Size of Company: Number of Employees
1 to 99 500 to 999 2,000 to 4,999
100 to 499 1,000 to 1,999 5,000 or more
3. Business Description: (Briefly describe the type of business or activity at the facility)
Hydrogen and steam production and electricity generation to supply adjacent Valero Energy Corporations petroleum refinery along with the separation, purification, delivery, and sequestration of carbon dioxide through Denbury Resources, Inc.
4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility. 325120

Section 3. Type of Application and Fee

1. Select only one:

Tier I – Fee: \$150

Tier II – Fee: \$1,000

Tier III – Fee: \$2,500

2. Payment Information:

Check/Money Order/Electronic Payment Receipt Number:

Payment Type: Check

Payment Amount: \$2500.00

Name on payment: Air Products LLC

Total Amount: \$2500.00

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.

Section 4. Property/Equipment Owner Information

1. Company Name of Owner: Air Products LLC

2. Mailing Address: 7201 Hamilton Boulevard

3. City, State, Zip: Allentown, PA, 18195

4. Customer Number (CN): 602299257

5. Regulated Entity Number (RN): 101941284

6. Is this property/equipment owned by the CN listed in Question 4? Yes No

If the answer is 'No,' please explain:

7. Is this property/equipment leased from a third party? Yes No

If the answer is 'Yes,' please explain:

8. Is this property/equipment operated by the RN listed in Question 5? Yes No

If the answer is 'No,' please explain:

Section 5. Name of Property/Equipment Operator (If different from Owner)

1. Company Name:

2. Mailing Address:

3. City, State, Zip:

4. Customer Number (CN):

5. Regulated Entity Number (RN):

Section 6. Physical Location of Property/Equipment

1. Name of Facility or Unit where the property/equipment is physically located: Air Products LLC

2. Type of Mfg. Process or Service: Hydrogen, electric power, and steam production

3. Street Address: 1801 South Gulfway Drive, Gate 37

4. City, State, Zip: Port Arthur, TX 77640

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Jefferson County Appraisal District
2. District Account Number(s): New Property

Section 8. Contact Name

1. Company Name: Air Products and Chemicals, Inc.
2. First Name of Contact: Gerard
3. Last Name of Contact: Thompson
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title: Environmental Manager
6. Mailing Address: 7201 Hamilton Boulevard
7. City, State, Zip: Allentown, PA 18195-1501
8. Phone Number/Fax Number: 610-481-5154/610-716-5590
9. Email Address: thompsgp@airproducts.com
10. Tracking Number (optional):

Section 9. Property/Equipment Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property/equipment for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property/equipment if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property/equipment: The Air Products' Port Arthur Plants 1 and 2 CO₂ separation, purification, delivery, and sequestration system.
2. Is the property/equipment used 100% as pollution control equipment? Yes No
If the answer is 'Yes,' explain how it was determined that the equipment is used 100% for pollution control: The Port Arthur CO₂ system is part of a Department of Energy (DOE) project to develop and demonstrate technology to successfully capture, purify, deliver, and sequester CO₂.
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product: Successfully sequestering the CO₂ at the Denbury Resources West Hastings oil field, provides Denbury the ability to enhance its oil recovery from its existing field. This result of sequestration provides a small measure of income to offset a fraction of the cost to separate, purify, transport, and sequester the CO₂.

What is the appropriate Tier I Table or Expedited Review List number? 30 TAC §17.17(b) Expedited Review List Pollution Control Property, B-16 Carbon Dioxide Capture and Geological Sequestration Equipment.

4. Is the property/equipment integrated pollution control equipment? Yes No

If the answer is 'No,' separate applications must be filed for each piece of property/equipment.

5. List applicable permit number(s) for the property/equipment: 30 TAC 106.261, 183, 371, and 478,

Incremental Cost Difference

6. Is the Tier I Table percentage based on the incremental cost difference? Yes No

If the answer is 'Yes,' answer the following questions:

7. What is the cost of the new piece of property/equipment?
8. What is the cost of the comparable property/equipment?
9. How was the value of the comparable property/equipment calculated?

Property/Equipment Description

10. Describe the property/equipment. (What is it? Where is it? How is it used?) The CO₂ control system separates CO₂ from the normal plant process syngas, purifies the CO₂, compresses it and transports it to final sequestration via pipeline. Please see Attachment 1 for a more complete project and process description and Attachment 2 for a process flow diagram.

Applicable Rule

11. What adopted environmental rule or regulation is being met by the construction or installation of the property/equipment? The citation must be to the subsection level. 40 CFR §§ 51.166 and 52.21; 30 TAC § 116.115(b); 30 TAC §§ 335.471 et seq., 335.475. See also attached memorandum from Locke Lord LLP.

Environmental Benefit

12. What is the anticipated environmental benefit related to the construction or installation of the property/equipment? The capture and sequestration of more than one million tons per year of carbon dioxide currently emitted to the atmosphere.

Section 10. Process Flow Diagram (Optional)

Attach documentation to the application showing a Process Flow Diagram for the property/equipment.

Section 11. Partial-Use Percentage Calculation

This section must be completed for all Tier III applications. Attach documentation to the application showing the calculations used to determine the partial-use percentage for the property/equipment.

Section 12. Property Categories and Costs

List each piece of property/equipment of integrated pollution control property/equipment for which a use determination is being sought.

Property/Equipment Name	Tier, Table No. or Expedited Review List No.	Use Percent	Estimated Dollar Value
Land:			
Property: Separation, purification, transport, and sequestration of CO ₂ from the Port Arthur syngas stream.	B-16	89.6	\$213,850,000
Property:			
Property:			
Total:			\$213,850,000

Attach additional response sheets to the application if more than three (3) pieces.

NOTE: Separate applications must be filed for each piece of nonintegrated pollution control property/equipment.

Section 13. Certification Signature

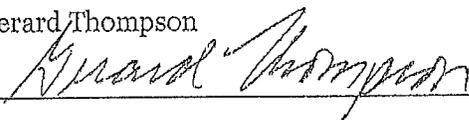
Must be signed by owner or designated representative.

By signing this application, I certify that I am duly authorized to submit this application form to the TCEQ and that the information supplied here is true and accurate to the best of my knowledge and belief.

Printed Name: Gerard Thompson

Date: 6/27/2012

Signature: _____



Title: Environmental Manager

Company Name: Air Products and Chemicals, Inc.

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.

Application Submission

Send the completed application and the appropriate fee, along with a complete copy of the completed application for the appraisal district, to:

U.S. Mail

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

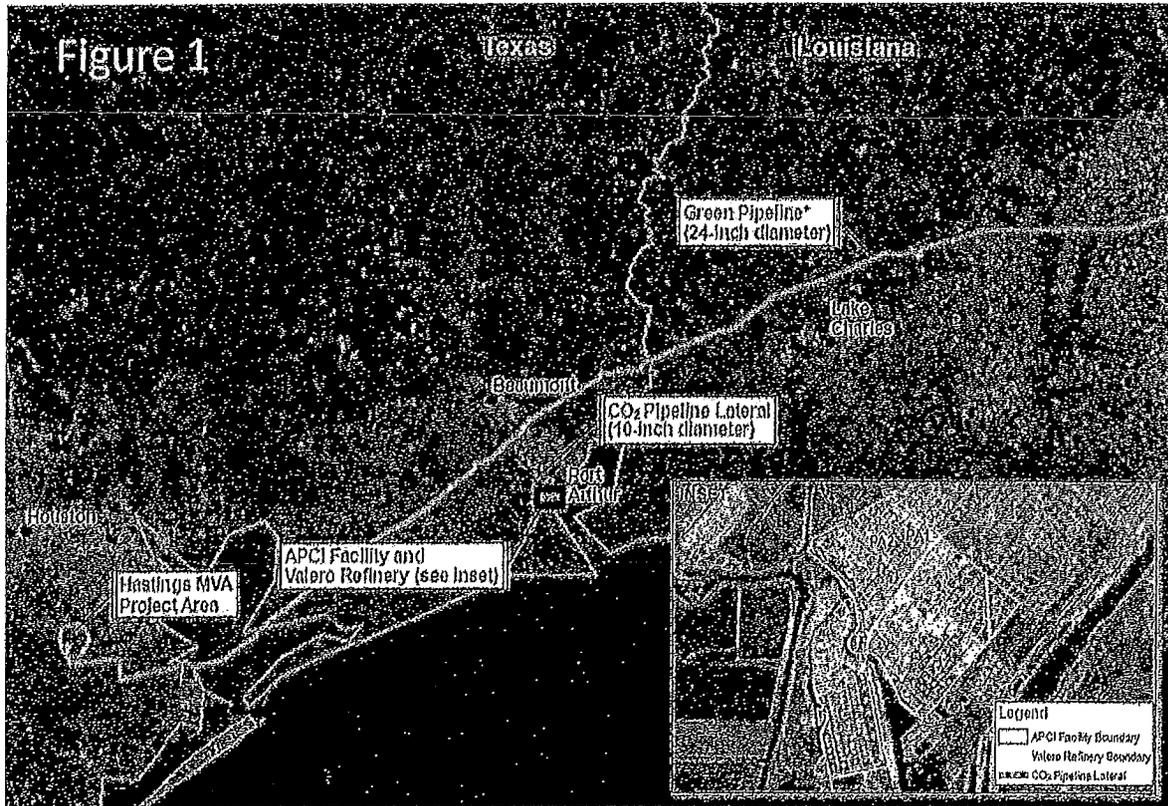
Physical Address

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

Attachment 1

PROCESS DESCRIPTION AND LOCATION

The Air Products' Port Arthur CO₂ Capture Units are integrated with the existing Port Arthur 1 (PA1) and Port Arthur 2 (PA2) plants each of which produce hydrogen, electric power, and steam for use by the Valero Energy Corporation refinery. The PA1 and PA2 hydrogen plants are located within the Valero Port Arthur Refinery near Port Arthur, Texas. Air Products has operated PA1 since 2000 and PA2 since 2006. Both the PA1 and PA2 plants use SMR technology for H₂ production and deliver the hydrogen to Valero and other West Gulf Coast customers via pipeline. Each CO₂ Capture Unit will recover CO₂ from the syngas generated by the steam methane reformer (SMR) at each site. CO₂ capture at each site will be achieved through two Vacuum Swing Adsorption (VSA) trains each of which will be nominally capable of recovering up to 760 tons/day of CO₂. Captured CO₂ from the four VSA trains are aggregated at the Port Arthur 2 site where it is compressed and dehydrated for delivery to the Denbury Resources, Inc. West Hastings oil field in Brazoria County via pipeline (See Figure 1 below) To make possible the final sequestration of the separated CO₂, Air Products installed an approximately 12.8 mile pipeline to deliver the CO₂.



CONFIDENTIAL

Attachment 3

Air Products LLC Port Arthur, Texas
CO2 Separation, Purification, Transport, and Sequestration
Tier III Partial Use Determination

Capital Cost of the New CO2 Plant (w/pipeline, w/o GTG-HRSG): \$238,672,000

Useful Life: 10 Years

Interest Rate: 10%

Net Present Value Marketable Product: \$24,940,000

Production Capacity Factor: 100%

$$\text{CAP Equation} = \frac{(1.00 \times \$238,672,000) - \$24,940,000}{\$238,672,000} \times 100 = 89.6\%$$

$$\text{Eligible Capital Cost: } 0.896 \times \$238,672,000 = \$213,850,000$$

ED's Exh. # 2 –
Response to Notice of Technical
Deficiency (March 25, 2013)



Attorneys & Counselors

16632
Revison 2

2800 JPMorgan Chase Tower, 600 Travis
Houston, TX 77002
Telephone: 713-226-1200
Fax: 713-223-3717
www.lockelord.com

Gerald J. Pels
Direct Telephone: 713-226-1402
Direct Fax: 713-229-2513
gpels@lockelord.com

March 25, 2013

Texas Commission on Environmental Quality
Tax Relief for Pollution Control Property Program
MC-110
P.O. Box 13087
Austin, Texas 78711-3087

Re: Response to Notice of Technical Deficiency
Air Products, LLC
Air Products Port Arthur Plant
1801 South Gulfway Drive Gate 37
Port Arthur (Jefferson County)
Regulated Entity Number: RN101941284
Customer Reference Number: CN602299257
Application Number: 16632

Dear Mr. Goodin:

On behalf of Air Products and Chemicals, Inc. ("Air Products"), we are responding to the Texas Commission on Environmental Quality's ("TCEQ") Notice of Technical Deficiency dated January 24, 2013. Air Products submitted an Application for Use Determination on May 31, 2012, for equipment associated with carbon dioxide ("CO₂") capture, transportation, and sequestration monitoring and verification equipment installed in connection with the company's hydrogen production facility at 1801 South Gulfway Drive, Port Arthur, Texas (the "Facility") and at the West Hastings oil field in which the CO₂ will be used for enhanced oil recovery (such capture, transportation, and sequestration monitoring and verification equipment being collectively referred to as the "CCS System").

