



# Property Tax Exemptions for Pollution Control Property

## DISCLAIMER

This document is intended to assist those applying for a use determination, pursuant to [Title 30, Texas Administrative Code, Chapter 17 \(30 TAC 17\)](#). Conforming to these guidelines should result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These draft guidelines are not regulations and should not be taken as such. Exercise discretion in using this guide; also consider any other relevant information when developing an application.

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# INTRODUCTION

## Purpose of Guidelines

These guidelines are intended as guidance for persons seeking a property tax exemption for capital expenditures for **pollution control property**—meaning a facility, device, or method for the control of air, water, or land pollution. Under the Texas Tax Code (TTC), a person or business may obtain an exemption from ad valorem property taxes for certain property installed to comply with environmental laws or rules. This document explains how to determine whether you have property that may qualify for a tax exemption and how to apply to the TCEQ to ultimately obtain the exemption. The document issued by the TCEQ, which authorizes the tax exemption, is referred to as a **use determination**.

## Legislative Background

On November 2, 1993, Texas voters approved a constitutional amendment exempting certain pollution control property from property taxation. This amendment added [Section \(§\) 1-l to Article 8 of the Texas Constitution](#). Legislation to implement the amendment was approved in House Bill (HB) 1920, 73rd Texas Legislature, 1993. This legislation added a new [TTC, §11.31](#). The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not increase a facility's property taxes.

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

The 80th Legislature, 2007, amended TTC, §11.31 by adding three new subsections. The first change required the TCEQ to adopt a nonexclusive list of property that included a list of 18 different categories, i.e., the Expedited Review List that is specified in [30 TAC §17.17\(b\)](#). The second change required that the list be reviewed at least once every three years and established a standard for removing property from the list. The third change established a 30-day review period for applications that contain only property listed on the Expedited Review List.

The 81st Texas Legislature, Regular Session, 2009, amended TTC, §11.31 by adding two new sections. New section (g-1) requires that applications containing property adopted under TTC, §11.31(k) be reviewed using the methods and standards adopted under TTC, §11.31(g). New section (n) requires the establishment of a permanent advisory committee that is charged with advising the commission on the implementation of TTC, §11.31. In addition, the legislation corrected the agency's name in the statute and allowed for electronic appraisal district notifications as required by TTC, §11.31(d).

On November 18, 2010, the TCEQ adopted changes to [30 TAC Chapter 17](#) to establish procedures and mechanisms for obtaining a use determination required to implement the amendments to TTC, §11.31 by HB 3206 and HB 3544, 81st Texas Legislature, Regular Session, 2009.

The 83rd Texas Legislature, Regular Session, 2013, amended TTC, §11.31 by adding new section (e-1) which requires the executive director to issue a final determination and the commission to finalize an initial appeal, if one is filed, within one year of the application being declared administratively complete.

On August 6, 2014, the TCEQ adopted changes to §17.12 limiting the number of notice of deficiency letters which may be issued per application, thereby limiting the length of the technical review process in order to implement TTC, §11.31(e-1).

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

1. A facility must first obtain from the TCEQ a determination that the property is used for pollution control. The determination includes the percentage of property use that pertains to pollution control.
2. The applicant then submits this use determination to the local appraisal district to obtain the property tax exemption. The appraisal district will determine the value of the property.

## ELIGIBILITY AND EXCLUSIONS

### Effective Date

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

### Eligible Property

Property that is installed (or is being installed) wholly or partly for pollution control purposes may be eligible for a positive use determination. **The applicant must show that the property was installed to meet or exceed an applicable environmental regulation.** For property used **partly** for pollution control, the applicant must perform a cost analysis using the **cost analysis procedure (CAP)** specified in [30 TAC §17.17\(c\)](#) to determine the percentage of the qualifying capital.

Pollution control property that became taxable after January 1, 1994, but for which no positive use determination has been issued, may be eligible for a positive use determination.

Following is a list of potentially eligible property:

- **Dedicated-Purpose Vehicles:** Vehicles that are used solely for pollution control at your facility (such as certain vacuum trucks, street sweepers, surface-watering trucks, and spill-response vehicles) may be eligible for positive use determinations.
- **Qualifying Land:** Land **may** be eligible for a positive determination, but only land acquired after January 1, 1994 that actually contains: (1) only pollution control property; or (2) property that is used solely for pollution control; or (3) property that was specifically purchased solely for pollution control. An example of (1): the actual square footage of land that contains a baghouse or scrubber. An example of (2): the land used for a storm water or wastewater containment pond. An example of (3): the purchase of adjacent land that will be used solely for pollution control. Please be aware that the mere fact that stormwater flows across a section of land does not make that land pollution control property and does not entitle that land to a positive use determination.

