

CHAPTER 17
TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION
§§17.1, 17.2, 17.4, 17.6, 17.10, 17.12, 17.14, 17.17, 17.20, 17.25
Effective December 13, 2010

§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 November 18, 2010

Effective December 13, 2010

§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 that are defined by Chapter 3 of this title (relating to Definitions), 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) Capital cost new--The estimated total capital cost of the equipment or process.
- (2) Capital cost old--The cost of the equipment that is being or has been replaced by the equipment covered in an application. The value of this variable in the cost analysis procedure is calculated using one of the four hierarchal methods for this variable in the figure in §17.17(b)(1) of this title (relating to Partial Determinations).
- (3) Cost analysis procedure--A procedure that uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.
- (4) Environmental benefit -- The prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the actions of the applicant. For purposes of this chapter, environmental benefit 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 or service produced or provided. For the purpose of this chapter, the terms "environmental benefit" and "pollution control" are synonymous.
- (5) 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). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control property.

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

(7) Pollution control property--A facility, device, or method for control of air, water, and/or land pollution as defined by TTC, §11.31(b).

(8) Tier I--An application containing property that is on the Tier I Table in §17.14(a) of this title (relating to Tier I Pollution Control Property) or that is necessary for the installation or operation of property located on the Tier I Table.

(9) Tier II--An application for property that is used wholly for the control of air, water, and/or land pollution, but is not located on the Tier I Table in §17.14(a) of this title.

(10) Tier III--An application for property used partially for the control of air, water, and/or land pollution and that does not correspond exactly to an item on the Tier I Table in §17.14(a) of this title.

(11) 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.

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§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:

(A) 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;

(B) if the property is used, constructed, acquired or installed wholly to produce a good or provide a service;

(C) if the property is not wholly or partly used, constructed, acquired or installed to meet or exceed 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

(D) if the environmental benefit is derived from the use or characteristics of the good or service produced or provided;

(2) property that is used for residential purposes, or for recreational, park, or scenic uses as defined by Texas 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.

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Effective December 13, 2010

§17.10. Application for Use Determination.

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

(1) a completed and signed commission application form and one copy of the completed, signed form; 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 group of integrated units that has 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 same tax year. Applications postmarked after this date will be processed as a lower priority than applications postmarked by the due date and without regard for any appraisal district deadlines.

(d) All use determination applications must contain at least the following:

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, and/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 for pollution control, such as, if deemed by the executive director to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that

clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled;

(4) the specific sections of the law(s), rule(s), or regulation(s) 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, and/or land pollution and is not on the Tier I Table, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17(c) of this title, and explaining each of the variables;

(6) any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(7) 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; and

(8) the name of the appraisal district for the county in which the property is located.

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§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, and/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 or electronic 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) As soon as practicable after receipt of an application for use determination, the executive director shall send 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 will specify the deficiencies, and allow the applicant 30 days to provide a revised application with the requested information. If the applicant does not submit the requested information within 30 days, the executive director may decide to take no further action on the application and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

(B) The executive director may request additional technical information within 60 days of issuance of an administrative completeness letter. If additional information is requested, the applicant shall provide a revised application with the requested information. If the applicant does not provide the requested technical information within 30 days, the executive director may decide to take no further action on the application and the application fee will be forfeited under §17.20(b) of this title.

(C) An application where the executive director will take no further action under subparagraphs (A) or (B) of this paragraph, may be refiled by the applicant. In such cases, the applicant shall pay the appropriate fee as required by §17.20 of this title.

(3) For applications covering property listed in the table in §17.17(b) of this title (relating to Partial Determinations), the executive director will complete the technical review of the application within 30 days of receipt of the required application information without regard to whether the information required by §17.10(d)(1) of this title has been submitted.

(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 the portion 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 that 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 or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located.

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§17.14. Tier I Pollution Control Property.

(a) For the property listed in the Tier I Table located in this subsection that is used wholly for pollution control purposes, a Tier I application is required. A Tier I application

must not include any property that is not listed in this subsection or that is used for pollution control purposes at a use percentage that is different than what is listed in the table. If a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier III application is required.

