



Harris County Appraisal District

13013 Northwest Freeway
Houston TX 77040
Telephone: (713) 812-5800

P.O. Box 920975
Houston TX 77292-0975
Information Center: (713) 957-7800

Office of Chief Appraiser

April 7, 2008

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

Re: Valero Refining – Texas, L.P.
Houston Refinery
TCEQ Docket Nos. 2007-0735-MIS-U and
2007-0734-MIS-U

Dear Ms. Castanuela:

Enclosed for filing is the original and eleven copies of the Harris County Appraisal District's Response to the Appeal of the Executive Director's Decision in the above-entitled matter.

Sincerely,

John M. Renfrow
Assistant General Counsel

cc: Mailing List

Enclosure

Board of Directors
Glenn E. Peters, *Chair*
Paul Bettencourt, *Secretary*
Toni Trumbull
Bill Harry
Gary W. Stein
Lawrence Marshall

Chief Appraiser
Jim Robinson
Chief Deputy
Sands L. Stiefer
Assistant Chief Appraisers
Guy Griscom
Teresa S. Terry
Director of Information & Assistance
Roland Altinger
Taxpayer Liaison Officer
Peggy Mason

2008 APR - 7 PM 3: 14
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ Docket Numbers
2007-0734-MIS-U (UD 06-10281 / Valero Refining)
2007-0735-MIS-U (UD 06-10268 / Valero Refining)

CHIEF CLERKS OFFICE

2008 APR - 7 PM 3: 14

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

APPEAL OF EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION REGARDING VALERO REFINING – TEXAS, L.P., ON APPLICATION NUMBERS 06-10268 AND 06-10281	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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**HARRIS COUNTY APPRAISAL DISTRICT'S RESPONSE BRIEF TO THE APPEAL
OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION**

Harris County Appraisal District ("HCAD") files this Response to the Appeals of the Executive Director's Negative Use Determination Issued to Valero Refining – Texas, L.P. ("Valero") on two Use Determination Applications, Numbers 06-10268 and 06-10281. Valero filed their Applications for Use Determination for Pollution Control Property with the Texas Commission on Environmental Quality ("TCEQ") via letters dated January 26, 2007. Application Number 06-10281 was for a Gasoline Desulfurization Project at Valero's Houston Refinery and Application Number 06-10268 was for an Ultra Low Sulfur Diesel ("ULSD") Project at Valero's Houston Refinery. Both applications sought 100 percent ad valorem tax exemptions and were filed as qualifying under the Tier II definition (property used wholly for control of air, water, and/or land pollution, but which is not eligible under Tier I because the property is not on the Equipment and Categories List). *See* 30 TAC, Chapter 17.

The Executive Director of the TCEQ issued a negative use determination for both projects on April 18, 2007, which were appealed by Valero on May 8, 2007. By letter dated May 18, 2007, Valero requested that TCEQ postpone indefinitely the scheduling of the appeals to allow time for Valero to further discuss the issues with the Executive Director's staff. Status reports on the discussions were submitted at the request of the TCEQ Office of General Counsel on September 12, 2007, and on December 3, 2007. It was agreed between the Office of General Counsel, Valero, and the Executive Director, that formal consideration of the Appeals be postponed until February 11, 2008. HCAD was

notified by letter from the Office of General Counsel dated February 11, 2008, of the briefing schedule now in place.

DESCRIPTION OF POLLUTION CONTROL PROPERTY CONTAINED IN VALERO'S APPLICATIONS

Both Applications for Use Determination filed by Valero relate to projects located within Harris County, Texas at Valero's Houston Refinery. Application Number 06-10268 describes a new ULSD Hydrotreater Unit with an estimated cost of \$238,335,968. These costs relate primarily to the acquisition of two new parallel reactors, heat exchangers, pumps, SAT gas plant, cooling towers, and hydrogen compressors. The purpose of adding this capacity to the Houston Refinery is to enable Valero to produce 14,000 BPD of ultra low sulfur diesel, which meets the U.S. Environmental Protection Agency's ("EPA") Clean Air Highway Diesel final rule known as the "2007 Heavy-Duty Highway Rule." Parts of the rule have been in effect since 2001 and the necessity to refine ULSD took effect in 2006.¹ The application was filed as a Tier II type, claiming that the property is used 100 percent for pollution control.

Application Number 06-10281 is also a Tier II type, seeking to exempt 100 percent of the property used for pollution control. This Houston Refinery addition is for a gasoline desulphurization project consisting of a new stabilizer, exchangers, air coolers, pumps, hydrogen compressors, SHU reactors, vessels, heaters, and modifications to the fractionator and depentanizer towers. Estimated cost for the project is \$65,788,116. As with diesel, the EPA's rules require a reduction in the sulfur content of gasoline phased-in between 2004 and 2006.²

EXECUTIVE DIRECTOR'S DETERMINATION

In both Valero applications, the Executive Director made a negative determination. The rationale for the determinations was identical and can be summarized as follows:

¹ In January 2001 and June 2004, EPA finalized the Highway Diesel and Nonroad Diesel Rules, respectively, which implement more stringent standards for new diesel engines and fuels. Refiners began producing ULSD for use in highway vehicles beginning June 1, 2006. *See* 40 CFR Parts 69, 80, and 86.

² *See* 40 CFR 80: Regulation of Fuels and Fuel Additives and 40 CFR 80, Subpart H – Gasoline Sulfur.