We respond to your points in the order they are set forth in your Notice.

Issue 1: The rule citations provided do not require the collection and sequestration of CO₂. In order to be eligible for a positive use determination the property must have been placed in service in order to meet or exceed an adopted environmental rule. Specifically, 40 CFR § 51.166 requires States to inventory emission sources located on nontribal lands and report this information to EPA; it does not place any requirements on the Applicant or its Facility. 40 CFR § 52.21 does not apply since the Facility does not have a Prevention of Significant Deterioration (PSD) permit. 30 TAC § 116.115(b) does not apply because the Facility's Air Quality Permit (Nos. 39693 and N63) does not contain a

Atlanta, Austin, Chicago, Dallas, Hong Kong, Houston, London, Los Angeles, New Orleans, New York, Sacramento, San Francisco, Washington DC

Maximum Allowable Emission Rate for the control of CO₂. 30 TAC § 335.471 contains definitions for Chapter 335 and does not place any requirements on the Applicant or its Facility. 30 TAC § 335.475 requires the development of a Pollution Prevention Plan and the renewal of the plan every five years. This provision does not impose source reduction or waste minimization requirements, nor does it compel the use or installation of a certain technology, equipment, or process. 30 TAC § 101.4 generally prohibits nuisance conditions, and does not require the control of CO₂. The cited permits by rule of 30 TAC §§ 106.261, 106.183, 106.371, and 106.478 do not require control of CO₂. Emission limitations associated with permits by rule are stated in § 106.104(a)(4), and CO₂ is expressly excluded as a substance with an emission limitation. Please 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 subject property. Also, per the application instructions, "The application must describe how the property/equipment meets or exceeds a rule, regulation, or statutory provision that has been adopted by a federal regulatory agency, the State of Texas, or a political subdivision of Texas." Please comply with this requirement.

Response:

A. The CCS System is Entitled to at Least a Partial Positive Use Determination, Because it is a Type of Equipment Listed in Subsection 11.31(k) of the Texas Tax Code

As a threshold matter, the TCEQ has not addressed Air Products' assertion that its CCS System must receive at least a partial positive use determination because it is a type of equipment listed in subsection 11.31(k) of the Texas Tax Code.¹ Subsection (k) sets forth a list of property "for the control of air, water, or land pollution." Per subsection (m), when TCEQ receives a tax relief application for property listed in subsection (k), the Executive Director "*shall* determine" that the property "is used *wholly or partly*" for pollution control (emphasis added). Thus, by the express language of the Tax Code, such equipment must qualify at least in part for a positive case determination.

Although it is not clear on what basis the TCEQ seeks to evade the clear mandate of sections 11.31(k) and (m), the TCEQ previously has taken the position that notwithstanding the

¹ Subsection (k) includes property used "wholly or partly" to capture CO₂ from an anthropogenic source in this state that is geologically sequestered in this state—if the U.S. Environmental Protection Agency ("EPA") adopts a final rule or regulation regulating CO₂ as a pollutant. As explained in Air Products' application, EPA has adopted such a final rule or regulation regulating CO₂ as a pollutant pursuant to its Light Duty Vehicle Rule, the GHG requirements that became effective January 2, 2011. See, 75 Fed. Reg. 25,324 (May 7, 2010). Moreover, pursuant to EPA's Tailoring Rule, effective August 2, 2010, GHGs, including CO₂, became regulated pollutants at major stationary sources as early as January 2, 2011. 75 Fed. Reg. 31,514 (June 3, 2010). Permitting of emissions associated with the CCS System commenced in April 2011, after the effective date of EPA's adoption of each of these final rules regulating CO₂ as a pollutant. See Standard Permit Registration Number 95649, and Permit by Rule Registration Number 95892, and the applications therefor, dated April 7, 2011, and April 21, 2011, respectively. Through a straightforward application of the statutory language, the CCS System qualifies for the pollution control property tax exemption.

requirement placed upon the Agency under subsection (m), property listed in subsection (k) could be found to have zero percent pollution control use.² Essentially, the Executive Director has interpreted property "used wholly or partly ... for the control of ... pollution" to include property that is *not at all used for pollution control*. To the extent that TCEQ applies such an interpretation to Air Products' application, such interpretation is an impermissible misreading of the statute, and is arbitrary and capricious under the Texas Administrative Procedure Act ("**Texas APA**").³

First, the plain meaning of the term "partly" does not include "not at all." As the Attorney General observed in a 2001 opinion on the tax relief program, section 11.31 is "broadly written," and "its plain meaning is clear. It embraces any property ... 'that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution.'" The opinion goes on to state that "the term 'wholly' clearly refers to property that is used only for pollution control," while the term "partly" "embraces property that has only some pollution-control use." The Attorney General noted that Merriam Webster's Collegiate Dictionary defines "partly" to mean "in some measure or degree."⁴ Thus, by its plain meaning, the term "partly" cannot mean "not at all."

A review of other parts of the statute that use the term, "wholly or partly," definitively establishes the interpretation's validity. According to principles of statutory construction, a term used more than once in a statute should generally be given the same meaning throughout the entire statute.⁵ Looking at the other parts of the statute, interpreting "partly" to mean "not at all" would yield absurd results. For example:

- Subsection (a) provides that a person is *entitled to a tax exemption* for property used "wholly or partly" for pollution control. Under TCEQ's interpretation, property *not used at all* for pollution control would be eligible for an exemption. That is if "partly" can be construed to mean "not at all," then a tax exemption could exist for property used "wholly or [not at all]" for pollution control. Obviously, that cannot be the legislature's intent.
- In subsection (k), the list of property used for pollution control includes property used "wholly or partly" to capture CO₂ from an anthropogenic source in this state that is

² TCEQ Executive Director's Response to the Appeals Filed on the Negative Use Determinations for the Heat Recovery Steam Generator Applications, Docket Nos. 2012-1529-MIS-U et al. ("**Executive Director's Response**"). "Just because a piece of equipment is listed in §11.31(k) does not mean that it is automatically entitled to a positive use determination." *Id.* at 3. "Section 11.31(m) requires the Executive Director to distinguish the production portion of the §11.31(k) listed equipment from the pollution control portion. The Executive Director must determine the appropriate use determination percentage, which includes 0% if none of the equipment is used for pollution control." *Id.* at 6.

³ Tex. Gov't Code §§ 2001.001 et seq.

⁴ Attorney General of Texas John Coryn, Opinion No. JC-0372 Re: Whether certain types of property at new facilities qualify for a tax exemption as pollution-control property under section 11.31 of the Tax Code (RQ-330-JC), available at <https://www.oag.state.tx.us/opinions/opinions/49cornyn/op/2001/htm/jc0372.htm>.

⁵ "A term appearing in several places in a statutory text is generally read the same way each time it appears." *Ratzlaf v. U.S.*, 510 U.S. 135, 143 (1994).

geologically sequestered in this state.⁶ Under TCEQ's interpretation, if applied consistently, property *not used at all* for capturing CO₂ would be eligible for the tax exemption. Further, if "wholly or partly" may be read to mean "nothing at all," then the statute could be read to allow a tax exemption for property not capturing any CO₂ at all. Again, these are absurd results.

- Subsection (i) requires a "person seeking an exemption" to provide the local appraiser with a copy of the Executive Director's letter "determining that the [property] is used wholly or partly as pollution control property." Under TCEQ's interpretation, property *not used at all* for pollution control could be the subject of the Executive Director's letter. Obviously, there is no need for an appraiser to receive a letter indicating no tax exemption is applicable.

TCEQ guidance demonstrates that the Agency itself interprets "wholly or partly" to mean "in some measure or degree" as opposed to "not at all." According to the guidance, to obtain tax relief an applicant must obtain "a determination that the property/equipment is used for pollution control" (which includes "the percentage of property/equipment use that pertains to pollution control"), then submit this use determination to the local appraisal district "to obtain the property tax exemption."⁷ TCEQ guidance thus assumes that the Executive Director's determination that the property is used "wholly or partly" for pollution control is the same as "a determination *that* the property/equipment is used for pollution control" (emphasis added).

Other parts of the statute demonstrate the legislature's intent that property listed in subsection (k) be presumed to have at least some pollution control benefits. Subsection (k) affirmatively states that the listed property is "for the control of air, water, or land pollution."⁸ Moreover, the TCEQ may only remove property from the list in subsection (k) if it finds "compelling evidence to support the conclusion that the item does not provide pollution control benefits."⁹ Necessarily, this means that the legislature determined that all property listed in subsection (k) provides some pollution control benefits. Accordingly, with regard to property listed in subsection (k), the Executive Director is charged with responsibility to determine "how much" such property is used for pollution controls,¹⁰ *i.e.* is it used wholly or just in part. But for property not so listed, he must determine "if" it is used "wholly or partly" for pollution control.¹¹

Note that while applicants generally must identify the environmental benefits of the installation of pollution control property in order to obtain tax relief, the Executive Director must determine "that" property listed in subsection (k) is used "wholly or partly" for pollution control *regardless of*

⁶ Tex. Tax Code § 11.31(k)(16).

⁷ TCEQ, Property-Tax Exemptions for Pollution Control Property 4, available at http://www.tceq.texas.gov/assets/public/implementation/tax_relief/rq461_program_guidelines.pdf.

⁸ Tex. Tax Code § 11.31(k).

⁹ *Id.* § 11.31(l).

¹⁰ *Id.* § 11.31(m).

¹¹ *Id.* § 11.31(d).

whether the applicant submits information on environmental benefits.¹² This demonstrates the legislature's assumption that property listed in subsection (k) has environmental benefits and, thus, pollution control benefits.¹³ A "zero" benefit determination is not contemplated or even authorized by the Tax Code.

Thus the statute clearly requires at least a partial positive use determination for property listed under subsection (k), including the CCS System. Any interpretation to the contrary impermissibly ignores the legislature's will in violation of the Texas APA¹⁴ and is an arbitrary and capricious abuse of Agency discretion.¹⁵ If the TCEQ wished to adopt a new approach in evaluating tax relief applications for property listed in subsection (k), the Agency was required to do so via the process for valid rulemaking outlined in the Texas APA.¹⁶ Because TCEQ has not done so, it is bound by the statute as is, which mandates at least a partial positive use determination for property like the CCS System that is listed in subsection (k).

B. The CCS System Must Meet or Exceed a Rule or Regulation Adopted for the Prevention, Monitoring, Control, or Reduction of Pollution—not a Rule or Regulation that Requires Collection and Sequestration of CO₂

TCEQ states that the rules cited in Air Products' application "do not require the collection and sequestration of CO₂." This, however, is not the appropriate standard. Air Products' CCS System must simply "meet or exceed rules or regulations adopted ... for the prevention, monitoring, control, or reduction of air, water, or land pollution."¹⁷ At the December 5 TCEQ Commissioners Agenda Meeting,¹⁸ when faced with similar arguments from the Executive Director, the Commissioners confirmed that the cited rule or regulation need not require a specific type of pollution control property, nor set forth a specific method by which the equipment must control pollution.¹⁹

At the Agenda Meeting, the Commissioners considered the applications for tax relief for HRSGs, and the Executive Director's decision denying the requested relief.²⁰ In his decision, the Executive Director argued that HRSGs are not eligible for tax relief because no applicants

¹² *Id.* §§ 11.31(c, m). In this instance, however, no question reasonably exists that the CCS System, by reducing CO₂ emissions, does not provide environmental benefits.

¹³ TCEQ defines "environmental benefit" as synonymous with "pollution control." 30 TAC § 17.2(4)

¹⁴ Tex. Gov't Code § 2001.174(2)(A).

¹⁵ *Id.* § 2001.174(2)(F).

¹⁶ *Id.* §§ 2001.023-.030. "Rule" is defined as "a state agency statement of general applicability that: (i) implements, interprets, or prescribes law or policy; or (ii) describes the procedure or practice requirements of a state agency." *Id.* § 2001.003(6)(A).

¹⁷ Tex. Tax Code § 11.31(b); 30 TAC § 17.4(a).

¹⁸ TCEQ Commissioners Agenda Meeting, Use Determination Appeals, Docket Nos. 2012-1529-MIS-U et al. (December 5, 2012) ("TCEQ Commissioners Meeting").

