

Proposed 2/15/12 Revisions to
Texas Commission on Environmental Quality
Use Determination for Pollution Control Property **Application**

Section 1. Eligibility

1. Is the applicant the owner of the property/equipment or have the owner's written authorization to request a tax exemption under this program? Yes No
~~Is the property/equipment subject to any lease or lease-to-own agreement?~~ Yes No
2. Is the property/equipment used wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, State of Texas, or a political subdivision of the State of Texas for the prevention, monitoring, control, or reduction of air, water, or land pollution? Yes No
- ~~2.3.~~ Is the property/equipment used solely to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water or land pollution?
Yes No
4. Is the property/equipment's sole environmental benefit derived from the use or characteristics of the good or service produced or provided? Yes No
- ~~3.5.~~ Was the property/equipment acquired, constructed, installed, or replaced before January 1, 1994? Yes No

If the answer to questions 1 or 2 is 'No' or any of ~~these~~ questions 3-5 is 'Yes', then the property/equipment is not eligible for a tax exemption under this program.

Underline indicates addition. ~~Strikethrough~~ indicates deletion.

Basis for Proposed 2/15/12 Revisions to Section 1
Texas Commission on Environmental Quality
Use Determination for Pollution Control Property **Application**

1. Only Owners Eligible – Question 1 as currently stated adds an additional threshold qualification for TCEQ’s consideration of an application that is not required by statute. The proposed question addresses the first basic eligibility in Tax Code §11.31(a) and will put the applicant on notice that only owners may apply for Prop 2 exemptions. However, TCEQ will not determine ownership. Tax Code §11.31(i) states in part: “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.” This directive speaks only to the use of the property and not to a determination of ownership. The determination if the applicant is the owner (or has the owner’s authorization to file the application) and has received a positive use determination from TCEQ is the sole responsibility of the chief appraiser after an application for tax exemption is filed as required by Tax Code §11.43. Tax Code §11.45(a) begins: “The chief appraiser shall determine separately each applicant’s right to an exemption.” The same section indicates the chief appraiser may approve, modify, disapprove and request supporting information, or deny the application for exemption. An affected taxpayer may appeal the chief appraiser’s decision to the appraisal review board and further to district court.
2. Pollution Control Use Eligible – “Used wholly or partly” is a quote from Tax Code §11.31(a) and (b). The remaining language is a quote from Tax Code §11.31(b), except “this state” in the code is substituted with “State of Texas” in the application. Use determination is also referenced in Tax Code §11.31(d), 30 TAC §17.4(b), 30 TAC §17.10, and 30 TAC §17.12.
3. Manufacturer or Service Provider Ineligible – Tax Code §11.31(a).
4. Environmental Benefit Exclusion – 30 TAC §17.6(1)(D).
5. Property Additions before January 1, 1994 Ineligible – Tax Code §11.31(b).