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

Re: TCEQ Docket Nos. 2007-0732-MIS-U (UD 06-10270/Valero Corpus Christi Refinery - Nueces County); 2007-0733-MIS-U (UD 06-10271/Valero Corpus Christi Refinery - Nueces County); 2007-0734-MIS-U (UD 06-10281/Valero Houston Refinery - Harris County); 2007-0735-MIS-U (UD 06-10268/Valero Houston Refinery - Harris County); 2007-0736-MIS-U (UD 06-10283/Diamond Shamrock McKee Refinery - Moore County); 2007-0737-MIS-U (UD 06-10282/Diamond Shamrock McKee Refinery - Moore County); 2007-0738-MIS-U (UD 06-10280/Valero Port Arthur Refinery - Jefferson County); 2007-0739-MIS-U (UD 06-10279/Valero Port Arthur Refinery - Jefferson County); 2007-0724-MIS-U (UD 06-10285/Valero Texas City Refinery - Galveston County); 2007-0740-MIS-U (UD 06-10284/Valero Texas City Refinery - Galveston County)

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced and numbered proceeding please find an original and eleven (11) copies of *Valero Refining – Texas, L.P., Diamond Shamrock Refining Company, L.P., and the Premcor Refining Group, Inc.'s Reply Brief to the Executive Director, Public Interest Counsel, Galveston Central Appraisal District, and the Harris County Appraisal District's Response Briefs to the Appeal of the Executive Director's Negative Use Determinations*.

Please file the original in the above-referenced proceeding and return a file-stamped copy to the messenger. A copy of the filing is being served on the persons identified below.

Thank you for your attention to this matter. If you have any questions concerning this filing, please do not hesitate to contact me at the number above.

Sincerely,

Pam Giblin

Enclosures

cc: Guy Henry (via fax and U.S. mail)
D.A. Chris Ekoh (via fax and U.S. mail)
Timothy Reidy (via fax and U.S. mail)
Ron Hatlett (via fax and U.S. mail)
Blas Coy (via fax and U.S. mail)
Garrett Arthur (via fax and U.S. mail)
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Kyle Lucas (via fax and U.S. mail)
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Diane Ball (via fax and U.S. mail)
Roland R. Bieber (via fax and U.S. mail)
John M. Renfrow (via fax and U.S. mail)
Jim Robinson (via fax and U.S. mail)
Ken Wright (via fax and U.S. mail)

TCEQ Docket Numbers

2007-0732-MIS-U (UD 06-10270/Valero Corpus Christi Refinery - Nueces County)
2007-0733-MIS-U (UD 06-10271/Valero Corpus Christi Refinery - Nueces County)
2007-0734-MIS-U (UD 06-10281/Valero Houston Refinery - Harris County)
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2007-0736-MIS-U (UD 06-10283/Diamond Shamrock McKee Refinery - Moore County)
2007-0737-MIS-U (UD 06-10282/Diamond Shamrock McKee Refinery - Moore County)
2007-0738-MIS-U (UD 06-10280/Valero Port Arthur Refinery - Jefferson County)
2007-0739-MIS-U (UD 06-10279/Valero Port Arthur Refinery - Jefferson County)
2007-0724-MIS-U (UD 06-10285/Valero Texas City Refinery - Galveston County)
2007-0740-MIS-U (UD 06-10284/Valero Texas City Refinery - Galveston County)

APPEAL OF THE EXECUTIVE DIRECTOR'S USE DETERMINATIONS ISSUED TO VALERO REFINING - TEXAS, L.P.; DIAMOND SHAMROCK REFINING COMPANY, L.P.; AND THE PREMCOR REFINING GROUP, INC. APPLICATION NUMBERS: 06-10268, 06-10270, 06-10271, 06-10279, 06-10280, 06-10281, 06-10282, 06-10283, 06-10284, and 06-10285	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

VALERO REFINING - TEXAS, L.P., DIAMOND SHAMROCK REFINING COMPANY, L.P., AND THE PREMCOR REFINING GROUP, INC.'S REPLY TO THE EXECUTIVE DIRECTOR, PUBLIC INTEREST COUNSEL, GALVESTON CENTRAL APPRAISAL DISTRICT, AND THE HARRIS COUNTY APPRAISAL DISTRICT'S RESPONSE BRIEFS TO THE APPEAL OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATIONS

Valero Refining - Texas, L.P., Diamond Shamrock Refining Company, L.P., and the Premcor Refining Group, Inc. (hereinafter collectively referred to as Valero) files this Reply to the Responses to the Appeals of the Executive Director's Use Determinations Issued to Valero. The Responses were submitted by the Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ), the Office of Public Interest Counsel, the Galveston Central Appraisal District, and the Harris County Appraisal District.

For the reasons described below, Valero respectfully requests that the Commission deny the Executive Director's negative use determinations and remand the matters to the Executive Director for new use determinations.

I. Background

In 1993, Texas voters approved an amendment to the Texas Constitution allowing the legislature to exempt property used to control pollution from ad valorem taxation. This amendment is frequently referred to as "Proposition 2." The Texas Legislature implemented Proposition 2 in 1993 by enacting TEX TAX CODE § 11.31. The statute exempts from taxation 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, Texas, or a political subdivision of Texas for the prevention, monitoring, control, or reduction of air, water, or land pollution.[1] This provision "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."[2] In order to receive a pollution control property tax exemption, a positive use determination must first be received from the TCEQ Executive Director.[3]

In 2006, Valero installed hydrotreater units and associated equipment at five of its Texas refineries. Valero installed these hydrotreater units solely to meet regulations adopted by the United States Environmental Protection Agency ("EPA") which requires refineries to reduce sulfur levels in gasoline and diesel.[4] Because the hydrotreater units were installed for the sole purpose of meeting environmental regulations for the reduction of air pollution, Valero filed applications for positive use determinations with the TCEQ. Valero's applications were denied, and negative use determinations issued, based on the Executive Director's finding that (i) there was no environmental benefit at the site and (ii) Valero manufactures or produces pollution control property.

Valero meets all of the requirements for positive use determinations under TEX. TAX CODE § 11.31 and the TCEQ rules[5] and has appealed the negative use determinations. Valero now requests that the Commission remand the applications to the Executive Director for new use determinations.

II. Executive Summary

Valero's downstream hydrotreater units should receive positive use determinations because they meet the terms and intent of TEX. TAX CODE § 11.31 and TCEQ rules. First, the equipment is pollution control property because it was installed and is used solely for the control of air pollution. The Executive Director has conceded that the equipment was installed in order to meet EPA's low sulfur diesel and low sulfur gasoline rule, which is the environmental rule of a federal agency.[6] The equipment was installed exclusively to meet these requirements, and has no production or process value to Valero.

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[1] TEX. TAX CODE § 11.31(a) and (b).
[2] *Op. Tex. Att'y Gen. No. 96-128* (1996).
[3] TEX. TAX CODE § 11.31(c) and (d).
[4] *See* 40 CFR § 80.195 *et seq.* and 40 CFR § 80.500 *et seq.*
[5] *See* 30 TAC Chapter 17.
[6] It appears that the Executive Director's somewhat opaque statement, "Whether or not Valero is meeting or exceeding federal environmental regulation is not at issue in this case" indicates the Executive Director's acceptance of the environmental purpose of the equipment. *Executive Director's Response Brief to Valero Refining – Texas, L.P. Diamond Shamrock Refining Company, L.P., and The Premcor Refining Group, Inc.'s Appeal of the Executive*

Second, Valero's downstream hydrotreater units are not covered by any statutory or regulatory exceptions. Valero is engaged in the business of making diesel, gasoline, and other petroleum-derived products. Valero is not a manufacturer of pollution control property, nor is it engaged in the business of commercial pollution control. Valero is not seeking a tax exemption on its fuels, but rather on the equipment necessary to meet the federal requirement to remove sulfur compounds from these fuels.

Finally, this equipment meets the requirements of the TCEQ's rules found in 30 Tex. Admin. Code Ch. 17, including the requirement to demonstrate an environmental benefit at the site. Valero's downstream hydrotreaters create several environmental benefits at the site including: reductions in hydrogen sulfide (H_2S) emissions from fugitive components; reductions in H_2S emissions from product tanks and loading and unloading facilities; reductions in H_2S content in refinery fuel gas (and therefore SO_2 emissions when that fuel gas is combusted); and reductions in emissions from company and employee owned vehicles. These benefits encompass the refineries *per se* as well as the counties surrounding the refineries at which the property is located.

III. Factual Clarifications

On April 7, 2008, the Executive Director filed a Response to Valero's appeals of the negative use determinations (the "Response"). It is evident from a review of the Response that there are significant misunderstandings of the facts relating to the use and purpose of the equipment that is the subject of Valero's applications. Because this confusion appears to be the basis for the conclusion that the equipment does not qualify for a pollution control determination, the facts must be established as a preliminary matter. After reviewing all the facts and arguments in this case, Valero believes the Commission will agree that the gasoline and diesel hydrotreaters are not production equipment and do meet the pollution control property tax exemption requirements.

Summary of Facts

The relevant facts are as follows:

- The equipment that is the subject of these applications are hydrotreaters located downstream in the refining process (the "downstream hydrotreaters"). These are distinguishable from hydrotreaters located upstream at the refineries (the "upstream hydrotreaters").

- The downstream hydrotreaters were installed solely to meet a regulation of a federal environmental agency.

- These hydrotreaters have no production purpose, and in fact reduce yields while increasing capital, operational and maintenance costs.

Director's Negative Use Determinations, filed April 7, 2008 (Executive Director's Response) at 6. See also, Staff Technical Review Document for the Valero Texas City Refinery, issued April 13, 2007.

- The requirements to reduce sulfur levels in gasoline and diesel have been imposed by the U.S. Environmental Protection Agency, and not the market.

- Valero is not a manufacturer or producer of pollution control equipment, but rather is a manufacturer of hydrocarbon fuels and other petroleum-based products.

These points are discussed in greater detail below.

Discussion of Factual Clarifications

The Executive Director's Response improperly characterizes Valero's downstream hydrotreaters and ancillary equipment as process equipment designed to improve yields and protect production equipment. Although heavily researched, there are inaccuracies worth noting in the Response as it omits essential facts concerning the actual use and purpose of the particular equipment.

1. The equipment that is the subject of these applications are hydrotreaters located downstream in the refining process which are installed solely to meet environmental regulations (the "downstream hydrotreaters"). These are distinguishable from hydrotreaters located upstream at the refineries which serve a purpose other than meeting environmental regulations (the "upstream hydrotreaters").

The most significant clarification concerns the use of Valero's downstream hydrotreaters. As a general matter, hydrotreaters can be utilized for a variety of purposes, but in all cases are used for the capture and removal of sulfur compounds.

The Executive Director's Response discusses many benefits hydrotreaters can provide, but focuses primarily, if not exclusively, on non-environmental purposes. For example, the Executive Director cites to the Occupational Safety and Health Administration (OSHA) Technical Manual describing the benefits of general catalytic hydrotreating.[7] Hydrotreating can be used to remove contaminants such as nitrogen, sulfur, oxygen, and metals from liquid petroleum upstream in the production process. Hydrotreaters are required to be used upstream in the refining process to protect against adverse effects on refinery equipment and to improve the finished petroleum product.

This information about some of the general uses of hydrotreaters is factually correct but does not apply to Valero's downstream hydrotreaters. The Response essentially argues that because some hydrotreaters are used for production purposes, then none of Valero's hydrotreaters, even the downstream hydrotreaters, are eligible for the pollution control tax exemption.[8] The hydrotreaters for which Valero is seeking a pollution control tax exemption are used only for pollution control purposes. Valero has had, and continues to have, other hydrotreaters in place upstream that alone sufficiently reduce the sulfur content of its products to meet production and market quality requirements. Valero agrees that such upstream hydrotreaters serve production purposes and are not eligible for the pollution control property tax exemption. Valero has not sought tax exemptions for the upstream hydrotreaters, and therefore the existence and use of

[7] Executive Director's Response at 13.
[8] *See* Executive Director's Response.

these upstream hydrotreaters is not relevant to the use determinations on the downstream hydrotreaters.