¹⁹ *Id.*

²⁰ The HRSGs and Air Products' CCS Systems are similarly situated because both are listed under subsection (k). See also note 1.

had cited a "rule that requires the installation of the HRSG," nor a "generally applicable efficiency standard that could only be met by installation of a HRSG."²¹ Although less relevant to Air Products' application, the Executive Director also argued that HRSGs did not remove pollutants, but rather avoided emissions through increased efficiency, and that the Executive Director had "never recognized emissions avoidance as pollution control."²²

The Commissioners rejected both of these arguments. First, the Commissioners addressed whether the cited "rule or regulation" must require the installation of the specific piece of equipment for which an applicant is seeking tax relief. Chairman Bryan W. Shaw stated that, historically, the Commissioners had not required that the specific type of equipment be mandated by the cited rule. Rather, the Commissioners had required, in accordance with the statute, that the equipment "meet or exceed a standard." The Chairman emphasized that this flexible approach incentivizes new control measures: "faster, more efficient ways of getting the environmental results ... while maintaining cost effectiveness." Even the Executive Director's staff member, Dan Long, agreed, stating that the cited rule "doesn't have to directly say which piece of equipment" must be used. Thus the cited rule or regulation need not require a specific type of pollution control property.

Second, the Commissioners considered whether the cited "rule or regulation" must set forth a specific method by which the equipment must control pollution. According to Chairman Shaw, TCEQ drafted the regulations to "encourage and incentivize least-cost compliance," in order to comply with the will of the legislature. He noted that it is not the intent of the Commissioners nor the Executive Director to "disincentivize energy efficiency or new, more efficient approaches." Rather, the statute allows applicants to "find ways to achieve standards and achieve environmental protections in the most cost effective way." Commissioner Carlos Rubenstein agreed that the legislature intended for the requirements to be flexible, in order to incentivize innovative ways to reduce pollution. With respect to the HRSGs, he pointed out that one should not be required to "forego energy efficiency, and then on the back end ... put something back in, a scrubber or something on the back end, to produce the same goal." Commissioner Baker agreed, noting that it would not be appropriate to discount the fact that increased efficiency leads to emission avoidance. As the Chairman observed, this flexibility acknowledges that a strong economy is required to encourage further investment in environmental protections. These comments prove that the cited rule or regulation need not set forth a specific method by which the equipment must control pollution.

Here Air Products' CCS System collects and sequesters CO₂, but as the TCEQ Commissioners have agreed in principle, the System need not meet or exceed a rule that requires removal of CO₂ through collection and sequestration. Rather, the CCS System must merely meet or exceed a rule "adopted ... for the prevention, monitoring, control, or reduction of air, water, or land pollution."²³ And as explained in the next section, Air Products has identified such rules in its application.

²¹ Executive Director's Response at 11.

²² *Id.* at 8.

²³ Tex. Tax Code § 11.31(b); 30 TAC § 17.4(a).

C. The CCS System Meets or Exceeds Rules or Regulations for the Prevention, Monitoring, Control, or Reduction of Pollution

According to the TCEQ, Air Products' CCS System does not "meet or exceed" the following rules or regulations cited in its application. As explained fully in Air Products' application, the CCS System does meet or exceed these rules. Below we provide a brief overview of these rules and specifically address TCEQ's claims in the Notice of Deficiency.

- **40 CFR § 52.21 does not apply since the Facility does not have a Prevention of Significant Deterioration (PSD) permit.**

40 CFR § 52.21 requires obtaining a PSD permit and implementing the best available control technology ("**BACT**"), where a major source undergoes a major modification that causes an emissions increase of at least 75,000 tons per year of CO₂—starting on July 1, 2011.²⁴ And according to the U.S. Environmental Protection Agency's ("**EPA**") guidance on the PSD permitting requirements, carbon capture and sequestration could be considered as BACT in these circumstances.²⁵

Here, the Facility is a major source of CO₂, and the modifications associated with installing the CCS System would have caused an increase in CO₂ emissions greater than 100,000 tons per year (without consideration of the capture controls). Thus the facility would have been required to comply with the PSD permitting and BACT requirements as of July 1, 2011. The only reason Air Products was not required to obtain a PSD permit and implement BACT is because it sought authorization to make the modifications three months before July 1.²⁶ As a result, Air Products agreed to install CO₂ control technology *before* it was required to implement BACT under the regulations. ***The installation and use of the CCS System thus exceeds these regulations,*** because Air Products voluntarily implemented measures to capture and sequester CO₂ *before* it was required to do so.

- **40 CFR § 51.166 requires States to inventory emission sources located on nontribal lands and report this information to EPA; it does not place any requirements on the Applicant or its Facility.**

40 CFR § 51.166 requires that State Implementation Plans include measures to prevent significant deterioration of air quality, including the PSD permitting and BACT requirements outlined above.²⁷ This federal regulation imposes requirements on the state Plans, which are enforceable at the state level. Thus the Facility is subject to this regulation, and as explained above, ***the installation and use of the CCS System exceeds these regulations.***

²⁴ 40 CFR §§ 52.21(a)(2)(iii), 52.21(j)(3), 52.21(b)(49)(v)(b); 75 Fed. Reg. 31,514 (June 3, 2010).

²⁵ EPA, PSD and Title V Permitting Guidance for Greenhouse Gases, EPA-457/B-11-001, March 2011, Appendix H.

²⁶ Air Products applied for authorization in April of 2011. The timing was controlled by separate timing concerns related to the Department of Energy's participation in the project.

²⁷ 40 CFR §§ 51.166(a, j).

- **30 TAC § 116.115(b) does not apply because the Facility's Air Quality Permit (Nos. 39693 and N63) does not contain a Maximum Allowable Emission Rate for the control of CO₂.**

30 TAC § 116.115(b) requires that a permit holder comply with the permit's conditions, including the maximum emission rates for contaminants. This rule applies here because Air Products holds Air Quality Permit 39693 and N63, dated December 15, 2009, and the rule requires permit compliance. It is true that Air Products' permit does not state a maximum emission rate for CO₂.²⁸ However, CO₂ is an air contaminant because it is produced by a process that is not natural,²⁹ and the U.S. Supreme Court has held that greenhouse gases ("**GHGs**"), including CO₂, are pollutants under the federal Clean Air Act.³⁰ The fact that the permit does not provide a cap on CO₂ emissions may be interpreted in one of two ways. If the lack of a cap means there is no limit on CO₂ emissions, then implementing the CCS System to control CO₂ emissions *exceeds* the permit requirements by reducing emissions of an air contaminant where no reduction is required. If the lack of a cap means that no emissions of CO₂ are permitted, then implementing the CCS System to control CO₂ emissions is *an effort to meet* the permit requirements. Either way, ***the installation and use of the CCS System meets or exceeds the rule.***

- **30 TAC § 335.471 contains definitions for Chapter 335 and does not place any requirements on the Applicant or its Facility.**

Air Products' application cites 30 TAC § 335.471 *et seq.* as a whole, not merely section 335.471. Please see below for an explanation as to why the regulation as a whole is sufficient for purposes of the tax relief requirements.

- **30 TAC § 335.475 requires the development of a Pollution Prevention Plan and the renewal of the plan every five years. This provision does not impose source reduction or waste minimization requirements, nor does it compel the use or installation of a certain technology, equipment, or process.**

30 TAC § 335.471 *et seq.* requires preparation of pollution prevention plans that identify source reduction and waste minimization projects to be undertaken.³¹ Source reduction includes any practice that reduces pollutants entering the environment, reduces hazards to the public or the environment associated with release of pollutants or contaminants, and includes equipment or technology modifications that accomplish these goals.³²

According to the TCEQ, this rule is not sufficient because it "does not impose source reduction or waste minimization requirements." The Agency, however, applies the wrong standard. The

²⁸ Air Products' Air Quality Permit 39693 and N63, dated December 15, 2009.

²⁹ Tex. Health & Safety Code § 382.003(2)

³⁰ Massachusetts v. EPA, 127 S.Ct. 1438 (2007).

³¹ 30 TAC § 335.474(1)(B, C).

³² *Id.* § 335.471(13).

requirement is that pollution control property "meet or exceed rules or regulations adopted ... for the *prevention, monitoring, control, or reduction* of air, water, or land pollution" (emphasis added).³³ This is a broad standard: the rule may be one that controls pollution by imposing numeric emission caps, or one that is intended to prevent pollution. Chairman Shaw made this exact observation during the TCEQ Commissioners Meeting. After quoting the statute, he stated that applicants are not limited to "just control in the form of a pollution abatement device that's added on the tail end," because "prevention is specifically mentioned" in the statute. He confirmed that property is not disqualified from tax relief merely because it is "used in a way to reduce emissions through prevention." Here, 30 TAC § 335.471 *et seq.* is intended to prevent pollution, which necessarily includes the discharge of air contaminants like CO₂ (as explained above). EPA has specifically designated the Pollution Prevention Program as a mechanism for reducing GHG emissions.³⁴ This rule is thus sufficient.

Alternatively, TCEQ believes that this rule is insufficient because it does not "compel the use or installation of a certain technology, equipment, or process." However, as explained above, the cited rule need not require a specific type of pollution control property, nor a specific method by which the equipment must control pollution. In fact, at the TCEQ Commissioners Agenda Meeting, the Executive Director's staff agreed that "the rule doesn't have to specifically name a piece of equipment." Chairman Shaw also pointed out that, historically, the Commissioners had not required that the specific type of equipment be mandated by the rule, and noted that the Commissioners planned to continue with that approach in the future. That the cited rule does not require the use of a specific technology, equipment, or process is thus irrelevant.

Air Products is subject to the cited rule,³⁵ and recently amended its Pollution Prevention Plan for the Facility to incorporate construction and use of the CCS System as a source reduction activity that reduces CO₂ (which, as explained above and in Air Products' application, is considered both an air contaminant and a pollutant). ***Thus the cited rule is sufficient, and the installation and use of the CCS System meets or exceeds this regulation.***

- **30 TAC § 101.4 generally prohibits nuisance conditions, and does not require the control of CO₂.**

30 TAC § 101.4 prohibits the discharge of air contaminants that may constitute a nuisance condition. According to TCEQ, this rule does not suffice for purposes of the tax relief program because it does not "require the control of CO₂." Again, however, this is not the correct standard. The rule or regulation must have been "adopted ... for the *prevention, monitoring, control, or reduction* of air, water, or land pollution" (emphasis added).³⁶ This is a broad

³³ Tex. Tax Code § 11.31(b); 30 TAC § 17.4(a).

³⁴ In EPA's 2010–2014 Pollution Prevention Program Strategic Plan, the agency announced its intention to identify and leverage pollution prevention opportunities to reach five key goals. EPA's first goal was to use the Pollution Prevention Program to reduce the generation of GHG emissions to mitigate climate change, including by the promotion of alternative technologies to control GHG. EPA, 2010-2014 Pollution Prevention (P2) Program Strategic Plan 3-4 (February 2010), available at <http://www.epa.gov/p2/pubs/docs/P2StrategicPlan2010-14.pdf>.

³⁵ Pollution Prevention Planning ID Number P06985.

³⁶ Tex. Tax Code § 11.31(b); 30 TAC § 17.4(a).

standard: the rule may be one that controls pollution via numerical emission caps, or a rule that is intended to prevent or monitor pollution.

30 TAC § 101.4 is intended to prevent pollution occurring through discharges of air contaminants that cause nuisance conditions. As explained above, CO₂ is an air contaminant. Additionally, EPA concluded its endangerment finding that GHGs, including CO₂, "may reasonably be anticipated to ... endanger public health."³⁷ EPA based its finding, in part, on its consideration of evidence demonstrating that climate change (to which CO₂ contributes, according to EPA) will cause increases in regional ozone pollution, which is associated with increased risk of respiratory illness and death.³⁸ In this case, Air Products' control of CO₂ is meaningful. Here by definition, the facility is a "major source" of CO₂ and as of July 11, 2012 was subject to full PSD permitting. Presumably, the Agency is not suggesting that controlling what would be a major source does not fall squarely within the rule's intent.

Here, the CCS System captures greater than 90 percent of CO₂ from the process gas stream used in a hydrogen production facility, thereby preventing nuisance conditions associated with CO₂ from arising, as required by 30 TAC § 101.4. ***Thus the cited rule is sufficient, and the installation and use of the CCS System meets or exceeds this regulation.***

- **The cited permits by rule of 30 TAC §§ 106.261, 106.183, 106.371, and 106.478 do not require control of CO₂. Emission limitations associated with permits by rule are stated in § 106.104(a)(4), and CO₂ is expressly excluded as a substance with an emission limitation.**

Air Products cited these rules in response to application Question 5 (Section 9) on the applicable permit numbers for the property equipment, not Question 11 (Section 9) on the cited rule or regulation being met by the construction or installation of the property/equipment.

Issue 2: Please review the answers provided for question 2 and 3 in Section 9 to ensure they are appropriate. If a marketable product is being produced by the property/equipment it cannot be 100% pollution control property/equipment.

Response: We are providing a revised Page 3 of the application to state in Question 2 of Section 9 that the equipment is not used 100% for pollution control.

Issue 3: Please provide a listing of the equipment that is included in the application. What pieces, if any, of the electrical generation unit are included?