- The applications pertain to equipment installed to allow Valero to comply with EPA regulations limiting the sulfur content of gasoline and diesel, both end products being produced at the Houston Refinery.
- Tier II use determinations are made for each item or process using the Prop 2 Decision Flow Chart (“DFC”) prescribed by 30 TAC § 17.15.³ The chart notes that to be eligible for a positive use determination, the item must generate “yes” answers for boxes 3 and 5.⁴ Box 5 asks “Is there a environmental benefit at the site?” The determination concluded that the answer was “no.”
- Section 11.31(a) of the Tax Code states that a person is not eligible for the exemption if the person produces a product that prevents or reduces pollution. The equipment at issue is being used to produce gasoline and diesel fuel containing reduced amounts of sulfur. The burning of these fuels off-site by consumers is the point at which pollution is reduced.

For the reasons stated below, HCAD agrees with the determination.

PROPERTY TAX EXEMPTION

The Texas Constitution was amended in 1993 authorizing the legislature to exempt from ad valorem taxation real and personal property used for the control of air, water, or land pollution.⁵ Implementing legislation was enacted as section 11.31 of the Tax Code, effective as of January 1, 1994.⁶ Section 11.31(a) of the Tax Code provides:

A person is entitled to an exemption 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*

³ Tax Code Section 11.31 was amended by adding subsections (k), (l), and (m), which became effective September 1, 2007. Acts 2007, 80th Leg., ch. 1277, §4. The amended provisions of Section 11.31 required TCEQ to adopt new rules, which became effective February 7, 2008. 33 TexReg 932. The Tax Code provisions and TCEQ rules in effect at the time of the Valero applications and upon which the Executive Director’s Negative Use Determination was based should be applied by the Commission in reaching its decision. Neither the statutory nor the regulatory revisions are retroactive.

⁴ The Executive Director’s Determination letters appear to mistakenly refer to Box 4 rather than Box 5.

⁵ See Tex. H.J. Res. 86, 73d Leg., R.S., 1993 Tex. Gen. Laws 5576 (adopted Nov. 2, 1993).

⁶ See Act of May 10, 1993, 73d Leg., R.S., ch. 285, 1993 Tex. Gen. Laws 1322, 1324 (act to take effect only upon voters’ approval of constitutional amendment proposed by House Joint Resolution 86).

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. (emphasis added).

The legislative history of Section 11.31(a), and more particularly the second sentence, was thoroughly examined by the Attorney General in 1996 in response to a question asked by Speaker of the House Tom Craddick (then Chairman of the House Committee on Ways and Means).⁷ LO-96-128 states that the committee hearings and 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." *Id.* at 2. The second sentence of Section 11.31(a) was not included in the original version of H.B. 1920 introduced in the Seventy-third Legislature's regular session in 1993. It was added by amendments from both the House and Senate committees, which held hearings on the bill. Both amendments were intended to limit the availability of the exemption. As stated by Representative Berlanga when he offered his amendment, which became essentially the second sentence of Section 11.31(a): "This amendment clarifies that a person cannot get the exemption just because the person manufactures a product that is used for pollution control purposes."⁸

More recently, the Attorney General was asked by the Chair of the Texas Natural Resource Conservation Commission ("TNRCC"), now the TCEQ, 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.⁹ Before answering the question, General Cornyn observed that no judicial opinions had been written involving Section 11.31, making the matters issues of first impression. He then went on to summarize the legal framework within which a tax exemption statute should be analyzed.¹⁰

⁷ Tex. Att'y Gen. LO-96-128.

⁸ Debate on H.B. 1920, on the Floor of the House, 73d Leg. (April 20, 1993) (tape available from House Video/Audio Services, John H. Reagan Building, Room 330).

⁹ Op. Tex. Att'y Gen. No. JC-372 (2001).

¹⁰ *Id.* at 4.

When construing a statute, “our primary objective is to give effect to the Legislature’s intent.” To give effect to legislative intent, we construe a statute according to its plain language. Statutory words and phrases must be “read in context and construed according to the rules of grammar and common usage.” Finally, exemptions from taxation are not favored by the law and “are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpayers rather than all.” The latter rule of construction guides us when a statute providing a tax exemption is ambiguous. It should not be employed to construe a tax exemption provision contrary to its plain meaning.
(citations omitted).

Unfortunately, the opinion was able to answer the questions asked without reference to the second sentence in Section 11.31(a). However, the roadmap provided in the above quoted language is directly applicable to resolving the issues presented in this appeal.

It is the second sentence of Section 11.31(a) upon which the Executive Director relied in determining that the Valero applications warranted a negative determination. The legislative intent is plainly stated in the statute using unambiguous language, which is confirmed by the legislative history in the words of the statutes authors. To the extent that one concludes that an ambiguity exists, an exemption statute must be strictly construed against granting the exemption. “*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.*” *Id.* Stated another way, Valero is not entitled to an exemption on equipment it uses to produce a product that reduces air pollution.

Read in its entirety, Section 11.31 is completely consistent with the analysis required by the Prop 2 DCF. Box 3 asks “Does the installation of the equipment allow the company to meet or exceed an adopted environmental rule, law or reg.?” *See* Section 11.31(b). The answer is arguably “no.” The EPA rules regarding sulfur content in gasoline and diesel do not directly require the installation of any particular equipment that relates to “the prevention, monitoring, control, or reduction of air, water, or land pollution” by Valero related to its refining business in Harris County. As H. P. Whitworth

testified before the House Ways and Means Committee in support of the bill which became Section 11.31:

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.¹¹

This observation is consistent with the statement made in Attorney General Letter Opinion 96-128 that the legislative history of Section 11.31 demonstrates an intent "to give such relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses."¹²

The DCF is the result of lawfully implemented regulations by TCEQ. The new version is identical to the one in effect prior to the February 7, 2008 revision as it relates to Box 5 (except for a grammatical correction). "Is there an environmental benefit at the site?" The question is implicit within general concepts of ad valorem taxation relating to taxable situs and is confirmed by the wording of Section 11.31.