- **Buffer Zones:** Property used solely as a buffer zone may be eligible only if the buffer zone is specifically required by an adopted environmental rule or regulation.
- **Used Equipment:** Property purchased from another owner may be eligible for a positive use determination if it meets the following criteria.
  1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.
  2. It must be used wholly or partly as pollution control property.
  3. It was not taxable prior to January 1, 1994 by any taxing unit in which the property is located.

## Excluded Property

A person is not entitled to an exemption from taxation under TTC, §11.31 and [30 TAC §17.6](#):

- 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;
- if the property is used, constructed, acquired, or installed wholly to produce a good or provide a service;
- if the property is not wholly or partly used, constructed, acquired, or installed to meet or exceed a law, rule, or regulation 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; or
- if the [environmental benefit](#) is derived from the use or characteristics of the goods or services provided.

For example, a company operates a hazardous waste incinerator and contracts with other companies to dispose of their hazardous waste for a fee. The incinerator will not be eligible for a positive use determination since it is considered commercial waste disposal equipment. However, pollution control equipment, such as baghouses or scrubbers needed to comply with environmental regulations while operating the unit, would be eligible. If a company installed and operated an incinerator to dispose of its own waste and did not accept others' waste for a fee, the incinerator would be eligible for a positive use determination.

Property used for residential purposes, or for recreational, park, or scenic uses as defined by [TTC, §23.81](#), is ineligible for an exemption under TTC, §11.31.

The exemption provided under TTC, §11.31 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 or to a motor vehicle, except for eligible dedicated-purpose vehicles that are used solely for pollution control.

## Length of Use Determination

A use determination is valid as long as the property is both:

- used for pollution control as described in the application for which the positive use determination was made; and
- the property remains under the same owner to whom the use determination was issued.

## TYPES OF APPLICATIONS

The applicant can submit three different tiers, or levels, of applications for a use determination. If tax relief is sought for pollution control property in different tier levels, separate applications must be submitted for each tier level.

Application fee levels were developed with the intent of recovering the costs to administer the program. Fees are higher for Tiers II and III because of the greater administrative costs involved in reviewing applications.

### Tier I—Tier I Table Property

The Tier I application is for eligible property that is listed on the Tier I Table specified in [30 TAC §17.14\(a\)](#). The Tier I Table enumerates specific property that the TCEQ has determined is used for pollution control at a standard use percentage as listed in the table. Commonly, property listed on the Tier I Table is used wholly for pollution control. Tier I applications require a \$150 fee.

The applicant is responsible for demonstrating that the property is used for pollution control at the standard use percentage listed on the table and was installed to meet or exceed an applicable environmental regulation.

**All** items listed on a Tier I application must be located on the Tier I Table or must be necessary for the installation or operation of property located on the Tier I Table. If a piece of property listed on the Tier I Table is used for a purpose different than that listed on the table, at a different use percentage than listed on the table, or the use of the property generates a marketable product, a Tier III application must be filed.

The Tier I Table is generic and does not specify brand names. The Tier I Table is reviewed at least once every three years. The [Tax Relief Advisory Committee](#) assists in this review.

### Tier II—100% Use, Non-predetermined Property

The Tier II application is for eligible property that an applicant believes is used 100% for pollution control but it is not listed on the Tier I Table. A Tier II application may include eligible property on the Expedited Review List specified in [30 TAC §17.17\(b\)](#) only if such property is used 100% for pollution control. Tier II applications require a \$1,000 fee.

The applicant is responsible for demonstrating that the property serves 100% for pollution control, has no production benefits, and was installed to meet or exceed an applicable environmental regulation.

### Tier III—Partial Use Determinations

The Tier III application is for property that is used partially for pollution control and that does not correspond exactly to an item on the Tier I Table. The Tier III application is also applicable for eligible property on the Expedited Review List specified in [30 TAC §17.17\(b\)](#) that is used partially for pollution control. Tier III applications require a \$2,500 fee.

The applicant is responsible for demonstrating that the property is used for pollution control and was installed to meet or exceed an applicable environmental regulation.

