



Tax Relief for Pollution Control Property

How to Complete an Application and Respond to a Deficiency Letter

Texas Commission on Environmental Quality's
Tax Relief for Pollution Control Property Program



Outline

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- History
- Program Description
- Application Process
- Completing an Application
- Responding to a Notice of Deficiency Letter
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Purpose

- The Tax Relief for Pollution Control Property Program provides tax relief to property owners compelled to install, acquire, or construct property used either wholly or partly to control pollution in order to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation.
- This tax relief is in the form of reduced Ad Valorem (Property) Taxation. The appraised value of the pollution control property is subtracted from the total appraised value of the facility.



History

- Texas voters approved 1993 ballot initiative Proposition 2 (Prop 2) to amend the Texas Constitution by adding Section 1-I to Article 8 authorizing the legislature to create a program that allowed for equipment used for pollution control, prevention, and monitoring to be exempt from property taxes.
- In 1993, the 73rd Legislature passed House Bill (HB) 1920, which created the Tax Relief program by adding new §11.31 to the Texas Tax Code (TTC).
- In 2001, the 77th Legislature passed HB 3121, which added §11.31(e) creating a formal appeal process and amended §11.31(g) to require the adoption of specific standards for evaluating applications.



History

- In 2007, the 80th Legislature passed HB 3732 which added three new subsections to §11.31.
 - Subsection (k) required the TCEQ to adopt a nonexclusive list of facilities, devices, or methods that included 18 property categories.
 - Subsection (l) required that the property on the nonexclusive list be reviewed at least once every three years and established a standard for removing property from the list.
 - Subsection (m) established a 30-day review period for applications that contain only property listed on the nonexclusive list.



History

- In 2009, the 81th Legislature passed HBs 3206 and 3544 adding new subsections (g-1) and (n) to §11.31.
 - (g-1) requires that applications containing items on the (k) list be evaluated using the same methods as non (k) list items.
 - (n) requires the establishment of a permanent advisory committee.
- The committee consists of 13 members with 6 representing industry; 6 representing taxing entities, appraisal districts, and environmental groups; and one independent expert. In 2011 HB 2280 amended (n) by requiring that at least one member of the advisory committee be a representative from a school or community college district where at least one use determination has been approved.



History

- The committee meets at least once each quarter.
- The meetings are open to the public.
- Information about upcoming meetings and audio files of previous meetings can be found online here:
available http://www.tceq.state.tx.us/airquality/taxrelief/advisory_group.html
- The “Sign up for e-mail updates from the Tax Relief for Pollution Control Program” section at the bottom of the webpage can be used to register to receive notifications about advisory committee meetings.



History

- In 2013, the 83rd Legislature passed HB 1897, which added §11.31(e-1) requiring the executive director to issue a final determination and the commission to take final action on an initial appeal not later than the first anniversary of the application being declared to be administratively complete. The commission adopted revisions to 30 TAC 17 to limit the technical review process to a total of 230 days by limiting the number of deficiency letters to two administrative and two technical.



History

- As of August 31, 2014, a total of 17,386 applications have been received listing a total estimated cost of approximately \$38.4 billion.
- Some program statistics include:
 - average annual number of applications: 919;
 - average estimated property cost: \$2.1 million;
 - highest estimated property cost: \$474 million;
 - lowest estimated property cost: \$178;
 - positive use determinations: 91%;
 - negative use determinations: 2%; and
 - withdrawn applications: 7%.
 - During 2012 the average technical review time was 15 days with 95% of reviews completed in 60 or fewer days.



Program Description

Eligible Property

- Property must:
 - have been installed, acquired, or constructed in order to meet or exceed an adopted federal, state, or local environmental law or rule;
 - be used for the prevention, monitoring, control, or reduction of air, water, or land pollution; and
 - constructed, acquired, or installed after January 1, 1994.
- Land that is used as pollution control property or used solely to house pollution control property.



