

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

Section 1. Eligibility

The eligibility to receive a tax exemption under this program for any property/equipment is determined by the answers provided in this section based on Texas Tax Code §11.31 and 30 TAC Chapter 17. Select the answer to each question by placing an X in the appropriate space.

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

TCEQ will only review the property's "use" and date of completed construction/installation to determine eligibility. Central appraisal districts will confirm if the applicant is the owner of the property or have the owner's written authorization in the filing of the: (1) Use Determination for Pollution Control Property Application with TCEQ; and (2) Application for Pollution Control Property Tax Exemption with the appraisal district.

~~NOTE: The Texas Emission Reduction Plan (TERP) is authorized to provide financial incentive grants for certain emission reduction activities. A TERP financial grant is considered to be an environmental incentive grant.~~

~~For more information about the TERP program, call 512-239-4900 or email: terp@teeq.state.tx.us.~~

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

- Paragraph 1 – “based on Texas Tax Code §11.31 and 30 TAC Chapter 17” is added to clarify eligibility is based on applicable law and administrative code.
- Paragraph 2 – Revisions in this paragraph are exactly as proposed in the application.
- Paragraph 3 – This paragraph is proposed to notify applicants of the separate roles of TCEQ and chief appraisers. The basis of the proposed additions are:
 - ❖ Use – Law and rules clarify TCEQ’s focus with Prop 2 is use determinations.
 - ✓ Tax Code §11.31(d) requires TCEQ’s executive director to determine the *use* of the property based on the information required by Tax Code §11.31(c).
 - ✓ Tax Code §11.31(i) states, in part: “The chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is *used* wholly or partly as pollution control property.”
 - ✓ 30 TAC §17.4(b) requires the executive director to “determine the portion of the pollution control property eligible for a positive *use* determination.”
 - ✓ 30 TAC §17.10 is entitled “Application for *Use* Determination.”
 - ✓ 30 TAC §17.12 requires TCEQ’s executive director to determine the *use* of the property based on information required by §17.10 (similar to Tax Code §11.31(d)).
 - ✓ 30 TAC §17.25(a)(1) states, in part: “This subchapter applies to all appeals of *use* determinations issued by the executive director.”
 - ❖ Own – Tax Code §11.31(a) states, in part: “A person is entitled to an exemption from taxation of all or part of real and personal property that the person *owns* and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution.” As stated in the above subsection, Tax Code §11.31(i) states, in part: “The chief appraiser shall accept a final determination by the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property.” This directive speaks only to the use of the property and not to a determination of ownership. The determination if the applicant is the owner (or has the owner’s authorization to file the application) and has received a positive use determination from TCEQ is the sole responsibility of the chief appraiser after an application for tax exemption is filed as required by Tax Code §11.43. Tax Code §11.45(a) begins: “The chief appraiser shall determine separately each applicant’s right to an exemption.” The same section indicates the chief appraiser may approve, modify, disapprove and request supporting information, or deny the application for exemption. An affected taxpayer may appeal an adverse decision by the chief appraiser to the appraisal review board and further to district court.
- Paragraphs 4 and 5 – These deletions are proposed because TERP was previously removed from the application and this TERP language was inadvertently left in the instructions. It is no longer applicable.