¹¹ Hearings on H.B. 1920 and H.J.R. 86 before the House Ways and Means Committee, 73d Leg. (March 24, 1993)(tape available from House Video/Audio Services).

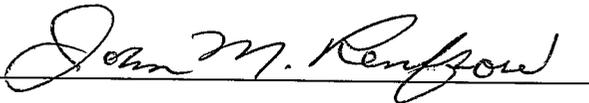
¹² *Supra*, note 7.

CONCLUSION

The Executive Director correctly made a Negative Use Determination for Valero's Tier II applications seeking complete exemption for the property identified in Application Numbers 06-10268 and 06-10281. The Determination should be upheld by the Commission.

Respectfully submitted,

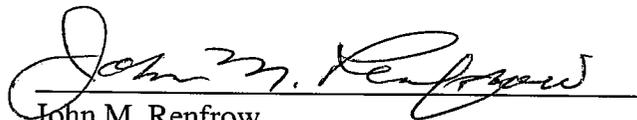
HARRIS COUNTY APPRAISAL DISTRICT

BY: 

John M. Renfrow
Assistant General Counsel
TBA#16777100
P.O. Box 920975
Houston, Texas 77292-0975
(713) 957-7497
Fax: (713) 957-5210

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2008, the original and eleven copies of the foregoing were hand delivered to the TCEQ Chief Clerk. True and correct copies were also delivered by U.S. Mail to those on the attached service list.



John M. Renfrow
Assistant General Counsel

Service List
Valero Refining – Texas, L.P. / Harris County
TCEQ Docket Nos. 2007-0734-MIS-U and 2007-0735-MIS-U

Parker Wilson, Managing Counsel
Environmental Safety & Regulatory Affairs
Valero
One Valero Way
San Antonio, Texas 78269-6000
210/345-2000; FAX 210/353-8363

Ron Hatlett
TCEQ Small Business &
Environmental Assistance Div. MC 110
P.O. Box 13087
Austin, Texas 78711-3087
512/239-3100; FAX 512-239-3165

Rich Walsh, Vice-President &
Assistant General Counsel
Valero
One Valero Way
San Antonio, Texas 78269-6000
210/345-2000; FAX 210/353-8363

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

Roy Martin, Vice-President
Ad Valorem Tax
Valero Energy Corporation
P.O. Box 690110
San Antonio, Texas 78269-0110
210/345-2700; FAX 210-345-2495

Bridget Bohac
TCEQ Office of Public Assistance MC 108
P.O. Box 13087
Austin, Texas 78711-3087
512/239-4000; FAX 512-239-4007

Trey Novosad, Director
Ad Valorem Tax
Valero Energy Corporation
P.O. Box 690110
San Antonio, Texas 78269-0110
210/345-2700; FAX 210-345-2495

Kyle Lucas
TCEQ Alternative Dispute Resolution MC 222
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0687; FAX 512-239-4015

Les Trobman, General Counsel
TCEQ Office of General Counsel, MC 101
P.O. Box 13087
Austin, Texas 78711-3087
512/239-5500; FAX 512-239-5533

Guy Henry
D. A. Chris Ekoh
TCEQ Environmental Law Div. MC 173
P.O. Box 13087
Austin, Texas 78711-3087
512/239-0600; FAX 512-239-0600

TAX CODE § 11.31

- (b) A property may not be exempted under Subsection (a)(2) for more than three years.
- (c) For purposes of Subsection (a)(2), an incomplete improvement is under physical preparation if the corporation has:
 - (1) engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement; or
 - (2) conducted an environmental or land use study relating to the construction of the improvement.

Added by Acts 1991, 72nd Leg., ch. 306, § 1, eff. Jan. 1, 1992. Amended by Acts 1999, 76th Leg., ch. 62, § 18.46, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 138, § 6, eff. May 18, 1999; Acts 2003, 78th Leg., ch. 288, § 1.07, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 288, § 2.07, eff. Jan. 1, 2006.

Cross References:

Annual application not required, see Sec. 11.43(c).

Effect on rates, see Sec. 13.0435, Water Code.

Exemption application required, see Sec. 11.43(c).

Exemption application form, see Rule Sec. 9.415.

Filing deadline for property acquired after January 1, see Sec. 11.43(d).

Immediate qualification for property acquired after January 1, see Sec. 11.42(d).

Prorating taxes for exemption for part of tax year, see Secs. 26.112 and 26.113.

Constitutional authorization, see art. VIII, Sec. 1-k, Tex. Const.

Notes:

Amendments to the statute effective June 18, 2003 under Acts 2003, 78th Leg., ch. 288 applies for the 2003 tax year regardless of whether the property owner applied for the exemption, provided the owner qualified for the exemption for the three years preceding the 2003 tax year. For the 2006 tax year, the statute modifies the five years exemption period for incomplete improvements back to being three years.

Sec. 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.

Added by 1993 Tex. Laws, p. 1324, ch. 285, Sec. 1; amended by 2001 Tex. Laws, p. 1673, ch. 881, Sec. 1; Amended by Acts 2007, 80th Leg., ch 1277, § 4, eff. Sept 1, 2007.