Figure: 30 TAC §17.14(a)

Tier I Table

The property listed in this table is property that the executive director has determined is used wholly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property. The items listed are described in generic terms without the use of brand names or trademarks. The use percentages on all property on the table 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 (e.g., use in production or recovery of a marketable product), the executive director may require that a Tier III application, using the Cost Analysis Procedure, be filed by the applicant to calculate the appropriate use determination percentage.. For items where the description limits the use determination to the incremental cost difference, the cost of the property or device with the pollution control feature is compared to a similar device or property without the pollution control feature. The table is a list adopted under Texas Tax Code, §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 created by an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators with blowers and ductwork 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, and blowers needed for the	100

			equipment to function.	
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, and pumps used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units 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, and blowers used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove hydrogen sulfide (H ₂ S) 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.	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	Halon Replacement Projects	All necessary equipment needed to replace the Halon in a fire suppression system with an environmentally cleaner substance.	100
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, and optical gas imaging instruments 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, and other meters 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, and power supplies used to monitor for levels of contaminants in ambient air.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used solely 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	Air	Automotive Dynamometers	Automotive dynamometers used for emissions testing of fleet vehicles.	100
Nitrogen Oxides Controls				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce nitrogen oxides (NO _x) emissions from combustion sources. Non-catalytic 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 and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of NO _x formation. May include fly ash collection in coal fired	100

			units.	
A-84	Air	Water/Steam Injection	Piping, nozzles, and pumps 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	Over-fire 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	Low-NO _x Burners	Installation of low-NO _x burners. The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without NO _x controls from the most recent generation of burners.	100
A-87	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, thereby reducing NO _x formation.	100
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO _x including directly related equipment.	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO _x control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Carbon Absorption 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 aboveground storage tanks.	100
A-112	Air	Replacement of existing pumps,	The incremental cost difference between the cost of the original equipment and the	100

		valves, or seals in piping service	replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of VOCs. New systems do not qualify for this item.	
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints 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	External Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).	100
Mercury Control				
A-130	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, and particulate collection devices needed for the equipment to function.	100
A-131	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-132	Air	Mercury Absorbing Filters	Filters that absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-133	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 that can be added to the flue gas or directly to the fuel.	100
A-134	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury. These units are only eligible if mercury is removed from flue gas.	100
A-135	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	100

			removed in a particulate removal device.	
Sulfur Oxides Controls				
A-160	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
A-161	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst	100
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, and ducts used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions 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 for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, and compressors 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-185	Air	Paint Booth Control Devices	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-186	Air	Blast Cleaning System – Connected to a Control Device	Particulate control device and blast material recycling system.	100
A-187	Air	Amine or Chilled Ammonia Scrubber	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).	100

A-188	Air	Catalyst-based Systems	Installed to allow the use of catalysts to reduce pollutants in emission streams.	100
A-189	Air	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.	100

Water and 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
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, or Plate and Frame	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 wastewater.	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 wastewater.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of	100

			ultraviolet light.	
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 wastewater 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
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 wastewater. 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, or 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 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 (including on-site septic systems) 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
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-64	Water	Storm water 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-65	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66	Water	Oil/Water Separator	Mechanical device used to separate oils from storm water.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen. Meter, or Chart Recorder	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	100

			control.	
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 land that is actually occupied by the diversion 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, or grinding of self-generated waste material for the purpose of disposal.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles that leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, and controls.	100
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, and controllers, for high liquid level, pH, temperature, or flow 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 groundwater or soil contamination.	100

