

The Texas Commission on Environmental Quality (commission) adopts amendments to §§17.1, 17.2, 17.4, 17.10, 17.12, 17.15, 17.17, and 17.20. The commission also adopts new §17.14

The commission adopts amendments to §§17.1, 17.4, 17.12, 17.17 and 17.20 *without changes* to the proposed text as published in the October 5, 2007 issue of the *Texas Register* (32 TexReg 6985) and will not be republished. The commission adopts §§17.2, 17.10, 17.15, and new 17.14 *with changes* to the proposed text.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The program for providing tax relief for pollution control property was established under a constitutional amendment listed as Proposition 2 on the state ballot on November 2, 1993. This amendment added §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature added Texas Tax Code (TTC), §11.31, Pollution Control Property, and TTC, §26.045, Rollback Relief for Pollution Control Requirements, to implement the new constitutional provision. The commission adopted 30 TAC Chapter 277 on September 30, 1994, to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was changed to Chapter 17 to be consistent with the commission's policy to place general or multimedia rules within 30 TAC Chapters 1 - 100. In 2001, the Texas Legislature enacted House Bill (HB) 3121 during the 77th Legislative Session. HB 3121 amended TTC, §11.31 in several respects. First, HB 3121 required that the commission adopt specific standards for considering applications to ensure that use determinations are equal and uniform, and to allow for partial determinations. Second, HB 3121 created an appeals process for a person seeking a use determination from the executive director, or the chief appraiser of the appraisal district for the county in which the property is located. Third, HB 3121

required the commission's executive director to provide a copy of the use determination to the chief appraiser of the appraisal district for the county in which the property is located.

In 2007, the Texas Legislature enacted HB 3732 during the 80th Legislative Session. HB 3732 amended TTC, §11.31, Tax Relief for Property Used for Environmental Protection, by adding three new subsections. TTC, §11.31(k) requires the commission to adopt, by rule, a list of pollution control property which must include the listed 18 categories of items. TTC, §11.31(l) requires the commission to adopt a procedure to review the list at least once every three years and allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control. TTC, §11.31(m) requires the executive director to review applications containing only items on the adopted list, and to issue a determination without regard to the information provided in response to TTC, §11.31(c)(1) within 30 days of receipt of the required application documents.

TTC, §11.31(k) requires the TCEQ to adopt a list containing the 18 categories of equipment. However, §11.31(k) does not provide the pollution control percentage for each of the 18 categories of items. Staff reviewed these items and determined that the pollution control percentage could vary depending upon the type of facility where the property is located, and the function of the property. After discussions with stakeholders, program staff developed a two-part list. Part A is the former Predetermined Equipment List, which consisted of the property that the executive director had determined to be used either wholly or partly for pollution control purposes. Part B of the list consists of the 18 property categories listed in TTC, §11.31(k). Part B categories will then be further defined in the program guidelines document. The items in Part B are listed without set use determination percentages. Applicants will be required to calculate an

application-specific determination for each piece of equipment. It is the responsibility of the executive director to determine the proper use percentage using the range of 0%-100%. Simply because a piece of equipment is on the Equipment and Categories List or purports to fall under a category set forth on the list, does not mean that it will receive a positive use determination. The use percentage will be calculated for each piece of property on an application-by-application basis.

This adopted rulemaking amended Chapter 17 by adding one new subsection and by modifying the application review process in order to meet the requirements of TTC, §11.31(m).

In addition these adopted amendments corrected references to the TCEQ.

#### SECTION BY SECTION DISCUSSION

The adopted amendments to §17.1, Scope and Purpose, remove the phrase “including political subdivisions.” The adoption of new 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements, implements Texas Tax Code (TTC), §26.045, Rollback Relief for Pollution Control Requirements. Political subdivisions are no longer covered under Chapter 17.

The adopted amendments to §17.2, Definitions, add definitions for the acronyms TCAA and TSWDA and includes the Texas Tax Code (TTC) in the list of regulations where terms used in this chapter may be defined. The adopted amendment changes the definition of Decision Flow Chart in §17.2(5) to reflect that it will not be used for applications containing property listed or contained in Part B of the Equipment and Categories List (ECL). The adopted amendment adds §17.2(6) which provides the definition for ePay,

which is the commission's electronic payment system. The use of ePay provides applicants with an additional method for paying application fees. The adopted amendment adds §17.2(7), which provides the definition for Equipment and Categories List (ECL). The ECL is a two-part list. Part A of this list is the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B includes the property categories listed in TTC, §11.31(k). The adopted amendment renumbers §17.2(6) as §17.2(8). The adopted amendment adds §17.2(9) which provides the definition for the Part B Decision Flow Chart. The adopted amendment renumbers §17.2(7) and (8) as §17.2(10) and (11) respectively. The adopted amendment removes §17.2(9) to reflect the elimination of the Predetermined Equipment List. The adopted amendment renumbers §17.2(10) - (13) as §17.2(12) - (15) respectively. The adopted amendment adds §17.2(16) which provides a definition for Tier IV, the fee level for applications containing property which is listed or contained in Part B of the Equipment and Categories List. The adopted amendment renumbers §17.2(14) and (15) as §17.2(17) and (18) respectively. The adopted amendment adds new §17.2(18)(E) which explains what information will be included with the use determination letter. The adopted amendment reletters existing §17.2(18)(E) as §17.2(18)(F). Section 17.5(15) is adopted with changes to the text. Language was added to clarify that items listed on Part A of the Equipment and Categories List may be listed with partial determinations but do not require a Tier III analysis.

The adopted amendment to §17.4, Applicability, deletes §17.4(c). The property which was listed in the list referred to in this subsection is now included in Part A of the Equipment and Categories List (ECL), set forth in §17.14. The commission will no longer maintain a list called the Predetermined Equipment

List. The adopted amendment adds “applicable” to §17.4(d) in order to show the existence of two decision flow charts and two partial determination processes.

The adopted amendment to §17.10, Application for Use Determination, removes “Texas Natural Resource Conservation Commission” from §17.10(a)(1) and replaces it with “commission.” The adopted amendment removes the phrase “other than a political subdivision” from §17.10(c). The program for political subdivisions has been relocated to Chapter 18. The adopted amendment corrected grammar in this subsection. The adopted amendment to §17.10(d)(1) adds language in order to show that this subsection does not apply to Tier IV applications. The adopted amendment renumbers §17.10(d)(6) - (9) to §17.10(d)(7) - (10) respectively. The adopted amendment adds §17.10(d)(6) in order to reflect the requirement that a worksheet containing the calculation of the pollution control percentage must be provided for Tier IV applications. The adopted amendment adds the word “appropriate” to §17.10(d)(10) in order to reflect that there are now two Decision Flow Charts. Section 17.10(a)(1) is adopted with changes to the proposed text. The commission received several comments in regards to chief appraiser notification. One common comment was that a complete application should be sent to the chief appraiser along with the required notification letter. The words “and one copy” were added to require the applicant to supply the TCEQ with two full applications. Policy will be developed requiring that staff send the copy to the appraisal district with the appropriate notification.

The adopted amendment to §17.12, Application Review Schedule, changes the 30-day administrative review period listed in §17.12(2) into a three-day period, in order to implement the HB 3732 requirements that the application review process described in TTC, §11.31(m), be limited to 30 days. The adopted

amendment removes the word “deficient” from §17.12(2)(A) and inserts the phrase “not administratively complete” to better define the differences between the two types of deficiencies. The adopted amendment adds “For Tier I, II, and III applications” to §17.12(2)(B) in order to differentiate between existing fee levels and the new fee level for Tier IV applications. The adopted amendment adds §17.12(3), which explains that the technical review period for Tier IV applications is limited to 30 days. The adopted amendment renumbers existing §17.12(3) to §17.12(4).

The adopted new §17.14, Equipment and Categories List, provides the Equipment and Categories List (ECL). The ECL is a two-part list. Part A is the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of the property located in TTC, §11.31(d). Figure: 30 TAC §17.14(a) is adopted with changes. In order to define the basis for calculating the “incremental cost difference” the following language has been added to the end of the description paragraph in Part A of the ECL: “For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property that does have the pollution control feature.” The following language was also inserted into the description paragraph in Part A of the ECL: “The use percentages on Part A of the ECL 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, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site.” The language allows

for calculation of a use determination percentage which is different from the listed one if it is determined that on a particular application the listed percentage is not appropriate. The following language was added in the description paragraph for Part B of the ECL: “Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list.” This will assist applicants in determining the correct Tier level and fee for their application. The description of item A-112 on the ECL was amended to read: “The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.” This was done to clarify that the 100% use determination relates only to the pollution control aspect of the new device. During the consolidation of the previous Predetermined Equipment List into the new ECL, staff left five items related to painting and blasting operations off of the list. As a result of discussions on incorporating the incremental cost difference concept into the rule, these items have been added to Part A of the list as items A-186 through A-190.