2. The subject equipment is installed solely to meet a requirement of a federal environmental agency. This equipment has no production benefit, and in fact reduces yields and increases capital, operational and maintenance costs.

Valero has sought tax exemptions only for those hydrotreaters that are used downstream and installed solely for the purpose of meeting the EPA low-sulfur pollution control requirements. This additional reduction in gasoline and diesel sulfur content is not required by production standards or market demand, and it actually decreases product yield while increasing production costs through higher maintenance and operation expenses. Sulfur compounds are removed from produced gasoline and diesel solely to meet federal environmental regulations.

3. The downstream hydrotreaters do not generate elemental sulfur, and any elemental sulfur otherwise generated as a result of the EPA's regulations has already been accounted for in the partial determinations accorded sulfur recovery units.

In addition to clarifying the nature of the use of the hydrotreaters at issue, Valero would like to correct any misunderstanding regarding the "marketable byproduct" produced by the hydrotreaters. The Response states that because the hydrotreaters produce elemental sulfur, the hydrotreaters create a marketable byproduct and TCEQ Regulations require the allowed tax exemption to be reduced by the net present value of this byproduct.[9]

To clarify, the hydrotreaters at issue do not produce elemental sulfur. They produce acid gas. Sulfur recovery units (SRU) produce elemental sulfur as a marketable byproduct. The marketable byproduct adjustment has already been applied to the partial determination calculation for SRUs. Requiring an adjustment for the same elemental sulfur against the hydrotreaters would effectively double count this byproduct against Valero's exemption.

4. Valero is not a manufacturer or producer of pollution control equipment, but rather is a manufacturer of hydrocarbon fuels and other petroleum-based products.

Valero is a U.S.-based oil refining company headquartered in Texas. Valero produces gasoline, diesel, heating oil, jet fuel, lubricants and chemicals. This list does not include pollution control equipment.

IV. Statutory Analysis

Valero's Downstream Hydrotreaters Meet the Terms and the Intent of the Proposition 2 Program Including the Authorizing Statute at TEX. TAX CODE § 11.31

The authorizing statute of the Proposition 2 program, TEXAS TAX CODE § 11.31, creates a clear and unambiguous exemption from ad valorem taxation for Pollution Control Property. This exemption is neither a tax deduction nor a subsidy.

[9] *See* Executive Director's Response at 14-15 and 30 TAC § 17.17.

There are two basic criteria that must be satisfied in order to qualify for the pollution control exemption in Section 11.31. First, the property must be used, constructed, acquired, or installed to meet or exceed a rule or regulation of an environmental agency after January 1, 1994. Second, the property must prevent, control, or reduce air, water, or land pollution.[10]

Valero's downstream hydrotreaters, as described in its 2007 use determination applications, and as actually used by Valero, meet both of these statutory requirements. The hydrotreaters were acquired, installed, and used (starting in 2006) to meet EPA's low sulfur standards for gasoline and diesel fuels. These standards will reduce emissions of sulfur dioxide, a federal criteria pollutant.[11]

The long-standing purpose behind the Proposition 2 program is one of fundamental fairness.[12] Businesses which are required by the government to acquire, install, and operate non-productive pollution control property should not be further penalized by the government by then being taxed on that same property that has been installed under mandate.[13] Downstream hydrotreaters, although they may serve the public purpose of improving the environment, do nothing to serve the business's purpose of making gasoline or diesel. They do not add to the productivity of the business, nor do they add to the business's bottom line.[14] On the contrary these hydrotreaters are an operational and maintenance burden on refineries, increasing their direct costs as well as the potential for expensive and unexpected operational downtime. Furthermore, yields of gasoline and diesel are actually decreased, even if marginally, through the use of this equipment.[15]

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[10] (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. TEXAS TAX CODE § 11.31

[11] *See* Preamble to the adoption of 40 CFR Parts 80, 85, and 86: "today's program will bring about major reductions in annual emissions of these pollutants and also reduce the emissions of sulfur compounds resulting from the sulfur in gasoline. 65 Fed. Reg. 6698 (Feb. 10, 2000).

[12] House Research Organization, Floor Report for HB 1920 at 3. (April 19, 1993) "It would be unfair to tax businesses on property they are required by law to purchase."

[13] *Id.*

[14] *See Id.*

[15] Other reasons cited in the legislative history include reduction of compliance costs and economic development. For instance, "This exemption was created to encourage business and industry to remain in Texas while complying with the federal Clean Air Act." This thought is echoed by the Background section of the bill analyses for HJR 86 and HB 1920, which note the increasing cost of environmental compliance, and the "increasing competitive disadvantage" resulting from the tax cost. Thus, the purpose of the bill was to reduce the cost of compliance with environmental regulations by reducing the property tax burden associated with this equipment. See, Attached Excerpts from House Ways and Means Committees Deliberations on H.J.R. 86 and H.B. 1920, on April 19, 1993.

Efforts to narrow the scope of the pollution control property tax exemption are contrary to the language and structure of the statute and the Proposition 2 program itself. A 2001 Attorney General's opinion confirmed that the language of the statutory and constitutional provisions is broad in scope, and that the plain meaning of the statute is to exempt any equipment used for pollution control.[16]

Downstream Hydrotreaters are Not Production Equipment

TEX. TAX CODE § 11.31 provides an exemption from ad valorem taxation for property that is used wholly or partly as a facility, device or method for the prevention, monitoring, control, or reduction of air, water, or land pollution ("Pollution Control Property"). Valero's downstream hydrotreaters meet this requirement. Although the Executive Director's Response inaccurately describes these downstream hydrotreaters as production equipment, they are not. Each of the hydrotreaters covered by Valero's use determination applications have been installed and are used only to remove additional sulfur, above and beyond what is required for production purposes, in order to comply with EPA's stringent ultra-low sulfur gasoline and diesel regulations.[17] The removal of this additional sulfur in compliance with EPA regulations improves air quality by preventing the formation of sulfur-based air emissions.

The Executive Director argues that because some hydrotreaters are used as production equipment, these specific downstream hydrotreaters are therefore also production equipment. The hydrotreaters for which Valero is seeking a pollution control tax exemption, however, are not used for any of these production purposes but are used only for pollution control purposes. The other equipment on the Equipment and Categories List (the "ECL") provide an apt comparison. The ECL is a result of the Legislature's direction to TCEQ to develop a nonexclusive list of facilities, devices, or methods used for the control of air, water, or land pollution.[18] The statute directs the Commission to adopt rules that are "sufficiently specific to ensure that determinations are equal and uniform.[19]

Even a cursory examination of the ECL shows many examples of property that can be either pollution control property or production equipment depending on their specific use. For example, piping is often used for production purposes including transporting feed stock and refined product. Piping used as production equipment would not be eligible for the pollution control exemption. Piping dedicated to pollution control projects, such as when used as part of vapor recovery equipment, however, is not denied a positive use determination based on its potential for use as production equipment in other instances. Similarly, the fact that hydrotreaters can be and are in use as production equipment in other stages of the refining process should not control the use determination for these specific pollution-reducing hydrotreaters.

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[16] "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." *Op. Tex. Att'y Gen. No. JC-0327* (2001).

[17] The EPA acknowledged that the low sulfur regulations would require most refineries "to install at least one desulfurization processing unit to lower gasoline sulfur to the required levels." 65 FR 6753 (Feb 10 2000).

[18] TEX. TAX CODE § 11.31(k).

[19] TEX. TAX CODE § 11.31(g).

Valero has sought positive use determinations only for that property that meets the statutory requirements for a tax exemption. It is not Valero's intent to secure an exemption for any property that is productive equipment and not pollution control equipment.

Valero Installed the Downstream Hydrotreaters to Meet EPA Regulations

TEX. TAX CODE § 11.31(b) states that pollution control property is property that is installed wholly or partly to meet or exceed 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. Valero installed its downstream hydrotreaters solely in response to the EPA's adoption of the low sulfur gasoline and ultra-low sulfur diesel regulations.[20] Valero's downstream hydrotreaters were installed wholly to meet the rules adopted by the EPA for the prevention of air pollution and meet the statutory criteria for pollution control property.

V. The XTO Case Does Not Represent Controlling Authority

The fact that Valero has installed its downstream hydrotreaters solely in response to the EPA regulations draws an important distinction between Valero's applications and the positive use determination applications at issue in the XTO Case. The Executive Director states that the Commission was confronted with and rejected a similar argument in the XTO case. Valero believes that any similarity to the XTO case is limited to the removal of sulfur from a product stream. The applications for XTO and Valero are distinguishable for the following reasons.

1. XTO Requested a Tax Exemption for an Entire Plant – Valero's Applications Did Not

XTO applied to the TCEQ for a use determination for the entire Teague Paques Gas Treating Plant. In its application, XTO stated that the plant "is designed to treat sour gas by removing hydrogen sulfide due to environmental concerns."[21] The application included all costs associated with running the facility including an office building and maintenance facility. In contrast, Valero has asked the Commission for positive use determinations restricted to only those facilities required to be installed to meet federal low sulfur gasoline and ultra-low sulfur diesel regulations.

2. XTO's Equipment Was Market Driven – Valero's is Driven by a Federal Environmental Mandate

XTO sought authorization from the TCEQ to build and operate a gas plant to remove hydrogen sulfide from the produced gas stream. XTO's decision to build a gas plant was a business decision and was not driven by a federal or state environmental regulation. In the XTO case the Commissioners repeatedly stressed this point.

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[20] 40 CFR Pt. 80.

[21] Application of XTO for Determination of Pollution Control Equipment at 3.

Commissioner Soward asked the Executive Director's staff. "Can you point to me a state or federal regulation that requires this hydrogen sulfide to be stripped off?" Commissioner Soward continued stating that there "is no obligation on the part of this company to strip this gas off." "It is a market item."[22]

In contrast, Valero is required by the regulations of the federal environmental agency to remove sulfur from its diesel and gasoline products.

3. XTO was Not Meeting or Exceeding an Environmental Regulation – Valero is

In its application, XTO listed 30 Tex. Admin. Code Ch. 116 as the relevant rule, regulation, or statutory provision requiring the treatment of the sour gas.[23] 30 Tex. Admin. Code Ch. 116 contains the state's new source review permitting regulations. 30 Tex. Admin. Code Ch.116 does not require any entity to apply for a permit to build a gas plant to treat sour gas by removing hydrogen sulfide. During the XTO deliberations, Commissioner Soward reiterated his request of the Executive Director's staff. "Could you point to me a regulation that would say that this gas could not go into this pipeline?" Gary McArthur, representing the Executive Director responded by shaking his head "no."

Near the end of the Commission deliberations, Chairman White was joined by the other two Commissioners in repeating this point.

Chairman White began, "Unless you can identify a specific federal, state or other environmental rule..." Commission Soward continued, "that says they are required to extract it..." Chairman White continued, "Yea." She was followed by Commissioner Soward, who said, "I don't think they are going to find that." Commissioner Marquez concluded, "And it has to be an environmental rule. It cannot be a Federal Trade Commission or Transportation Commission or Homeland Security... It has to be an environmental rule."

In contrast, Valero has identified EPA's regulations at 40 CFR Part 80 as the regulatory driver for its installation of the downstream hydrotreaters. These regulations require refineries to remove sulfur from their diesel and gasoline streams. The Executive Director, in the technical review of Valero's applications, has confirmed that this is an applicable environmental rule.[24]

4. No Decision by Commission on Separation of Sulfur from Gasoline or Diesel

It is also clear from a review of the deliberations of the Commissioners in the XTO case that the Commission did not decide the issues of (i) whether the separation of sulfur from gasoline or diesel through the use of downstream hydrotreaters qualifies as pollution control, or (ii) whether such separation would or would not constitute an environmental benefit at the site.