Response: Please see Attachment 4 for a list of equipment included in the application. None of the listed equipment is associated with the electrical generation unit.

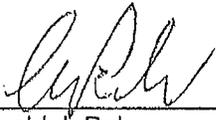
³⁷ 74 Fed. Reg. 66,496-97 (Dec. 15, 2009).

³⁸ *Id.* at 66,525.

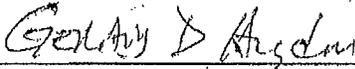
Mr. Chance Goodin
March 25, 2013
Page 11

Issue 4: Please provide an explanation on how each variable of the cost analysis procedure was calculated.

Response: Please see Attachment 5 for an explanation of how each variable of the cost analysis procedure was calculated. Additionally, please note that we are providing a revised Estimated Dollar Value based upon more current information that became available since the date of the application.³⁹ The revised Estimated Dollar Value and updated cost calculations are included in a revised version of Attachment 3, also attached.



Gerald J. Pels
For the Firm



Gerald D. Higdon
For the Firm



³⁹ The original Estimated Dollar Value, as stated in Section 12 of the application, was \$222,613,422. The revised Estimated Dollar Value is \$201,200,000.

ATTACHMENTS

4. City, State, Zip: Port Arthur, TX 77640

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Jefferson County Appraisal District
2. District Account Number(s): New Property

Section 8. Contact Name

1. Company Name: Air Products and Chemicals, Inc.
2. First Name of Contact: Gerard
3. Last Name of Contact: Thompson
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title: Environmental Manager
6. Mailing Address: 7201 Hamilton Boulevard
7. City, State, Zip: Allentown, PA 18195-1501
8. Phone Number/Fax Number: 610-481-5154/610-716-5590
9. Email Address: thompsgp@airproducts.com
10. Tracking Number (optional):

Section 9. Property/Equipment Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property/equipment for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property/equipment if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property/equipment: The Air Products' Port Arthur Plants 1 and 2 CO₂ separation, purification, delivery, and sequestration system.
2. Is the property/equipment used 100% as pollution control equipment? Yes No
If the answer is 'Yes,' explain how it was determined that the equipment is used 100% for pollution control: The Port Arthur CO₂ system is part of a Department of Energy (DOE) project to develop and demonstrate technology to successfully capture, purify, deliver, and sequester CO₂.
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product: Successfully sequestering the CO₂ at the Denbury Resources West Hastings oil field, provides Denbury the ability to enhance its oil recovery from its existing field. This result of sequestration provides a small measure of income to offset a fraction of the cost to separate, purify, transport, and sequester the CO₂.

CONFIDENTIAL

Attachment 3

Air Products LLC Port Arthur, Texas
CO2 Separation, Purification, Transport, and Sequestration
Tier III Partial Use Determination

Capital Cost of the New CO2 Plant (w/pipeline, w/o GTG-HRSG): \$238,672,000

Useful Life: 10 Years

Interest Rate: 10%

Net Present Value Marketable Product: \$37,463,000

Production Capacity Factor: 100%

$$\text{CAP Equation} = \frac{(1.00 \times \$238,672,000) - \$37,463,000}{\$238,672,000} \times 100 = 84.3\%$$

$$\text{Eligible Capital Cost: } 0.843 \times \$238,672,000 = \$201,200,000$$

Attachment 4
Port Arthur CO2 - Capital Equipment List

PORT ARTHUR CO2 RECOVERY

1A13 Preamble

1A13 Machinery

- 1A13 CW Pumps
- 1A13 VSA Cooling Water Recycle Pumps
- 1A13 Trim Cooler Recycle Pumps
- 1A13 CT Blowdown Pumps
- 1A13 Waste Sump Lift Pumps
- 1A13 Product Blowers
- 1A13 CO2 Compressor
- 1A13 Rinse Compressors

1A13 Seal Gas Dryer

- 1A13 Seal Gas Dryer
- 1A13 Back-up Seal Gas Compressor
- 1A13 JW Skid
- 1A13 Rinse Oil Recovery Skids
- 1A13 Rinse Comp Aux Skids
- 1A13 HRSG Chemical Dosing Unit
- 1A13 HRSG System
- 1A13 GT System
- 1A13 Cooling Tower System
- 1A13 Instrument Air Skid
- 1A13 Vacuum Blower Inlet Silencer
- 1A13 Vacuum Blower Discharge Silencer
- 1A13 Sidestream Filter

1A13 Mechanical Equipment

- 1A13 SMR Burners
- 1A13 VSA Vessel Internals
- 1A13 Adsorbers Vessels
- 1A13 Surge Tanks
- 1A13 Mole Sieve
- 1A13 VSA Alumina
- 1A13 VSA Ceramic Balls
- 1A13 NH3 SCR Upgrades for SMRs
- 1A13 Drier System

1A13 Yard Separators and Tanks

- 1A13 NG Gas Knock-Out Drum
- 1A13 CO2 Product Compressor Suction Sep
- 1A13 CO2 Product Condensate Drum
- 1A13 CO2 5th Stage Discharge Separator
- 1A13 Cogen Unit Continuous Blowdown Drum
- 1A13 Neutralization System/Tank

1A13 Heat Exchangers

- 1A13 Blower Aftercoolers
- 1A13 CO2 Comp Aftercooler
- 1A13 CO2 Disposal Vaporizer

Attachment 4
Port Arthur CO2 - Capital Equipment List

1A13 HRSG Blowdown Cooler

~~1A13 Electrical Equipment~~

1A13 Vacuum Blower Motor 1st Stage
1A13 Vacuum Blower Motor 2nd Stage
1A13 Vacuum Blower 3rd Stage
1A13 CO2 Product Compressor Motor
1A13 CO2 Rinse Compressor Motor
1A13 GT/ Transformers/ Substation
1A13 69kV Upgrades
1A13 PDC-Electric Bldg

~~1A13 Electrical Components~~

1A13 69KV Step-Up Transformer
1A13 Dead-End Structure
1A13 13.8kV Switchgear Bus Tap Addition
1A13 4160V to 480V Transformer
1A13 13.8kV to 4kV Transformer
1A13 Bus Duct/Cables
1A13 LV VFD
1A13 HV Cable

~~1A13 Process Controls Equipment~~

~~1A13 VSA Control Equipment~~

1A13 VSA Automatic Valves
1A13 VSA Bulk Instruments
Pending SPMatl Activity

~~1A13 Process Controls Equipment~~

1A13 Control Valves
1A13 Safety Devices
1A13 DCS
1A13 MPC Hardware
1A13 Bulk Instruments

1A13 Transmitters/Manifolds
1A13 Analyzer Bldg
1A13 Analyzer Bldg Equip
1A13 CEMS Equip & Bldg
1A13 Flowmeters
1A13 Paymeters

~~1A13 Mechanical Systems Equipment~~

1A13 Manual Valves
1A13 Traps, Strainers, Misc Devic
1A13 VSA Manual Valves

~~1A13 Prefabricated Packages~~

1A13 ISBL PA1 Piping
1A13 ISBL PA1 Steel/ Pipe Supports
1A13 ISBL PA2 Piping
1A13 ISBL PA2 Steel/ Pipe Supports
1A13 Process Piping assemblies/ skids
1A13 Fuel Gas Skid

Attachment 4
Port Arthur CO2 - Capital Equipment List

- 1A13 VSA Skids
- 1A13 Blower Piping assemblies/skids
- 1A13 Rinse Compressor Skids
- 1A13 OSBL Rack and Yard Steel
- 1A13 OSBL Piping
- ~~1A13 Prefabricated Buildings~~
- 1A13 Spare Parts Building
- 1A13 CW Treatment Bldg Module
- 1A13 Blower Building
- ~~1A13 Freight~~
- 1A13 Freight Road/Rail
- 1A13 Freight Air
- 1A13 Warehousing/Export Boxing
- 1A13 Freight Ocean
- 1A13 Import Duties & Customs Fees
- ~~1A13 Operations Materials~~
- ~~1A13 Plant Materials~~
- 1A13 Commissioning/Start up Parts
- 1A13 Signs & Nameplates
- 1A13 Maintenance Supplies
- 1A13 Office Equipment
- 1A13 Spare Parts Racking / Storage
- 1A13 Maintenance Tools
- 1A13 Safety Equipment
- 1A13 In Plant Radios
- 1A13 PC Hardware & Links
- 1A13 Laboratory Equipment
- 1A13 Initial Chems and Lubes
- ~~1A13 Plant Spares~~
- 1A13 CO2 Product Compressor Spares
- 1A13 Rinse Compressor Spares
- 1A13 Blower Spares
- 1A13 Instr Air Comp Spares
- 1A13 Dryer Unit Spares
- 1A13 Oil Removal Skid Spares
- 1A13 GT/HRSG - LTSA Spares
- 1A13 GT/HRSG - non - LTSA Spares
- 1A13 GT/HRSG - other Spares
- 1A13 Plant Spares - misc.
- 1A13 JW Spares
- 1A13 Pump Spares
- 1A13 Burner Spares
- 1A13 Safety Valve Spares
- 1A13 Valve & Instr Spares
- 1A13 VSA Skid Valve Spares
- 1A13 Analyzer Spares
- 1A13 DCS Spares

Attachment 4
Port Arthur CO2 - Capital Equipment List

1A13 Cooling Tower Spares
1A13 Motor Spares
1A13 HV/LV Electrical Gear Spares
1B113 Pipe
1B113 Coating
1B113 Fittings
1B113 Excess Flow Valves
1B113 Inline Valves
1B113 EFV Station Valves
1B113 Paymeter
1B113 Instrumentation
1B113 Operations Materials

Attachment 5

Notice of Technical Deficiency - January 24, 2013

Issue 4: Please provide an explanation on how each variable of the cost analysis procedure was calculated.

- Capital Cost New – Project capital costs were provided by the Air Products Senior Project Senior Manager
- Capital Cost Old – Not applicable, no existing facility
- Production Capacity Old – Not applicable, no existing facility
- Production Capacity New – 100%: New facility
- Marketable Product Value – Ten years of projected product (CO₂) sales provided by Commercial and Project Management were employed.
- Production Cost - Ten years of project operation and maintenance costs provided by Global Operations were employed.
- Interest Rate – 10% per 30 TAC §17.17(c)(2)
- Production Capacity Factor – 1.0: New facility
- Useful Life – 10 year projection provided by APCI Commercial Management.

ED's Exh. # 3 –
Use Determination No. 16632

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*

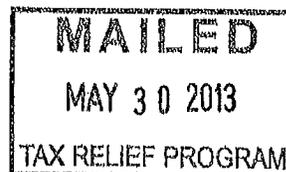


TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 28, 2013

Mr. Gerard Thompson
Environmental Manager
Air Products and Chemicals, Inc.
7201 Hamilton Blvd.
Allentown, Pennsylvania 18195-1501



Re: Notice of Negative Use Determination
Air Products, LLC
Air Products Port Arthur Plant
1801 South Gulfway Drive Gate 37
Port Arthur (Jefferson County)
Regulated Entity Number: RN101941284
Customer Reference Number: CN602299257
Application Number: 16632

Dear Mr. Thompson:

This letter responds to Air Products, LLC's Application for Use Determination, received May 31, 2012, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program.

The TCEQ has completed the review for Application No. 16632, and has issued a Negative Use Determination for the property in accordance with 30 Tex. Admin. Code (TAC) § 17.4. The justification for the negative use determination is provided below.

In order to receive a positive use determination, an applicant must cite to the federal, state, or local environmental law, rule, or regulation being met or exceeded by the use, construction, acquisition, or installation of the subject property. The rule citations listed in Application No. 16632 are not appropriate for the following reasons.

- 40 C.F.R. § 51.166 requires States to inventory emission sources located on nontribal lands and report this information to the U.S. EPA; it does not place any requirements on the Applicant or its Facility.
- 40 C.F.R. § 52.21 does not apply because the Facility does not have a Prevention of Significant Deterioration (PSD) permit.
- 30 TAC § 116.115(b) does not apply because the Facility's Air Quality Permit (Nos. 39693 and N63) does not contain a Maximum Allowable Emission Rate for the control of CO₂.
- 30 TAC § 335.471 *et seq.* and 30 TAC § 335.475 implement the Waste Reduction Policy Act of 1991. These sections encourage source reduction and waste minimization through the development of Pollution Prevention (P2) Plans. While these sections impose reporting requirements, they do not require the Applicant to install waste minimization or recycling equipment.