The adopted new §17.14(b) defines the review process of the ECL list as at least once every three years.

The adopted amendment created new §17.14(b)(1), which defines the requirements for adding an item to the ECL, and new §17.14(b)(2), which defines the requirements for removing an item from the ECL.

The adopted amendment renumbers §17.15, Review Standards, to §17.15(a) and amends §17.15(a) by removing two incorrect references to the program’s name and stating that the chart in Figure: 30 TAC §17.15(a) is not to be used for Tier IV applications. The adopted amendment removes two incorrect references to the program’s name from Figure: 30 TAC §17.15(a). Figure: 30 TAC §17.15(a) is adopted

with changes. The diagram has been modified to show that a partial analysis must be done first in order to determine the appropriate Tier level. The adopted amendment adds new §17.15(b), which states that both the applicant and the executive director will use the new Part B Decision Flow Chart for applications containing only items listed or contained in Part B of the Equipment and Categories List (ECL). The adopted amendment adds new Figure: 30 TAC §17.15(b) “Part B Decision Flow Chart.” This is necessary in order to establish in detail the review process for an application containing only items listed or contained in Part B of the ECL, which differs from the standard review process. Figure: 30 TAC §17.15(b) is adopted with changes. There were two places on the figure that referenced the Decision Flow Chart. The references were amended to read: “Decision Flow Chart located in §17.15(a).” This clarifies which Decision Flow Chart is being referenced by this section.

The adopted amendments to §17.17, Partial Determinations, amends §17.17(a) to reflect that, where applicable, a partial determination must be calculated for all pieces of equipment listed or contained in Part B of the ECL and for property which is not used wholly as pollution control property. The adopted amendment to §17.17(b) reflects that the formula in Figure: 30 TAC §17.17(b) is to be used for all partial determinations except those which contain property listed or contained in Part B of the ECL. The adopted amendment adds new §17.17(d) which explains that it is the responsibility of the applicant to determine a reasonable method for calculating a partial determination for all items submitted under a category or categories contained in Part B of the ECL. In addition, subsection (d) also explains that it is the responsibility of the executive director to determine if the proposed method is appropriate. The adopted amendment reletters existing §17.17(d) as §17.17(e) in order to reflect the addition of new subsection (d).

The adopted amendment to subsection (e) adds the “method accepted by the executive director under subsection (d) of this section.”

The adopted amendment to §17.20, Application Fees, amends §17.20(a) in order to reflect that there would be four fee levels rather than three. The adopted amendment to §17.20(a)(1) explains that the Tier I fee level applies to applications containing only property listed in part A of the ECL. The adopted amendment to §17.20(a)(2) replaces the reference to the Predetermined Equipment List with a reference to the ECL. The adopted amendment adds new §17.20(a)(4) in order to establish a new Tier IV level for applications containing property which is purported to fall under a category or categories listed on Part B of the Equipment and Categories list. The adopted amendment adds “administratively” to §17.20(b) as a means of defining the word “complete.” The adopted amendment to §17.20(c) adds the word “either” and the phrase “or by electronic funds transfer by using the commission’s ePay system.” This will allow applicants to remit application fees through the electronic payment system. In addition, the adopted amendment to this subsection corrects the agency’s name from the “Texas Natural Resource Conservation Commission” to the “Texas Commission on Environmental Quality.” The adopted amendment further amends this section by removing the phrase “and delivered with the application to the TNRCC, at the address listed on the application form.” This phrase is moved to new §17.20(d). The adopted amendment adds §17.20(d) which requires that the application fee must be delivered with the application. In addition, this adopted new section clarifies that if the applicant pays the applicant fee by using the ePay system, a copy of the receipt must be included with the application form.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of “a major environmental rule.” Under Texas Government Code, §2001.0225, “a major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking amended the Tax Relief for Pollution Control Property rules. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these amended rules and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted amendments. Enforcement of these adopted rules would be neither a statutory nor constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The adopted amendments are not a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505, concerning rules subject to the Texas Coastal Management Program (CMP), and will not require that goals and policies of the CMP be considered during the rulemaking process.

#### PUBLIC COMMENT

A public hearing on this proposal was held in Austin on October 26, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. This was a joint hearing at which comments were also received on proposed amendments to Chapter 18. The hearing was attended by twenty-three people. Oral comments were provided by four attendees. The commission received comments from State Representative Dennis Bonnen, State Representative Lon Burnam, State Representative Myra Crownover, State Representative Joe Deshotel, State Representative Juan M. Garcia III, State Representative Richard L. "Rick" Hardcastle, State Representative Tan Parker, State Representative Mike O'Day, State Representative Dora Olivo, State

Representative Alan B. Ritter, State Representative Beverly Woolley, State Senator Chris Harris, State Senator Robert L. Nichols, State Senator Tommy Williams, City of Houston Mayor Bill White (Houston), Harris County Judge Ed Emmett (Harris), Jefferson County Judge Ronald Walker (Jefferson), Newton County Judge Truman Dougharty (Newton), Nueces County Judge Samuel L. Neal, Jr. (Nueces), Orange County Judge Carl K. Thibodeaux (Orange), San Patricio County Judge Terry Simpson (San Patricio), Harris County Precinct 2 Commissioner Sylvia R. Garcia (Garcia), Harris County Attorney's Office (HCA), Dallas Central Appraisal District Chief Appraiser W. Kenneth Nolan (DCAD), Deer Park Independent School District Superintendent Arnold Adair and Board President Rhonda Lowe (DPISD), Pasadena Independent School District Superintendent Kirk Lewis (PISD), Port Arthur Independent School District Superintendent Johnny E. Browen, Ph.D. (PAISD), Port Neches-Groves Independent School District Superintendent Dr. Lani Randall (PNGISD), Association of Electric Companies of Texas, Inc. (AECT), Clean Coal Technology Foundation of Texas (CCTFT), County Judges & Commissioners Association of Texas (CJCAT), Texas Association of Business (TAB), Texas Association of Counties (TAOC), Texas Association of School Administrators (TASA), Texas Chemical Council (TCC), Texas Conference of Urban Counties (TCUC), Texas Mining and Reclamation Association (TMRA), Texas Oil & Gas Association (TxOGA), Texas Taxpayers and Research Association (TTARA), Jackson Walker, L.L.P. (Jackson), Marathon Petroleum Company, LLC. (Marathon), NRG Texas LLC. (NRG), Pritchard & Abbott, Inc. (Pritchard), Sierra Club (Sierra), Individual.

## RESPONSE TO COMMENTS

General comments in support of the rule package and the Tax Relief for Pollution Control Property application process were received from Harris County Judge Ed Emmett, Jefferson County Judge Ronald

Walker, Harris County Commissioner Sylvia Garcia, Jackson, TAOC, CCTFT, TMRA, TCUC, TxOGA, and the City of Houston.

**The commission appreciates the comments. The commission made no changes to the rule in response to these comments.**

Harris County Judge Ed Emmett, Jefferson County Judge Ronald Walker, Harris County Commissioner Sylvia Garcia, and Orange County Judge Carl Thibodeaux specifically endorse the comments provided by the Texas Conference of Urban Counties.

**The commission appreciates the comments. Specific responses to the TCUC comments are provided later in this document. The commission made no changes to the rule in response to these comments.**

TCC provided general comments supporting the rule and a specific comment stating that they support the comments provided by TTARA, relating to the role of chief appraisers in the use determination process.

**The commission appreciates the comments. Please see section on chief appraiser notification for response to TTARA's comments on this issue. No change has been made with regard to these comments.**

Pritchard provided comments about the Predetermined Equipment List (PEL) Advisory Group which was formed by the TCEQ in June 2007. Pritchard commented that “industry representatives far outnumber appraisal district representatives and collectively sway the evaluations and determinations.”

**The commission appreciates the comment, but determined that the comment is outside of the scope of the rulemaking. No changes to the rule were made in response to this comment.**

Senator Harris, Senator Nichols, Senator Williams, Representative Crownover, Representative O’Day, Representative Deshotel, Representative Garcia, Representative Olivo, Representative Bonnen, Garcia, San Patricio, Nueces, PAISD, PISD, PNGISD, CJCAT, DPISD, HCA, Harris, Newton, Houston, TASA, and Pritchard expressed concern that the rule changes could lead to a significant negative impact on local property tax revenue and economic growth. The commenters requested that the commission narrowly interpret Texas Tax Code (TTC) §11.31. Newton suggested that any exemptions be phased in as a way to mitigate the loss. CCTFT commented that “{a}llegations that implementing HB 3732 will result in billions of dollars coming off the tax rolls are unsupported conjecture and should be rejected.”