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[22] The excerpts are derived from a listening of the audio recording of the September 28, 2005 Commission Agenda Meeting. This audio recording is available on the TCEQ's website.

[23] Application of XTO for Determination of Pollution Control Equipment at 2.

[24] See, e.g., Staff Technical Review Document for the Valero Texas City Refinery, issued April 13, 2007.

VI. Valero is Not a Manufacturer of Pollution Control Property

The Executive Director claims in its Response that Valero is disqualified from the pollution control property tax exemption in Section 11.31 on the basis that Valero is a manufacturer of pollution control property. Valero is not a manufacturer of pollution control property; it is a refiner of gasoline, diesel, asphalt and other crude-oil-derived products.[25] The suggestion by the Executive Director that low sulfur gasoline and ultra low sulfur diesel are somehow pollution control property is technically incorrect[26] and ultimately misconstrues the scope and purpose of the "manufacturing exclusion" under Section 11.31 of the Tax Code.

The statute states:

> "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."

As was made clear in a 1996 Attorney General Opinion, the origin of the exclusion was an amendment by Representative Berglanga in response to the bill's sponsor, Representative Stiles, who wished to make clear that the tax exemption did not apply to persons in the pollution control business.[27]

In rendering his opinion, the Attorney General concluded that the legislative history makes clear that the "manufacturing exclusion" in Section 11.31(a) applies to manufacturers engaged for profit in the commercial trade of pollution control property as well as those who are primarily engaged in the commercial business of pollution control or abatement:

> "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 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."

Op. Tex. Att'y Gen. No. 96-128 at 3.

In furthering an argument regarding the exclusion of certain landfills from the Section 11.31 exemption, the Attorney General contrasted that "a device employed by a business to reduce environmental pollution as mandated by law is exempted from property tax by the statute."[28] This is exactly the case with downstream hydrotreaters which are employed by refiners to

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[25] *Infra*, p. 5.

[26] Gasoline and diesel, no matter what their sulfur content, release emissions into the environment when they are combusted. It is hard to understand how a product that creates emissions when used, and therefore which itself does not reduce, control, or prevent pollution, can somehow simultaneously be considered pollution control property.

[27] *Op. Tex. Att'y Gen. No. 96-128* at 2.

[28] *Id.* at 3.

prevent air pollution and which are installed and operated to comply with federal regulatory requirements.

Fuels Compared to Fuel Additives. While gasoline and diesel, in and of themselves, are not pollution control property, there are fuel-related products that do constitute pollution control property. For example some producers of diesel are currently meeting TxLED (Texas Low Emission Diesel) regulatory requirements through the purchase of TCEQ-approved fuel additives. The TxLED program requires that producers of diesel consumed in regulated Texas counties meet certain emission reduction targets. These targets can be met through the use of third-party additives. The manufacturer of the additives is not entitled to an exemption under the statutory language because the additive is a product that prevents air pollution.

Fuel Additives Compared to Downstream Hydrotreaters. Because the additives are manufactured and marketed as a pollution control product, they are not eligible for a determination. Similar to the TxLED fuel additives, Valero's downstream hydrotreaters are purchased from third parties and are used to reduce or prevent air pollution through the removal and sequestration of sulfur compounds from gasoline and diesel. Valero does not manufacture the hydrotreaters but it does purchase, install, and operate them in order to meet EPA regulatory mandates in 40 CFR Part 80.

VII. Regulatory Analysis

TCEQ Regulatory Requirements

Valero meets the requirements for a pollution control property tax exemption under TEX. TAX CODE § 11.31. Valero also meets all of the requirements for the exemption under the TCEQ rules. In addition to the statutory elements, TCEQ rules contain several requirements that must be met in order to qualify for a pollution control property tax exemption. The applicant must submit a commission application form containing all required information and the appropriate fee.[29] If the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the ECL, the application must include a worksheet showing the Cost Analysis Procedure, including information regarding marketable byproduct, relating to a partial determination.[30] The Flow Chart included in 30 Tex. Admin. Code § 17.15(a) includes a requirement that there be "an environmental benefit at the site." Lastly, there is a requirement that the applicant respond to a request for further information issued by the Executive Director in accordance with 30 Tex. Admin. Code § 17.12.

Valero complied with all of these TCEQ regulatory requirements. Valero submitted its applications along with the appropriate fees and all information required for a Tier II application. The worksheet showing the Cost Analysis Procedure and marketable byproduct deduction was not required to be submitted, as Valero's downstream hydrotreaters are used wholly for the control of air, water, or land pollution.[31] Valero satisfied the environmental benefit at the site requirement, and timely responded to the Executive Director's request for further information

[29] 30 TAC § 17.10.
[30] *Id.*
[31] *Id.*

with regard to its applications. Valero's compliance with the TCEQ requirements is discussed in further detail below.

Valero Meets the Environmental Benefit at the Site Requirement

TCEQ rules require that there be an "environment benefit at the site" for property to be eligible for a positive use determination.[32] Valero has met this requirement. The "environmental benefit at the site" requirement is not found in the statute, but was added by the TCEQ in 2001 in response to HB 3121 which required the Agency to adopt rules to ensure that determinations are "equal and uniform."[33] The TCEQ has provided no interpretation of what is meant by "environmental benefit at the site," nor has the agency issued any guidance or other policy documents discussing the meaning or application of this provision. Therefore, one must look to the words of the phrase, the history of its adoption and the manner in which it has been applied, particularly as is evidenced in the previous Pre-approved Equipment Lists ("PEL") or the recently adopted ECL. Once harmonized with the agency's previous use determination, it is clear that under any reasonable interpretation, Valero's downstream hydrotreaters meet the requirement of providing an environmental benefit at the site.

The most conservative interpretation of the requirement, which is now being argued by the Executive Director, would limit positive use determinations to pollution control properties that produce an environmental benefit within the fence line of a site. Valero's downstream hydrotreaters provide an environmental benefit at the site in the following ways: reductions in H_2S emissions from fugitive components; reductions in H_2S emissions from product tanks and loading and unloading facilities; reductions in H_2S content in refinery fuel gas (and therefore SO_2 emissions when combusted); and reductions in emissions from company and employee owned vehicles. For all of these reasons, Valero meets the requirement of even the most conservative definition of "environmental benefit at the site."

The Executive Director argues that Valero does not meet the "at the site" requirement because of an incidental increase in emissions at the site.[34] Using the PEL and the ECL as guideposts, any incidental increase would not prevent Valero from meeting the "at the site" requirement. There is in fact an environmental benefit at the site. The rule does not require that there not be any increase in emissions at the site in addition to an environmental benefit at the site. Any suggestion that the rule prohibits any increase in emissions at the site would be inconsistent with the ECL and would violate the statute's requirement that use determinations be equal and uniform.[35]

In adopting the "environmental benefit at the site" requirement in its rules, the Commission included no limitations or standards as to the size, significance or nature of the required benefit.[36]

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[32] 30 TAC § 17.15(a).

[33] TEX. TAX CODE § 11.31(g).

[34] In adopting the regulations, the EPA acknowledged that although "residual emissions increases at some refineries" could be expected, "for the vast majority of areas, we believe that these potential refinery emissions increases will be very small compared to the Tier 2 benefits in those same local areas." 65 Fed Reg. 6774 (Feb. 10, 2000).

[35] *See* TEX. TAX CODE § 11.31(g).

[36] This omission is consistent with the commission's limited discretion under the statute to deny a determination for pollution control equipment, as well as the statutory boundaries already in place to safeguard unmerited

This unlimited meaning is clarified by the adoption history of the rule, where commenters objected that an applicant should not be required to show a "net" or "quantifiable" environmental benefit. This meaning is also consistent with both the generally broad language of the underlying statute.[37] Thus, the commission seems to have intended that the rule requirement be just that of showing *an* "environmental benefit at the site" and not a showing of a "quantifiable environmental benefit,"[38] or a "net environmental benefit." This sensible interpretation is illustrated by examining several determinations recently adopted on the ECL.

- **Stacks**. This equipment provides no emission reductions since the amount of pollutants emitted remains the same. Instead, by raising the emissions point and allowing better dispersion of pollution, they provide the benefit of minimizing the concentration of pollution where the public is exposed which in most instances is distant from the site. In fact, the use of stacks and the calculation of stack heights is required in NSR authorizations as part of emissions modeling to ensure that offsite impacts are protective of human health and the environment. Stacks are granted a 100% determination for the increase in stack height.

- **Flares**. This equipment decreases emissions and/or volumes of some pollutants while generating other pollutants and impacting other media. The equipment is allowed a 100% determination.

- **Selective Catalytic and Non-Catalytic Reduction Systems**. This equipment reduces NO_x emissions from engines and boilers, and is included on the ECL at 100% even though these systems result in new ammonia emissions or "ammonia slip."[39] An applicant is not required to weigh the increases in ammonia slip with the decrease in NO_x emissions. Instead, agency review focuses simply on the NO_x reduction benefits.

- **Solid Waste Incinerators**. This equipment is listed on the ECL and is allowed a 100% exemption when not used for energy recovery or material recovery.[40] These incinerators, along with associated feed systems, ash handling systems, and other controls generate additional air emissions at the site.

- **Stationary Waste Mixing, Stabilization and Grinding Facilities, Water Disinfection Facilities**. This group of facilities is given a 100% exemption even though the equipment generates cross-media impacts. The use of stationary mixing and sizing equipment for solidification, stabilization, and grinding of waste materials for the purpose of disposal or

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determinations. These include the requirement that the equipment be installed to meet a requirement of an environmental agency.

[37] *Op. Tex. Att'y Gen. No. JC-0327* (2001).

[38] Per changes made to the rule in response to comments during the rulemaking process. *See* Executive Director's Response at 24.

[39] ECL Item A-80.

[40] ECL Item S-3.

in-house recycling generates air emissions in the form of particulate matter at the site.[41] Water disinfection facilities may also generate chlorine emissions.[42]

These are just a few examples. Others include distillation recycling systems,[43] automotive dynamometers,[44] and wet and dry scrubbers.[45] In light of this guidance, it is clear that "environmental benefit" has been construed to mean the existence of at least some benefit to the environment but not necessarily a total or complete benefit.

Benefit in the Area of the Site: Harmonizing the ECL

While the Executive Director's Response advocates an extremely literal and rigid interpretation of environmental benefit at the site, another interpretation, consistent with past determinations, is possible and much more reasonable. Under such an interpretation, the demonstrated environmental benefit would inure to the area of the site, not just the site itself. Several items on the ECL present compelling examples of this interpretation and are discussed below.

- **Automotive Dynamometers**. This equipment is used for the in-house emissions testing of fleet vehicles and is granted a 100% exemption.[46] The environmental benefit resulting from the use of these dynamometers does not occur until after the detection and correction of malfunctions. The benefit occurs when and wherever the vehicle is driven. When the vehicle is driven on-site, the environmental benefit will occur on-site, and when the vehicle is in use off-site, the emissions reductions will occur off-site. The area as a whole benefits from this reduction in emissions.[47]

- **Slurry and Barrier Walls**. These methods of pollution control utilize a barrier to minimize the lateral migration of pollutants in soil and groundwater and are granted a 100% exemption.[48] These methods provide a definite benefit off-site, but no benefit within the site.