Mr. Gerard Thompson

Page 2

April 19, 2013

- 30 TAC § 101.4 is a general prohibition against causing nuisance conditions, and does not require the control of CO₂ or the construction or installation of the subject property.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512)239-6348, by e-mail at Ronald.Hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,



Zak Covar
Executive Director

ZC/RH

Enclosure

cc: Chief Appraiser, Jefferson County Appraisal District, PO Box 21337, Beaumont, Texas 77720

ED's Exh. # 4 –
Property Tax Exemptions for Pollution
Control Property, Draft Guidelines
Document, TCEQ, RG-461
(January 2008)

Property Tax Exemptions for Pollution Control Property

Table of Contents

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

DISCLAIMER

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

INTRODUCTION

Purpose of This Document

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

Legislative Background

On November 2, 1993, Texas voters approved a constitutional amendment providing an exemption from property taxation for pollution control property. This amendment added Section (§) 1-1 to Article VIII of the Texas Constitution. Legislation to implement the amendment was approved in House Bill (HB) 1920 during the regular session of the 73rd Legislature. This legislation added §11.31 to the TTC. Copies of §11.31 and §1-1 of Article VIII are located on pages 53 and 55 of this document. The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not increase a facility's property taxes.

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

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

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

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

1. A facility must first receive from the TCEQ a determination that the property is used for pollution control purposes.
2. The applicant then submits this use determination to the local appraisal district to obtain the property tax exemption.

Benefit to Taxpayers

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

ELIGIBILITY AND EXCLUSIONS

Effective Date

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

Eligible Property

Property that is installed wholly or partly for pollution control purposes is eligible for a positive use determination. The applicant must show that the property was installed to meet or exceed adopted environmental regulations of the United States, the State of Texas, or political subdivisions of Texas. For property used *partly* for pollution control, the applicant must perform a cost analysis using the Cost Analysis Procedure to determine the percentage of the capital cost that qualifies.

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

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

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

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

1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.
2. It will be used wholly or partly as pollution control property.

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

Property Excluded from the Exemption

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

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

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

COMPLETING AN APPLICATION

Application Submission Requirements

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

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

Timing Deadline: Applications must be postmarked by January 31 for property constructed or installed during the previous calendar year. This deadline was established to allow sufficient time for TCEQ to complete review of all applications and issue final determinations by April 30. By law, there is an April 30 deadline for filing an exemption request with an appraisal district. TCEQ will review the applications in the order received. The agency will make every effort to issue a determination prior to April 30 for all applications received.

Single Facility Extending into Two Counties: If the property listed on an application is located in more than one appraisal district, each affected appraisal district must be listed on the application. Separate applications are not required.

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

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

Applications Submitted After the First Year of Eligibility: Pollution control property that became taxable after January 1, 1994, but for which no positive use determination has been issued is eligible for a positive use determination. However, the tax exemption is not retroactive and previously paid taxes will not be refunded.

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

Inclusion of Fee with Applications: As stated in the rules, an applicant whose application is not accompanied with the proper fee payment or a receipt from the ePay system showing that the payment has been made will be mailed a deficiency letter. Review of the application will not commence until the proper fee is received.

Preparing the Application

If a company has installed equipment or made process changes that were intended to control, reduce or prevent air, water, or land pollution, and that either met or exceeded an adopted environmental regulation, then such equipment or process changes may be eligible for a full or partial use determination. Two Decision Flow Charts have been developed to assist applicants in preparing applications. The Decision Flow Chart is to be used for all applications to determine if each device or equipment item qualifies as pollution control property and the proper Tier level. If it is determined that a Tier IV application is appropriate the Part B Decision Flow Chart is used.

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

TYPES OF APPLICATIONS

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

Tier I – Part A ECL Applications

This tier is for property listed on Part A of the Equipment and Categories List (ECL), which is located on page 34. Part A of the ECL consists of specific equipment that the TCEQ has determined to be pollution control property. Tier I applications have a \$150 fee. In order for the application to be considered Tier I, all items listed on the application must be located on Part A of the ECL or must be necessary for the installation or operation of property located on Part A of the ECL. The most current version of the ECL is located in 30 TAC 17.14(a). Additional copies may be obtained by contacting the TCEQ or by accessing the TCEQ Web page. Follow the instructions in the section **Obtaining Publications** in this document.

The ECL contains property that is used both wholly and partially for pollution control. The equipment listed at less than 100% was analyzed by TCEQ staff to determine the appropriate percentages. Most of the property contained on the list is used entirely for pollution control and is listed at 100%. Once established, the percentage is fixed for Tier I applications. Anyone seeking to obtain a different percentage must apply for a Tier III determination.

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

Tier II - 100% Non-ECL Applications

Tier II is for property that an applicant believes is 100% pollution control property but which is not contained on the ECL. Tier II applications have a \$1,000 fee. The applicant has the burden of demonstrating that the property is indeed "100% pollution control property." The applicant must provide financial or other information to prove that the property has no production benefits and serves entirely for pollution control.

Tier III - Partial Determination Applications

This tier is for property that is partially used for pollution control and which is not listed on the ECL. Tier III applications have a \$2,500 fee. Tier III application properties have environmental benefits and process improvements or benefits. These include new or modified process equipment that has both environmental and production elements. An example would be the replacement of a reactor vessel with a new reactor that has improved mixing and reduces waste. Since the reactor is essential to production but also has environmental benefits, the equipment would be considered partial pollution control property.

If there are one or more parts of the property that both control pollution and are essential to the manufacturing process, the applicant is asked to specify the proportion of the property used for pollution control purposes. In order to make a partial determination, the applicant must use the Cost Analysis Procedure described later in this document.

Tier IV -- Part B ECL Nonexclusive List Applications

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

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

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

DETERMINING THE TIER LEVEL OF AN APPLICATION

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

Decision Flow Chart

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

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

Part B Decision Flow Chart Used for Tier IV Applications

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

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

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

CALCULATING A PARTIAL DETERMINATION

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

Cost Analysis Procedure

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

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

Production Capacity Factor (PCF): This is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process.

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

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

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

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

1. If comparable equipment without the pollution control feature is on the market in the U.S., then an average market price of the most recent generation of technology must be used.
2. If condition 1 above does not apply, and the company is replacing an existing unit, then the company shall index the original cost of the unit to today's dollars by using a published industry specific standard.
3. If neither conditions 1 nor 2 apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.

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

Byproduct (BP): For property that generates a marketable byproduct, in addition to providing pollution control, the net present value of the byproduct is used to reduce the partial determination. The value of the byproduct is calculated by subtracting transportation and storage costs of the byproduct from the market

value of the byproduct. This value is then used to calculate the Net Present Value (NPV) of the byproduct over the lifetime of the equipment. The equation for calculating BP is as follows:

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

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

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

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

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

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

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

Cost Analysis Procedure Example

Type of facility: Sulfur recovery unit at a petroleum refinery

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

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

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

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

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

Storage and transportation costs per year: \$500,000

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

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

$$BP = \$8,000,000$$

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

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

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

ABOUT THE EQUIPMENT AND CATEGORIES LIST

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

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

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

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

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

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

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

APPLICATION REVIEW

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

Administrative Review

The TCEQ has 3 days from the receipt of an application to determine whether the application is administratively complete. For an application to be administratively complete, all of the required fields on the application form must have an entry and the proper fee must have been paid. If some fields are left blank or incomplete, if the proper fee has not been received, or if the company has an outstanding balance with the TCEQ, then a notice of deficiency (NOD) will be mailed. This notice will specify the information that is needed to complete the application. The applicant then has 30 days to submit the requested information. Failure to respond in the allotted time will result in termination of the review and forfeiture of the fee. The applicant may reapply, but it will be considered as a new application requiring payment of a new application fee. Once an application has been declared to be administratively complete a letter will be sent to notify the applicant that the application is under technical review. In addition, a letter and the copy of the application will be sent to the appropriate appraisal district.

Technical Review

Once the application is determined to be administratively complete, the technical review will commence. The technical review consists of a detailed review of the application. For Tier I, II, and III applications, the TCEQ has 60 days from the date that an application has been declared administratively complete to request additional technical information. The TCEQ must complete its review of a Tier IV application within 30 days of receipt of the application, provided that there are no technical deficiencies. The 30 day clock is stopped if a technical NOD is sent. The clock restarts after an acceptable response is received and the application is deemed technically complete. The applicant has 30 calendar days from receipt of the NOD to address the deficiencies and reply to the TCEQ. A maximum of three technical NODs will be issued. If the final response does not answer all of the deficiencies, the application will be returned to the applicant. If the applicant chooses to refile the application, it will be treated as a new application and will require the payment of the appropriate fee. All technical reviews will be documented with copies of the documents being mailed to the applicant and the appropriate appraisal district at the completion of the review.

Use Determination

Once the technical review has been completed, the applicant will receive a use determination letter and a use determination. By statute, the executive director may not make a determination that the property is pollution control property unless the property meets the standards established under Chapter 17. It is the applicant's burden to supply the TCEQ with the information necessary to make a use determination. If the applicant is unable to provide the required information, the application will be returned to the applicant. If the TCEQ determines that the property is not eligible for a positive determination, a negative determination will be issued. For Tier III applications, if alternative equipment is not currently available on the market or if it is not possible to develop a cost of the property without the pollution control feature, then no partial will be issued.

Obtaining the Tax Exemption

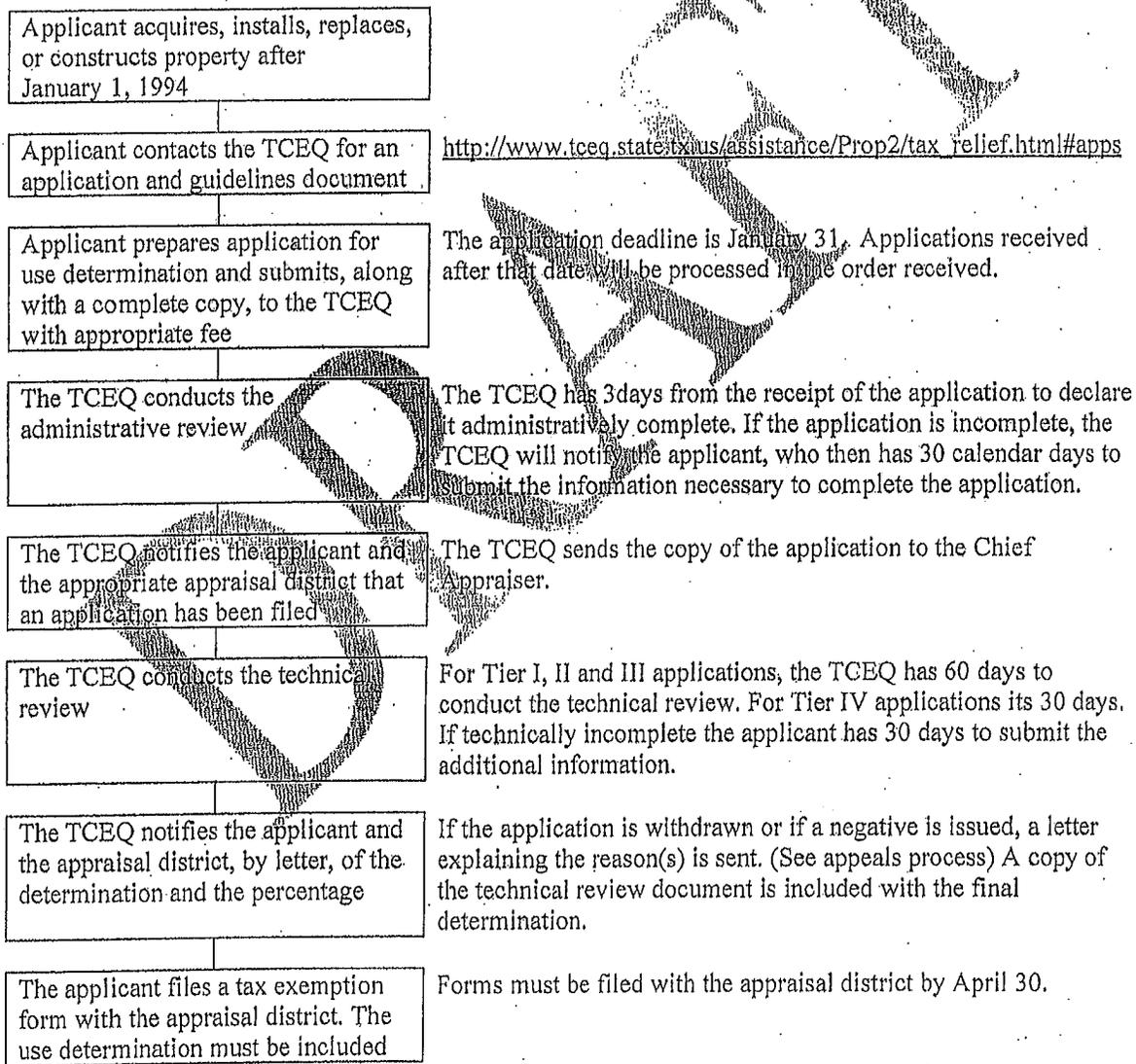
If a positive use determination is made, the applicant must then submit the use determination, along with the appropriate exemption request form, to the appraisal district in order to receive the tax exemption. Exemption request forms can be obtained from the appraisal district. If a negative use determination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

made, the applicant and the chief appraiser will be provided with the reason(s) for the denial. The appraisal districts have a filing deadline for exemption requests by April 30 for each tax year. The chief appraiser has the authority to disallow exemption requests that are not filed by the deadline. The TCEQ provides written notice to the appraisal district when a use determination is filed with a copy of the final determination. However, it is the responsibility of the applicant to submit the exemption request to the appraisal district in order to obtain the tax exemption.

