

ELIGIBILITY AND EXCLUSIONS

Effective Date

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

Eligible Property/Equipment

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

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

Following is a list of potential eligible property/equipment:

- **Dedicated-Purpose Vehicles:** Vehicles that are used solely for pollution control (such as certain vacuum trucks, street sweepers, surface-watering trucks, and spill-response vehicles) may be eligible for positive use determinations.
- **Qualifying Land:** Land **may** be eligible for a positive determination, but only land acquired after January 1, 1994, that actually contains (1) only pollution control property/equipment; or (2) property/equipment that is used solely for pollution control; or (3) property/equipment that was specifically purchased solely for pollution control. An example of (1): the actual square footage of land that contains a baghouse or scrubber. An example of (2): the land used for a storm water–or wastewater–containment pond. An example of (3): the purchase of adjacent land that will be used solely for pollution control.
- **Buffer Zones:** Property/equipment used solely as a buffer zone may be eligible only if the buffer zone is specifically required by an adopted environmental rule or regulation.
- **Used Equipment:** Property/equipment purchased from another owner may be eligible for a positive use determination if it meets the following criteria.
 1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.
 2. It must be used wholly or partly as pollution control property/equipment.
 3. It was not taxable prior to January 1, 1994, by any taxing unit in which the property/equipment is located.

- **Best Management Practices:** An industrial facility may manage storm water discharges in accordance with the TCEQ's Multi-Sector General Permit (TPDES General Permit No. TXR050000). The Multi-Sector General Permit (MSGP) requires the permittee to develop and implement a Storm Water Pollution Prevention Plan (SWP3). As part of a SWP3, a permittee must establish Best Management Practices (BMPs) to reduce the discharge and potential discharge of pollutants in storm water and to minimize exposure of areas of the site with industrial activity to storm water. The MSGP defines BMPs as follows:

Schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage areas.

An applicant seeking a positive use determination for property installed as a BMP pursuant to a SWP3 developed and implemented as part of the MSGP should cite to the applicable federal, state, or local environmental law, rule, or regulation that authorizes coverage under the MSGP. Executive Director staff may request, pursuant to 30 TAC § 17.10(d)(6), a copy of the applicant's SWP3 and a signed certificate verifying that the applicant is currently covered under the terms of the MSGP.

- **Spill Prevention Controls and Countermeasures:** Non-transportation related facilities that have a certain amount of aboveground oil storage capacity, which due to their location, could reasonably be expected to discharge harmful quantities of oil into navigable waters of the United States or adjoining shorelines may be required to prepare and implement a Spill Prevention Control and Countermeasures Plan (SPCC Plan). The SPCC Plan must address discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

An applicant seeking a positive use determination for property installed pursuant to an SPCC Plan should cite to the applicable federal, state, or local environmental law, rule, or regulation that required the preparation and implementation of the SPCC Plan. Executive Director staff may request, pursuant to 30 TAC § 17.10(d)(6), a copy of the applicant's SPCC Plan.