- **New Stack Construction, Stack Modifications, and Stack Repairs**. These categories of equipment are included on the ECL as pollution control property at 100%.[49] Stacks are used to disperse pollution, but do not provide any actual reduction in that pollution either on or off-site. Their environmental benefit is the dilution of the pollution by

[41] ECL Item S-1.
[42] ECL Item W-20.
[43] ECL Item M-5.
[44] The example of automotive dynamometers is particularly instructive. This equipment undoubtedly increases emissions at the site, and only results in a reduction in emissions upon detection and correction of the failure of an emissions control system. Although this is discussed in the next section, the example of dynamometers also illustrate one aspect of the agency's interpretation of the "at the site" component. For dynamometers, the environmental benefit occurs only at the point of the inspected (and corrected) automobile's use, whether on the site or in another state. Thus, although the emissions may be very small, occur only occasionally, and may or may not occur on site, this equipment produces some benefit and is required by rule. For this reason, the ECL provides a 100% determination.
[45] ECL A-168.
[46] ECL Item A-67.
[47] The agency does not require a partial determination for on site versus off site use.
[48] ECL Item S-15.
[49] ECL Item A181, 182, 183.

dispersion to a larger area. To the degree the stacks cause the emissions to be less concentrated, there is a demonstrable environmental benefit in the area of the site.

- **Injection Wells**. This equipment is included on the ECL and allowed a 100% exemption.[50] Injection wells that accept waste from other off-site areas provide no environmental benefit on-site, but do provide a significant environmental benefit to the area.

- **Fish and Other Aquatic Organism Protection Equipment**. This equipment is included on the ECL and is granted a 100% exemption.[51] This equipment is installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Such equipment can include among other items aquatic filter barrier systems, fine-mesh traveling intake screens, fish return buckets, and sprays. This protection equipment does not control pollution either on or off-site. It also provides no environmental benefit on-site. At best, it encourages conservation and protection of aquatic wildlife which could create an environmental benefit for the area.

This is only a partial list; other examples include detention ponds, landfill liners, off-site ambient air monitoring facilities, double-hulled barges, stormwater and waste water outfalls, API separators, and CFC replacement projects.[52]

Valero's downstream hydrotreaters provide an environmental benefit at the site even under the most restrictive interpretation advanced by the Executive Director. Like much of the other equipment found on the ECL, these hydrotreaters create an even more significant environmental benefit *in the area of the site* by removing sulfur compounds from gasoline and diesel, therefore preventing the formation of SO_2 emissions in the immediate air shed. In its adoption of the regulations, the EPA stated: "the Tier 2/gasoline sulfur rule will achieve environmental benefits in the local areas where refineries are located, due to reductions in tail pipe emissions from vehicles driven in those areas."[53]

It would be inconsistent to designate equipment on the ECL that creates significant environmental benefits in the area of the site as pollution control equipment while denying the same designation for these hydrotreaters. TEX. TAX CODE § 11.31 requires the Commission to adopt rules that are "sufficiently specific to ensure that determinations are equal and uniform."[54] With respect to Valero's downstream hydrotreaters, any discrepancy between this equipment and the ECL is unnecessary and can be resolved by following the previous practice of granting positive use determinations for pollution control property that provides an environmental benefit in the area of the site.

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[50] ECL Item S-17.
[51] ECL Item M-22.
[52] *See* 30 TAC § 17.14.
[53] 65 Fed. Reg. 6774 (Feb. 10, 2000).
[54] TEX. TAX CODE § 11.31(g).

VIII. The Trent Wind Farm Decision Does Not Support Denial of Valero's Applications

The Executive Director has pointed to the Trent Wind Farm case in support of its narrow reading of the "at the site" criterion.

Trent Wind Farm involved an application for a partial use determination of a new wind turbine facility in West Texas that was constructed to help meet the renewable energy goals in the Texas Utilities Code and related PUC rules. The turbines did not replace any existing or planned conventional generating equipment and, importantly, were not installed or constructed to comply with any environmental regulation of any environmental agency. The TCEQ's denial of a use determination was first appealed to the Commission and then to district court where the case was ultimately decided on summary judgment grounds.

In court, the TCEQ provided four separate grounds for potentially denying Trent's application. First, the agency argued that wind turbines were so different from gas turbines that they were not comparable for purposes of a partial determination.[55] Second, the TCEQ argued that the wind turbines did not satisfy the rule requirement that there be "an environmental benefit at the site."[56] Third, the TCEQ argued that the PUC rule regarding renewable energy[57] was not a rule or regulation "adopted by any environmental protection agency of ... this state."[58] Finally, the state argued that the wind turbines did not qualify for a use determination because the turbines were solely production equipment, and not pollution control property.[59]

In granting the State's Motion for Summary Judgment, the Court did not affirm or deny the "environmental benefit at the site," criterion nor did it opine on the scope of that requirement. Although the Executive Director uses Trent to support its interpretation of the "at the site" requirement, the fact is that we do not know on which of the several grounds the Court upheld the TCEQ's denial of Trent Wind Farm.

IX. Response to NOD

The Executive Director's Response indicated Valero was not responsive to an agency request in support of a partial use determination. Valero did in-fact respond to the TCEQ request by stating that, because Valero believed its hydrotreaters qualified for a full use determination, it did not make sense to provide documentation in support of a lesser, partial use determination. In hindsight, Valero recognizes that its response was unnecessarily abbreviated and could have contained more discussion on this point.

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[55] *See* Texas Commission on Environmental Quality and Margaret Hoffman's Additional Motion for Summary Judgment at 3. Trent Wind Farm, L.P. v. Texas Commission on Environmental Quality, Cause No. GN2-04045, In the 200th Judicial District Court of Travis County, Texas.

[56] *See* Texas Commission on Environmental Quality and Margaret Hoffman's Motion for Summary Judgment at 20. Trent Wind Farm, L.P. v. Texas Commission on Environmental Quality, Cause No. GN2-04045, In the 200th Judicial District Court of Travis County, Texas.

[57] 16 TAC § 25.173.

[58] *Id.* at 22.

[59] *See* Texas Commission on Environmental Quality and Margaret Hoffman's Response to Trent Wind Farm's Motion for Summary Judgment at 6. Trent Wind Farm, L.P. v. Texas Commission on Environmental Quality, Cause No. GN2-04045, In the 200th Judicial District Court of Travis County, Texas.

Nevertheless, it bears noting that although Valero has been in communication with the TCEQ staff over the course of the past year and has been generally available to address any perceived shortfalls in its response, no such request for supplementation was made. Moreover, had staff at the time believed that Valero's response was inadequate, as it now asserts, the proper procedure would have been to return the application to Valero, allowing Valero an opportunity to correct and refile the application accordingly.[60]

X. Conclusion

Valero's downstream hydrotreaters are Pollution Control Property as defined in TEX. TAX CODE 11.31 and are therefore properly eligible for an exemption from ad valorem taxation under that Code. These hydrotreaters were installed solely to comply with the low sulfur gasoline and ultra-low sulfur diesel standards mandated by EPA in its regulations at 40 CFR Part 80.

Valero's downstream hydrotreaters also are not production equipment and are in no way necessary or even useful to the production of on-road or off-road gasoline or diesel. Indeed, installation and use of these hydrotreaters adds a burden to refiners in terms of ongoing operation and maintenance costs, and furthermore results in a slight decrease in gasoline and diesel yields.

Valero does not manufacture Pollution Control Property nor is it in the commercial business of providing pollution control services. The hydrotreaters that are subject to the Section 11.31 tax exemption are manufactured by a third party, and are purchased, installed, and used by Valero to meet mandatory environmental regulations.

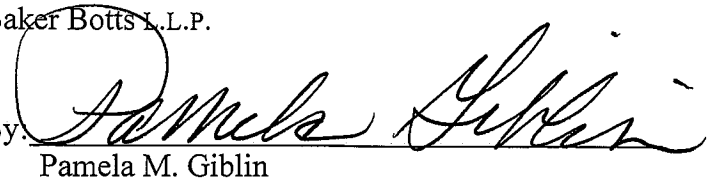
Valero's hydrotreaters provide a tangible "environmental benefit at the site," even under the most conservative interpretation of that phrase, consistent with properties that have previously been approved by the Commission as part of the PEL and, more recently, the ECL.

For all these reasons, Valero respectfully requests that the Commission remand the company's downstream hydrotreater use determination to the Executive Director for a new determination pursuant to the provisions of 30 Tex. Admin. Code § 17.25.

[60] 30 TAC § 17.12(2).

Respectfully submitted,

Baker Botts L.L.P.

By: 

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CERTIFICATE OF SERVICE

I certify that on May 19, 2008, copies of the "Valero Refining – Texas, L.P., Diamond Shamrock Refining Company, L.P., and the Premcor Refining Group, Inc.'s Reply to the Executive Director, Public Interest Counsel, Galveston Central Appraisal District, and the Harris County Appraisal District's Response Briefs to the Appeal of the Executive Director's Negative Use Determinations" was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, and was served by first-class mail or facsimile to all persons on the attached mailing list.