Return of Fees

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

FLOW CHART FOR OBTAINING A USE DETERMINATION



APPEALS PROCESS

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

The appeal request must contain the following information:

1. Name, address, and daytime telephone of the person requesting the appeal.
(Fax number and email addresses are requested but not required)
2. Name and address of the applicant and the Chief Appraiser.
3. The application number assigned by TCEQ and a copy of the use determination.
4. A description of what is being appealed.
5. An explanation of the basis for the appeal.

Upon receipt of the appeal, the chief clerk will forward a copy to the executive director and TCEQ's General Counsel. The General Counsel will develop the briefing schedule and set the agenda date. The chief clerk will mail a copy of the appeal to whichever party did not request the appeal.

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

The applicant and the chief appraiser may testify at the commission meeting. The commission may either deny the appeal or remand the matter to the executive director. If remanded, the executive director will conduct a new technical review and issue a new use determination. The new determination may then be appealed using the same procedures as for the initial appeal.

Contact information for the Office of the Chief Clerk is:

U.S. Mail Address

Office of the Chief Clerk

TCEQ MC 105

PO Box 13087

Austin, TX. 78711-3087

Physical Address

Office of the Chief Clerk

TCEQ MC 105

12100 Park 35 Circle

Austin, TX. 78758

The Chief Clerk's fax number is 512-249-3311.

CONFIDENTIAL MATERIAL

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

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

OBTAINING PROGRAM DOCUMENTS

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

CONTACTING THE PROGRAM

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

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

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

APPLICATION FILING

Filing Information

Send the completed applications and copies to:

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

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

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

DELINQUENT FEE/PENALTY PROTOCOL

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

Information about the Delinquent Fee Protocol can be found here:

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

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

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and the appropriate fee, to: TCEQ MC-214, Cashiers Office, PO Box 13088, Austin, Texas 78711-3088.

Information must be provided for each field unless otherwise noted.

1. GENERAL INFORMATION

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

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

B. Size of company: Number of Employees

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

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

2. TYPE OF APPLICATION

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

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

3. NAME OF APPLICANT

A. Company Name:

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

C. City, State, and Zip: _____

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit:

B. Type of Mfg. Process or Service: _____

C. Street Address: _____

D. City, State, and Zip: _____

E. Tracking Number (Optional): _____

F. Company or Registration Number (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: _____

B. Appraisal District Account Number: _____

6. CONTACT NAME

A. Company/Organization Name _____

B. Name of Individual to Contact: _____

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

D. City, State, and Zip: _____

E. Telephone number and fax number: _____

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

7. RELEVANT RULE, REGULATION OR STATUTORY PROVISION

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

MEDIUM	Rule/Regulation/Law
Air	
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

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

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

9. PARTIAL PERCENTAGE CALCULATION

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

10. PROPERTY CATEGORIES AND COSTS

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

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

11. EMISSION REDUCTION INCENTIVE GRANT

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

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

Yes No

12. APPLICATION DEFICIENCIES

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

13. FORMAL REQUEST FOR SIGNATURE

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

Name: _____ Date: _____

Title: _____

Company: _____

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

14. DELINQUENT FEE/PENALTY PROTOCOL

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

INSTRUCTIONS FOR COMPLETING APPLICATION FORM

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

GENERAL INFORMATION

If you have questions or require additional clarification or assistance please contact the Tax Relief Program at (512) 239-3100, or by email at txrelief@tceq.state.tx.us

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

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

OBTAINING COPIES OF THE APPLICATION FORM AND OTHER DOCUMENTS

A copy of the official application form in Microsoft Word format is available on the TCEQ Web page. The Equipment and Categories list (ECL) is included in both the Application Instructions and the guidance document (RG-??). The documents can be downloaded from the link titled "Application Forms and Guidance Documents". The URL is: <http://www.tceq.state.tx.us/assistance/Prop2/prop2.html#apps>

Filing Information

Send the completed applications and copies to:

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

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

Other Information

All other written correspondence should be sent to: TCEQ - MC-110, Attention: Tax Relief for Pollution Control Property Program, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-5678. The telephone number for direct contact is (512) 239-3100.

APPLICATION INSTRUCTIONS

1. General Information

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

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

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

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

2. Type of Application

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

The types of applications for pollution control property are:

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

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

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

Tier IV: This is for property that is contained in one of the categories listed on Part B of the ECL. The fee is \$500.

3. Name of Applicant

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

4. Physical Location of Property Requesting a Tax Exemption

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

5. Name of Appraisal District with Taxing Authority over Property

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

6. Contact Name

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

7. Relevant Rule, Regulation, or Statutory Provision

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

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

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

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

8. Description of Property

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

Land: provide a legal description and an accurate plot plan of the land in question.

Example of a Property Description:

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

9. Decision Flow Charts

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

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

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

10. Partial Percentage Calculation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Capital Cost New - Provide a description of how the estimated dollar value was calculated.
3. Capital Cost Old - Provide a description of how the estimated dollar value was calculated. Explain which of the three options was used to determine the capital cost old.
4. Byproduct: Does the installation of this property result in the creation of a byproduct. If the answer is yes, provide a description of the byproduct. Use the following equation to calculate the value of the byproduct. Explain how each variable of the equation was determined. Show the calculation.

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

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

11. Property Categories and Costs

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

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

The third column is used to record which box on the Decision Flow Chart was the final destination of the property.

The fourth column is used for property that is listed on the ECL. Place the appropriate ECL item numbers in this column.

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

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

12. Emission Reduction Incentive Grant

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

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

13. Application Deficiencies (provided for informational purposes only)

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

14. Formal Request for Signature

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

15. Delinquent Fee/Penalty Protocol

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

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

CHAPTER 17: TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

§17.1. Scope and Purpose.

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

§17.2. Definitions.

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

(1) Byproduct--A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is not used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

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

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

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

(5) Decision flow chart--A flow chart which is used to determine if a property or process, which is not listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination as pollution control property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§17.4. Applicability.

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

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

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

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

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

(b) The executive director shall determine the portion of the pollution control property eligible for a positive use determination.

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

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

§17.6. Property Ineligible for Exemption from Taxation

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

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

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

(3) motor vehicles; and

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

§17.10. Application for Use Determination.

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

(1) a commission application form or a similar reproduction and one copy; and

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

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

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

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

(1) for Tier I, II, and III use determination applications, the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, or land pollution;

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

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

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

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

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

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

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

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

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

§17.12. Application Review Schedule.

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

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

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

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

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

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

(3) For Tier IV applications the executive director will complete the technical review of the application within 30 days of receipt of the required application documents.

(4) The executive director shall determine whether the property is or is not used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

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

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

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

§17.14. Equipment and Categories List.

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

Figure: 30 TAC §17.14(a)

DRAFT

Equipment and Categories List Part A

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

Air Pollution Control Equipment

No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork—used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges—used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection by creating an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators, with blowers, ductwork, etc. used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. - used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Igniters	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control (VOC) Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H ₂ S) or Nitrogen Oxides (NO _x) from a waste gas	100

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

No.	Media	Property	Description	%
			turbocharged engines.	
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for reduction of NO _x formation. May include flyash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO _x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO _x emissions.	100
A-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NO _x formation.	20
A-88	Air	Low-NO _x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO _x burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which draws combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO _x .	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NO _x emissions from existing internal combustion engines used to drive natural gas compressors. These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO _x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO _x including directly related equipment.	100
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NO _x and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO _x control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers,	100

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

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

Wastewater Pollution Control Equipment

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

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

W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-65	Water	Stormwater Containment Systems	Structures or ditches used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen Meter, Chart Recorder, etc.	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or Carbon Dioxide (CO ₂) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
-----	-------	----------	-------------	---

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 to restrict downward or lateral escape of wastes or leachate in a 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 Wells and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit. (e.g., detection monitoring systems, compliance monitoring systems)	100
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water.	100
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	100
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100
S-18	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-19	Land/	Resource Conservation	Pads, structures, solid waste treatment equipment used to	100

	Water	Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	100
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities. (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100
S-26	Land	Vegetated Compost Sock	Install in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment - positions and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100
M-2	Air/ Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant.	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal.	100
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Land/ Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation. The recycled solvents must be reused at the facility generating the	100

			waste.	
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-8	Air/ Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	100
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-10	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-11	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-12	Land/ Water	Structures, Enclosures, Containment Areas, Pads	Required in order to meet 'no contact' stormwater regulations.	100
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100
M-15	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, & Degasser.	100
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-19	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-20	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion of metal tanks and piping.	100
M-22	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-23	Water /Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100
M-24	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges.	100

Equipment Located at Service Stations

No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-11	Water	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges or leaks.	100
T-12	Water	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges or leaks.	100
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-16	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the Service Station. This item only applies to Service Stations.	100
Release Detection for Tanks and Piping				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-24	Water	Automatic In-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

DRAFT

Part B

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

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

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

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

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

§17.15. Review Standards.

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

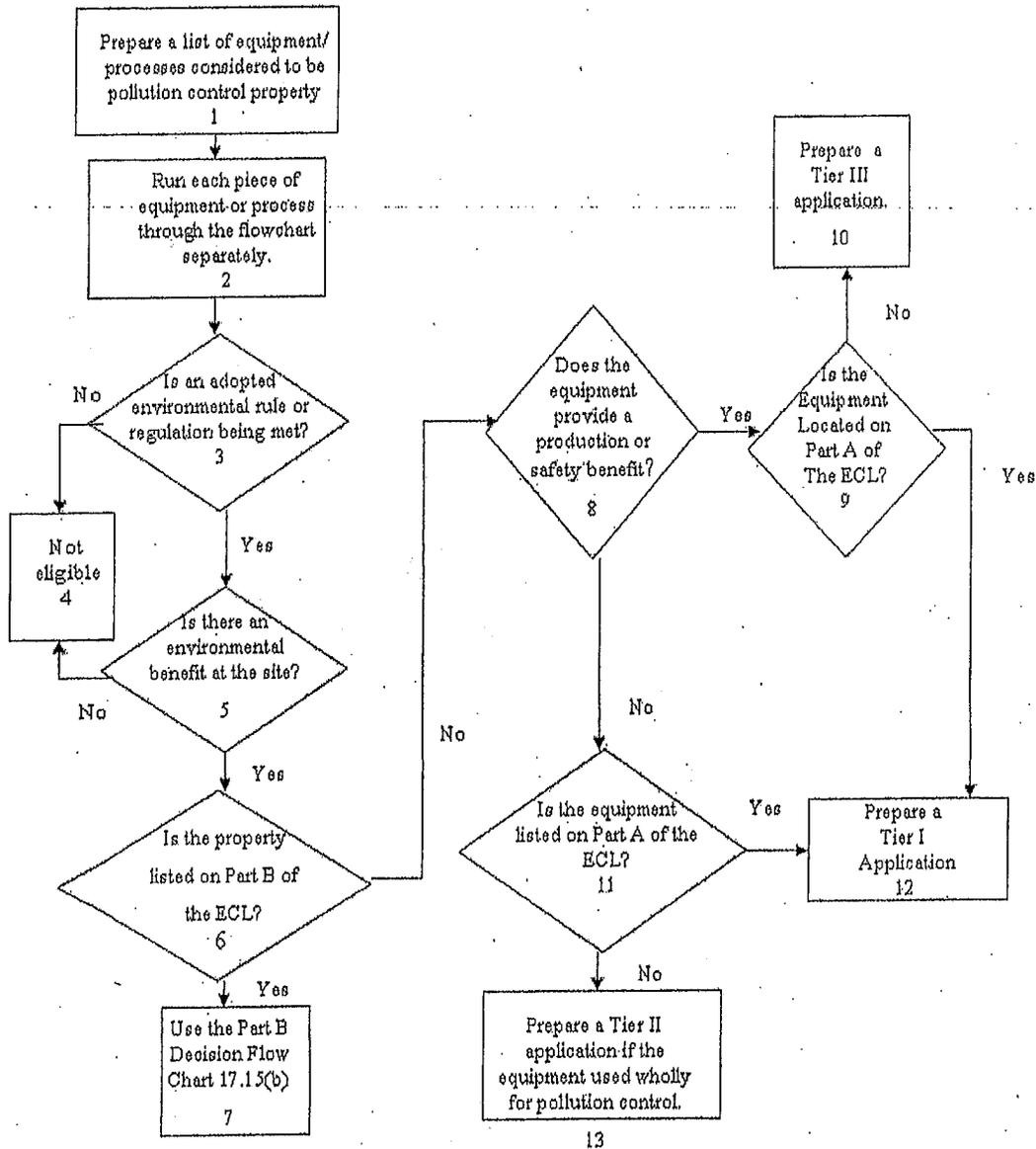
item will qualify as pollution control property. The executive director shall apply the standards in the Decision Flow Chart when acting on a non-Tier IV use determination application.

