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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 listed 18 categories of equipment. However, §11.31(k) does not provide the pollution control percentage for each of the 18 categories of items. Staff has 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 decided to recommend for proposal, a two-part list. Part A would be 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 of the list would consist 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 would be listed without set use determination percentages. Applicants would 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 rulemaking will amend 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 to these amendments, incorrect references to the TCEQ will be corrected.

SECTION BY SECTION DISCUSSION

§*17.1. Scope and Purpose.*

The commission proposes to amend this section by removing the phrase "including political subdivisions." New 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements is being proposed under concurrent rulemaking and will implement Texas Tax Code (TTC), §26.045, Rollback Relief for Pollution Control Requirements. Once Chapter 18 is adopted, political subdivisions will no longer be covered under Chapter 17.

§17.2. Definitions.

The commission proposes to amend §17.2 by defining the acronyms TCAA and TSWDA and by including the Texas Tax Code (TTC) in the list of regulations where terms used in this chapter may be defined. The commission proposes to amend §17.2(5) by changing the definition of Decision Flow Chart to reflect that it is not used for applications containing property listed or contained in Part B of the Equipment and Categories List (ECL). The commission proposes to add §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 commission proposes to add §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). Section 17.2(6) will be renumbered as §17.2(8). The commission proposes to add §17.2(9) which provides the definition for the Part B Decision Flow Chart. Sections 17.2(7) and (8) will be renumbered as §17.2(10) and (11) respectively. The commission proposes to remove §17.2(9) to reflect the elimination of the Predetermined Equipment List. Section 17.2(10) - (13) will be renumbered as §17.2(12) - (15) respectively. The commission proposes to add §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. Section 17.2(14) and (15) will be renumbered as §17.2(17) and (18) respectively. The commission proposes to add new §17.2(18)(E) which explains what information will be included with the use determination letter. Section 17.2(18)(E) is relettered as §17.2(18)(F).

§*17.4. Applicability.*

The commission proposes to delete §17.4(c). The property currently listed in the list referred to in this subsection is now proposed to be included in Part A of the Equipment and Categories List (ECL), set forth in §17.14. The commission would no longer maintain a list called the Predetermined Equipment List. The commission proposes to amend §17.4(d) by adding "applicable" to show the existence of two decision flow charts and two partial determination processes.

§*17.10. Application for Use Determination.*

The commission proposes to amend §17.10(a)(1) by removing "Texas Natural Resource Conservation Commission" and replacing it with "commission." The commission proposes to amend §17.10(c) by removing the phrase "other than a political subdivision." The program for political subdivisions is being relocated to the new Chapter 18, which has been proposed under concurrent rulemaking. In addition, this proposal amends this subsection to make it grammatically correct. The commission proposes to amend §17.10(d)(1) by adding language to show that this subsection does not apply to Tier IV applications. The commission proposes to renumber §17.10(d)(6) - (9) to §17.10(d)(7) - (10) respectively. The commission proposes adding §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 commission proposes to amend §17.10(d)(10) by adding the word "appropriate" to reflect that there are now two Decision Flow Charts.

§*17.12. Application Review Schedule.*

The commission proposes to amend §17.12(2) by changing the 30-day administrative review period to 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 commission proposes to amend §17.12(2)(A) by removing the word "deficient" and inserting the phrase "not administratively complete" to better define the differences between the two types of deficiencies. The commission proposes to amend §17.12(2)(B) by adding "For Tier I, II, and III applications" to differentiate between existing fee levels and the new fee level for Tier IV applications. The commission proposes to add §17.12(3) which explains that the

technical review period for Tier IV applications is limited to 30 days. The commission proposes to renumber existing §17.12(3) to §17.12(4).

The Commission solicits comments on the appropriate format and process for notifying the chief appraiser for the appraisal district where the pollution control equipment is located.

§17.14. Equipment and Categories List.

The commission proposes new §17.14 which 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).