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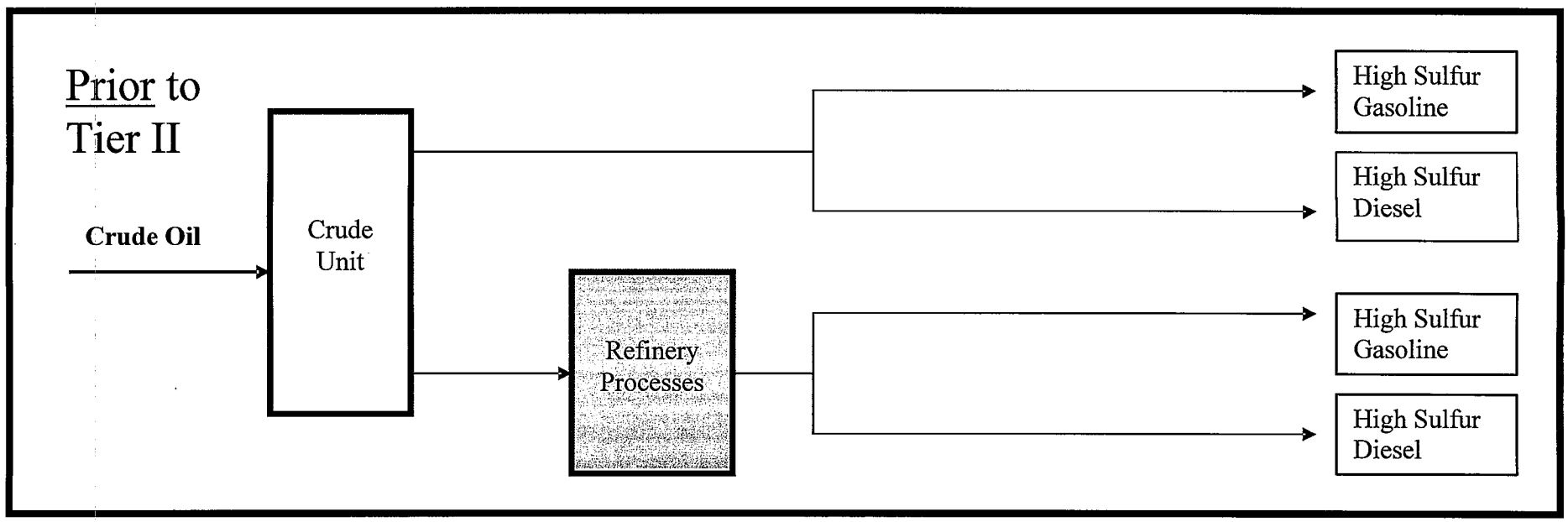
TIER II COMPARISON FLOWCHART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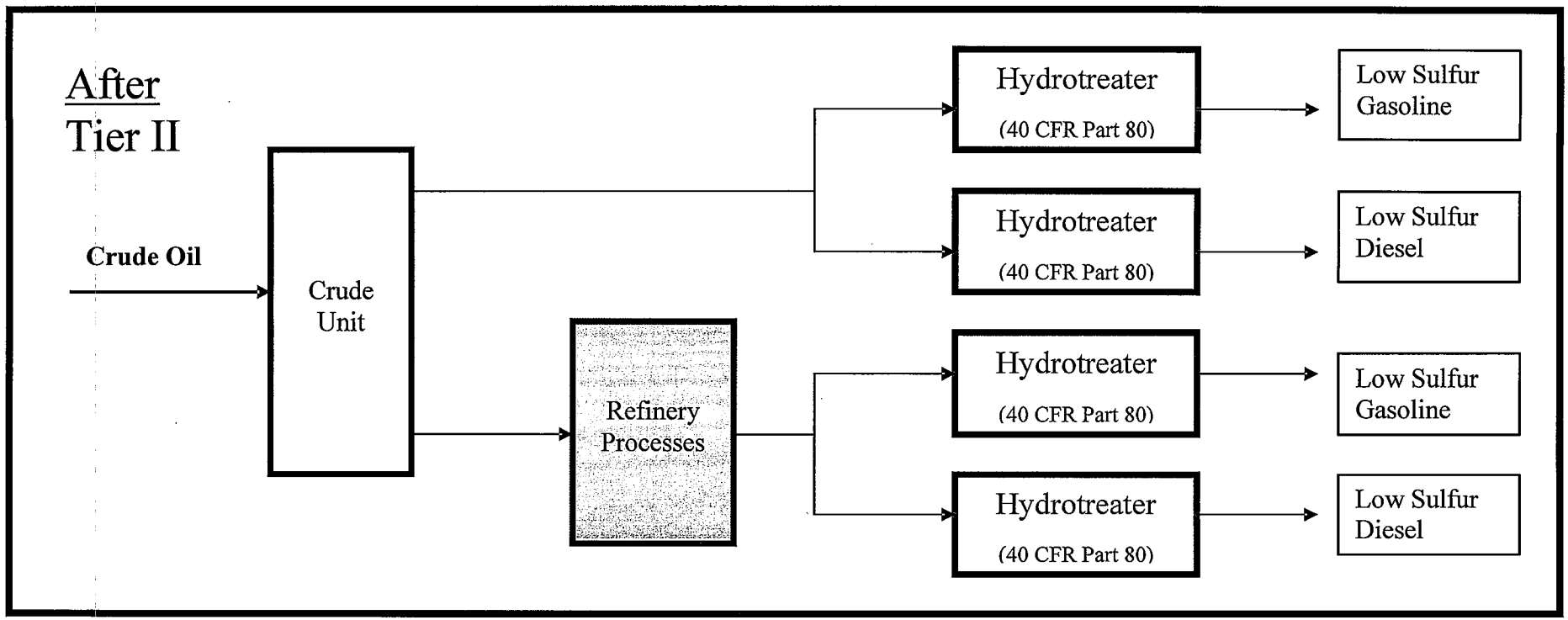
After
Tier II
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Crude Unit
Refinery Processes
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(40 CFR Part 80)
Hydrotreater
(40 CFR Part 80)
Hydrotreater
(40 CFR Part 80)
Hydrotreater
(40 CFR Part 80)
Low Sulfur Gasoline
Low Sulfur Diesel
Low Sulfur Gasoline
Low Sulfur Diesel

TEX. TAX CODE § 11.31

§ 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 Acts 1993, 73rd Leg., ch. 285, § 1, eff. Jan. 1, 1994.
Amended by Acts 2001, 77th Leg., ch. 881, § 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1277, § 4, eff. September 1, 2007.

30 TAC Chapter 17

CHAPTER 17
TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION
§§17.1, 17.2, 17.4, 17.6, 17.10, 17.12, 17.14, 17.15, 17.17, 17.20, 17.25
Effective February 7, 2008

§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.

Adopted January 16, 2008 Effective February 7, 2008

§17.2. Definitions.

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

(1) **Byproduct**--A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the name of the applicant;

(B) the name and location of the facility;

(C) the property description;

(D) in the case of a Tier III application, a copy of the Cost Analysis Procedure worksheet;

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

(F) any other information the executive director deems relevant to the use determination.

Adopted January 16, 2008 Effective February 7, 2008

§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.

Adopted January 16, 2008 Effective February 7, 2008

§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.

Adopted May 26, 1999 Effective June 17, 1999

§17.10. Application for Use Determination.

(a) In order to be granted a use determination a person shall submit to the executive director:

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

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

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

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

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

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

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

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

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

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the Equipment and Categories List, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this 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.

Adopted January 16, 2008 Effective February 7, 2008

§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.

Adopted January 16, 2008 Effective February 7, 2008

§17.14. Equipment and Categories List.

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

Equipment and Categories List
Part A

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

Air Pollution Control Equipment

No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork— used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges — used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection by creating an electric field between positive or negative	100

No.	Media	Property	Description	%
			electrodes and collection surface.	
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators, with blowers, ductwork, etc. used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. - used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control (VOC) Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H_2S) or Nitrogen Oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final 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

No.	Media	Property	Description	%
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, gas find Infrared (IR) Cameras, etc. constituting a monitoring system required to demonstrate compliance with emission limitations of regulated air contaminants. (Including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, gas find IR Cameras, etc. used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing of fleet vehicles in order to reduce emissions.	100
Control of Nitrogen Oxides				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide (NO_x) emissions from engines/boilers. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for	100

No.	Media	Property	Description	%
			reduction of NO_x formation. May include flyash collection in coal fired units.	
A-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO_x emissions.	100
A-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NOx formation.	20
A-88	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO_x.	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NOx emissions from existing internal combustion engines used to drive natural gas compressors These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO_x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing	100

No.	Media	Property	Description	%
			NOx including directly related equipment.	
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NOx control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove VOCs or odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from above ground storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints in order to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100
Mercury Control				
A-133	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, particulate collection devices, etc. needed for the equipment to function.	100
A-134	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-135	Air	Mercury Absorbing Filters	Filters which absorb mercury such as those using the affinity between mercury and metallic	100

No.	Media	Property	Description	%
			selenium.	
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
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	The incremental cost difference between the new paint booth and the replaced paint booth.	100

No.	Media	Property	Description	%
		increased pollution prevention or control)		
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

No.	Media	Property	Description	%
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

No.	Media	Property	Description	%
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

No.	Media	Property	Description	%
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-65	Water	Stormwater Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen. Meter, Chart Recorder, etc.	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or Carbon Dioxide (CO_2) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
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	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100

No.	Media	Property	Description	%
		material recovery)		
S-4	Land/ Water/ Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. in waste treatment system (Does not include fire alarms).	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent ground water or soil contamination.	100
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Non-Commercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit. (e.g., below the treatment zone of a land treatment unit, etc.)	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit. (e.g., detection monitoring systems, compliance monitoring systems)	100
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water.	100
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	100
S-17	Water	Injection Wells (Including Saltwater Disposal Wells)	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100

No.	Media	Property	Description	%
		and Ancillary Equipment		
S-18	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-19	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	100
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	100
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities. (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100
S-26	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100
M-2	Air/ Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal.	100
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Land/ Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-8	Air/ Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	100
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, 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	Consisting of only the Shaker Tank System, Shale	100

No.	Media	Property	Description	%
		System	Shakers, Desilter, Desander, & Degasser.	
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Unit and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-19	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-20	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion of metal tanks and piping.	100
M-22	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-23	Water /Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100
M-24	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges.	100

Equipment Located at Service Stations

No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to	100

			automatically stop the flow of product.	
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-11	Water	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges or leaks.	100
T-12	Water	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges or leaks.	100
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-16	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the Service Station. This item only applies to Service Stations.	100
Release Detection for Tanks and Piping				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-24	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-25	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate	100

			underground piping from above ground tanks and piping.	
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Part B

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

No.	Property	%
B-1	Coal Cleaning or Refining Facilities	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	V
B-3	Ultra-Supercritical Pulverized Coal Boilers	V
B-4	Flue Gas Recirculation Components	V
B-5	Syngas Purification Systems and Gas-Cleanup Units	V
B-6	Enhanced Heat Recovery Systems	V
B-7	Exhaust Heat Recovery Boilers	V
B-8	Heat Recovery Steam Generators	V
B-9	Super heaters and Evaporators	V
B-10	Enhanced Steam Turbine Systems	V
B-11	Methanation	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	V
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	V
B-15	Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based	V

	Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology	
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.

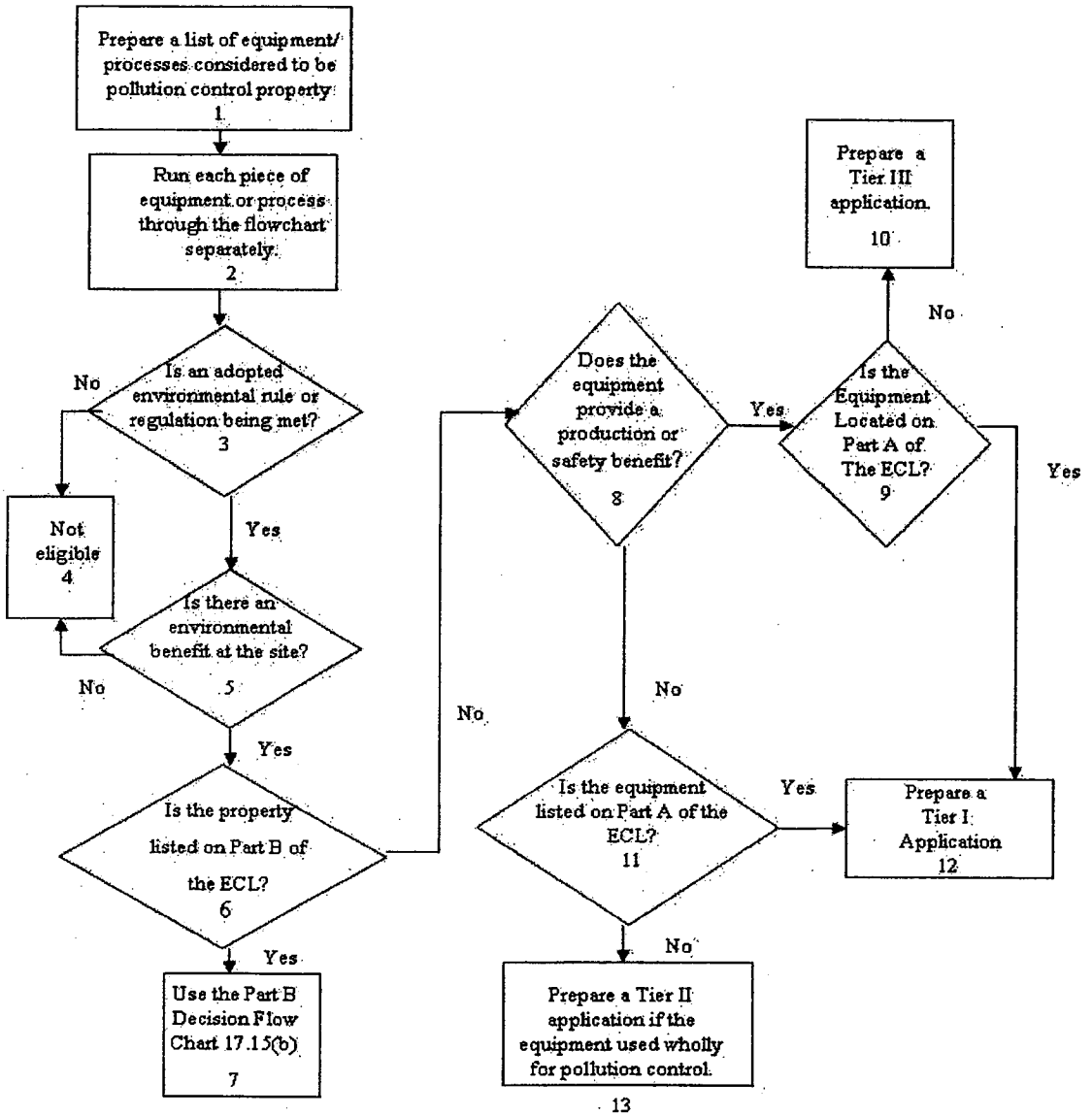
Adopted January 16, 2008 Effective February 7, 2008

§17.15. Review Standards.