S-7	Land/ Water	Liners (Noncommercial Landfills and Impoundments)	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 or landfill.	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, and piping.	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 (Noncommercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, and a biotic barrier.	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).	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 or compliance monitoring systems).	100
S-13	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-14	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and groundwater.	100
S-15	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).	100
S-16	Water	Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, and monitoring equipment.	100
S-17	Land/ Water	Noncommercial Landfills (used for	Excavation, clay and synthetic liners, leak detection systems, leachate collection and	100

		disposal of self generated waste materials) and Ancillary Equipment	treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	
S-18	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 30 TAC Chapter 335, Subchapter O - Land Disposal Restrictions, §335.431.	100
S-19	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, and pumps.	100
S-20	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, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	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).	100
S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-26	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker	100

			screens vented to a dust collector, conveyor covers, and emission control devices at other points.	
S-27	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
S-28	Land	Fencing installed for the control of windblown trash or access control.	Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.	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, vacuum trailers, storage sheds, diversion basins, tanks, and dispersants.	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, and 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	Solvent Recovery Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, by filtration, or by other means. 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	100

			reused. Does not include product storage containers or facilities.	
M-7	Air/ Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted air quality rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes or storm water control. Does not include dirt or gravel. Value of the paving must be stated on a square foot basis with a plot plan provided that shows the paving in question.	100
M-8	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, wastewater, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-9	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-10	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-11	Land/ Water	Structures, Enclosures, Containment Areas, Pads for Composting Operations	Required to meet 'no contact' storm water regulations.	100
M-12	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of waste material on site. Methane must be sent to a control device rather than used.	100
M-13	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, and Degasser.	100
M-14	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Units, and Choke Manifold Systems.	100
M-15	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-16	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-17	Air	Low NO _x Combustion System for drilling rigs	Equipment on power generating units designed solely to reduce NO _x generation.	100
M-18	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-19	Land	Cathodic Protection	Cathodic protection installed to prevent corrosion of metal tanks and piping.	100
M-20	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-21	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 to prevent unauthorized discharges.	100
M-22	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 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 automatically stop the flow of product.	100
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	100

			prevent backflow through vents.	
Secondary Containment				
T-10	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 to prevent unauthorized discharges or leaks.	100
T-11	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 to prevent unauthorized discharges or leaks.	100
T-12	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-15	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-20	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-21	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-22	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-23	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-24	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-25	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 underground piping from aboveground tanks and piping.	100
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

(b) The commission shall review and update the Tier I Table at least once every three years.

(1) The commission may add an item to the table 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) The commission may remove an item from the table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

Adopted November 18, 2010

Effective December 13, 2010

§17.17. Partial Determinations.

(a) A Tier III application requesting a partial determination must be submitted for all property that is either not on the Tier I Table located in §17.14(a) of this title (relating to Tier I Pollution Control Property), or does not fully satisfy the requirements for a 100% positive use determination under this chapter. For all property for which a partial use

determination is sought, the cost analysis procedure (CAP) described in subsection (c) of this section must be used.

(b) The Expedited Review List in this subsection is adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code, §11.31(k) with changes as authorized by Texas Tax Code, §11.31(l). The commission shall review and update the items listed in this table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

Figure: 30 TAC §17.17(b)

Expedited Review List

No.	Property	Description
B-1	Coal Cleaning or Refining Facilities	Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems.
B-3	Ultra-Supercritical Pulverized Coal Boilers	Boiler system designed to provide 4500 pounds per square inch gauge (psig)/1100°/1100°/1100° double reheat configuration.
B-4	Flue Gas Recirculation Components	Ductwork, blowers, and ancillary equipment used to redirect part of the flue gas back to the combustion chamber for reduction of nitrogen oxides (NO _x) formation. May include fly ash collection in coal fired units.
B-5	Syngas Purification Systems and Gas-Cleanup Units	A system, including all necessary appurtenances, that (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment and (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.
B-6	Enhanced Heat Recovery Systems	A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be

		returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.
B-7	Exhaust Heat Recovery Boilers	Used to recover the heat from boiler to generate additional steam.
B-8	Heat Recovery Steam Generators	A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.
B-9	Heat Transfer Sections for Heat Recovery Steam Generators	Super-heaters, Evaporators, Re-heaters and Economizers.
B-10	Enhanced Steam Turbine Systems	Enhanced efficiency steam turbines.
B-11	Methanation	Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	Used for handling, storage, or treatment of by-products or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur.
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	Installed to reduce pollution by using biomass as a supplementary fuel.
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, or coal flow balancing technology).
B-15a	Oxy-Fuel Combustion Technology	Installed to allow the feeding of oxygen, rather than air, and a proportion of recycled flue gases to the boiler.
B-15b	Amine or Chilled Ammonia Scrubbing	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).
B-15c	Catalyst based Systems	Installed to allow the use of catalysts to reduce emissions.