**The commission appreciates the comments and understands the concerns about potential property tax revenue impacts associated with the amendments to 30 TAC Chapter 17. The tax exemption process for pollution control property is a two-step process. The first step requires the TCEQ to review the property to determine if it qualifies as pollution control property. Once this has occurred, the applicant files an exemption request with the appropriate appraisal district. Except in cases where a partial determination is being calculated, the dollar value of the property does not**

**play a part in the use determination process. In cases where the executive director makes partial determinations, the final determination is expressed as a percentage of the total value of the equipment and not in a dollar amount. TTC, §11.31 does not authorize the commission to, and the commission does not consider the actual dollar amount of tax exemptions received by the applicants. This determination is made by the appraisal districts after the executive director's final decision on whether the equipment is used wholly or partly to control air, water or land pollution. TCEQ is mindful of the fact that laws related to tax exemptions are to be narrowly interpreted. However, when drafting regulations the commission is limited to implementing the clear language in the statute and relying upon legislative intent in cases of ambiguity. TTC, § 11.31 does not allow for the phasing in of exemptions. No changes have been made in response to these comments.**

TAOC commented that, due to the potential increase in the number of applications and the increased difficulty of the application process the TCEQ should ensure that sufficient resources be provided so that fair and accurate reviews will be conducted.

**The commission appreciates this comment. TCEQ management will ensure that any additional necessary resources will be furnished to implement the rule amendments. No changes were made to the rule in response to this comment.**

TMRA commented that they support the comments provided by the CCTFT, Jackson, and TTARA.

**The commission appreciates the comment. Specific responses to CCTFT, Jackson and TTARA's comments are provided later in this document. No change was made to the rule in response to this comment.**

TxOGA commented on the eligibility of "Green Products" to qualify for a positive use determination. In their opinion, property put into place in order to meet a market demand for green products should not be eligible for a positive use determination, but that property installed in order to meet an environmental initiative should be eligible.

**The commission appreciates the comment and agrees that property installed to meet a market demand to create a green product would not be eligible for a positive use determination. The commission does not agree that a piece of equipment is automatically eligible for tax exemption under TTC, §11.31 simply because it was installed to meet an environmental initiative. A piece of equipment installed to meet an environmental initiative must also satisfy all statutory and regulatory requirements to qualify for a positive use determination including that it provide a pollution control benefit at the site. No changes were made to the rule in response to this comment.**

*General Comments Relating to the Scope and Intent of §11.31(k)*

During the proposal agenda the commission directed staff to solicit "comments on whether Part B should be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003." Representative Hardcastle, Sierra, Representative Woolley, Representative Parker, and CCTFT provided general comments on this issue.

Representative Hardcastle commented that the overall intent of HB 3732 is to “ensure that Texas continue to build power plants that are” clean and to make electricity affordable. However, the legislature did not intend to limit the categories of equipment listed in HB 3732 to advanced clean energy projects. Sierra commented that their review of the legislative history of HB 3732 leads them to the conclusion that Section 4 of HB 3732 is not tied to clean energy projects. Sierra stated that the TCEQ should perform due diligence to ensure that the use determination includes only the pollution control aspect of the property. Representative Woolley and Representative Parker commented that the purpose of the bill was to provide incentives to electric generation projects. CCTFT, supported by TMRA commented that: “Part B of the ECL should not be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003.”

**The commission appreciates the comments provided by commenters regarding the scope and legislative intent of HB 3732. As a state agency, the commission is required to follow the mandates of the legislature regarding implementation of the statutes it enforces. When implementing a statute, the commission gives effect to its “plain language.” In implementing HB 3732, staff is mindful that tax exemption statutes “are subject to strict construction.” In reviewing the text and legislative history of HB 3732, staff concludes that the categories of equipment listed in it are not limited to advanced clean energy projects. However, as urged by the commenters, and consistent with existing regulations unaffected by HB 3732, the executive director is required to consider: 1) whether each category of equipment listed in TTC, §11.31(k) is used wholly or partly to control air,**

**water or land pollution; and 2) whether the equipment provides environmental benefit at the site.**

**No changes were made to the rule in response to these comments.**

*Comments Relating to Chief Appraiser Notification*

During the proposal agenda the commission directed staff to solicit “comments on the appropriate format and process for notifying the chief appraiser for the appraisal district where the pollution control equipment is located.” Representative Burnam, TAOC, Sierra, TCUC, Harris, TTARA, TCC, CCTFT, and TAB provided comments on this issue. Representative Burnam commented that the TCEQ should require the applicant to provide a detailed cost analysis and that the local tax assessor should be given an opportunity to review the analysis to ensure the accuracy of the application and the impact on the local tax base. TAOC commented that the TCEQ should provide the chief appraisers enhanced opportunities to comment during the application review process. TAOC suggested that chief appraisers be provided ample notice, a copy of the complete application, and an opportunity to comment before the use determination is issued. Sierra commented that a requirement that the chief appraiser be notified as soon as possible after an application is filed and that notification should include a copy of the complete application and any attachments should be added to the rules. Sierra provided specific language to change §17.12(1). Under Sierra’s proposed language, the section would require that notice be sent within ten days of receipt and that a list of equipment and associated dollar values be included. It goes on to say that a copy of the complete application and any supporting materials must be mailed to the chief appraiser within ten days if the chief appraiser requests it. TCUC commented that §17.12 should be amended to allow the appraisal district time to comment on a tax exemption application, ten business days after issuance of notice of an application, and to require that a copy of the administratively complete application be provided to the

chief appraiser. Harris commented that TCEQ should provide a complete copy of each application to the appropriate appraisal district and to provide 10 days for the appraiser to comment on each application.

TTARA's comments provided an overview of the laws applicable to the Tax Relief Program with regard to notification of the appropriate chief appraiser and participation by the chief appraiser in the review process. TTARA pointed out that the statute created a two-part process for obtaining an exemption for pollution control property. The first part requires the TCEQ to evaluate the property to determine whether or not it provides pollution control. The second part requires the chief appraiser to determine the dollar value of the property. TTC provides the chief appraiser with an appeals process if they disagree with a use determination. TTARA also stated that nowhere in the code is there any language that would suggest that the chief appraisers have involvement in the application review process. TTARA encourages the TCEQ to maintain the separation between the two processes. They provided a specific comment in response to the question asked about chief appraiser notification and involvement. TCC commented in support of TTARA's comments. CCTFT commented that "Section 11.31(d) requires the executive director to notify the chief appraiser that an application has been filed and to send the appraiser the determination letter. Nothing more is required under the statute." TAB commented generally that they support the proposed rule package. They do not support the adoption of any process which would expand the chief appraiser's role in the use determination review process. They expressed preference for the current system that requires the executive director to determine whether the equipment is used for pollution control and the chief appraiser to determine the dollar amount of the tax exemption to be granted to an applicant with a positive use determination.

**The commission appreciates the comments, but respectfully disagrees that the rules should be amended to allow chief appraisers or tax assessors to comment on a use determination application before the executive director makes a final determination on the application. TTC §11.31(d) does not authorize this procedure. To allow a comment period for the chief appraiser would also frustrate the speedy review process contemplated by HB 3732 with respect to the categories of equipment listed in TTC, §11.31(k). TTC, §11.31(d) states that the executive director shall: determine if a piece of equipment is used wholly or partly to control air, water or land pollution; send notice to the chief appraiser for the county where the equipment is located “as soon as practicable” that the applicant has applied for a use determination; and send a copy of the use determination letter issued to the applicant to the chief appraiser. The chief appraiser has no role in the determination of whether a piece of equipment provides pollution control benefit. In fact, TTC, §11.31(i) mandates that 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.” The appeals process contained in TTC, §11.31(e) and 30 TAC §17.25 provides the sole avenue for the chief appraisers to challenge the executive director’s use determination on an application. The statutory and regulatory structure would be flustered if the commission were to allow comment on each application for use determination. The executive director is currently required by §17.12(1) to send notice to the chief appraiser as soon as practicable after receipt of an application. Program policy defines “as soon as practicable” to mean when an application is declared to be administratively complete. The TCEQ is confident that the chief appraiser is provided adequate opportunity to consider and exercise its opportunities for appeal under this timeline construction. The executive director is currently working on updating a**

**standard operating procedure (SOP) for use in use determination reviews. It is anticipated that the SOP will formalize the executive director’s current procedure of providing notice and a copy of the complete application to the chief appraiser. Section 17.10(a)(1) has been amended to require the applicant to provide an original and one copy of the application. The application will be furnished solely to give the chief appraiser information regarding the property being reviewed for use determination under TTC, §11.31.**

*Comments Relating to Environmental Benefit at the Site*

The commission directed staff to solicit comments on the current regulation pertaining to the requirement that there be an environmental benefit at the site for the facility, device, or method for the control of air, water, or land pollution to be eligible for a positive use determination.