(a) The Decision Flow Chart shall be used for each item of property or process, submitted in a non-Tier IV use determination application to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Decision Flow Chart when acting on a non-Tier IV use determination application.

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

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



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

Where:

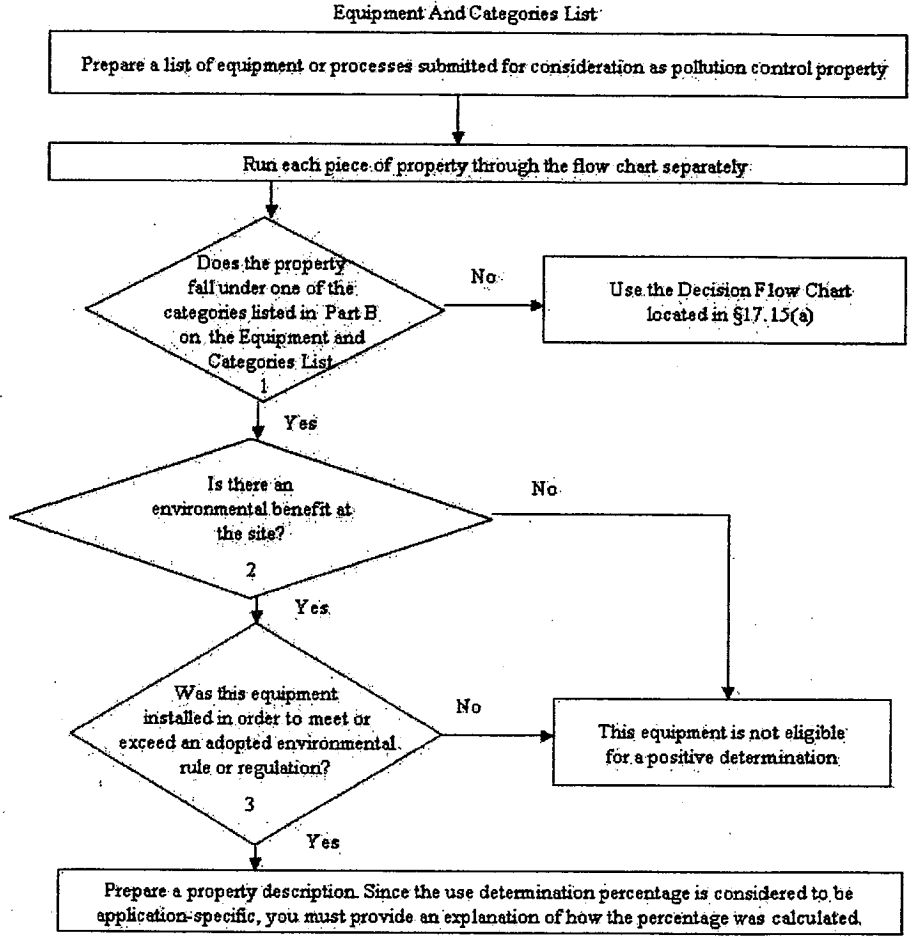
- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
- 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)

$$\left[\frac{(\text{Production Capacity Factor}^{1} \times \text{Capital Cost New}^{2}) - \text{Capital Cost Old}^{3} - \text{Byproduct}}{\text{Capital Cost New}^{2}}\right] \times 100$$

Where:

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

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

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

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

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

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

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

Figure: 30 TAC §17.17(c)

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

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

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

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

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

(d) 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.

Adopted January 16, 2008 Effective February 7, 2008

§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.

Adopted January 16, 2008 Effective February 7, 2008

§17.25. Appeals Process.

(a) Applicability.

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

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

(A) the applicant seeking a use determination; and

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

(b) Form and timing of appeal. An appeal must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive directors action is mailed by first class mail. If an appeal meeting the requirements of this subsection is not filed within the time period specified, the executive director's use determination is final. An appeal filed under this subchapter must:

(1) provide the name, address, and daytime telephone number of the person who files the appeal;

(2) give the name and address of the entity to which the use determination was issued;

(3) provide the use determination application number for the application for which the use determination was issued;

(4) request commission consideration of the use determination; and

(5) explain the basis for the appeal.

(c) Appeal processing. The chief clerk shall:

(1) deliver or mail to the executive director a copy of the appeal;

(2) deliver or mail a copy of the appeal to the applicant if the appeal was filed by the chief appraiser or to the chief appraiser if the appeal was filed by the applicant; and

(3) schedule the appeal for consideration at the next regularly scheduled commission meeting for which adequate notice can be given.

(d) Action by the commission.

(1) The person seeking the determination and the chief appraiser may testify at the commission meeting at which the appeal is considered.

(2) The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's use determination.

(3) If the commission denies the appeal and affirms the executive director's use determination, the commission's decision shall be final and appealable.

(e) Action by the executive director.

(1) If the commission remands a use determination to the executive director, the executive director shall:

(A) conduct a new technical review of the application which includes an evaluation of any information presented during the commission meeting; and

(B) upon completion of the technical review, issue a new determination. A copy of the new determination shall be mailed to both the applicant and the chief appraiser of the county in which the property is located.

(2) A new determination by the executive director may be appealed to the commission in the manner provided by this subchapter.

(f) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, address, and daytime telephone number of the person who files the withdrawal, and the withdrawal shall indicate the identification number of the use determination. The withdrawal must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission.

Derivation Table
Rule Log No. 98050-277-AD
Tax Relief for Pollution Control Equipment
Adopted May 26, 1999
Effective June 17, 1999

Chapter 17 - Tax Relief for Property Used for Environmental Protection

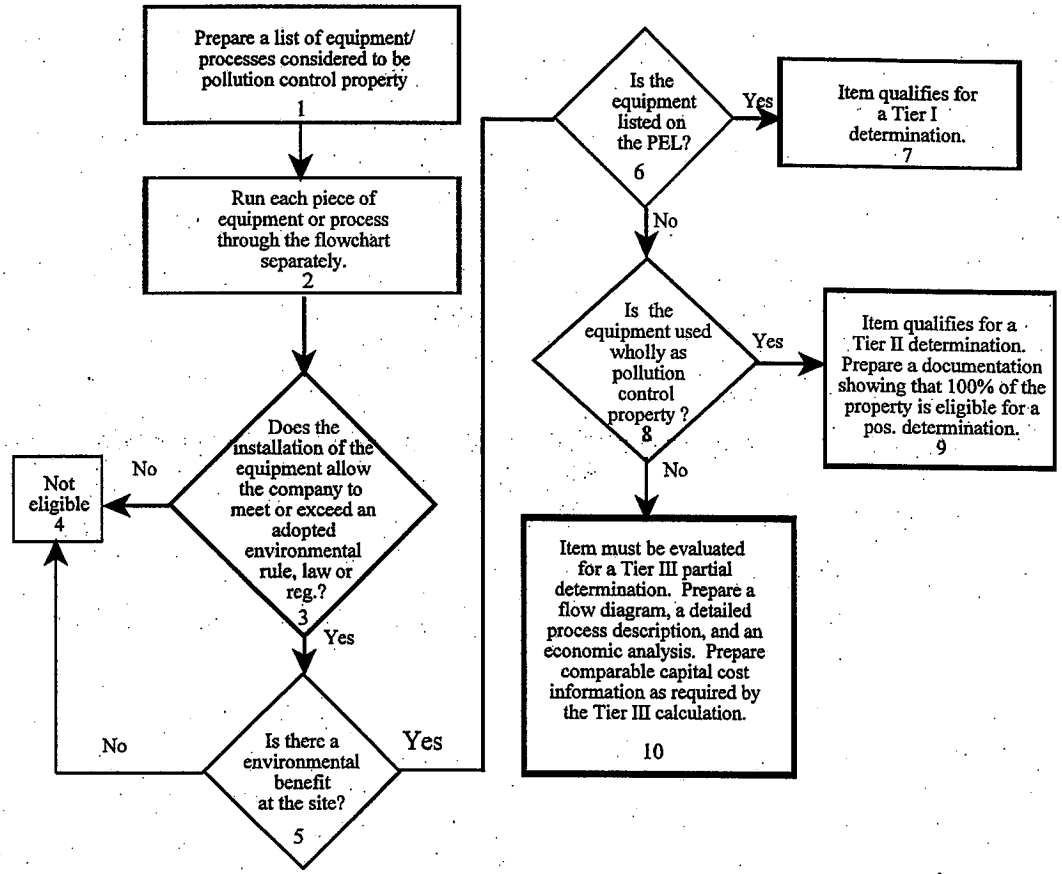
This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

New Section	Old Section
17.1	277.1
17.2	277.2
17.4	277.4
17.6	277.6
17.10	277.10
17.12	277.12
17.20	277.20

TCEQ DECISION FLOW CHART

Tax Relief Decision Flow Chart

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



TIER I - PREDETERMINATIONS

The TCEQ has developed a list of equipment that it has determined to be pollution control property. The PEL is located in Appendix A of this document. The most current version of this list may be obtained by contacting the TCEQ Tax Relief for Pollution Control Property Program (Tax Relief) or by accessing the TCEQ Web page. Follow the instructions in the section **Obtaining Publications** in this document.

The list contains property that is both wholly and partially pollution control. The specific types of equipment that are less than 100% were analyzed by TCEQ staff to determine the appropriate percentages. Most of the property contained on the list is used entirely for pollution control and is listed at 100%. Once a percentage has been established, that percentage is fixed for Tier I applications. Anyone seeking to obtain a different percentage must apply for a Tier III determination. The PEL is generic in nature and will not specify brand names.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[6]*Id.*

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

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

SUMMARY

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

Yours very truly,

James E. Tourtelott

James E. Tourtelott
Assistant Attorney General
Opinion Committee

AG OPINION JC-0372 (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-*l*, 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.

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[1]*See* 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].

[2]*See* 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-*l* (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.

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[3]*See* 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-*l*(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.

[4]A 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).

SUMMARY

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,

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

HRO BILL ANALYSIS HB3121

SUBJECT: Determining proportion of pollution-control equipment exempt from taxation

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Oliveira, McCall, Hartnett, Bonnen, Y. Davis, Heflin, Keffer, Ritter

0 nays

3 absent — Craddick, Hilbert, Ramsay

WITNESSES: For — Bill Allaway, Texas Taxpayers and Research Association; Ron Dipprey, Texas Chemical Council and Dow Chemical Co.; Donald Lee, Texas Conference of Urban Counties

Against — None

BACKGROUND: In 1993, voters amended the Texas Constitution to allow the Legislature to exempt from property taxes all or part of capital expenditures for pollution-control equipment and property (Art. 8, sec. 1-l). Tax Code, sec. 11.31 exempts equipment used, constructed, acquired, or installed wholly or partly to meet or exceed federal, state, or local requirements for preventing, monitoring, controlling, or reducing air, water, or land pollution.

The Texas Natural Resource Conservation Commission (TNRCC) determines whether and to what extent such equipment and property is exempt, including what proportion, if any, of the equipment or property is not used for pollution control. Motor vehicles and property used for residential, recreational, park, and scenic purposes are ineligible for the exemption, as are equipment and property that was subject to a tax abatement agreement executed before January 1, 1994.