Cross References:

Annual application not required, see Sec. 11.43(c).

Constitutional authorization, see art. VIII, Sec. 1-1, Tex. Const.

Environmental response appraisal adjustment, see Sec. 23.14.
Exemption application required, see Sec. 11.43(c).
Rollback tax rate additional protection, see Sec. 26.045.
Tax rate calculation process, see Sec. 26.012.
Model application form, see Rule Sec. 9.415.

Notes:

Removal of a pollution control exemption by a chief appraiser without notification as required under Section 11.43(h) makes the act voidable rather than void. A property owner must be afforded the right to protest the cancellation. This notwithstanding, notice is still a procedural act that does not affect appraisal jurisdiction. If it did, judgments subject to tax proceedings would be open to collateral attack years later. *Harris County Appraisal Dist. v. Pasadena Prop., LP*, 197 S.W.3d 402 (Tex. App. -- Eastland 2006, pet denied).

Add-on pollution-control devices and methods of production that limit pollution at new facilities are entitled to exemption under Tax Code Section 11.31. The Texas Natural Resource Conservation Commission must administer the tax exemption to grant exemptions to only that portion of property that actually controls pollution. Pollution-reducing production equipment may receive only a partial tax exemption. Section 11.31 makes no distinction between property controlling pollution generated by an existing facility or by a new facility. The statute contains only one limitation: to be exempt, property must be acquired after January 1, 1994, the statute's effective date. *Op. Tex. Att'y Gen. No. JC-372* (2001).

A commercial business performing pollution control or abatement services is not entitled to a property tax exemption for its pollution control property. The pollution control exemption was not intended to give tax relief to those who are primarily engaged in the commercial business of pollution control but to give relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses. *Tex. Att'y Gen. LO-96-128* (1996).

Sec. 11.32. Certain Water Conservation Initiatives

The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives, desalination projects, or brush control initiatives have been implemented. For purposes of this section, approved water conservation, desalination, and brush control initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

Added by 1997 Tex. Laws, p. 3663, ch 1010, Sec. 5.11; amended by 2001 Tex. Laws, p. 1959, ch. 966, Sec. 4.24 and p. 2745, ch. 1234, Sec. 38.

Cross References:

Annual application required, see Sec. 11.43(a).
Constitutional authorization, see art. VIII, Sec. 1-m, Tex. Const.
Model application form, see Rule Sec. 9.415.

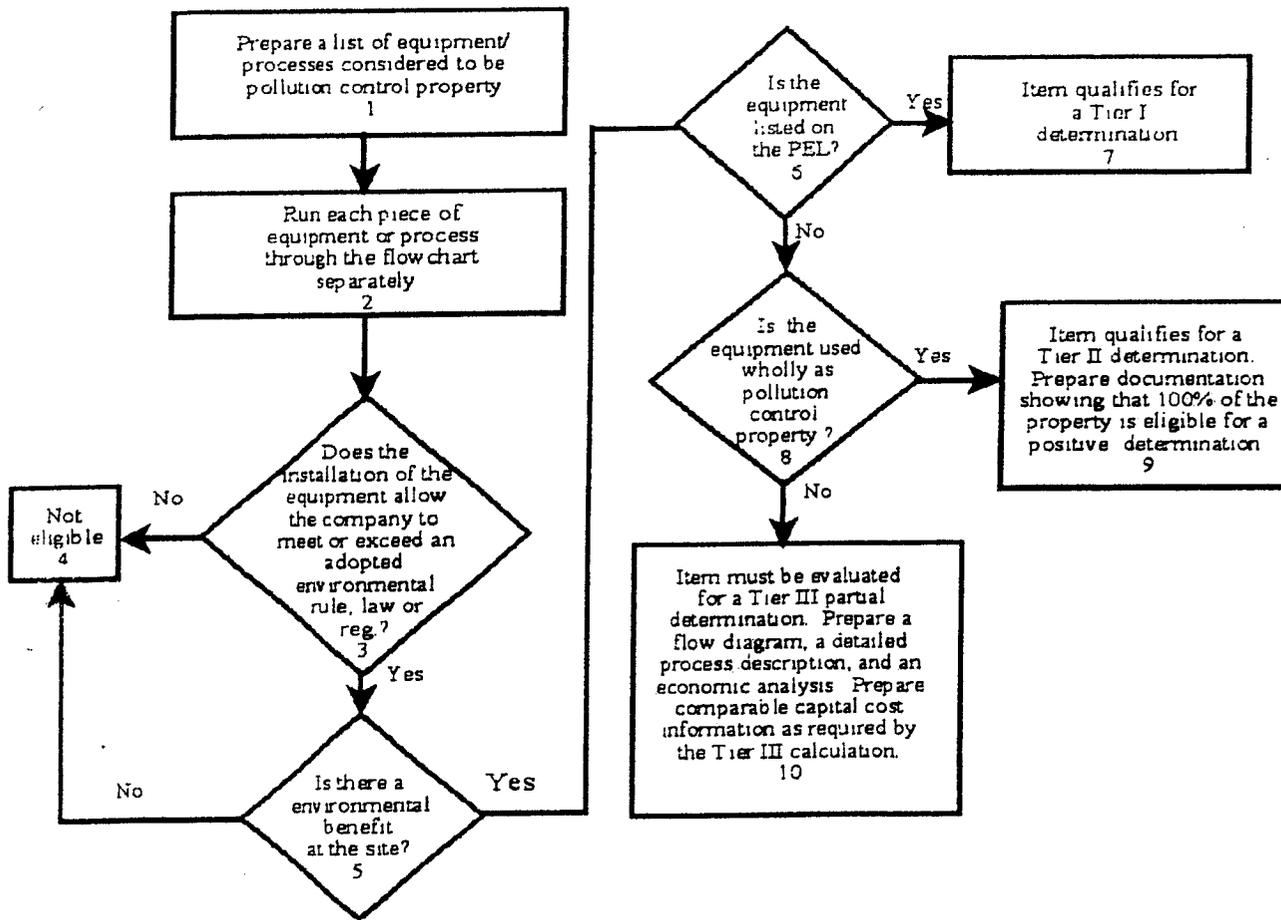
Sec. 11.33. Raw Cocoa and Green Coffee Held in Harris County