Representative Burnam, CCTFT, Sierra, TAOC, and TxOGA commented on the requirement for environmental benefit at the site issue. CCTFT commented that HB 3732 has no impact on the ongoing debate as to whether pollution control property has to provide an environmental benefit at the site to be eligible for a positive use determination. “CCTFT does not support and the TCEQ should not accept arguments that HB 3732 clarified that off-site benefits should be recognized in issuing exemptions for on-site” benefit. Sierra commented that the commission should continue to require environmental benefit at the site for Tier I, II, and III applications and at least request information regarding environmental benefit at the site for Tier IV applications. They provided suggested changes to §17.10(d)(1) which would implement this proposal. Representative Burnam and TAOC agree with the current regulation requiring environmental benefit at the site. TxOGA commented that a pollution control device should be eligible

for a positive use determination even when such a device does not produce environmental benefit at the site. TxOGA proposed that the commission revise box 5 in the current decision flow chart to read “{i}s an environmental benefit created by pollution control property which is located at the site?”

**Having reviewed the comments on both sides of this issue, the commission will continue to require environmental benefit at the site as required by the statute and regulations. HB 3732 states that the executive director shall determinate whether a device is used wholly or partly to control pollution within 30 days of receipt of an application without regard to whether information on anticipated environmental benefit has been submitted by the applicant. The bill however, does not nullify the requirement to require environmental benefit at the site. It should be noted that the lack of documentation supporting a use determination application would force the executive director to make a decision on an application without the benefit of having all the information necessary to make a sound scientifically based determination. Such a situation could result in a negative use determination. Finally, staff would note that the issue of requiring environmental benefit at the site was litigated in Trent Wind Farm, L.P v. Texas Commission on Environmental Quality, GN2-04045, 200<sup>th</sup> Judicial District Court of Travis County (April 19, 2004). The court sustained the regulatory requirement of environmental benefit at the site by granting summary judgment in favor of the TCEQ and the co-defendants in the case. No changes were made to the rules in response to these comments.**

*Comments Relating to §17.2*

Sierra commented that the definition of Tier III should be clarified to ensure that Tier III applications are not submitted for items listed on the ECL under §17.14(a).

**The commission appreciates the comment and agrees that additional language similar to that suggested by Sierra is needed to clarify the definition of Tier III. The definition is therefore revised to read as follows: “An application for property used partially for the control of air, water, and/or land pollution, but that is not on the Equipment and Categories List located in §17.14(a) of this Chapter.”**

*Comments Relating to §17.4*

Houston commented that the program should be limited so that only property which is installed to exceed an environmental requirement is eligible for the tax incentive.

**The commission appreciates the comment, but respectfully disagrees. Article 8, §1-1 of the Texas Constitution provides that property installed to *meet* or exceed rules or regulations promulgated by any governmental environmental protection agency to control air, water, or land pollution is eligible for pollution control property tax exemption. Similarly, TTC, §11.31(b) defines pollution control property as property “installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state or a political subdivision of this state” for the control of air, water, or land pollution. Property installed to *meet* an environmental requirement has the same eligibility as property installed to exceed an**

**environmental requirement. The commission made no changes to the rule in response to this comment.**

Pritchard commented that property should be eligible for a positive use determination only if the application is filed in the first year that the property becomes taxable. CCTFT commented that under the statute any pollution control property which became taxable for the first time on or after January 1, 1994, is eligible for a positive use determination.

**The commission appreciates both comments. Article 8, §1-1(b) of the Texas Constitution states that tax exemption for pollution control property applies to property which became taxable for the first time on or after January 1, 1994. Neither the constitution nor the statute provides any language which would authorize the commission to limit pollution control property tax exemption applications to be filed within the first year that the property became taxable. No changes were made to the rule in response to this comment.**

*Comments Relating to §17.10*

An individual commented that a minimum pollution control threshold should be established by rule and that this threshold must be met before a piece of equipment is eligible for consideration for a pollution control property tax exemption.

**The commission does not see a need for an additional threshold beyond that required by the constitution, the statute and the commission regulations. Under the current and proposed rules, to**

**be eligible for tax exemption: 1) each piece of property must be installed in order to meet or exceed an adopted environmental rule or regulation; and 2) the property must provide an environmental benefit at the site. These statutory and regulatory requirements are designed to ensure that the installation of the property results in pollution control. No changes were made to the rule in response to this comment.**

*Comments Relating to §17.14*

Representatives Ritter, Parker and Hardcastle, and PAISD commented that the TCEQ must exercise discretion in designating property as pollution control, has the authority to add items to the list, and to determine the eligibility of properties listed in HB 3732 as pollution control properties. TAOC expressed concerns about property categories listed in HB 3732 and the potential that partial determinations might reflect not just pollution control, but also contributions to production or energy efficiency.

**The commission appreciates the comments. The commission agrees that it has the statutory authority under HB 3732 to remove categories of equipment from the list contained in TTC, §11.31(k) and to review properties to ensure that they control air, water, or land pollution. The commission agrees that the calculation of partial determinations must be done in a way to ensure that the use determination is limited to the pollution control aspect of the property. Under the adopted rules, Tier IV applications will be reviewed on a case-by-case basis; and an applicant submitting a Tier IV application must provide calculations to determine and justify the qualifying pollution use percentage. The commission made no changes to the rule in response to this comment.**

TxOGA commented about the pollution control eligibility of manufacturers of pollution control equipment used to manufacture a product which controls or prevents pollution. The comments include a general discussion of TTC, §11.31(a) and a reference to a 1996 Texas Attorney General's opinion.

TxOGA's comments include a discussion of the pollution control applicability of equipment installed in order to produce low sulfur diesel and gasoline. TxOGA and Marathon requested that downstream Hydrotreaters and Sulfur Recovery Units be added to Part A of the ECL.

**The commission appreciates the comment. TTC, §11.31(a) provides that “person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.” Commission regulations under 30 TAC §17.15 require environmental benefit at the site for an installation to be eligible for pollution control property tax exemption. A piece of equipment used to manufacture a property that controls pollution is not statutorily eligible for pollution tax exemption. Production equipment that does not provide environmental benefit at the site is not eligible for pollution control property tax exemption. Pieces of equipment (such as Hydrotreaters and Sulfur Recovery Units used to manufacture low sulfur diesel and gasoline) installed to meet a federal environmental initiative that does not provide environmental benefit at the site are not eligible for Texas pollution control property tax exemption. The commission made no changes to the rule in response to this comment.**

Pritchard provided comments on the removal of three specific items from Part A of the ECL. They requested that Drilling Mud Recycling Systems (M-15); Drilling Rig Spill Response System (blowout preventors) (M-

16); and Cathodic Protection (for oil and gas pipelines) (M-31) be removed from Part A of the ECL. While acknowledging that the items have some pollution control benefits, they contend however that they should be removed from Part A of the ECL because they are installed primarily for production and safety purposes.

**The commission appreciates this comment, but respectfully disagrees with the comments on items M-15, M-16 and M-31. The executive director has determined that Mud Recycling Systems, Blowout Preventers, and Cathodic Protections are installed for pollution control purposes. The commission sustained the executive director's use determination regarding Mud Recycling Systems and Drilling Rig Spill Response Systems in previous use determination appeal hearings. No changes were made to the rule in response to this comment.**

Jackson commented that the HB 3732 property list reaffirms that production equipment using new or advanced technologies may have a pollution control benefit.

**The commission appreciates this comment and agrees that certain production equipment using advanced technologies may also have pollution control benefits. However, each category of equipment listed in TTC, §11.31(k) will be considered on an application-specific basis to determine whether the equipment is installed to wholly or partly control air, water, or land pollution. Under the adopted rules, the categories of equipment listed in HB 3732 are incorporated into rule in Part B of the ECL. No changes were made to the rule in response to this comment.**

Sierra commented that §17.14(a) should be amended to include: "Applicants should first view Part A of the Equipment and Categories List to see if their equipment might already be on that list."