DRAFT

Figure: 30 TAC §17.15(a)

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

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5. ECL means the Equipment and Categories List adopted under Texas Tax Code, §11.31(g).



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

Where:

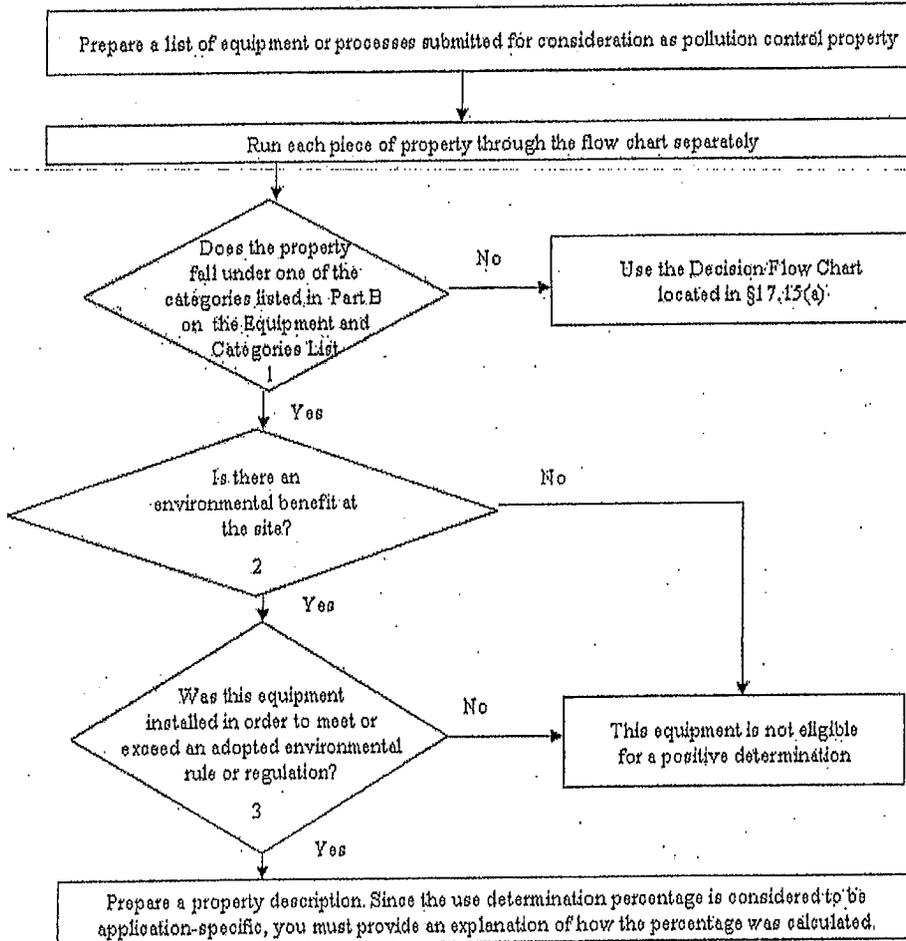
- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
-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

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

Figure: 30 TAC §17.15(b)

PART B DECISION FLOW CHART

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



Where:

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

§17.17. Partial Determinations.

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

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

Figure 30 TAC §17.17(b)

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

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

(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)

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

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

(e) If the cost analysis procedure or the method accepted by the executive director under subsection (d) of this section produces a negative number or a zero, the property is not eligible for a positive use determination.

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (4) of this subsection.

(1) Tier I Application--A \$150 fee shall be charged for applications for property that is located in the figure in §17.14(a) of this title (relating to Equipment and Categories List), as long as the application seeks no variance from that use determination.

(2) Tier II Application--A \$1,000 fee shall be charged for applications for property that is used wholly for the control of air, water, and/or land pollution, but not in the figure in §17.14(a) of this title (relating to Equipment and Categories List).

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

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

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

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

(d) The check, money order, or electronic funds transfer receipt must be delivered with the application to the commission, at the address listed on the application form.

§17.25. Appeals Process

(a) Applicability.

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

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

(A) the applicant seeking a use determination; and

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

(b) Form and timing of appeal. An appeal must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive 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.

DRAFT

Texas Tax Code § 11.31. POLLUTION CONTROL PROPERTY.

- (a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.
- (b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. This section does not apply to a motor vehicle.
- (c) In applying for an exemption under this section, a person seeking the exemption shall present in a permit application or permit exemption request to the executive director of the Texas Natural Resource Conservation Commission information detailing:
- (1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;
 - (2) the estimated cost of the pollution control facility, device, or method; and
 - (3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property. If the installation includes property that is not used wholly for the control of air, water, or land pollution, the person seeking the exemption shall also present such financial or other data as the executive director requires by rule for the determination of the proportion of the installation that is pollution control property.
- (d) Following submission of the information required by Subsection (c), the executive director of the Texas Natural Resource Conservation Commission shall determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. As soon as practicable, the executive director shall send notice by regular mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a determination under this subsection. The executive director shall issue a letter to the person stating the executive director's determination of whether the facility, device, or method is used wholly or partly to control pollution and, if applicable, the proportion of the property that is pollution control property. The executive director shall send a copy of the letter by regular mail to the chief appraiser of the appraisal district for the county in which the property is located.
- (e) Not later than the 20th day after the date of receipt of the letter issued by the executive director, the person seeking the exemption or the chief appraiser may appeal the executive director's determination to the Texas Natural Resource Conservation Commission. The commission shall consider the appeal at the next regularly scheduled meeting of the commission for which adequate notice may be given. The person seeking the determination and the chief appraiser may testify at the meeting. The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's determination. On issuance of a new determination, the executive director shall issue a letter to the person seeking the determination and provide a copy to the chief appraiser as provided by Subsection (d). A new determination of the executive director may be appealed to the commission in the

manner provided by this subsection. A proceeding under this subsection is not a contested case for purposes of Chapter 2001, Government Code.

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

(g) The commission shall adopt rules to implement this section. Rules adopted under this section must:

- (1) establish specific standards for considering applications for determinations;
- (2) be sufficiently specific to ensure that determinations are equal and uniform; and
- (3) allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ED's Exh. # 5 –

Use Determination No. 14241,
Application Review Summary for Use
Determination No. 14241, First Revised
Application No. 14241, and Original
Application No. 14241

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



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

Mr. Carlos R. Zuazua
Environmental Manager
El Paso Electric Company
P. O. Box 982
El Paso, Texas 79934

Re: Negative Use Determination
El Paso Electric Company
Newman Power Plant
4900 Stan Roberts Avenue
El Paso (El Paso County)
Application Number: 14241

Dear Mr. Zuazua:

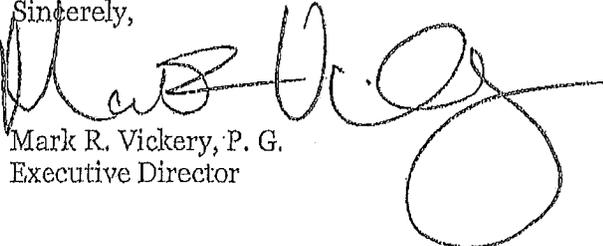
This letter responds to El Paso Electric Company's application for Use Determination, received February 1, 2010, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Newman Power Plant.

The TCEQ has completed the review for application #14241 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and §17.6. The installation of photovoltaic panels is used to produce power and does not meet or exceed an adopted environmental rule, regulation, or law.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,


Mark R. Vickery, P. G.
Executive Director

MV/RH

Mr. Carlos R. Zuazua
Page 2

cc: Chief Appraiser, El Paso County Appraisal District, 5801 Trowbridge Drive, El Paso,
Texas 79925

Application Review Summary

Application Number: 14241
Company: El Paso Electric Company
Facility: Newman Power Plant
County: El Paso
Tier: IV
Estimated Cost of Property: \$555,996.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

Project to install solar photovoltaic (PVs) panels. The power will be used at the facility and may reduce the amount of fuel combusted, thereby reducing emissions to the air.

Tier I Table Number: N/A Tier IV
Tier III Creditable Partial Percentage: N/A

Rule Citation

16 Texas Administrative Code (TAC) 25.173 establishes renewable energy capacity goals for Texas generators.
40 Code of Federal Regulations (CFR) §73.80 establishes a sulfur dioxide allowance system for energy conservation and renewable energy.

Final Determination

A negative determination is issued for the solar photovoltaic (PVs) panel equipment for failure to cite to an applicable adopted environmental rule, regulation, or law.

Administrative Review

Administrative Review Chronology

Received Date: 2/01/2010

First Administrative Notice of Deficiency (ANOD): Provide a citation to the specific subsection of an adopted environmental rule which is being met by the installation of Photovoltaic Panel.

Date First ANOD Was Mailed: 3/31/2010

Date Applicant's Response Was Received: 5/07/2010

Date Application Was Declared Administratively Complete: 6/03/2010

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R016596

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

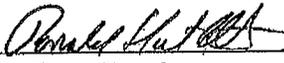
Technical Review Start Date: 6/15/2010

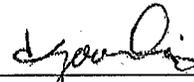
First Technical Notice of Deficiency (TNOD): Please provide a citation to the subsection level of the adopted environmental rule requiring installation of the solar photovoltaic panel equipment. The federal rule citation, 40 CFR §73.80, establishes an allowance program for sulfur dioxide, but does not require the installation of alternative energy equipment. The state rule citation, 16 TAC §25.173, establishes statewide goals for the amount of electricity generated by renewable sources. This rule is administered by the Public Utilities Commission which is not an environmental protection agency of Texas.

Date First TNOD Was Mailed: 6/15/2010

Date Applicant's Response Was Received: 7/30/2010

Technical Review Completion Date: 9/24/2010

 4/12/2011
Project Reviewer Date

 4/19/11
Work Lead Date

**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?

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

B. Size of Company: Number of Employees

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

C. Business Description: (Briefly describe the type of business or activity at the facility)
Generation, transmission, and distribution of electricity

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

2. TYPE OF APPLICATION

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

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

3. NAME OF APPLICANT

- A. Company Name: El Paso Electric Company
- B. Mailing Address (Street or P.O. Box): P.O. Box 982
- C. City, State, ZIP: El Paso TX, 79960

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- A. Name of Facility or Unit: Newman Power Plant
- B. Type of Mfg. Process or Service: Electricity Generation
- C. Street Address: 4900 Stan Roberts SR, AVE
- D. City, State, ZIP: El Paso, Texas 79934
- E. Tracking Number (optional): _____
- F. Company or Registration Number: _____

Revised
1/4/24

5. **APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

A. Name of Appraisal District: El Paso County Appraisal District
B. Appraisal District Account Number: _____
[if not yet on tax roll, enter "new property:"]

6. **CONTACT NAME**

A. Company/Organization Name: El Paso Electric Company
B. Name of Individual to Contact: Carlos R. Zuazua
C. Mailing Address (Street or P.O. Box): P.O. Box 982
D. City, State, ZIP: El Paso, TX 79960
E. Phone Number and Fax Number: (915) 543-5924
F. E-Mail Address (if available): czuazu1@epelectric.com

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 x 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.**

Installation and operation of new (B-18) Solar Photovoltaic (PVs) Panel equipment at Newman Generating Facility in Northeast El Paso, TX. Photovoltaic panels are best known as a method for generating electric power by using solar cells to convert energy from the sun into electricity. Solar cells produce direct current electricity from light, which can be used to power equipment or to recharge a battery. Unlike fossil fuel based technologies, solar power does not lead to any harmful emissions during operation. Solar power is pollution-free during use (life cycle). These photovoltaic (PV) panels were incorporated into Newman Generating Facility (fitted on top of existing parking lots roof structure) as an ancillary source of electrical power.

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?**

40 CFR Part 73.80.

These approaches to reducing emissions from the power sector through the use of renewable energy sources generally have several things in common reflected as follows:

- Improvement in human health;
- Adoption of a market-based cap and trade program;
- Substantial reduction in the number of PM_{2.5} and ozone nonattainment areas
- pollution controls on power plants;
- Alteration of existing regulations;
- Reduction in emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and mercury (Hg).

Example: The baghouse was constructed in order to meet the requirements of 40 CFR 50(6): National primary and secondary ambient air quality standards for PM₁₀.