- (a) A person is entitled to an exemption from taxation of raw cocoa and green coffee that the person holds in Harris County.
- (b) An exemption granted under this section, once allowed, need not be claimed in subsequent years, and the exemption applies to all raw cocoa and green coffee the person holds until the cocoa's or the coffee's qualification for the exemption changes. The chief appraiser may, however, require a person who holds raw cocoa or green

PROP 2 DCF

Prop 2 Decision Flow Chart

Applicants must use this flow chart 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.

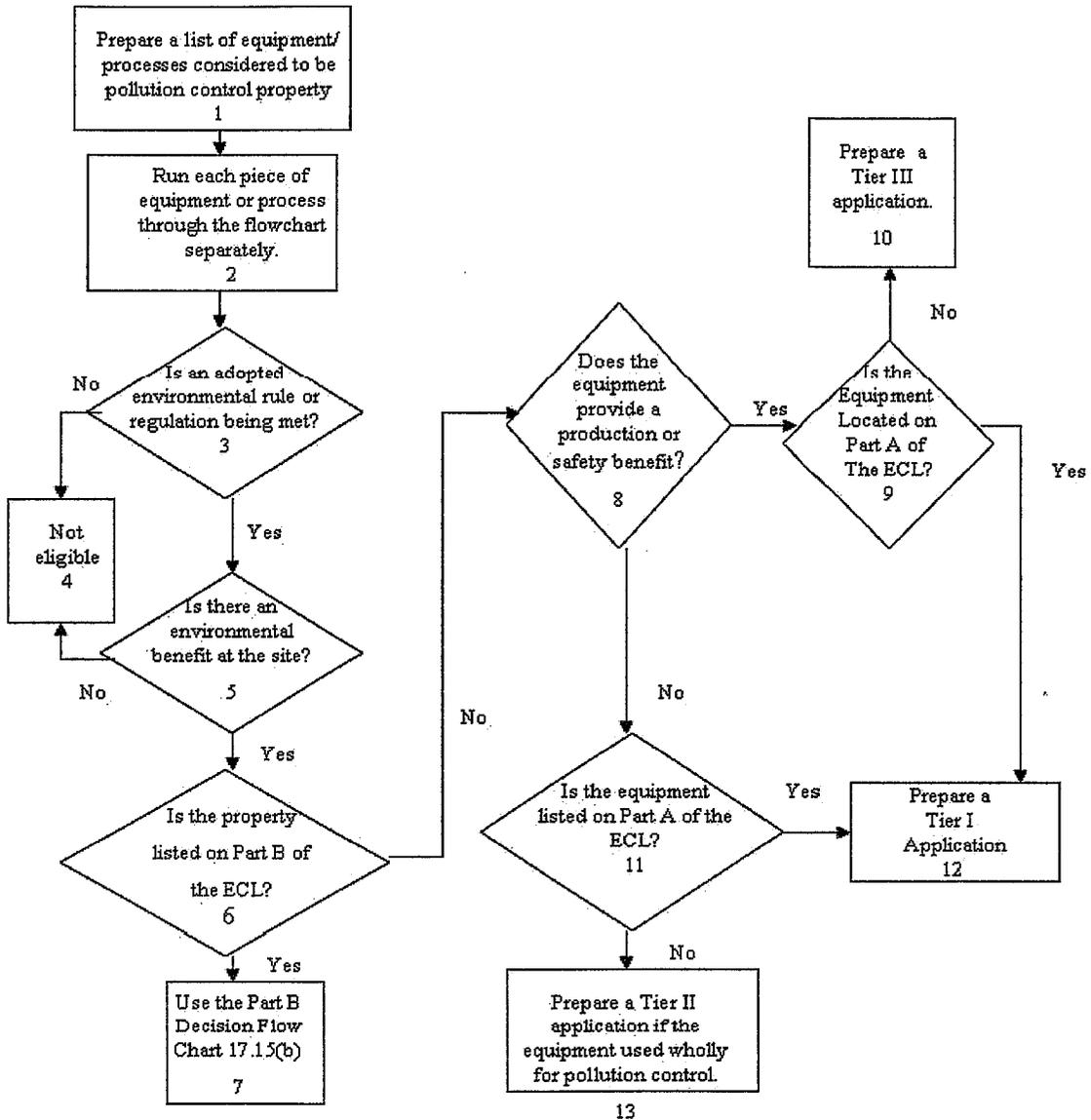


30 TAC §17.15
DECISION FLOW CHARTS

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).