**The commission appreciates this comment and agrees with this suggestion and has amended §17.14(a) accordingly. In addition, the program guidelines manual and application form will be changed to reflect that the applicant should check to see if their equipment is listed on Part A of the ECL before checking Part B. This has the potential of saving the applicant time and money and reducing the required staff review time.**

DCAD commented on two specific items on Part A of the ECL; environmental paving and storm-water containment. DCAD is concerned that TCEQ has been too broad in its determinations related to these items, especially for property located at service stations.

**The commission appreciates this comment and understands DCAD's concerns over these items. Over the last two years staff has seen a significant increase in the number of applications from service stations which has led staff to review the PEL listed items related to service stations. In response to this review, ECL item M-8 (Environmental Paving) has been modified. This item is now limited to industrial facilities and covers only traffic areas. Only the paving qualifies and the dollar value must be provided on a square foot basis. A plat plan must also be provided. Staff developed new item T-16: Concrete Paving above Underground Tanks and Piping in order to alleviate specific concerns at service stations. Rather than the entire parking and driving area being eligible for a positive use determination, paving is now limited to only the concrete paving which must be installed in order to protect underground tanks and pipes from hydrocarbon leaks or spills. In order to better define the part of the land associated with a storm-water containment structure that**

**is eligible for a positive determination, staff has already incorporated the language suggested by DCAD into the property description. Staff adopted this language as a means of explaining to applicants that only that part of the land that actually houses a piece of pollution control property is eligible for a positive use determination. No changes were made to the rule in response to this comment.**

TCUC commented, with the City of Houston's support, that a change in equipment that merely shifts an on-site emission to off-site should not qualify for a use determination. If there was a pollution control benefit then only a partial determination should be made. TCUC cited an example of replacing a gas-fired pump with an electric-fired pump. TCUC suggested that the appropriate determination, if any, should be limited by the productive value of the pump.

**The commission appreciates this comment, but respectfully disagrees with the portion of the comment related to the shifting of emissions from one source to another. Under TTC, the TCEQ is charged with evaluating the equipment or project to determine if it meets the definition of pollution control property. Pollution control property as defined includes property that is used for the prevention, monitoring, control, or reduction of air, water, or land pollution. TTC does not require a net reduction in pollution for an item to be eligible for a pollution control property tax exemption. The requirement for an environmental benefit at the site must also be satisfied.**

**The commission agrees with the second part of the comment related to limiting the exemption to only that portion of the property or project which is related to pollution control or prevention. The**

**appropriate use determination for a project, such as the one in the example, would be one based on determining the amount of additional cost for providing pollution control. Staff refers to this additional cost as the “incremental cost difference”. The descriptions for several of the items in the proposed ECL state that the use percentage is based on the incremental cost difference. In reviewing the proposed ECL, staff realized that there was no explanation on how to calculate “incremental cost difference.” Accordingly, the following language has been added to the end of the description paragraph, in Part A of the ECL: “For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property with the pollution control feature.” Also in response to this comment staff modified the description for item A-112 on the ECL, which includes replacements of pumps, seals and valve, to explain that the portion of the equipment which is eligible for exemption is the cost difference between the new equipment and the old equipment.**

TCUC commented that a “safety valve” should be added to §17.14 to allow the TCEQ to issue a use determination at a percentage other than that listed on the ECL. This would happen if it was determined that an item filed as a Tier I or Tier IV was entitled to a lesser use percentage, than listed on the ECL.

TCUC commented that, under this circumstance, the executive director should require the applicant to re-submit the application under Tier III. From then on all applications for that type of equipment would be considered as Tier III equipment until such time that the ECL could be reviewed under §17.14(b). Harris commented that an amendment should be made to require a Tier III analysis for Tier I or Tier IV if the TCEQ determines that an item does not belong on the ECL.

**The commission appreciates these comments, but respectfully disagrees that a “safety valve” other than those provided in TTC, §11.31 and the commission rules are appropriate. All of the categories of equipment listed in Part B of the ECL are listed as having a “variable” percentage. The percentage, if any of items in Part B of the ECL will be determined on a case-by-case basis. Until a percentage is assigned to an item in Part B of the ECL, TCUC’s suggested “safety valve” will not work since there is not listed use percentage for the items. The proposed three-year review period for the ECL under the adopted rules will allow enough time for the executive director to evaluate each item on Part B of the ECL to determine if there is a need to remove an item from the list.**

**Tier I applications are ones which contain property which is listed in Part A of the ECL. Staff agrees that there may be situations where the use determination percentage listed in the ECL may be inappropriate. In order to handle these situations staff has inserted language into the description paragraph in Part A on the ECL. The insertion is before “The commission will review. . .” The new language is: “The use percentages on Part A of the ECL 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, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure where, it is appropriate, in order to more accurately reflect the environmental benefit at the site.”**

The City of Houston stated that when appropriate only partial exemptions should be provided.

**The commission appreciates this comment and agrees that when appropriate only a partial determination should be issued. Several sections within Chapter 17 address the issuance of partial determinations. Part A of the ECL contains several items which are listed as partial percentages. Part B of the ECL lists all of the categories as variable (V) to signify that a partial determination calculation is required. To ensure that both staff and applicants first consider if the piece of property or project is only eligible for a partial determination staff has modified Figure: 30 TAC §17.15(a) – Decision Flow Chart. The new language will require that property first undergo a partial analysis review before the appropriate fee Tier Level is determined. No change has been made to the rule as a result of this comment.**

Pritchard commented that power supplies installed for the purpose of operating pollution control property should not be eligible for a positive use determination.

**The commission appreciates this comment, but respectfully disagrees. From the inception of the program, staff has considered that the definition of pollution control property includes all equipment necessary in order to operate the specific property item. Included in this definition is that portion of any additional utilities required to operate the pollution control property. No change has been made to the rule as a result of this comment.**

Pritchard commented that the substitution of an electric motor for an internal combustion engine should not receive a 100% use determination. The reasoning provided is that while this type of substitution might eliminate air emissions the electric motor is a piece of production equipment.

**The commission appreciates this comment and agrees that the value of the pollution control aspect of this type of property substitution is the incremental cost difference between the two items. No change has been made to the rule as a result of this comment.**

NRG commented that the list of eighteen property categories listed on Part B of the ECL and in HB 3732 does not specifically include the gasifier and air separation units associated with an integrated coal gasification combined cycle facility. They go on to state that the list contains other pollution control items that would be constructed at this facility and that the legislature must have meant to include these items. They express concern that they may be required to file an application containing this property as a Tier I, II, or III application which would “appear to be contrary to the intention of HB 3732, which was designed to provide advance clean energy projects with expeditious processing and review.” They raise concerns that as written they are unable to reliably determine the amount of exemption that the project might receive. They request that the TCEQ amend the rules to state that “pollution control components of an advanced clean energy, including an IGCC gasifier and ASU, that are not specifically listed in B-1 through B-17 of the Part B list will be eligible for a use determination review as category B-18 facilities and that use determination requests containing such equipment will be considered Tier IV applications.”

**The commission appreciates this comment but declines to address the scope of Category B-18 in this rule. The executive director will determine the scope of Category B-18 in guidance documents and on a case-by-case basis when reviewing actual Tier IV applications. Nevertheless, the commission recognizes that pollution control components of an advanced clean energy project that are not specifically listed in B-1 through B-17 of Part B will be eligible for use determination review under Category B-18 and can be included in a Tier IV application.**

*Comments Relating to §17.15*

Sierra commented that additional language needs to be added to §17.15 to clarify the decision flow chart being referenced in Figure: 30 TAC §17.15(b).

**The commission appreciates the comment and agrees that Sierra’s proposed changes would provide clarity to the application review process. The two references on Figure: 30 TAC §17.15(b) to the Decision Flow Chart have been modified to reflect that the references are to the Decision Flow Chart located in §17.15(a).**

TxOGA recommended that two changes be made to Figure: 30 TAC §17.15(a): Decision Flow Chart. The first proposed change is to re-word Box 5 to read: “Is an environmental benefit created by pollution control property which is located at the site?” The second proposed change is to change the footnote related to Box 5 to read: “Determine that the pollution control property which creates the environmental benefit is installed and operated at the site. If the property that creates the benefit is not located at the site, then that property is not eligible for a positive use determination.”

**The commission appreciates the comment, but respectfully disagrees with these proposed changes.**

**The purpose of the Tax Relief Program is to allow industry to meet ever more stringent environmental regulations by installing pollution control or prevention property without seeing an increase in their property taxes. Making the changes recommended by TxOGA would lead to situations where the environmental benefit could happen at a distance from the local community. No changes were made in response to this comment.**

*Comments Relating to §17.17*

AECT commented that “{p}ollution-reducing production equipment is eligible for a partial positive use determination.”