DIGEST: CSHB 3121 would set procedures for TNRCC to follow in determining eligibility of equipment and property for the pollution-control tax exemption. It would require TNRCC to adopt rules that:

- established specific standards for considering applications for determining eligibility;

- were specific enough to ensure that determinations were equal and uniform; and
- allowed determinations to distinguish the proportion of the property used for pollution control from the proportion used to produce goods or services.

The TNRCC executive director could not determine that property was pollution-control property unless the property met the standards established by TNRCC rules.

The executive director would have to mail written determinations to an applicant and to the chief appraiser of the county where the property was located. Determinations would have to indicate what proportion of the equipment or property was used for pollution control. An applicant and an appraiser would have 20 days from receipt of a determination to appeal to TNRCC. The commission would have to consider the appeal at its next regularly scheduled meeting and allow testimony from the appellant. The commissioners could deny appeals and affirm determinations or remand them to the director, who would have to notify both parties in writing of any new determination, after which the same appeals process would apply. Such a proceeding would not be a contested case for purposes of Government Code, chapter 2001, subject to judicial review.

Applicants would have to submit copies of determinations to appraisers as to what proportions of their facilities, devices, or methods were deemed to be pollution controls. Appraisers would have to accept final determinations as conclusive evidence.

This bill would take effect September 1, 2001.

SUPPORTERS SAY:

CSHB 3121 would represent a compromise among regulators, industry, and taxing entities that would provide much-needed clarification on how to evaluate whether and to what extent equipment and property were eligible for the pollution-control tax exemption.

This exemption was created to encourage business and industry to remain in Texas while complying with the federal Clean Air Act. As technology has advanced, companies have installed more efficient equipment that, while not totally devoted to pollution control, significantly reduces emissions or other types of pollution. Over time, it has become less clear how to categorize such equipment for tax-exemption purposes.

TNRCC has granted partial exemptions under informal guidelines that it developed but does not have to follow. Some companies have sought full exemptions based on the percentage of emissions reduced or the degree of mitigation improvement, rather than on capital cost. They argue that new equipment that is 90 percent less polluting should receive a 90 percent exemption, or a 100 percent exemption if it does not pollute at all. This has led to confusion as to what standards to apply, because these circumstances were not anticipated when the Constitution was amended. It also has raised concerns among appraisers about tax-base erosion. In some cases, especially in heavily industrialized and large urban counties, these decisions can affect hundreds of millions of dollars' worth of property-tax valuations and millions of dollars in tax liability.

Businesses should not be taxed on purchases they were required by law to make. This is true of any size company, and the exemption would benefit small businesses as well. In fact, the exemption could mean more to smaller businesses, because they might not be in a position to seek tax abatements or other incentives.

CSHB 3121 would provide a more efficient mechanism to determine the eligibility of equipment and property that has both pollution-control and commercial production characteristics. Requiring TNRCC to set binding rules for its determinations, as it does for its other regulatory functions, would lead to fairer, more accurate, and more predictable determinations. The commission recently approved cost-formula guidelines that would fulfill the bill's requirements for uniform and equal partial determinations. The appellate procedure required by this bill also would bring chief appraisers into the process formally for the first time and would give them meaningful input.

OPPONENTS SAY:

CSHB 3121 would get the procedure backward for determining what proportion of new equipment should get a tax break for pollution control. Chief appraisers are the experts trained to determine how property is used for tax purposes. Of necessity, appraisers have much more familiarity and experience than TNRCC with how property and equipment are being used in the appraisers' districts. They should be making the exemption decisions on a case-by-case basis, with technical input from TNRCC if necessary, not the other way around. A few officials at a high-profile state agency inherently are more susceptible to political pressure than are local tax officials, who deal with challenges to their decisions on a regular basis.

OTHER OPPONENTS SAY:

CSHB 3121 should require the value of pollution-control equipment to be included in facilities' taxable values. The existing tax exemption has been a boon to big business at the expense of the environment and taxpayers. Texas is one of the most polluted states in the nation, with several major cities that fail to meet federal air-quality standards. The Legislature has created a perpetual and constantly expanding tax break that is moving beyond the original intent to include standard equipment that generates profit. Giving polluters tax breaks for not breaking the law sends the wrong message and penalizes the wrong people. Controlling pollution is another cost of doing business that should not be passed on to taxpayers who are not responsible for it.

NOTES:

HB 3121 as filed would have instructed TNRCC to set standards that would ensure that property used to produce goods or services was not tax-exempt, whereas the substitute would require proportional determinations. The original bill would have required chief appraisers to challenge determinations under the Administrative Procedures Act rather than appeal to TNRCC. Also, the original bill did not require TNRCC's executive director to mail determinations to appraisers.

1993 WAYS AND MEANS DELIBERATIONS ON HB 1920

Williamson:
That could have some impact on the relationship to state aid [inaudible] and the distribution of state aid to that school district.

Stiles:
It certainly could.

Williamson:
That would have some impact on the rest of the school districts receiving state aid.

Stiles:
Same thing would happen if there was a refinery in Weatherford or Corpus Christi or Victoria, or anywhere in the State. I think that's certainly a...that's right. [inaudible]

Wolens:
In Weatherford. Is that what you said? (Laughter)

Stiles:
I have no idea Mr. Williamson.

Williamson:
Is that what you were talking to?

Wolens:
No, but it does open up, I mean there are just a lot of other things. I mean, argument, I understand the argument about all the horrors that can happen, and I don't know that we have to reach all of those horrors to be persuasive to pass this particular substitute, but, its, its just not, it's not thoroughly and freshly truthful to say that it won't have an impact of fiscal note, because it is going to have fiscal note.

Stiles:
This is ....

Wolens:
Mark, Mark makes the argument that "yeah Steve, it may have a loss to the state theoretically, if you bring all of these pollution controls and Chevron and everybody else buys them and adds them on, and yes you could impose an ad valorem tax, and yes you will have more taxes generated for the taxing entities." But on the other hand, you may have some leaving the state to go to Chile to do whatever that they're going to do and just pick up and move and therefore having a, a uh devastating impact on the ad valorems in a particular county. And it is a little bit of giving and taking uh and to the extent that people would pick up and go to Chile then maybe they would or maybe that's an argument I, I think that this bill can stand on arguments even other, other than that. I think the best

VALERO TEXAS CITY TECHNICAL REVIEW DOCUMENT

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: RLH App. No.: 06 - 10285 Review Start Date: 3/6/2007
Company Name: VALERO REFINING COMPANY - TEXAS
Facility Name: VALERO TEXAS CITY REFINERY

TIER LEVEL
What Tier is this application? The application was filed as a Tier II application.

The equipment listed on this application is not located on the predetermined equipment list. Therefore it is not a Tier I application. Further review is required in order to determine if it is correctly filed as a Tier II or if it should be a Tier III.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is:
40 CFR 80 I

40 CFR 80 I: AIR PROGRAMS, REGULATION OF FUELS AND FUEL ADDITIVES, Subpart I-- Motor Vehicles, Nonroad, Locomotive, And Marine Diesel Fuel. This is a vlid rule.

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

The property is described as:

ULSD Refinery Revamp (Equipment List): 2-Bed Reactors; Exchangers; Replacement Convection Section; Air Cooler; Pumps; Compressors; Tankage; and Larger Piping.

The description is adequate.

DECISION FLOWCHART

Mark the appropriate boxes: Box 3 Y Box 5 N Box 6 Box 8 Box 10
Reason this box was chosen:
This project does not make it through Box 5 with a yes answer.
TIER III APPLICATIONS
Did the applicant use the CAP? Recalculate the CAP. Does your calculation agree with the applicants?

There is no Tier III calculation provided.

PROPERTY CATEGORIES AND COSTS

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

Yes

TECHNICAL REVIEW
Is the application technically complete? If the answer is no, what is missing? Provide the language used in the NOD letter. If yes then develop the use determination language.

Technically complete when received: N

1st NOD: See file

NOD RESPONSE

1st NOD: Disagree that there is not any environmental benefit at the site.

Full Property Description:

ULSD Refinery Revamp (Equipment List): 2-Bed Reactors; Exchangers, Replacement Convection Section; Air Cooler; Pumps; Compressors; Tankage; and Larger Piping.

DETERMINATION

Provide the reason for your determination.

Equipment fails to make it through Box 5 of the DFC. Under the rules there is only one possible outcome. An additional reason for the negative determination is 11.31a of the Tax Code. Which states that a person is not entitled to a positive determination for producing a product which controls pollution.

Provide the language for the final determination.
A negative determination for this project.

********** ED Approval Required: N **********

Reviewed by: Gary E. McArthur Date: 4/13/2007

Peer Reviewed By: Ronald Hallett Date: 4/13/2007

XTO ENERGY
USE DETERMINATION
APPLICATION

Application and Instructions for Use Determination for Pollution Control Property and Predetermined Equipment List

Application information also listed in:
Property Tax Exemptions for Pollution Control Property
Guidance Document for Preparation
of Use Determination Applications

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

The Texas Commission on Environmental Quality (TCEQ) has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property,* as well as 30 TAC §17, rules governing this program. For additional assistance please contact the TCEQ Tax Relief for Pollution Control Property Program at 512/239-6348. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, P.O. Box 13088, Austin, Texas, 78711-3088.

1. GENERAL INFORMATION

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

[X] Corporation [ ] Sole Proprietor
[ ] Partnership [ ] Utility
[ ] Limited Partnership [ ] Other _____

B. Size of company: Number of Employees

[ ] 1 to 99
[ ] 100 to 499
[ ] 500 to 999
[ ] 1,000 to 1,999
[X] 2,000 or more

C. Business Description: Acid Gas Treatment Plant

2. TYPE OF APPLICATION

A. [ ] Tier I $150 Application Fee
If all property listed in Section 8 of this application is on the predetermined equipment list (PEL) or is necessary for the installation or operation of equipment on the list, then check this box.

B. [X] Tier II $1,000 Application Fee
If any property listed in Section 8 is not on the PEL, and all of this property is used 100% for pollution control, then check this box.

C. [ ] Tier III $2,500 Application Fee
If any property listed in Section 8 is not on the PEL and if a partial use determination is being requested for ANY of the property included in the application, then check this box.

NOTE: Enclose a check or money order to the TCEQ along with the application to cover the required fee.

04-8353

3. NAME OF APPLICANT

A. Company Name: XTO Energy

B. Mailing Address (Street or P.O. Box): 810 Houston Street

C. City, State, ZIP: Ft. Worth, TX 76102-6298

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: Teague Paques Gas Treating Plant

B. Type of Mfg. Process or Service: Acid Gas Treatment

C. Street Address: 423 SH 179

D. City, State, ZIP: Teague, TX 75860

E. Tracking Number Assigned by Applicant (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Freestone County

6. CONTACT NAME (must be provided)

A. Company/Organization Name: K. E. Andrews and Company

B. Name of Individual to Contact: Joseph Tran

C. Mailing Address: P.O. Box 870849

D. City, State, ZIP: Mesquite, TX 75187-0849

E. Telephone number and fax number: 972-203-2436 (fax) 972-203-8250

F. E-Mail address (if available): jtran@keatax.com

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which the property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law. Do not list permit numbers or registration numbers in this table. If the property or equipment was installed or constructed in response to an agreed order, do not list the order — list the rule, regulation, or law that requires the installation or construction of the property.

MEDIUM	RULE/REGULATION/LAW
Air	30 TAC 116
Water	
Waste	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

The Teague Paques Gas Treating Plant is designed to treat sour gas by removing H_2S due to environmental concerns. In an effort to control harmful gas emissions, XTO Energy has implemented this plant in order to remove the H_2S (Acid gas) from the gas stream. The Teague Paques Plant removes H_2S from natural gas streams using a mild caustic solution (NaOH and water). The caustic solution is regenerated by Thiopaqs bacteria that oxidize the H_2S to solid sulfur. Once in the solid sulfur form, it is disposed of.