Program Description

Ineligible Property

- Property is not eligible:
 - 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 it is used, constructed, acquired, or installed wholly to produce a good or provide a service;
 - if it is not wholly or partly used, constructed, acquired, or installed to meet or exceed an adopted environmental law or rule;



Program Description

Ineligible Property

- if it is used for residential purposes, or for recreational, park, or scenic uses as defined by TTC, §23.81;
- if it is a motor vehicle (except vehicles dedicated 100% for pollution control); or
- if the property is subject to a tax abatement agreement executed before January 1, 1994; or
- if the environmental benefit is derived from the use or characteristics of the good produced or service provided.



Program Description

Application Types

- Tier I is for property listed in the Tier I Table located in 30 TAC §17.14(a). The fee is \$150.
- Tier II is for property not listed on the Tier I Table but used 100% for pollution control. It may include property on the (k) list only if the property is used 100% for pollution control. The fee is \$1,000.
- Tier III is for property that is used partially for pollution control and that does not correspond exactly to an item on the Tier I Table. It may include property on the (k) list that is used partially for pollution control. The fee is \$2,500.



Program Description

Tier I Table:

- A list of property determined to be used wholly for pollution control purposes, where:
 - the property must be used as described on the list;
and
 - a partial determination is required if the property produces a marketable product.
- Expedited Review List (ERL): the 18 categories of equipment listed in §11.31(k) and adopted in 30 TAC §17.17(a).



Application Process

- Application and fee are submitted.
- Completeness review conducted.
- A Positive or Negative Use Determination is issued.
- The local appraisal district determines the value of equipment associated with a Positive Use Determination.



Application Process

- The Final Determination may be appealed by the applicant or the appraisal district within 20 days after receipt.
- The commission may either deny the appeal or remand the matter to the executive director.
- The use determination and the initial appeal must be completed within one year of the application being declared administratively complete.



Application Process

Responsibilities

- Applicant:
 - Prepare and submit a complete application accompanied by the appropriate fee.
 - Respond timely and accurately to requests for additional information.
 - Accept the TCEQ determination or file a timely appeal.
- TCEQ Staff:
 - Conduct full administrative and technical reviews.
 - Prepare appropriate letters and documentation.
 - Issue appropriate determinations.
- Chief Appraiser
 - Accept the TCEQ determination or file a timely appeal.
 - Issue the property tax exemption.



Completing an Application

- First determine if an application should be filed.
 - Have you installed pollution control property?
 - Does it control, prevent, or monitor land, water, or air pollution?
 - Was the pollutant generated at the facility?
 - Is the facility required to control the pollutant either by rule, regulation, law, or permit?



Completing an Application

Section 1. Property Owner Information

1. Company Name of Owner:
2. Mailing Address:
3. City, State, Zip:
4. Customer Number (CN):
5. Regulated Entity Number (RN):
6. Is this property owned by the CN listed in Question 4? If the answer is 'No,' please explain:
7. Is this property subject to any lease or lease-to-own agreement? If the answer is 'Yes,' please explain:
8. Is this property operated by the RN listed in Question 5?
If the answer is 'No,' please explain.

Note: To be eligible for a positive use determination, the property must be owned and used by the same entity.



Completing an Application

Section 2. Physical Location of Property

1. Name of Facility or Unit where the property is physically located:
2. Type of Mfg. Process or Service:
3. Street Address:
4. City, State, Zip:
5. County:
6. Appraisal District Account Number(s):



Completing an Application

Section 3. Contact Name

1. Company Name:
2. First Name of Contact:
3. Middle Initial:
4. Last Name of Contact:
5. Salutation: Mr. Mrs. Ms. Dr. Other:
6. Title:
7. Suffix:
8. Mailing Address:
9. City, State, Zip:
10. Phone Number/Fax Number:
11. Email Address:
12. Self-Assigned Tracking Number (optional):



Completing an Application

Section 4. General Information

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

Corporation Sole Proprietor Partnership
Limited Partner Limited Liability Corporation
Utility Other:

2. Size of Company: Number of Employees

1 to 99 100 to 499 500 to 999 1,000 to 1,999
2,000 to 4,999 5,000 or more

3. Business Description: (Briefly describe the type of business or activity at the facility)

4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility.