Tier III property may offer environmental benefits and improvements to production, safety, or other processes, including new or modified property that has both environmental and production elements. An example is the installation of a new closed vent system used to control highly reactive volatile organic compound (HRVOC) emissions from a cooling tower. The HRVOC emissions are captured by the new closed vent system and returned to the production process. Since the captured material is returned to the production process, the closed vent system is eligible for only a partial use determination and therefore requires a Tier III application.

If the property controls pollution and contributes to the manufacturing process, safety, or other purposes, the application must specify the proportion of the pollution control aspect of the property. The applicant must use the CAP specified in [30 TAC §17.17\(c\)](#) to make this partial use determination.

## **TIER I TABLE AND THE EXPEDITED REVIEW LIST**

The Tier I Table is specified in [30 TAC §17.14\(a\)](#). The Expedited Review List is specified in [30 TAC §17.17\(b\)](#) and is based on the categories of property listed in TTC, §11.31(k), referred to as the *nonexclusive list*.

The [Tier I Table](#) is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes at a standard use percentage. The items listed are described in generic terms without brand names or trademarks. If the executive director determines a piece of property listed on the Tier I Table is used for a purpose different than that listed on the table, at a different use percentage than listed on the table, or the use of the property generates a marketable product, a Tier III application must be filed.

The commission will review and update the list at least once every three years with the assistance of the Tax Relief for Pollution Control Property Advisory Committee. An item may be added only if there is compelling evidence that the item provides pollution control benefits and a standard use percentage can be calculated. An item may be removed from the list only if there is compelling evidence that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control equipment.

The [Expedited Review List](#) is a modified version of the list of the categories set forth in [TTC, §11.31\(k\)](#). The list was formerly known as Part B of the Equipment and Categories List. Property used solely for product collection or for production is not eligible for a positive use determination.

If a piece of property is located on both the Tier I Table and the Expedited Review List, the applicant must select the listing appropriate for the use of the property.

## **CALCULATING A PARTIAL USE DETERMINATION**

Partial use determinations must be calculated for all Tier III applications. The applicant must use the CAP specified in [30 TAC §17.17\(c\)](#) to make the partial use determination.

The purpose of the calculation is to determine the percentage of the property that is being used for pollution control.

[TTC, §11.31](#) requires the applicant to supply any information requested by the TCEQ as needed to make a use determination. Therefore, if an applicant is unable or unwilling to provide the TCEQ in a timely manner with the information required by the CAP, then the TCEQ will issue a negative use determination to the applicant.

## Cost Analysis Procedure

Equation 1 is specified in [30 TAC §17.17\(c\)\(1\)](#) and is used in the CAP to determine the creditable partial percentage for property that is used only in part for pollution control and is not listed on the Tier I Table. If the CAP produces a negative number or zero, then there is no creditable partial percentage for the property and a positive use determination cannot be issued.

### Equation 1

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

The variables used in Equation 1 are defined as follows:

*Production Capacity Factor (PCF)*: A calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property or process. The PCF is calculated as shown in Equation 2 by dividing the capacity of the existing property or process, i.e., Old Property, by the capacity of the new property or process, i.e., New Property. The PCF is only used when there is a change in production capacity.

### Equation 2

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

*Capital Cost New (CCN)*: The estimated total capital cost of the property or process.

*Capital Cost Old (CCO)*: The cost of comparable property or process without the pollution control. Use the following criteria for calculating CCO:

1. If comparable property without the pollution control is on the market in the United States, then an average market price of the most recent generation of technology must be used.
2. If the conditions in criteria 1 do not apply and the owner is replacing an existing property that already has received a positive use determination, the owner shall use the CCO from the application of the previous use determination.
3. If the conditions in criteria 1 and 2 do not apply and the owner is replacing an existing property, then the owner shall convert the original cost of the property to today's dollars by using a published industry specific standard. If the production capacity of the new property or process is lower than the production capacity of the old property or process, CCO is divided by the PCF to adjust CCO to reflect the same capacity as CCN.
4. If the conditions in criteria 1, 2, and 3 do not apply, and the owner can obtain an estimate of the cost to manufacture the alternative property without the pollution control, then an average estimated cost to manufacture the property

must be used. The comparable property must be the most recent generation of technology. A copy of the estimate, including the specific source of the information, must be provided with the worksheet that is required to be attached to the Tier III application.

*Net Present Value of Marketable Product (NPVMP)*: The net present value of the marketable product recovered for the expected lifetime of the property is calculated using Equation 3 as specified in [30 TAC §17.17\(c\)\(2\)](#).