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

Reduces local air pollution

Use of solar electric systems decreases the amount of local air pollution. With a decrease in the amount of conventional fuels (fossil) used for lighting, there is a corresponding reduction in the amount of local pollution produced.

Offsets greenhouse gases

Photovoltaic systems produce electric power with no carbon dioxide (CO₂) emissions. Carbon emission offset is calculated at approximately 6 tons of CO₂ over the estimated twenty-year life of our PV system.

Conserves energy

Solar electricity is an effective energy conservation program because it conserves costly conventional power for urban areas, town market centers, and industrial and commercial uses.

Example: The use of baghouse B-10 will reduce the likelihood of particulate matter being released into the air.

B. **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 <u>Photovoltaic Panels</u>	<u>NO</u>	<u>Part B-3</u>	<u>B-18</u>	<u>\$555,996.29</u>	<u>100%</u>
_____	_____	_____	_____	_____	_____
Totals				<u>\$555,996.29</u>	<u>100%</u>

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?

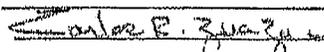
Yes No

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: Carlos R. Zuazua Date: 4-30-2008
 Signature: 
 Title: Environmental Manager
 Company: El Paso Electric 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.

**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?

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

B. Size of Company: Number of Employees

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

C. Business Description: (Briefly describe the type of business or activity at the facility)
Generation, transmission, and distribution of electricity

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

2. TYPE OF APPLICATION

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

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

3. NAME OF APPLICANT

- | | |
|--|---------------------------------|
| A. Company Name: | <u>El Paso Electric Company</u> |
| B. Mailing Address (Street or P.O. Box): | <u>P.O.Box982</u> |
| C. City, State, ZIP: | <u>El Paso TX, 79960-0982</u> |

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- | | |
|-------------------------------------|-------------------------------|
| A. Name of Facility or Unit: | <u>Newman Power Plant</u> |
| B. Type of Mfg. Process or Service: | <u>Electricity Generating</u> |
| C. Street Address: | <u>4900 Stan Roberts Ave.</u> |
| D. City, State, ZIP: | <u>El Paso, TX 79934</u> |
| E. Tracking Number (optional): | _____ |
| F. Company or Registration Number: | _____ |

016379 #19
 DEPARTMENT OF STATE COMPTROLLER
 TCEQ

14241

5. **APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

A. Name of Appraisal District: El Paso County Appraisal District

B. Appraisal District Account Number: _____

[if not yet on tax roll, enter "new property"]

6. **CONTACT NAME**

A. Company/Organization Name: El Paso Electric Company

B. Name of Individual to Contact: Carlos R. Zuazua

C. Mailing Address (Street or P.O. Box): P.O. Box 982

D. City, State, ZIP: El Paso, TX 79960

E. Phone Number and Fax Number: (915) 543-5942 and (915) 543-5802 fax

F. E-Mail Address (if available): czuazu1@epelectric.com

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.**

Installation and operation of new (B-18) Solar Photovoltaic (PVs) Panel equipment at Newman Generating Facility in Northeast El Paso, TX. Photovoltaic panels are best known as a method for generating electric power by using solar cells to convert energy from the sun into electricity. Solar cells produce direct current electricity from light, which can be used to power equipment or to recharge a battery. Unlike fossil fuel based technologies, solar power does not lead to any harmful emissions during operation. Solar power is pollution-free during use (life cycle). These photovoltaic (PV) panels were incorporated into Newman Generating Facility (fitted on top of existing parking lots roof structure) as an ancillary source of electrical power.

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?**

The PV devices were installed at Newman Generating Facility in order to meet or exceed the requirements related to air quality and health benefits. Those regulatory drivers are:

- Clean Air Planning Act (Carper, S.843 in 108th)
- Clean Power Act (Jeffords, S.150 in 109th)
- Clear Skies Act of 2005 (Inhofe, S.131 in 109th)
- Clear Skies Act of 2003 (Inhofe/Voinovich at the Administration's request, S.485 in 108th)
- Clean Air Interstate Rule, Clean Air Mercury Rule, and the CleanAir Visibility Rule

These approaches to reducing emissions from the power sector through the use of renewable energy sources generally have several things in common reflected as follows:

- Improvement in human health;
- Adoption of a market-based cap and trade program;
- Substantial reduction in the number of PM2.5 and ozone nonattainment areas; Installation of additional pollution controls on power plants;
- Alteration of existing regulations;
- Reduction in emissions of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and mercury (Hg).

Example: The baghouse was constructed in order to meet the requirements of 40 CFR 50(6): National primary and secondary ambient air quality standards for PM₁₀.

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

Reduces local air pollution

Use of solar electric systems decreases the amount of local air pollution. With a decrease in the amount of conventional fuels (fossil) used for lighting, there is a corresponding reduction in the amount of local pollution produced.

Offsets greenhouse gases

Photovoltaic systems produce electric power with no carbon dioxide (CO₂) emissions. Carbon emission offset is calculated at approximately 6 tons of CO₂ over the estimated twenty-year life of our PV system.

Conserves energy

Solar electricity is an effective energy conservation program because it conserves costly conventional power for urban areas, town market centers, and industrial and commercial uses.

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 <u>Photovoltaic Panels</u>	<u>NO</u>	<u>Part B- 3</u>	<u>B-18</u>	<u>\$555,996.29</u>	<u>100%</u>
Totals				\$555,996.29	100%

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: Carlos R. Zuazua Date: January 29, 2010

Signature

Carlos R. Zuazua

Title

Environmental Manager

Company:

El Paso Electric 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.

ED's Exh. # 6 –

Letter from Rep. Dennis Bonnen to Mr.
Glenn Shankle, Executive Director of the
TCEQ, received August 31, 2007

OPA, IGR, GS, M

DENNIS BONNEN

RECEIVED BY OPA
TRACKING # 15640
ASSIGNED TO: JPC

CAPITOL OFFICE:
P.O. Box 2910
AUSTIN, TX 78768-2910
(512) 463-0564
FAX (512) 463-8414

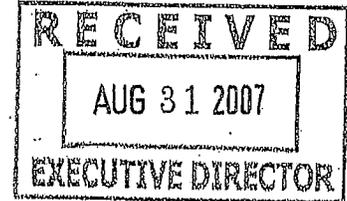


AUG 31 2007

DISTRICT OFFICE:
122 E. MYRTLE
ANGLETON, TX 77515
(979) 848-1770
FAX (979) 849-3169

HOUSE OF REPRESENTATIVES DUE DATE: 9-10-07
Committees: Chair, Environmental Regulation, Ways and Means

Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
MC-109
P.O. Box 13087
Austin, Texas 78711-3087



Re: Pollution Control Equipment Exemption Determinations under HB 3732

Dear Mr. Shankle:

I have recently been made aware of issues regarding the interpretation of HB 3732, Section 4 which cause me a great deal of concern. The overall purpose of the bill is to encourage clean energy projects within Texas. As Chairman of the House Committee on Environmental Regulations, I believe this is a laudable goal and I support the concept of exempting from local taxation pollution control equipment which is installed to meet or exceed rules and regulations. However, I have recently heard some interpretations of Section 4 of HB 3732 which I believe could have a devastating impact on local government and would go beyond the legislative intent.

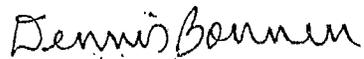
The legislation requires TCEQ to adopt rules to include a "non-exclusive list of facilities, devices, or methods for the control of air, water, or land pollution." The language requires that the list include 18 categories of technologies. I understand that some parties are pushing for this list to require an automatic exemption determination without any deliberation by TCEQ. The language itself, however, requires that the item must be a facility, device or method for control of pollution. It does not supersede the TCEQ's obligation to review the application-specific information to ensure that the equipment does in fact qualify as pollution control equipment. If the TCEQ does not have sufficient evidence to demonstrate that something is pollution control equipment, it should not qualify for the exemption even if it is in a category on the list.

There may also be some discussion that the language in the bill intended to broaden the scope of property to be included under a tax exemption, even to the point of exempting entire plants because the plant installed pollution control equipment. This would be contrary to the original program which was approved by the voters of Texas in 1993. That program only allows for the portion of the plant which is actually used for pollution control to be given the tax exemption. It is the responsibility of the TCEQ to determine what portion should qualify and nothing in this bill changes that.



It is critical to local areas that the TCEQ strike the proper balance between mitigating the cost of installation of pollution control equipment and protection of the property tax base. The local area needs both a cleaner environment and county services supported by the taxes paid. Thank you for your careful consideration of this issue.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Bonnen".

Dennis Bonnen
Chairman, House Committee on Environmental Regulation

cc: Brazoria County Commissioner's Court.

ED's Exh. # 7 –

Letter from Rep. Allan Ritter to Mr.
Glenn Shankle, Executive Director of the
TCEQ, received August 10, 2007

State of Texas
House of Representatives



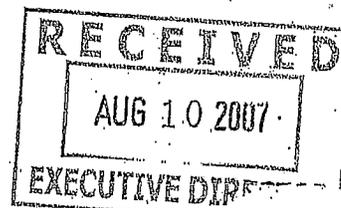
Capitol Office:
P.O. Box 2910
Austin, TX 78768-2910
(512) 463-0706
Fax (512) 480-0744

Allan B. Ritter

District 21

District Office:
P.O. Box 1265
Nederland, TX 77627
(409) 729-3228
Fax (409) 729-3241

August 8, 2007



Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
MC-109
P.O. Box 13087
Austin, Texas 78711-3087

Re: **Pollution Control Tax Exemption Determinations made by TCEQ
under Section 11.31 of the Tax Code as Modified by HB 3732**

Dear Mr. Shankle:

It has come to my attention that there are concerns regarding the interpretation of language used in Section 4 of HB 3732, which requires TCEQ to establish a nonexclusive list of pollution control equipment. It is important that the TCEQ make every effort to give full effect to all of the provisions in the amended statute rather than accepting an interpretation that would favor industry to the detriment of the local tax base.

I have received several calls from local officials and chief appraisers who are concerned that the TCEQ may be leaning toward an overly aggressive interpretation of the requirement, which would severely restrict its authority in making or denying pollution control determinations and significantly increase the scope of the pollution control exemption program. Because industrial property is such a significant part of the Texas tax base, any overly broad or incorrect decisions regarding pollution control determinations would severely harm Texas by shifting the tax burden onto residential taxpayers.

It is vitally important to Texas and to the success of the Prop 2 program that TCEQ diligently exercise discretion over the designation of property as pollution control equipment to prevent the exemption of property used for the production of goods or services. Accepting industry suggestions that HB 3732 mandates expansive new designations of productive value as pollution control equipment and exempting that value from property taxes would be a failure in TCEQ's

responsibility to the State. TCEQ's role in Prop 2 is unlike any other role the agency has to fulfill. Property tax payers should be expected to aggressively seek every method to reduce their tax burden. It is up to tax administrators, in this case TCEQ, to exercise proper discretion to prevent an inappropriate tax shift.

Although new subsection (k) provides a list of equipment to be included on the nonexclusive list, this should not be interpreted to require the TCEQ to approve the equipment if it fails to meet the pollution control standards established by the agency. TCEQ retains the final discretion to determine the items that are eligible for an exemption under section 11.31. This authority was reinforced by the inclusion of new subsection (l), which specifies that an item may be removed from the nonexclusive list if the commission finds that it does not provide pollution control benefits.

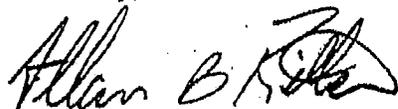
It must also be pointed out that the legislature did not repeal an existing provision (Subsection 11.31(h)) that clearly prohibits the TCEQ from making a determination that property is pollution control property unless it meets the standards established by TCEQ. To interpret subsection (k) as requiring TCEQ to make a positive pollution control determination on all the items listed by the legislature regardless of whether they meet the standards would render subsection (h) meaningless.

Concerns have also been raised that TCEQ may be leaning toward giving full exemptions for all of the items listed by HB 3732. This interpretation would be difficult to understand, since the legislation contained no language that would override TCEQ's technical expertise in making its determinations. TCEQ has an obligation under section 11.31 to allow for partial determinations that distinguish between pollution control and productive use.

It is important to remember that the purpose of creating the pollution control property tax exemption program was to provide relief to industry for mandated pollution control measures while also ensuring that productive value remains on the tax roll.

Thank you for your consideration on this serious issue. If you would like to discuss this matter further do not hesitate to call me.

Sincerely,



Allan B. Ritter

ED's Exh. # 8 –
Op. Tex. Att'y Gen. No. 96-128 (1996)



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1996

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

Letter Opinion No. 96-128

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

Dear Representative Craddick:

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

Section 11.31(a) of the Tax Code provides:

A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁶*Id.*

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

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

S U M M A R Y

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

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is written in a cursive style with a long horizontal line extending to the right.

James E. Tourtelott
Assistant Attorney General
Opinion Committee