Completing an Application

Section 5. Property Description, Applicable Rule, and Environmental Benefit

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

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



Completing an Application

General Information

1. Name the property:
2. Is the property used 100% as pollution control equipment? Yes No

Explain your answer:



Completing an Application

3. Does the property generate a Marketable Product?

Yes No

Marketable Product: Anything produced or recovered using pollution control property that is sold as a product, is accumulated for later use, or is used as a raw material in a manufacturing process. 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).

If the answer is 'Yes,' describe the marketable product:



Completing an Application

4. What is the appropriate Tier I Table or Expedited Review List number?

5. Is the property integrated pollution control equipment?

Yes No

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

6. List applicable permit number(s) for the pollution control property.



Completing an Application

7. Incremental Cost Difference

Is the Tier I Table item number A-86, A-112, A-114, A-182, or S-22? Yes No

If the answer is 'Yes,' the use determination percentage is based on the incremental cost difference and you must answer the following questions:

8. What is the cost of the new piece of property?

9. What is the cost of the comparable property without controls?

10. How was the value of the comparable property calculated?



Completing an Application

Property Description

11. Describe the property. (What is it? Where is it located within the production process? How is it used to control, prevent, or monitor pollution?)

What constitutes an adequate description?

A detailed description of the property that describes what the property is, where it is located at the facility (e.g., Baghouse installed on Production Line A), how it is used as pollution control equipment at the facility, the pollution it controls, and any material it recovers.

Example: A new fiber-bag baghouse (#1) was installed on the exhaust of Production Line A. The baghouse will collect particulate matter generated during the production process. The particulate matter is considered to be a waste material and will be sent to a landfill for disposal.



Completing an Application

Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property? The citation must be to the specific subsection, paragraph, subparagraph, or clause level.

What constitutes an appropriate rule citation?

The citation must be specific to the section and the subsection, paragraph, subparagraph, or clause, of the adopted environmental rule or regulation that is being met or exceeded by the construction or installation of the property. The narrative must describe how the property is used to meet or exceed a requirement in the cited rule, regulation, or statutory provision.



Completing an Application

Tips on Rules:

The application must describe how the property meets or exceeds an environmental rule, regulation, or statutory provision that has been adopted by a federal regulatory agency, the State of Texas, or a political subdivision of Texas. Regulations adopted by health and safety agencies, such as the Occupational Safety and Health Administration, do not meet this criteria.

If you are uncertain of the specific rule to list in this section, many resources are available online.

State rules are specified in the Texas Administrative Code: Title 16, Division 1 contains Texas Railroad Commission rules, and Title 30, contains TCEQ rules.

Other chapters may include other relevant regulations.



Completing an Application

Tips on Rules:

The federal rules are specified in the Code of Federal Regulations: Title 40 contains United States Environmental Protection Agency regulations; relevant regulations from other federal agencies are specified in other titles.

Ordinances from cities and counties are often available at reliable websites.

The following Internet sites may be helpful:

Code of Federal Regulations (CFR) –

<http://www.ecfr.gov/cgi-bin/ECFR?page=browse>

Title 40 CFR Chapter Index –

www.epa.gov/lawsregs/search/40cfr.html

State rules (TCEQ rules are codified in Title 30) –

www.sos.state.tx.us/tac/index.shtml



Completing an Application

13. Environmental Benefit

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

What constitutes an adequate environmental benefit?

The environmental benefit or pollution control must be directly related to the construction or installation of the property. For purposes of the application, 'environmental benefit or pollution control' does not include the prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the use or characteristics of the applicant's goods produced or services provided.