Please see attached process description, technology case study and flowchart

9. DECISION FLOWCHART

Each piece of equipment or process change must be processed through the following Decision Flow Chart. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 11 to document which box (7, 9 or 10) was the final destination of each piece of equipment.

The following instructions should be used with the flow chart. The numbered items below do not correspond to the box numbers in the flow chart.

1. Prepare a list of all process equipment and pollution control equipment that is considered to be pollution control property.

2. Each item on the list must be run through the flow chart separately. Some items will likely end at different points on the flow chart.

3. Determine whether the item is required to meet or exceed a state, local, or federal environmental regulation, rule or law. If no specific rule citation can be made, then this item does not qualify as pollution control property (box 4).

4. Determine if there is an environmental benefit at the site where the equipment item is installed. A yes answer to this question is needed to continue evaluating the equipment. If the answer is no, then the equipment does not qualify (box 4).

5. If the equipment is listed on the Predetermined Equipment List (PEL), then determine the reference number for that item.

6. Include all PEL equipment for the project in a single list that is included with the application.

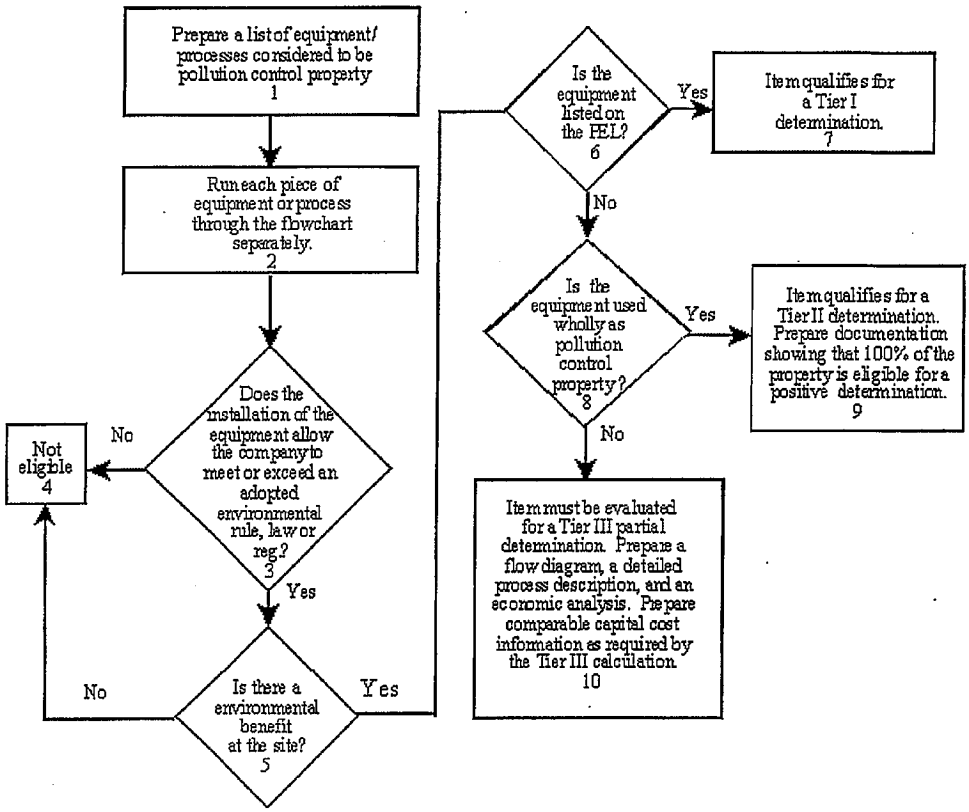
7. If the equipment is not on the PEL, then determine whether the equipment is used wholly for pollution control, i.e., the equipment is not production related and/or does not increase production or improve product quality.

8. If it is wholly for pollution control, then the equipment may qualify as 100% pollution control property. The applicant must provide sufficient written documentation and justification to prove that it qualifies.

9. If the equipment has both environmental and production elements, then the equipment must be evaluated as a partial determination. The applicant must provide a detailed capital cost analysis following the procedures established in the Partial Determinations section of this document. The results of these calculations will determine the partial use percentage.

Prop 2 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 4.



10. PARTIAL PERCENTAGE CALCULATION

Not Applicable – There are no by-products.

11. PROPERTY CATEGORIES AND COSTS

Identify the category and the estimated purchase cost of the property listed in Section 8. List each piece of property for which a use determination is being sought. If the application is for property that is listed on the predetermined equipment list, list the appropriate item number(s) in the PEL column. Place an "N" in the second column to certify that the property was not taxable on or before January 1, 1994. Failure to answer this question for each piece of property will result in the issuance of a notice of deficiency letter and the possible rejection of the application. List the which box, (7, 9, or 10), was the final destination of each piece of property. List the estimated or actual purchase cost of the property. If the property is not wholly used for the purpose of pollution control, list the estimated percentage of pollution control calculated using the Partial Determination Cost Analysis Procedure.

Please see attached Property Categories and Cost Table

11. PROPERTY CATEGORIES AND COSTS

Description	Property Taxable on or before 01/01/94 (Yes or No)	Decision Flow Chart Box 7, 9, or 10	PEL Number	Estimated Purchase Cost ($)	Partial Percentage (%)
Land:					
Property:	No	9	To be reviewed	$4,875,000.00	100%
V-5000 Inlet Whirly-Scrubber V-5050 Inlet Filter Coelescer V-6000 Absorber/Contactor #1 V-6001 Absorber/Contactor #2 V-5200 Outlet Scrubber V-5300 Outlet Filter Coelescer V-6050 Flash Tank R-6200A Bioreactor A R-6200B Bioreactor B R-6200C Bioreactor C R-6200D Bioreactor D S-6399A Settler CT- 7000 Centrifuge/Decanter T-7100 Filtrate Tank					

12. EMISSION REDUCTION INCENTIVE GRANT

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

[ ] Yes [X]No

13. APPLICATION DEFICIENCIES

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

14. FORMAL REQUEST FOR SIGNATURE

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

NAME: _____ DATE: March 30, 2005

TITLE: Petroleum / Environmental Engineer

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.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 07, 2006

K E ANDREWS & COMPANY
JOESPH TRAN
PO BOX 870849
MESQUITE TX 75187 0849

This letter is to inform you that on 04/07/06 the technical review of Use Determination Application, 04-8353, for:

XTO ENERGY
XTO ENERGY - TEAGUE PAQUES GAS PLANT
423 SH 179
TEAGUE TX 75860

was completed. The use determination is included with this letter. In order to request an exemption, a copy of this Use Determination, along with a completed exemption request form, must be provided to the Chief Appraiser of the appropriate appraisal district. This request must be made by May 1.

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

If you have any questions or require any additional information please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348.

Sincerely,

Ronald L. Hatlett

Ronald L. Hatlett
Tax Relief for Pollution Control Property Program

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

4/10/2006

CHIEF APPRAISER
FREESTONE COUNTY APPRAISAL DISTRICT
218 N MOUNT
FAIRFIELD TX 75840

This letter is to inform you that on 4/10/2006 a final determination was issued with regard to Use Determination application 04-8353 filed by:

XTO ENERGY
XTO ENERGY - TEAGUE PAQUES GAS PLANT
423 SH 179
TEAGUE TX 75860

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

In order to qualify for a tax exemption the applicant must file an exemption request with your appraisal district. This exemption request must be accompanied by a copy of the positive use determination issued by the TCEQ. If you have any questions regarding this Use Determination or the appeals process please call me at 512/239-6348.

Sincerely,
Ronald Hatlett

Ronald Hatlett
Tax Relief for Pollution Control Property

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 04-8353, filed by:

XTO ENERGY
XTO ENERGY - TEAGUE PAQUES GAS PLANT
423 SH 179
TEAGUE TX 75860

The pollution control property/project listed in the Use Determination Application is:

Teagues Paques Gas Treatment Plant: includes inlet and outlet scrubbers, absorber/contactors, inlet and outlet filter coalescers, flash tank, bioreactors, settler, centrifuge/decanter, filtrate tank, and associated piping, pumps, and instrumentation. Includes three 750 kw natural gas power generators to operate the plant.

The outcome of the review is:

A positive use determination for 100% of the following components of the Teagues Paques Gas Treatment Plant: flash tank, bioreactors, settler, centrifuge/decanter, filtrate tank, and associated piping, pumps, and instrumentation and three 750 kw natural gas power generators to operate the plant. A negative determination for the following items: inlet and outlet scrubbers, absorber/contactors, inlet and outlet filter coalescers.

This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

Executive Director

4/7/2006
Date

TAX RELIEF FOR POLLUTION CONTROL PROPERTY: TECHNICAL REVIEW DOCUMENT

Reviewed By: GEM App. No.: 04 - 8353 Review Start Date: 11/2/2005
Company Name: XTO ENERGY
Facility Name: XTO ENERGY - TEAGUE PAQUES GAS PLANT

TIER LEVEL
What Tier is this application? The application was filed as a Tier II application.

This property is not on the PEL but was determined to be 100% pollution control, so Tier II is applicable. As part of the review, the application was tested to determine whether Tier III would be applicable. Application of the Cost Analysis Procedure resulted in a 100% determination which thereby excluded a Tier III determination.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION
The rule listed in the application is:
30 TAC 116

This is the air permit rule. The facility was required to obtain an air permit and is thus complying with this rule.

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

The property is described as:

Teagues Paques Gas Treatment Plant: includes inlet and outlet scrubbers, absorber/contactors, inlet and outlet filter coalescers, flash tank, bioreactors, settler, centrifuge/decanter, filtrate tank, and associated piping, pumps, and instrumentation. Includes three 750 kw natural gas power generators to operate the plant.

The property description provides all needed information.

DECISION FLOWCHART

Mark the appropriate boxes: Box 3 Box 5 Box 6 Box 8 Y Box 10
Reason this box was chosen:
The property is 100% pollution control but it is not contained on the PEL.
TIER III APPLICATIONS
Did the applicant use the CAP? Recalculate the CAP. Does your calculation agree with the applicants?

Not applicable.

PROPERTY CATEGORIES AND COSTS

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

The parts of the facility that qualify for a positive determination are 100% pollution control property. The equipment is not all contained on the PEL, so the property meets Box 9 as a Tier II application.

TECHNICAL REVIEW
Is the application technically complete? If the answer is no, what is missing? Provide the language used in the NOD letter. If yes then develop the use determination language.

Technically complete when received: Y

NOD RESPONSE

Full Property Description:

The Teague Paques Gas Treating Plant is designed to treat sour gas by removing H2S. It is removed by using a mild caustic solution (NaOH and water). The caustic solution is regenerated by Thiopaq bacteria that oxidize the H2S to solid sulfur. Once in solid form the sulfur is disposed of. The facility has three 750 kw natural gas power generators to provide electrical power for the plant.

DETERMINATION

Provide the reason for your determination.

Addendum 4/07/2006. The original determination for this facility was appealed to the Commission. The first part of the facility which includes the inlet/outlet scrubbers, absorbers/contactors, and inlet/outlet filter coalescers were deemed by the Commission to be product improvement by removing H2S from the well gas thereby improving its quality and not being required to be removed by environmental rules. Therefore, these components are being given a negative determination. The determination is reissued excluding this equipment.

Provide the language for the final determination.
A positive use determination for 100% of the following components of the Teagues Paques Gas Treatment Plant: flash tank, bioreactors, settler, centrifuge/decanter, filtrate tank, and associated piping, pumps, and instrumentation and three 750 kw natural gas power generators to operate the plant. A negative determination for the following items: inlet and outlet scrubbers, absorber/contactors, inlet and outlet filter coalescers.

********** ED Approval Required: N **********

Reviewed by: Gary McArthur Date: 4-7-06

Peer Reviewed By: Ronald Hatlett Date: 4/7/2006