**Equation 3**

$$NPVMP = \sum_{t=1}^n \frac{(\text{Marketable Product Value} - \text{Production Cost})_t}{(1 + \text{Interest Rate})^t}$$

The variables used in Equation 3 are defined as follows:

*Marketable Product Value (MPV)*: The MPV may be calculated two ways.

1. 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 must calculate an average and explain how the figures were determined.
2. If the material is used as an intermediate material in a production process, then the value assigned to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the assigned value is comparable to the value assigned by other similar producers of the product.

Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property and sold, traded, accumulated for later use, or used in a manufacturing process (including at a different facility). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control equipment.

*Production Cost (PC)*: The costs directly attributed to the production of the marketable product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs, such as overhead and depreciation.

*n*: The estimated useful life in years of the property that is being evaluated for a use determination.

*Interest Rate*: 10%

*t*: The sequential number for time in years 1 to *n*. The numerical value for *t* is used in Equation 3 as the value of the exponent for the denominator and only as an identifier of the calculation sequence in the numerator. For example, where *n* is 6 years, *t* = 1 in year one, *t* = 2 in year two, *t* = 3 in year three, and so on in sequence, up to year six. The values for MPV and PC in each calculation should equate to those values estimated for year one, year two, year three and so on in sequence, up to year six. The NPVMP would be the sum of all six calculations.

## Example: Cost Analysis Procedure

*Type of Property*: Dust Collection System

*Analysis*: As a result of an increase in production capacity, a facility installs a larger dust collection system. The material collected is considered to be a co-product and is sold to

another owner. The previous dust collection system received a positive use determination in 2002.

Costs related to this project are:

Capital Cost New = \$20,000,000  
 Capital Cost Old = \$5,000,000  
 Production Capacity Old = 100 tons per year  
 Production Capacity New = 150 tons per year  
 Co-Product Value: Per Year = \$100,000  
 Co-Product Production Costs Per Year = \$50,000  
 Useful Life = 10 years  
 Interest Rate = 10%  
 Marketable Product Value = \$50,000 per year  
 Production Capacity Factor = 67%  
 Net Present Value of Marketable Product = \$307,228

**Figure 1**

$$CAP \text{ Equation} = \frac{(.67 \times 20,000,000) - 5,000,000 - 307,228}{20,000,000} = 0.40 = 40\%$$

Therefore, using the equation specified in the CAP as shown in Figure 1, 40% of the capital cost of the new dust collection system would be eligible for a partial use determination.

## STEPS FOR OBTAINING A USE DETERMINATION

The following steps explain how to apply for a use determination and how the TCEQ processes the application.

1. Applicant acquires, installs, replaces, or constructs property after January 1, 1994.
2. Applicant obtains a use determination application and guidance document from the TCEQ. <http://www.tceq.texas.gov/airquality/taxrelief>
3. Applicant prepares application for use determination and submits the original signed application and a complete copy to the TCEQ with the appropriate fee.
4. The TCEQ conducts an administrative review to ensure that all required items are included.

If the application is incomplete, the TCEQ will notify the applicant who then has 30 calendar days to submit a revised application. A total of two notices may be issued during the administrative review process. If an application is incomplete after receipt of the response to the second notice, the application will be returned to the applicant and no further processing will occur.

5. When the application is declared administratively complete, the TCEQ notifies the applicant and sends the copy of the application to the Chief Appraiser of the appropriate appraisal district.
6. The TCEQ conducts the technical review.

If the application is not technically complete, the TCEQ will notify the applicant who then has 30 days to submit a revised application. A total of two requests for additional information may be issued during the technical review process. If an application is incomplete after receipt of the response to the second request, a negative determination will be issued.

7. The TCEQ issues a use determination and notifies the applicant and the appraisal district of the use determination.
8. The applicant submits a tax exemption form and the positive use determination to the appraisal district.

## COMPLETING AN APPLICATION

### Confidential Material

The TCEQ recommends that the applicant **not** submit confidential information as part of the use determination application. If doing so cannot be avoided, a general description in non-confidential terms should be included on the application, along with a document containing the confidential information as an attachment. Each page of the confidential information should be conspicuously marked *CONFIDENTIAL*.

Please note that all information submitted to the TCEQ is subject to the Texas Public Information Act as codified in Chapter 552 of the Texas Government Code. The Texas Office of the Attorney General (OAG) is responsible for determining whether proprietary information, i.e., confidential business information, submitted to the TCEQ must be released upon public request. Additional information on this subject is available from the OAG's Open Records Division at <https://www.texasattorneygeneral.gov/og/open-government>.