**Staff agrees and established the Tier III application process to review property that is used partly for pollution control and also for production. No change has been made to the rule in response to this comment.**

CCTFT commented that: “Production equipment that reduces pollution is eligible for tax exempt usage determination.” Jackson expanded on that statement by stating that the statute specifically allowed property that is “wholly or partly” used for pollution control is eligible for a tax exemption.

**The commission appreciates this comment and agrees that production property used partly for the control of air, water, or land pollution is eligible for tax exemption if such property provides an**

**environmental benefit at the site. TTC, §11.31 clearly states that equipment used wholly or partly to control pollution is eligible for a pollution control property tax exemption. From its inception the Tax Relief Program has included a method for obtaining a partial determination. No changes were made to the rule in response to this comment.**

*Comments Relating to §17.10*

Sierra suggested that §17.10(d)(6) be changed to require that the use determination percentage for Tier IV applications be calculated by using the Cost Analysis Procedure (CAP) located in §17.17. Sierra suggested changes to §17.17 which would require use of the CAP for Tier IV applications.

**The commission appreciates this comment. Staff considered this issue during the rule development process. The concern is that while the Cost Analysis Procedure provides an accurate use percentage for pieces of property which provide both pollution control and production benefits, staff is not confident that it will work for the categories of property listed in Part B of the ECL. Staff determined that a more appropriate course of action would be to allow applicants to suggest methods for calculating the appropriate percentage. The executive director retains the right to evaluate the proposed methods and determine the most appropriate one. No change was made to the rule as a result of this comment.**

**CHAPTER 17: TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION**

**§§17.1, 17.2, 17.4, 17.10, 17.12, 17.14, 17.15, 17.17, 17.20**

**STATUTORY AUTHORITY**

These amendments and new section are adopted under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. These rules are also adopted under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The adopted amendments implement the new subsections added to TTC, §11.31.

**§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.

**§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 which are defined by 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) Byproduct--A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.

(2) Capital cost new--The estimated total capital cost of the equipment or process.

(3) Capital cost old--This is the cost of comparable equipment or process without the pollution control feature.

(4) Cost analysis procedure--A procedure which uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.

(5) Decision flow chart--A flow chart which is used to determine if a property or process, which is not listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination as pollution control property.

(6) ePay--The commission's electronic payment system which is located on the TCEQ's web page at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

(7) Equipment and Categories List--A list of property or categories of property used either wholly or partially for pollution control purposes or that is listed in TTC, §11.31(k).

(8) Installation--The act of establishing, in a designated place, property that is put into place for use or service.

(9) Part B decision flow chart--A flow chart which is used to determine if a property or process, which falls under a category listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination or a negative use determination as pollution control property.

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

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

(12) Production capacity factor--A calculated value used to adjust the value of a partial use determination to reflect capacity considerations.

(13) Tier I--An application which contains property that is in Part A of the figure in §17.14(a) of this title (relating to Equipment and Categories List) or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List.

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

(15) Tier III--An application for property used partially for the control of air, water, and/or land pollution but that is not included on the Equipment and Categories List, located in §17.14(a) of this title.

(16) Tier IV--An application containing only pollution control property which falls under a category located in Part B of the figure in §17.14(a) of this title.

(17) 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.

(18) Use determination letter--The letter sent to the applicant and the chief appraiser which includes the executive director's use determination. In addition to the use determination, the letter will also include at least the following information:

(A) the name of the applicant;

(B) the name and location of the facility;

(C) the property description;

(D) in the case of a Tier III application, a copy of the Cost Analysis Procedure worksheet;

(E) in the case of a Tier IV application, a copy of the worksheet explaining the calculation of the use percentage; and

(F) any other information the executive director deems relevant to the use determination.

**§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.

**§17.10. Application for Use Determination.**

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

(1) a commission application form or a similar reproduction and one copy; 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 facility consisting of a group of integrated units which have 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 following year. Applications postmarked after this date will not be processed until after review of all applications postmarked by the due date are completed and without regard for any appraisal district deadlines.

(d) Except for paragraph (1) of this subsection, all use determination applications shall contain at least the following:

(1) for Tier I, II, and III use determination applications, the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, 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 pollution control property;

(4) the specific law, rules, or regulations that are 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, or land pollution, and is not on the Equipment and Categories List, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this title (relating to Partial Determination), and explaining each of the variables;

(6) if the pollution control property contains equipment which falls under one of the categories listed in Part B of the Equipment and Categories List, located in §17.14 of this title (relating to Equipment and Categories List), a worksheet showing the method and the calculation used to calculate the use percentage;

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

(8) 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;

(9) the name of the appraisal district for the county in which the property is located; and

(10) the appropriate Decision Flow Chart, §17.15 of this title (relating to Review Standards), showing how each piece of pollution control property flows through the applicable diagram.

**§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, 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 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) Within three days of receipt of an application for use determination, the executive director shall mail 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 shall specify the deficiencies, and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

(B) For Tier I, II and III applications, additional technical information may be requested within 60 days of issuance of an administrative completeness letter. If the applicant does not provide the requested technical information within 30 days, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title.

(C) If an application is sent back to the applicant under subparagraphs (A) or (B) of this paragraph, the applicant may refile the application and pay the appropriate fee as required by §17.20 of this title.

(3) For Tier IV applications the executive director will complete the technical review of the application within 30 days of receipt of the required application documents.

(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 some or all 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 which 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 mail to the chief appraiser of the appraisal district for the county in which the property is located.

**§17.14. Equipment and Categories List.**

(a) The Equipment and Categories List (ECL) is a two-part list. Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in Texas Tax Code (TTC), §11.31(k).

Figure: 30 TAC §17.14(a)

**Equipment and Categories List  
Part A**

Part A of the Equipment and Categories List is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The use percentages on Part A of the ECL 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, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site. The commission will review and update the list at least once every three years. Items may be added 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. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. For items where the description limits the use determination percentage to the incremental cost difference, the cost of the property or device without the pollution control feature is compared to a similar device or property with the pollution control feature. Part A was formerly referred to as the Predetermined Equipment List. Part A is a list adopted under TTC, §11.31(g).

**Air Pollution Control Equipment**

No.	Media	Property	Description	%
<b>Particulate Control Devices</b>				
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 by creating 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, ductwork, etc. 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, blowers, etc. needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. - used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Igniters	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
<b>Combustion Based Control Devices</b>				
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, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
<b>Non-Volatile Organic Compounds Gaseous Control (VOC) Devices</b>				
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite	100

No.	Media	Property	Description	%
			(H <sub>2</sub> S) or Nitrogen Oxides (NO <sub>x</sub> ) from a waste gas stream.	
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. Stripper associated with product or by-product improvement does not qualify.	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	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50
A-44	Air	Halogen Replacement Projects	All necessary equipment needed to replace the Halogen in a fire suppression system with an environmentally cleaner substance.	100
<b>Monitoring and Sampling Equipment</b>				
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, gas find Infrared (IR) Cameras, etc. constituting a monitoring system required 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, etc. 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, power supplies, etc.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, gas find IR Cameras, etc. used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used 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		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing of fleet vehicles in order to reduce emissions.	100

No.	Media	Property	Description	%
<b>Control of Nitrogen Oxides</b>				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide (NO <sub>x</sub> ) emissions from engines/boilers. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO <sub>x</sub> 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 <sub>x</sub> formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for reduction of NO <sub>x</sub> formation. May include flyash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. 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 <sub>x</sub> formation.	100
A-85	Air	Overfire 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	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO <sub>x</sub> emissions.	100
A-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NO <sub>x</sub> formation.	20
A-88	Air	Low-NO <sub>x</sub> Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO <sub>x</sub> burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO <sub>x</sub> .	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NO <sub>x</sub> emissions from existing internal combustion engines used to drive natural gas compressors These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that	100

No.	Media	Property	Description	%
			delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO <sub>x</sub> formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO <sub>x</sub> including directly related equipment.	100
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NO <sub>x</sub> and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO <sub>x</sub> control.	100
<b>Volatile Organic Compounds (VOC) Control</b>				
A-110	Air	Activated Carbon 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 above ground storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints in order 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	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100
<b>Mercury Control</b>				
A-133	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, particulate collection devices, etc. needed for the equipment to function.	100
A-134	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-135	Air	Mercury Absorbing Filters	Filters which absorb mercury such as those using the affinity between mercury and metallic selenium.	100