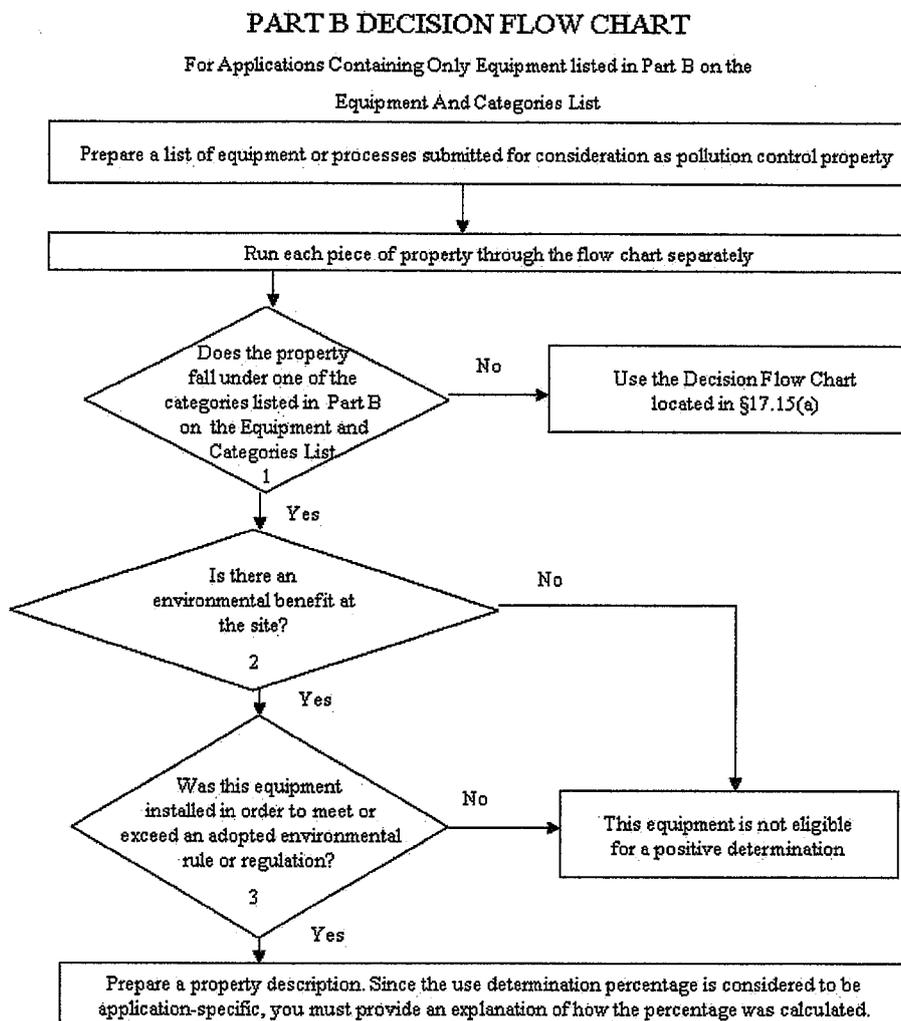


Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

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.

Figure: 30 TAC §17.15(b)



Where:

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

**Tex. Att'y Gen.
Letter Opinion 96-128**



**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 1-7 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 1-7, 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 from the end of the name.

James E. Tourtelott
Assistant Attorney General
Opinion Committee

Tex. Att'y Gen.
Opinion No. JC-372 (2001)



April 27, 2001

Mr. Robert J. Huston
Chair, Texas Natural Resource
Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

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)

Dear Mr. Huston:

Section 11.31 of the Tax Code provides that a person is entitled to a tax exemption for all or part of real or personal property “used wholly or partly as a facility, device, or method for the control of air, water, or land pollution.” TEX. TAX CODE ANN. § 11.31(a) (Vernon Supp. 2001). You ask whether pollution-control devices and methods of production that limit pollution at new facilities qualify for a tax exemption under this provision.¹ We conclude that they do, but that the Texas Natural Resource Conservation Commission (“TNRCC”) must administer the tax exemption to grant exemptions to only that portion of property that actually controls pollution.

Before addressing your specific questions, we briefly review the legal framework. In 1993, the legislature proposed an amendment to the Texas Constitution, which the voters approved, providing for an exemption from ad valorem taxation for real and personal property used to control pollution.² That constitutional provision, article VIII, section 1-1, provides as follows:

(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.

¹See Letter from Robert J. Huston, Chair, Texas Natural Resource Conservation Commission, to Honorable John Cornyn, Texas Attorney General (Dec. 22, 2000) (on file with Opinion Committee) [hereinafter Request Letter].

²See Tex. H.J. Res. 86, 73d Leg., R.S., 1993 Tex. Gen. Laws 5576 (adopted Nov. 2, 1993).

(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.

Tex. Const. art. VIII, § 1-1 (emphasis added). This constitutional provision uses the word “may” with respect to the legislature’s authority to adopt a statute, rather than “shall” or “must.” Thus, it permits but does not require the legislature to provide a tax exemption for pollution-control property. *See Rooms With A View, Inc. v. Private Nat’l Mortgage Ass’n Inc.*, 7 S.W.3d 840, 844 (Tex. App.—Austin 1999, pet. denied) (“We use the same guidelines in interpreting constitutional provisions as we do interpreting statutes.”); TEX. GOV’T CODE ANN. § 311.016(1) (Vernon 1998) (unless context requires a different construction the word “[m]ay” creates discretionary authority or grants permission or a power”).