### Common Application Mistakes

- **Citing the Wrong Regulation or Rule**

Property must have been installed in order to meet or exceed an environmental rule or regulation adopted by a federal regulatory agency, the State of Texas, or a local political subdivision of Texas. To be an appropriate citation the rule does not need to require the use of the specific piece of equipment it need only require the control of the specific pollutant.

The citation must be to a specific subsection of the regulation that is being met by the installation of the pollution control property. Local regulations are only valid if they have been adopted as part of the political subdivision's environmental code.

Primary links to federal and state environmental rules and regulations:

- [Title 40 Code of Federal Regulations \(40 CFR\)](#)
- [30 TAC](#)

- **Failure to Explain Why the Rule Citation is Appropriate**

An explanation of how the property is used to meet a requirement contained in the cited rule or regulation must be provided. If the citation is to a rule requiring a permit, then a copy of the permit with the section containing the requirement must be provided.

- **Inadequate Description**

The description of the property provided in the application must, at a minimum, include all of the following information:

1. The name of the property;
2. A detailed description of the location within the facility of the property; and
3. An explanation of specifically how the property is used for pollution control.

- **Failure to Respond Fully to a Notice of Deficiency Letter**

To be considered an adequate response, each issue raised in the deficiency letter must be fully addressed.

- **Timing Deadline**

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 same tax year.

- **Multiple Projects at One Site**

A separate application must be submitted for each unit of pollution control property or each group of integrated units installed for a common purpose at a facility.

**Example 1:** A facility installs a new dust collector and secondary containment around storage tanks and replaces a gas-fired internal combustion motor in gas-compression service with an electric motor. Consideration of all three pieces of pollution control property would require three applications.

**Example 2:** A facility installs a new scrubber and a flare. A vent stream is first sent to the scrubber where a toxic substance is removed. The vent stream is then sent to the flare. This process should be considered one project or integrated unit and could be considered with one application.

**Example 3:** A facility undertakes a project to eliminate fugitive emissions. The project involves replacement of pump seals, elimination of threaded pipe joints, installation of a collection system that will collect releases from pressure safety valves, and replacement of an existing flare that is unrelated to the fugitive emissions project. This project would require separate applications for the fugitive emissions and the replacement flare.

- **Eligible Property Must Have Capital Expenditures Incurred**

Positive use determinations will not be issued prospectively. Upon request, the TCEQ will review proposed future projects or purchases and issue a letter stating which specific equipment or parts of a project may be eligible for a positive use determination at the time of construction or purchase. To receive a positive use determination, the requester will need to submit an application during or after the year that the property would first become taxable.

- **Applications Submitted Without Fee Payment**

As specified in [30 TAC §17.10\(a\)](#), the appropriate fee must be submitted with each application. An applicant whose application is not accompanied with the proper fee payment or a receipt showing the completion of an electronic payment will receive a deficiency letter by mail. An application will not be considered administratively complete until the proper fee is received.

- **Failure to Submit Signed Copy of Application**

As specified in 30 TAC §17.10(a) “a completed and signed commission application form and one copy of the completed, signed form” must be submitted. Failure to submit the required copy will prevent the application from being declared to be administratively complete.

## APPLICATION FILING

Send the completed application and the appropriate fee along with a complete copy of the application to:

*U.S. Mail*

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

*Physical Address*

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

Each completed application must include a signature page with an original signature. The copy must be complete and marked *Appraisal District Copy*.

## APPLICATION REVIEW

Applications are first received by the TCEQ’s Cashier’s Office for fee collection and are then forwarded to the TCEQ’s Tax Relief program area for processing and review.

### Administrative Review

The TCEQ will determine if an application is administratively complete—that is, all of the required fields on the application form have an entry—and whether the proper fee has been paid within a reasonable time after receipt of the application. If any required fields are left blank or incomplete, if the proper fee has not been included, if the required application copy is not submitted, or if the owner of the property has an outstanding balance with the TCEQ, the agency will return the application along with a notice of deficiency (NOD) specifying the information or payment needed. The applicant then has 30 days from receipt of the NOD to submit the revised application. Failure to respond in the allotted time will result in the agency terminating its review and the applicant’s forfeiture of any fee.

As specified in [30 TAC §17.12\(a\)\(2\)\(A\)](#) “If the second revised application is not administratively complete or the applicant does not provide a second revised application within the 30 days, the executive director shall take no further action on the application and the application fee will be forfeited under §17.20(b) of this title.”