Completing an Application

Section 6. Process Flow Diagram (Optional)

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

Provide the necessary information to indicate where the property is located, listing all inputs and outputs, the pollutant(s) controlled, how the property controls the pollutant(s), and what happens to any materials removed or recovered by the property. Sketches, drawings, plot plans, or photographs may be substituted for Process Flow Diagrams in some cases.

Note: If a Process Flow Diagram is not provided, TCEQ staff will determine when and if such information is relevant and essential to the use determination and may require the subsequent submittal of a Process Flow Diagram.



Completing an Application

Section 7. Partial-Use Percentage Calculation

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

The procedures and calculations specified in 30 TAC §17.17 must be used to calculate the partial-use percentage for Tier III applications, including those containing property located in one of the categories located on the Expedited Review List.

Additional information regarding partial-use percentage calculations, including an example, is available in the TCEQ regulatory guidance document, *Property-Tax Exemptions for Pollution Control Property, RG-461*.



Completing an Application

The Cost Analysis Procedure (CAP) located in 30 TAC §17.17 must be used to calculate a partial use determination.

The purpose of the CAP is to determine the incremental cost of providing pollution control. The incremental cost is the difference in cost between the new and the old equipment minus the net present value of any marketable product generated by the equipment.

The CAP is designed to determine the creditable partial percentage for property that is used only in part for pollution control. 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.



Completing an Application

The equation is:

- $$\left\{ \frac{((PCF \times CCN) - CCO - NPVMP)}{CCN} \right\} \times 100$$

- *Production-Capacity Factor* (PCF) is a calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property or process.

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



Completing an Application

- *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:
 - 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.
 - 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.



Completing an Application

- 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.
- 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 application.



Completing an Application

- Net Present Value of Marketable Product (NPVMP) is the net present value of the marketable product recovered for the expected lifetime of the property and is calculated using the following equation:

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

- Where Marketable Product Value (MPV) may be calculated two ways.
 - The average retail value of the product produced by the property for one-year periods. Typically, the most recent three-year average price is used. If the price varies from state to state, the applicant must calculate an average and explain how the figures were determined.



Completing an Application

- 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.



Completing an Application

- Production Cost (PC) – The costs directly attributed to the production of the 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 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, 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.



Completing an Application

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
- Which results in a PCF of .67



Completing an Application

- Useful Life = 10 years and the Interest Rate = 10%
- Co-Product Value: Per Year = \$100,000
- Co-Product Production Costs Per Year = \$50,000
- Which results in a Marketable Product Value of \$50,000 per year
- Net Present Value of Marketable Product = \$307,228
- *CAP 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.



Completing an Application

Section 8. Property Categories and Costs

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

Attach additional response sheets to the application if more than five (5) pieces of property need to be listed.

Property Name	Tier 1 Table No. or Expedited Review List No	Use Percent	Estimated Dollar Value
Land:			
Property:			
Total:			

- *Attach additional response sheets to the application if more than five (5) pieces of property need to be listed.*
- ***NOTE: Separate applications, along with application fees, must be filed for each piece of nonintegrated pollution control property.***



Completing an Application

Section 9. Type of Application and Fee

Type of Application being filed: *Select only one.*

- Tier I – Fee: \$150 Tier II – Fee: \$1,000 Tier III – Fee: \$2,500

Fee Payment Type:

- Check Money Order Electronic Payment

Payment Receipt Number:

Payment Amount:

Payer Name on Payment:

Total Amount of Payment:

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

Information on electronic payments is located at this address:

<http://www.tceq.state.tx.us/e-services/>



Completing an Application

- ***In accordance with the TCEQ's Delinquent Fee Protocol, the Tax Relief Program will not consider applications administratively complete until all delinquent fees the company owes to the TCEQ are paid.***
- Information regarding the TCEQ's Delinquent Fee Protocol is available at:
- <http://www.tceq.state.tx.us/agency/delin/index.html>.