At the same time the legislature proposed this constitutional amendment, it also enacted section 11.31 of the Tax Code as implementing legislation, which became effective on January 1, 1994.³ Section 11.31 defines the property eligible for the tax exemption, *see* TEX. TAX CODE ANN. § 11.31(a), (b), (g) (Vernon Supp. 2001), and establishes a procedure whereby taxpayers seeking the exemption submit information to your agency, the TNRCC, for a determination as to whether the property at issue is a pollution-control facility, device, or method, *see id.* § 11.31(c)-(f).

With respect to defining property eligible for the tax exemption, section 11.31 provides in pertinent part:

(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.

³See Act of May 10, 1993, 73d Leg., R.S., ch. 285, § 5, 1993 Tex. Gen. Laws 1322, 1324 (act to take effect only upon voters’ approval of constitutional amendment proposed by House Joint Resolution 86).

(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.

Id. § 11.31(a), (b). Consistent with the constitutional provision, the statute provides that the tax exemption may 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. *See id.* § 11.31(g). In addition, the legislation enacting section 11.31 provided that this tax exemption applies only to pollution control property that is constructed, acquired, or installed after January 1, 1994. *See* Act of May 10, 1993, 73d Leg., R.S., ch. 285, § 5(b), 1993 Tex. Gen. Laws 1322, 1325.

The TNRCC is charged with administering the statute by determining whether property qualifies for the pollution-control tax exemption. Specifically, the TNRCC is charged with determining "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." TEX. TAX CODE ANN. § 11.31(d) (Vernon Supp. 2001). In addition to determining whether the property controls pollution, the TNRCC must also determine the proportion of the property devoted to that purpose. The statute provides that "[i]f 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." *Id.* § 11.31(c). In the event a facility, device, or method is used only partly to control pollution, the TNRCC must provide a letter stating what portion of the property is a facility, device, or method for the control of pollution. *See id.* § 11.31(d) ("If the executive director determines that the facility, device, or method is used wholly or partly to control pollution, the director shall issue a letter to the person stating that determination and the proportion of the installation that is pollution control property.").

You ask 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. Your question is limited to equipment new to a location: "equipment for a process or product that has never been produced at that location; that is, a new facility." Request Letter, *supra* note 1, at 2. You ask about two types of equipment. You are concerned about that equipment that is added on to production equipment to control pollution, which you refer to as "add-on control equipment." *See* Request Letter, *supra* note 1, at 2. You are also concerned about equipment used to make a product that limits pollution

by its design, which we will refer to as pollution-reducing production equipment. The following example provided in your letter contrasts the two types of equipment:

The owner of a new [electricity-generating] boiler elects to construct the facility so that it will emit less NOx [emissions] than is required to meet best achievable control technology or the requirements of 30 TAC Chapter 117. . . . [T]he emissions level could be achieved by adding controls to the end of the process. Alternatively, the same emissions level could be reached by a unit that is designed to achieve more complete combustion.

Request Letter, *supra* note 1, at 3. You ask us to assume that the equipment would meet or exceed environmental requirements.

Your question is as follows:

Is equipment, of a type new to a location, that is used to make a product and by its design limits pollution, or add-on control equipment installed on new equipment, within the category of property used for pollution control under § 11.31 of the Texas Tax Code?

Request Letter, *supra* note 1, at 2. We gather your concern is whether a distinction should be made between measures taken to address pollution that is already being generated by an existing facility as opposed to pollution that will be generated in the future by a new facility. You also want to know whether pollution-reducing production equipment and add-on control equipment should be treated differently.

As there are no Texas judicial opinions addressing the contours of the section 11.31 tax exemption, the issues you raise are questions of first impression. When construing a statute, “our primary objective is to give effect to the Legislature’s intent.” *Mitchell Energy Corp. v. Ashworth*, 943 S.W.2d 436, 438 (Tex. 1997). To give effect to legislative intent, we construe a statute according to its plain language. See *RepublicBank Dallas v. Interkal, Inc.*, 691 S.W.2d 605, 607-08 (Tex. 1985); *Bouldin v. Bexar County Sheriff’s Civil Serv. Comm’n*, 12 S.W.3d 527, 529 (Tex. App.—San Antonio 1999, no pet.). Statutory words and phrases must be “read in context and construed according to the rules of grammar and common usage.” TEX. GOV’T CODE ANN. § 311.011(a) (Vernon 1998). Finally, exemptions from taxation are not favored by the law and “are subject to strict construction because they undermine equality and uniformity by placing a greater burden on some taxpayers rather than all.” *Baptist Mem’ls Geriatric Ctr. v. Tom Green County Appraisal Dist.*, 851 S.W.2d 938, 942 (Tex. App.—Austin 1993, writ denied) (citing *N. Alamo Water Supply Corp. v. Willacy County Appraisal Dist.*, 804 S.W.2d 894, 899 (Tex. 1991)). The latter rule of construction guides us when a statute providing a tax exemption is ambiguous. It should not be employed to construe a tax exemption provision contrary to its plain meaning.

First, we consider whether the statute should apply differently to new versus old facilities. Section 11.31 is broadly written, and we believe its plain meaning is clear. It embraces any property, real or personal, "that is used *wholly or partly* as a *facility, device, or method* for the control of air, water, or land pollution." TEX. TAX CODE ANN. § 11.31(a) (Vernon Supp. 2001) (emphasis added). "[F]acility, device, or method for the control of air, water, or land pollution" is specifically defined to mean:

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.

Id. § 11.31(b). This broad definition is not inconsistent with the constitutional provision authorizing the tax exemption. See TEX. CONST. art. VIII, § 1-1(a) ("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.") (emphasis added).