No.	Media	Property	Description	%
A-136	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 which can be added to the flue gas or directly to the fuel.	100
A-138	Air	Photochemical Oxidation	Use of a ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury.	100
A-141	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 removed in a particulate removal device.	100
<b>Control of Sulfur Oxides</b>				
A-168	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
<b>Miscellaneous Control Equipment</b>				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. - used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions. In order 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 in order for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment for Fugitive Emissions	Hoods or other enclosures including piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	100
A-185	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - 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-186	Air	Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention or control)	The incremental cost difference between the new paint booth and the replaced paint booth.	100
A-187	Air	Paint Spray Booth Attached to a Final Control Device (New Construction)	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-188	Air	Powder Coating System – Installed to replace an existing paint booth	The incremental cost difference between the Powder Coating System and the Paint Spray Booth which was	100

No.	Media	Property	Description	%
			replaced.	
A-189	Air	Powder Coating System – New construction	Powder recovery system.	100
A-190	Air	Blast Cleaning System – Connected to a Control Device	Particulate control device and blast material recycling system.	100
<b>Dry Cleaning Related Equipment</b>				
A-200	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60
A-201	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40
A-202	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60
A-203	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60
A-204	Air	Refrigerated Vapor Condenser. (Includes only the components that recover the vapors)	A device that uses refrigerants to condense recovered vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	90
A-205	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100
A-206	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100

**Wastewater Pollution Control Equipment**

No.	Media	Property	Description	%
<b>Solid Separation and De-watering</b>				
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	Hydrocarbon.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, Plate and Frame, etc.	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

No.	Media	Property	Description	%
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
<b>Disinfection</b>				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or waste water.	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 waste water.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100
<b>Biological Systems</b>				
W-30	Water	Activated Sludge	Biologically activating carbon matter in waste water 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
<b>Other Equipment</b>				
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 waste water. 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, 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

No.	Media	Property	Description	%
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 in order 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 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-65	Water	Stormwater 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-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
<b>Control/Monitoring Equipment</b>				
W-70	Water	pH Meter, Dissolved Oxygen. Meter, Chart Recorder, etc.	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 control.	100
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 <sub>2</sub> ) 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 that land which is actually occupied by the division 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	%
<b>Solid Waste Management</b>				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles which 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, controls, etc.	100
S-4	Land/ Water/ Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. 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 ground water or soil contamination.	100
S-7	Land/ Water	Liners	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, landfill, etc.	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, piping, etc.	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 (Non-Commercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	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, etc.)	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, compliance monitoring systems)	100
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water.	100
S-16	Water	Groundwater Recovery or	A groundwater remediation system used to remove or treat	100

No.	Media	Property	Description	%
		Remediation System	pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100
S-18	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-19	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 Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	100
S-20	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, pumps, etc.	100
S-21	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, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	100
S-22	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, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100
S-26	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	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

**Miscellaneous Pollution Control Equipment**

No.	Media	Property	Description	%
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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, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	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, Personal Protection, 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	Distillation Recycling Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation. 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 reused. Does not include product storage containers or facilities.	100
M-8	Air/ Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	100
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-10	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-11	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-12	Land/ Water	Structures, Enclosures, Containment Areas, Pads	Required in order to meet 'no contact' stormwater regulations.	100
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100
M-15	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, & Degasser.	100
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Unit and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and	Carbon absorption, zeolite absorption, and other odor	100

No.	Media	Property	Description	%
		Chemical Treatment Systems	neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	
M-19	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-20	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-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion of metal tanks and piping.	100
M-22	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-23	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 in order to prevent unauthorized discharges.	100
M-24	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 in order to prevent unauthorized discharges.	100

**Equipment Located at Service Stations**

No.	Media	Property	Description	%
<b>Spill and Overfill Prevention Equipment</b>				
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 prevent backflow through vents.	100
<b>Secondary Containment</b>				
T-11	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 in order to prevent unauthorized	100

			discharges or leaks.	
T-12	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 in order to prevent unauthorized discharges or leaks.	100
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-16	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
<b>Release Detection for Tanks and Piping</b>				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-24	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-25	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-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
<b>Cathodic Protection</b>				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground 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
<b>Emissions Control Equipment</b>				
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

Part B of the Equipment and Categories List is a list of the pollution control property categories set forth in §11.31(k) of the Texas Tax Code. These categories are described in generic terms without the use of brand names or trademarks. Property used solely for product collection or for production purposes is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as a “V”, for variable, and must be calculated on an application specific basis. Applicants should first view Part A of the Equipment and Categories List to see if their equipment is already on that list. Part B is a list adopted under TTC, §11.31(k).

No.	Property	%
B-1	Coal Cleaning or Refining Facilities	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	V
B-3	Ultra-Supercritical Pulverized Coal Boilers	V
B-4	Flue Gas Recirculation Components	V
B-5	Syngas Purification Systems and Gas-Cleanup Units	V
B-6	Enhanced Heat Recovery Systems	V
B-7	Exhaust Heat Recovery Boilers	V
B-8	Heat Recovery Steam Generators	V
B-9	Super heaters and Evaporators	V
B-10	Enhanced Steam Turbine Systems	V
B-11	Methanation	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	V
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	V
B-15	Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology	V
B-16	If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state	V
B-17	Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste	V
B-18	Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant	V

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

(1) An item may be added to the list 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) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

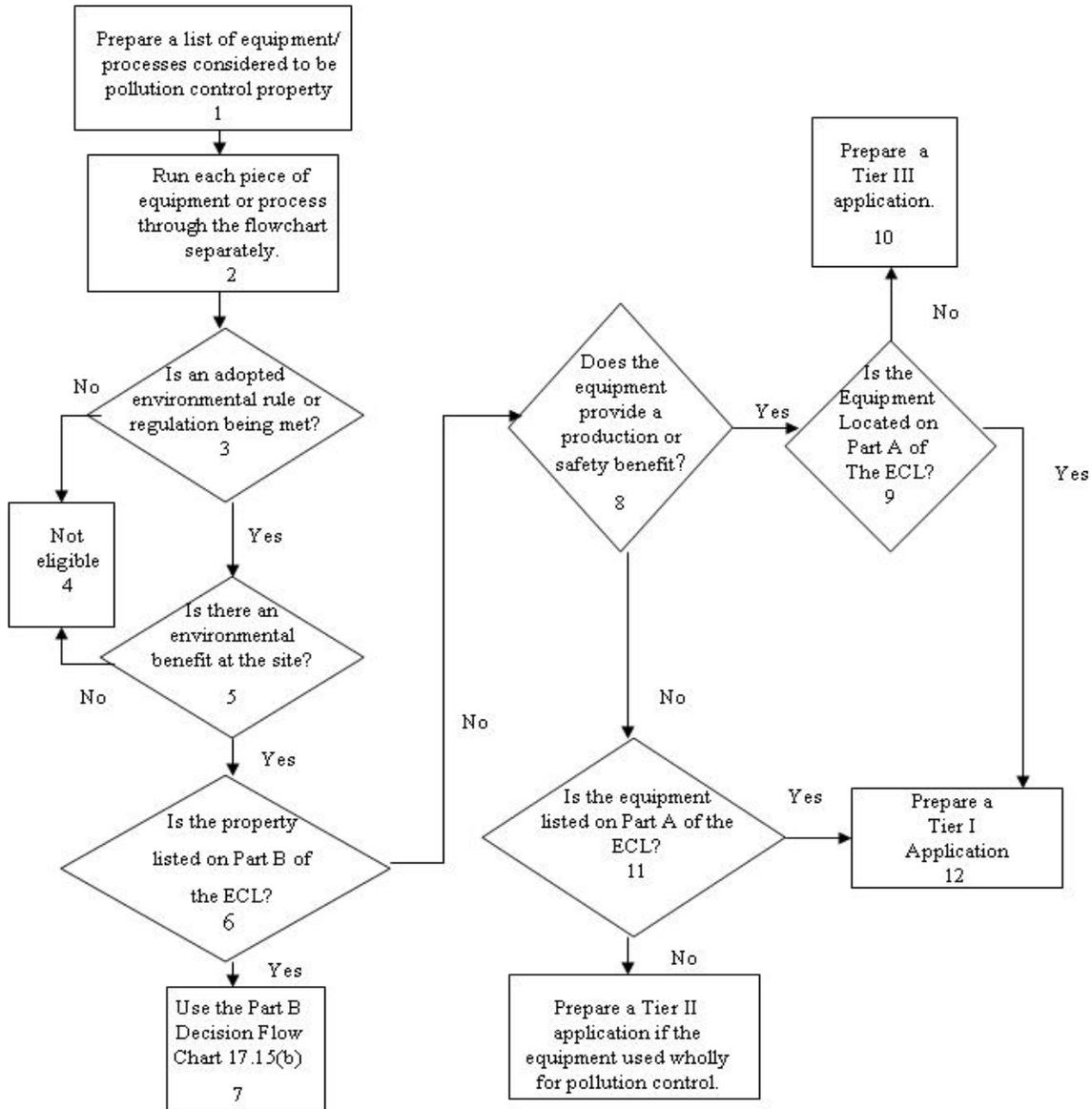
**§17.15. Review Standards.**

(a) The Decision Flow Chart shall be used for each item of property or process, submitted in a non-Tier IV use determination application to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Decision Flow Chart when acting on a non-Tier IV use determination application.