Completing an Application

Section 10. Certification Statement

- Must be signed by owner or designated representative.
- I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
- Printed Name: _____ Date: _____
- Signature: _____
- Title: _____
- Company Name: _____

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



Completing an Application

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

U.S. Mail

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

Physical Address

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

If the fee has been paid electronically, the application can be mailed directly to the Tax Relief Program at the contact address provided later in the presentation.



Responding to a Notice of Deficiency (NOD) Letter

What is a NOD letter?

Administrative NOD letters (30 TAC §17.12(2)(A)) are issued during the administrative review process, which is a quantitative rather than qualitative review.

- Is the application signed?
- Did the applicant provide an Appraisal District copy?
- Did the applicant provide the required fee?
- Does the property meet all of the eligibility requirements specified in Section 10?
- Is all of the general business information requested in Section 4, including the NAICS for the facility, provided?
- Is all of the owner/operator information requested in Section 1 including owner/operator CN and RN, provided?



Responding to a NOD Letter

- Are the owner/operator's delinquent fees less than \$25?
- Is the physical location information requested in Section 2, including the type of manufacturing process or service at the facility, provided?
- Is the name of the county provided?
- Is all of the contact information requested in Section 4 provided?
- Is all of the general information on the property requested in Section 5, including the Tier 1 Table or ERL number, provided?
- Does the application contain only one unit of pollution control property or one integrated unit?
- Is all of the applicable incremental cost information requested, including an explanation of how it was calculated, provided?
- Is a detailed description of the property provided?



Responding to a NOD Letter

- Is the rule citation provided to the subsection level?
- Is the anticipated environmental benefit from the property provided?
- Is a process flow diagram provided? (Optional)
- For Tier III: Is the calculations and explanation for a partial use determination provided?
- Are the Tier I Table/ERL No., use percent, and estimated dollar value of each property covered by this application provided?



Responding to a NOD Letter

Technical NOD letters (30 TAC §17.12(2)(B))

Once an application has been declared administratively complete, a technical review is conducted. The technical review looks at the application responses in detail to determine if the property meets the eligibility requirements contained in the Texas Tax Code.

- Does the property meet the eligibility requirements listed on the application form?
- If a Tier 1 application, is the property located on the Tier I Table, is the appropriate table number listed, is the property used for pollution control purposes at the same use percentage as what is listed in the table, and is sufficient information provided to ensure that no marketable product (not including materials that are disposed) is being generated from the use of the property?



Responding to a NOD Letter

- If a Tier II application, is the property listed in the application not located on the Tier I Table but used 100% for pollution control purposes; if an Expedited Review List (ERL) number is listed in the application, does the property match the description listed in the ERL; and is sufficient information provided to ensure that no marketable product (not including materials that are disposed) is being generated from the use of the property?
- If a Tier III application, was the Cost Analysis Procedure (CAP) calculation performed correctly?



Responding to a NOD Letter

All Applications:

- Does the description provide sufficient detail to determine what it is, where it is located, and what it does?
- Are the specific sections of the law(s), rule(s), or regulation(s) cited?
- Is there an environmental benefit?
- Does the process flow diagram provide sufficient detail?
- Is the purpose of the property provided?
- Is a description of the pollution source provided?
- Is Section 8 of the application completed correctly?



Responding to a NOD Letter

Common Errors – Administrative NODs

1. Failure to supply CN/RN or providing the wrong CN/RN
2. Failure to answer all questions
3. Providing contradictory answers
4. Failure to provide adequate rule citation
5. Failure to sign the application
6. Delinquent fees
7. Providing an attachment rather than placing answers on application form
8. Failure to provide a copy of the application



Responding to a NOD Letter

Failure to supply CN/RN or the wrong CN/RN

To be declared administratively complete an application must include a valid CN and RN

- To determine if the owner has an assigned CN, search the TCEQ Central Registry at:
<http://www15.tceq.state.tx.us/crpub/index.cfm?fuseaction=cust.CustSearch>.
- If the owner has not been assigned a CN, instructions on how to obtain one are available at:
http://www.tceq.state.tx.us/permitting/central_registry/guidance.html. An RN will be assigned when applying for a CN.
- If applying for a CN, submit the Core Data Form with the application.