B-15d	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.
B-15e	Modified Combustion Technologies	Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.
B-15f	Cryogenic Technology	Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by the EPA regulating carbon dioxide as a pollutant).
B-16	Carbon Dioxide Capture and Geological Sequestration Equipment	Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is then geologically sequestered in this state. (This item is only in effect upon the effective date of an EPA final rule regulating carbon dioxide as a pollutant.)
B-17	Fuel Cells	Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.
B-18	Regulated Air Pollutant Control Equipment	Any other facility, device, or method designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(c) 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 that is filed on a Tier III application:

(1) If no marketable product results from the use of the property, use the following equation and enter "0" for the net present value of the marketable product (NPVMP):

Figure: 30 TAC §17.17(c)(1)

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

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, this calculation is modified so that PCF is applied to Capital Cost Old (CCO) 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 CCO 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 do not apply and the company is replacing an existing unit that already has received a positive use determination, the company shall use the CCO from the application for the previous use determination.

3.3 If the conditions in variable 3.1 and 3.2 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 to adjust CCO to reflect the same capacity as CCN.

3.4 If the conditions in variables 3.1, 3.2 and 3.3 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. A copy of the estimate must be provided with the worksheet including the specific source of the information.

⁴ **NPVMP** --The net present value of the marketable product recovered for the expected lifetime of the property, calculated using the equation in §17.17(c)(2) of this title. 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.

(2) For property that generates a marketable product (MP), the net present value (NPV) of the MP is used to reduce the partial determination when used in the equation in the figure in paragraph (1) of this subsection. The value of the MP is calculated by subtracting the production costs of the MP from the market value of the MP. This value is then used to calculate the NPV of the MP (NPVMP) over the lifetime of the equipment. The equation for calculating NPVMP is as follows:

Figure: 30 TAC §17.17(c)(2)

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

ⁱ **Marketable Product Value** -- The marketable product value may be calculated one of two ways.

1. The retail value of the product produced by the equipment for one year periods. 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.
2. If the material is used as an intermediate material in a production process, then the value assigned by to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the internally assigned value is comparable to the value assigned by other similar producers of the product.

ⁱⁱ **Production Cost** -- 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.

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

^{iv} **Interest Rate** -- 10%.

(d) If the cost analysis procedure of this section produces a negative number or a zero, the property is not eligible for a positive use determination.

Adopted November 18, 2010

Effective December 13, 2010

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (3) of this subsection.

(1) Tier I Application--A \$150 fee shall be charged for applications for property that is located in the Tier I Table located in §17.14(a) of this title (relating to Tier I Pollution Control Property), 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 Tier I Table located in §17.14(a) of this title.

(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.

(b) Fees will be forfeited for applications for use determination on which the executive director will take no further action 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. If it is determined during a technical review that an application was submitted at the wrong tier level, the executive director will notify the applicant of the amount in which the fees are deficient or in excess, and if there are deficient fees, the applicant shall remit the deficient amount of fees before review of the application continues. If the deficient fees are not paid in full within 30 days of the applicant being notified of the deficiency, the executive director will take no further action on the application. If the executive director takes no further action on the application, the portion of the fees already paid shall be forfeited by the applicant.

(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), by electronic funds transfer, or 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 November 18, 2010

Effective December 13, 2010

§17.25. Appeals Process.

a) Applicability.

(1) This subchapter applies to all appeals of use determinations issued by the executive director. A proceeding based upon an appeal filed under this subchapter is not a contested case for purposes of Texas Government Code, Chapter 2001.

(2) 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 must 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 director's 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 general counsel. The general counsel may remand a matter from the commission's agenda to the executive director if the executive director or the public interest counsel requests a remand.

(e) 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 in district court.

(f) 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 that 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.

(g) 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.

Adopted November 18, 2010

Effective December 13, 2010

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
17.2	277.20