Figure: 30 TAC §17.15(a)

Figure: 30 TAC §17.15(a) **Decision Flow Chart**

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5. ECL means the Equipment and Categories List adopted under Texas Tax Code, §11.31(g).



Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

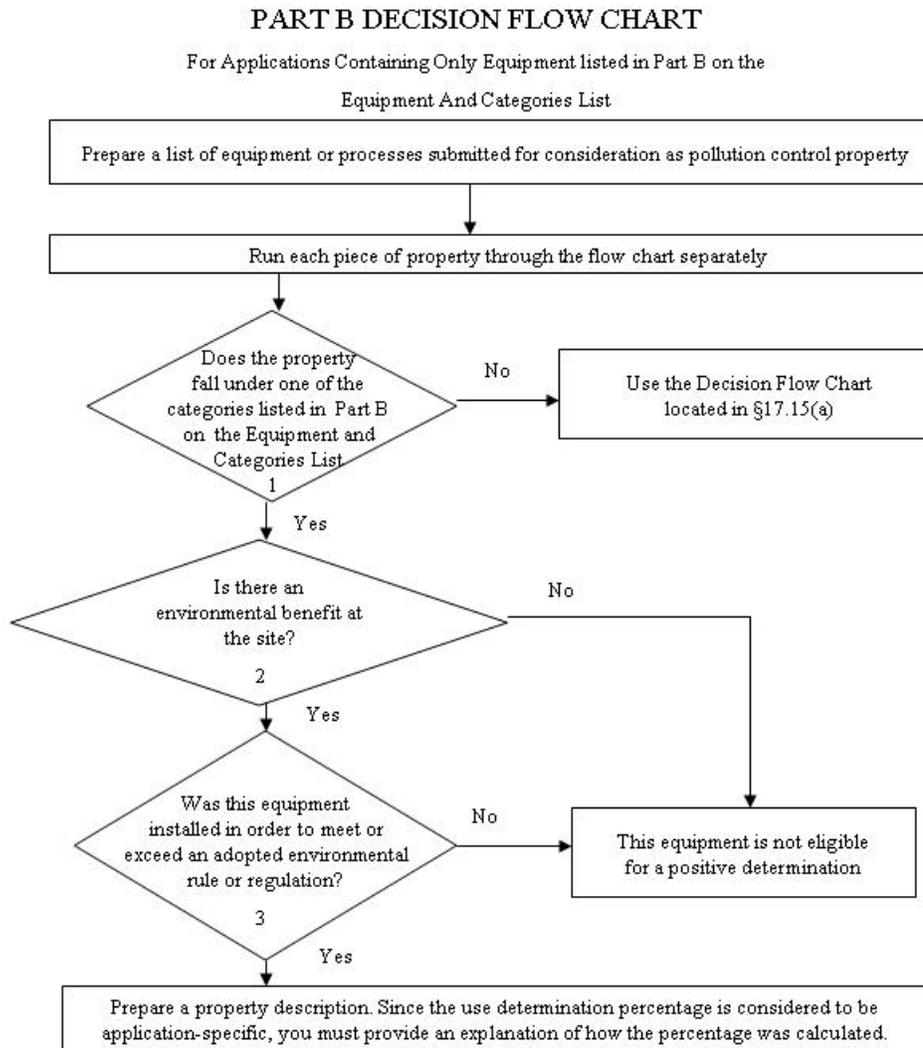
Where:

- Prepare a list of all property that is considered to be pollution control property.
- Process each item on the list through the flow chart separately.
- Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
- Determine the environmental benefit that this property provides at the site where it is installed.
- Determine if the property is listed on Part B of the ECL
- Determine if the equipment is only partly used for pollution control. If it is used only partly, and is not listed on Part A of the Equipment and Categories List (ECL), then a Tier III application must be filed and the partial determination calculation detailed in §17.17 Partial Determinations must be used.
- If the equipment is listed in Part A on the ECL, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application
- If the equipment is not in Part A on the list prepare a Tier II application.

(b) For applications containing only property located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), the Part B Decision Flow Chart shall be used for each item or process to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Part B Decision Flow Chart when acting on an application containing only property which is listed in Part B of the Equipment and Categories List.

Figure: 30 TAC §17.15(b)

Figure: 30 TAC §17.15(b)



Where:

1. Determine if the property is listed in Part B on the Equipment and Categories List. If not, then use the Decision Flow Chart located in §17.15(a).
2. Is there an environmental benefit at the site? If the answer is no then the property is not eligible for a positive use determination.
3. Determine if the equipment was installed in order to meet or exceed an adopted environmental rule or regulation. If the answer is no then the property is not eligible for a positive use determination.

**§17.17. Partial Determinations.**

(a) A partial determination must be requested for all property that is either not on Part A of the Equipment and Categories List located in §17.14(a) of this title (relating to Equipment and Categories List) or does not fully satisfy the requirements for a 100% positive use determination under this chapter. In order to calculate a partial determination percentage for pollution control property submitted in a Tier IV application, the cost analysis procedure described in subsection (d) of this section must be used. For all other property for which a partial use determination is sought, the cost analysis procedure described in subsection (b) of this section must be used.

(b) 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 submitted in a non-Tier-IV application:

Figure 30 TAC §17.17(b)

Figure: 30 TAC §17.17(b)

$$\left[ \frac{(\text{Production Capacity Factor} \times \text{Capital Cost New}) - \text{Capital Cost Old} - \text{Byproduct}}{\text{Capital Cost New}} \right] \times 100$$

Where:

<sup>1</sup> 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, the method of calculation shown in §17.17(b) is modified so that PCF is applied to Capital Cost Old rather than Capital Cost New.

<sup>2</sup> Capital Cost New is the estimated total capital cost of the new equipment or process.

<sup>3</sup> Capital Cost Old is the cost of comparable equipment or process without the pollution control. The standards used for calculating Capital Cost Old are as follows:

<sup>3.1</sup> 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.

<sup>3.2</sup> If the conditions in variable 3.1 of §17.17(b) 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 in order to reduce CCO to reflect the same capacity as CCN.

<sup>3.3</sup> If the conditions in variables 3.1 and 3.2 of §17.17(b) 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.

(c) For property that generates a marketable byproduct (BP), the net present value of the BP is used to reduce the partial determination. The value of the BP is calculated by subtracting the transportation and storage of the BP from the market value of the BP. This value is then used to calculate the net present value (NPV) of the BP over the lifetime of the equipment. The equation for calculating BP

is as follows: Figure 30 TAC §17.17(c)

Figure: 30 TAC §17.17(c)

$$\Delta P = \sum_{t=1}^n \frac{[(\text{Byproduct Value}) - (\text{Storage \& Transport})]_t}{(1 + \text{interest rate})^t}$$

<sup>i</sup> **Byproduct Value**--The retail value of the recovered byproduct for a one year period. 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.

<sup>ii</sup> **Storage and Transport**--These costs are the costs to store and transport the byproduct. These costs will reduce the market value of the byproduct. The applicant shall provide verification of how these costs were determined and itemized.

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

<sup>iv</sup> **Interest rate**--This is the current Prime Lending Rate that is in effect at the time the application is submitted. The Prime Lending Rate is defined by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the Wall Street Journal and on most financial or investment web sites.

(d) For applications containing only property falling under a category listed in Part B of the Equipment and Categories List, located in §17.14(a) of this title (relating to Equipment and Categories List), a use determination must be calculated. It is the responsibility of the applicant to propose a reasonable method for determining the use determination percentage. It is the responsibility of the executive director to review the proposed method and make the final determination.

(e) If the cost analysis procedure or the method accepted by the executive director under subsection (d) of this section produces a negative number or a zero, the property is not eligible for a positive use determination.

**§17.20. Application Fees.**

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (4) of this subsection.

(1) Tier I Application--A \$150 fee shall be charged for applications for property that is located in the figure in §17.14(a) of this title (relating to Equipment and Categories List), 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 figure in §17.14(a) of this title (relating to Equipment and Categories List).

(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.

(4) Tier IV Application--A \$500 fee shall be charged for applications containing only property which is located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List).

(b) Fees shall be forfeited for applications for use determination which are sent back 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.

(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) or by electronic funds transfer 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.