Once the TCEQ has declared an application administratively complete, it will mail the applicant and the appraisal district a notice that the application is under technical review and provide the copy of the application to the appropriate appraisal district.

## **Delinquent Fee Protocol**

In accordance with the TCEQ's Delinquent Fee Protocol, the agency will not consider applications administratively complete until all delinquent fees the owner of the property owes to the TCEQ are paid.

Additional information about the Delinquent Fee Protocol is available on the following TCEQ web page: <http://www.tceq.texas.gov/agency/delin/index.html>.

## **Technical Review**

A detailed technical review of the application is completed. For Tier I, II, and III applications not containing property located on the Expedited Review List, the TCEQ has 60 days from the date it declares an application administratively complete to request additional technical information. The TCEQ must complete its review of applications containing property located on the Expedited Review List within 30 days of receipt of a complete application, provided that there are no technical deficiencies.

The 30-day and 60-day clocks are stopped if a technical NOD is sent. The clock restarts after an appropriate response to the technical NOD is received. If an application is deficient, it will be returned to the applicant who has 30 calendar days from receipt to address the deficiencies and provide a revised application.

As specified in [30 TAC §17.12\(a\)\(2\)\(B\)](#) the executive director may issue no more than two technical notices of deficiency. If no response or an inadequate response is received in response to the second letter, a negative use determination will be issued.

The technical review process is limited to a total of 230 days from the date that the application is declared to be administratively complete. If at the end of the review period the application is considered to be incomplete, the executive director will issue a negative use determination for failure to document the eligibility of the property to receive a positive use determination.

## **Use Determination**

Once the TCEQ has completed its technical review, it will furnish the applicant with a use determination letter (negative or positive) and a use determination certificate, if positive. A copy of the use determination is mailed to the Chief Appraiser of the appropriate appraisal district. If the review results in a negative determination, the reasoning is explained in the letter. By statute, the executive director may not determine that the property is pollution control unless it meets all of the standards of Chapter 17.

## **Obtaining the Tax Exemption**

If the use determination is positive, the applicant must then submit the use determination, along with the appropriate exemption request form obtained from the appraisal district, to the appraisal district to receive the tax exemption. If the use determination is negative, the applicant and the chief appraiser will be notified of the reason(s) for the denial. The appraisal districts have a filing deadline for exemption requests by April 30 for each tax year. Chief appraisers have the authority to disallow exemption requests that are not filed by this deadline. The TCEQ provides notice to the

appraisal district when an application for a use determination is filed and when a final determination is issued. However, it is the responsibility of the applicant to submit the exemption request to the appraisal district to obtain the tax exemption.

## APPEALS PROCESS

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

The appeal request must contain the following information:

1. Name, address, and daytime phone number of the person requesting the appeal. (Fax number and e-mail addresses are requested but not required.)
2. Name and address of the applicant and the Chief Appraiser of the appraisal district.
3. Application number assigned by the TCEQ and a copy of the negative use determination letter or the positive use determination letter and certificate.
4. Description of what is being appealed.
5. Explanation of the basis for the appeal.

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

Tax Relief program personnel or the Office of the General Counsel will contact the applicant and the appraiser to discuss the appeal. Both parties will be offered the opportunity to participate in alternative dispute resolution.

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

To contact the Office of the Chief Clerk:

*U.S. Mail Address*

Office of the Chief Clerk, MC 105  
TCEQ  
PO Box 13087  
Austin TX 78711-3087

*Fax:* 512-239-3311

*Physical Address*

Office of the Chief Clerk, MC 105  
Building F  
TCEQ  
12100 Park 35 Circle  
Austin TX 78753

## OBTAINING PROGRAM DOCUMENTS

Current copies of the *Use Determination for Pollution Control Property Application*, Form TCEQ-00611, instructions for completing the application form, and this TCEQ regulatory guidance document may be obtained from the following TCEQ web page:

<http://www.tceq.texas.gov/airquality/taxrelief>.

### CONTACTING THE TAX RELIEF PROGRAM

Questions relating to the Tax Relief program can be sent to:

*U.S. Mail Address*

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

*Physical Address*

Tax Relief Program, MC 110  
Building F  
TCEQ  
12100 Park 35 Circle  
Austin TX 78753

*E-mail:* [txrelief@tceq.texas.gov](mailto:txrelief@tceq.texas.gov)

Telephone: 512-239-4900