Responding to a NOD Letter

Failure to answer all questions

- Common areas left blank:
 - Not providing an explanation to eligibility questions 6, 7, and 8 in Section 1.
 - Question 2 of Section 2: Type of Mfg. Process or Service
 - Question 2 of Section 5. If you answered "Yes," you must provide an explanation.
 - Questions 8, 9, and 10 of Section 5. If you answer "Yes" to question 7, you must provide answers for 8, 9, and 10.



Responding to a NOD Letter

Providing contradictory answers

- Such as stating that no marketable product is produced but then describing a marketable product in the property description or environmental benefit.
- The property description must be consistent in all three places in the application that request property description information.
- The pollutant being controlled must be consistent between the description sections, the rule citation, and the environmental benefit.



Responding to a NOD Letter

Failure to provide an adequate rule citation

- 30 TAC Chapter 115 is not to the subsection level
- Federal and Texas Clean Air Acts
- U.S. Code sections requiring actions of EPA
- Permit Number
- U.S. Occupational, Safety, and Health Administration, U.S. Department of Housing and Urban Development, and the Texas Public Utilities Commission rules
- Fire and Safety Codes
- Local development codes that do not contain an environmental component



Responding to a NOD Letter

Failure to sign the application

To be valid, an application must include an original signature.

Delinquent fees

Providing an attachment rather than placing answers on application form

Attachments providing additional clarifying information are acceptable.

Failure to provide a copy of the application as required by 30 TAC §17.10(a)(1)



Responding to a NOD Letter

Common Technical NOD issues

- Failure to provide the appropriate Tier I Table number
- Failure to cite to the specific subsection of the adopted environmental rule
- Providing contradictory answers
- Incomplete answers in the table located in Section 8
- Citing a permit rule without providing permit number
- Failure to explain what happens to material generated or captured by use of the property
- Inadequate description
- Inadequate environmental benefit
- Failure to correctly use the Cost Analysis Procedure



Responding to a NOD Letter

When responding to a NOD

- Answer all questions fully.
- If unsure how to answer a question, contact the TCEQ staff listed in the letter.
- Corresponding by e-mail allows both parties to document the conversation and allows staff the opportunity to research their response.
- TCEQ staff are not consultants and are not allowed to provide consulting services.
- Staff cannot tell you how to answer a question. We can and will direct you to where to look for the answer.



Responding to a NOD Letter

- NOD letters list a response due date.
- Failure to respond in a timely manner can result in your application being closed.
- §17.12(2)(A) limits Administrative NODs to two – if still incomplete after two NODs, the executive director shall take no further action on the application and the application fee will be forfeited.
- §17.12(2)(B) limits Technical NODs to two – if still incomplete after two NODs, the executive director shall take no further action on the application and the application fee will be forfeited.



Responding to a NOD Letter

- §17.12(2)(C): The technical review process is limited to a total of 230 days from the date of declaration that the application is administratively complete. If at the end of the review period the application is considered to be incomplete, the executive director shall issue a negative use determination for failure to document the eligibility of the property to receive a positive use determination.
- If you can't respond within the 30-day period, you may request an extension.
 - Extensions are limited to 15 days.
 - Only two extensions per NOD may be granted.



Responding to a NOD Letter

Submit the Revised Application/NOD response 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

TCEQ, Building F

12100 Park 35 Circle

Austin TX 78753



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 website:

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



Program Contacts

Shelley Naik

512-239-1536

shelley.naik@tceq.texas.gov

Ron Hatlett

512-239-6348

ronald.hatlett@tceq.texas.gov

Alyssa Aston

512-239-0861

alyssa.aston@tceq.texas.gov

David Serrins

512-239-1954

david.serrins@tceq.texas.gov

Program E-Mail:

txrelief@tceq.texas.gov