Section 11.31 makes no distinction between property controlling pollution generated by an existing facility and property controlling pollution generated by a new facility. The statute contains only one temporal limitation. In order for land to be exempt, it must be acquired after January 1, 1994, the statute's effective date. See TEX. TAX CODE ANN. § 11.31(b) (Vernon Supp. 2001). In addition, the legislation enacting section 11.31 provided that the tax exemption applies only to pollution control property that is constructed, acquired, or installed after January 1, 1994. See Act of May 10, 1993, 73d Leg., R.S., ch. 285, § 5(b), 1993 Tex. Gen. Laws 1322, 1325. Furthermore, in defining "facility, device, or method for the control of air, water, or land pollution," subsection (b) of section 11.31 uses words that embrace new facilities as well as changes to existing facilities: "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." TEX. TAX CODE ANN. § 11.31(b) (Vernon Supp. 2001). In sum, on its face section 11.31 applies to pollution-control property added to any facility after January 1, 1994. There is no basis in the statute for limiting the tax exemption only to pollution-control property added to an existing facility.

Next, we consider whether section 11.31 excludes from its scope pollution-reducing production equipment. Significantly, the statute applies to property used “wholly or partly” for pollution control. *See id.* § 11.31(a). To qualify for the exemption, property must be used “wholly or partly” to meet or exceed environmental rules. *See id.* § 11.31(b). The term “wholly” clearly refers to property that is used only for pollution control, such as an add-on device. *See* MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 1351 (10th ed. 1993) (defining “wholly” to mean “to the full or entire extent: . . . to the exclusion of other things”). The term “partly,” however, embraces property that has only *some* pollution-control use. *See id.* at 848 (defining “partly” to mean “in some measure or degree”). This broad formulation clearly embraces more than just add-on devices. Furthermore, that statute clearly embraces not only “facilities” and “devices” but also “methods” that prevent, monitor, control, or reduce pollution. “Methods” is an extremely broad term that clearly embraces means of production designed, at least in part, to reduce pollution. *See id.* at 732 (defining “method” to include “a way, technique, or process of or for doing something”).

Based on its plain language and the common meaning of the terms “wholly,” “partly,” and “method,” we conclude that section 11.31 clearly extends to, in your words, “equipment . . . that is used to make a product and by its design limits pollution.” Request Letter, *supra* note 1, at 2. We stress, however, that under section 11.31 the owner of pollution-reducing production equipment, property that serves both a production and a pollution-reduction purpose, is not entitled to a tax exemption on the total value of the property. Rather, pollution-reducing production equipment may receive only a partial tax exemption. The TNRCC has been charged by the legislature with determining what portion of such property is a “facility, device, or method for the control” of pollution. *See* TEX. TAX CODE ANN. § 11.31(d) (Vernon Supp. 2001) (“If the executive director determines that the facility, device, or method is used wholly or partly to control pollution, the director shall issue a letter to the person stating that determination and the proportion of the installation that is pollution control property.”). The person seeking the exemption must “present such financial or other data as the [TNRCC] executive director requires by rule for the determination of the proportion of the installation that is pollution control property.” *Id.* § 11.31(c). Given that tax exemptions are not favored by the law, *see N. Alamo Water Supply Corp.*, 804 S.W.2d at 899, the TNRCC must adopt rules and administer the statute to limit tax exemptions to only that portion of property that serves a pollution-control, as opposed to a production, purpose.

We have received several briefs that argue that pollution-reducing production equipment should not receive a tax exemption because production equipment is a source of pollution and is designed to produce rather than reduce pollution. This argument ignores the broad scope of section 11.31. Again, section 11.31 exempts not only those facilities, devices and methods what are wholly used to control pollution, but also those that are used only partly to control pollution. Furthermore, if the TNRCC grants tax exemptions only to that portion of property that reduces pollution, the portion of the property that produces pollution will not fall within the scope of the exemption and will be taxed.

In sum, in answer to your question whether “equipment, of a type new to a location, that is used to make a product and by its design limits pollution, or add-on control equipment installed on

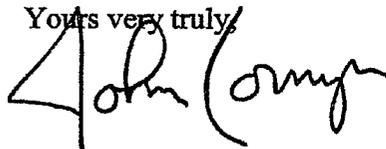
new equipment” falls within the scope of section 11.31, we conclude that both add-on control equipment installed in a new facility and pollution-reducing production equipment installed in a new facility qualify for a tax exemption under that provision. However, the TNRCC must administer the tax exemption to grant exemptions to only that portion of property that actually controls pollution. The legislature may want to provide the TNRCC with additional guidance regarding the proper criteria for assessing what portion of property actually controls pollution.⁴ In addition, the constitution permits the legislature to narrow or eliminate this tax exemption for pollution-control property if it determines that the exemption is burdensome to taxing units or unfair to other taxpayers. *See discussion supra* pp. 1-2.

⁴A bill is currently pending before the legislature that would, among other things, require the TNRCC to enact rules that would “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.” Tex. H.B. 3121, 77th Leg., R.S. (2001).

S U M M A R Y

Add-on pollution-control devices and methods of production that limit pollution at new facilities are entitled to a tax exemption under section 11.31 of the Tax Code. The Texas Natural Resource Conservation Commission must administer the tax exemption to grant exemptions to only that portion of property that actually controls pollution.

Yours very truly,

A handwritten signature in black ink, appearing to read "John Cornyn". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN CORNYN
Attorney General of Texas

ANDY TAYLOR
First Assistant Attorney General

SUSAN D. GUSKY
Chair, Opinion Committee

Mary R. Crouter
Assistant Attorney General - Opinion Committee