The commission proposes new §17.14(b) which defines the review process of the ECL list as at least once every three years. Proposed new §17.14(b)(1) defines the requirements for adding an item to the ECL and §17.14(b)(2) defines the requirements for removing an item from the ECL.

The Commission solicits 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.

§*17.15. Review Standards.*

The commission proposes to renumber §17.15 to §17.15(a) and to amend §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 commission proposes to amend Figure: 30 TAC §17.15(a) by removing two incorrect references to the program's name. The commission proposes to add §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 commission proposes to add 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.

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

§*17.17. Partial Determinations.*

The commission proposes to amend §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 Equipment and Categories List and for property which is not used wholly as pollution control property. The commission proposes to amend §17.17(b) to reflect 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 commission proposes to add §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. Subsection (d) also explains that it is the responsibility of the executive director to determine if the proposed method is appropriate. The commission proposes to reletter existing §17.17(d) as §17.17(e) in order to reflect the addition of new subsection (d). The commission proposes to amend subsection (e) by adding the "method accepted by the executive director under subsection (d) of this section."

§*17.20. Application Fees.*

The commission proposes to amend §17.20(a) to reflect that there would be four fee levels rather than three. The commission proposes to amend §17.20(a)(1) to reflect that the Tier I fee level applies only to applications containing only property listed in part A of the Equipment and Categories List. The commission proposes to amend §17.20(a)(2) by replacing the reference to the Predetermined Equipment List with a reference to the Equipment and Categories List. The commission proposes to add §17.20(a)(4) 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 commission proposes to amend §17.20(b) by adding "administratively" as a means of defining the word "complete. The commission proposes to amend §17.20(c) by adding 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, this proposal amends this subsection by correcting the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." This proposal 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 commission proposes to add §17.20(d) which requires

that the application fee must be delivered with the application. In addition, this proposed 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state government as a result of the administration or enforcement of the proposed rules. Some local governments may realize a decrease in tax revenue and/or a decrease in their tax base due to the exemption of certain pollution control property, which may be significant. Industries or businesses that own certain qualifying pollution control equipment may be eligible for tax relief as a result of the administration or enforcement of the proposed rules.

The proposed rule changes in Chapter 17, implement portions of House Bill 3732, 80th Legislature, Regular Session. HB 3732 provides incentives via grants, loans, tax abatements and exemptions, as well as expedited permit processing for advanced clean energy projects and other environmentally protective projects. The proposed rules relate to tax relief for pollution control property.

The proposed amendments include the following: proposal of an Equipment and Categories List consisting of equipment that the commission has previously determined to qualify as whole or partial pollution control property and 18 categories of equipment listed in TTC, §11.31(k); a procedure to review this list at least once every three years; a requirement that items may not be removed from the list unless

there is compelling evidence that the item does not provide a pollution control benefit; and a requirement that agency review of applications, containing only equipment from the 18 categories on the adopted list, must be completed within 30 days of receipt of the required application documents.

The agency would be impacted by the rulemaking in that the Equipment and Categories List (ECL) must be reviewed at least once every three years. Since the agency is proposing that the list be adopted by rule, the review process would require rulemaking. Secondly, for those applications that contain only property listed or contained in Part B of the ECL, final determinations must be issued within 30 days of receipt of the required application documents. The current rules provide for a 30-day administrative review period and a 60-day technical review period, so under the proposed amendments, there would be a quicker turnaround time for the issuance of final determinations.

Agency staff estimates that the proposed rule changes would result in an additional 500 applications being filed each year containing equipment listed or contained in Part B of the ECL. Any additional costs for the agency to review and issue final determinations for the additional applications are expected to be offset by additional fee revenue collected for administering the program as authorized by the General Appropriations Act. The agency proposes to adopt a new fee level, Tier IV, for these applications. The agency proposes setting the filing fee for each Tier IV application at $500. The fee would be deposited into the General Revenue Fund. If there are 500 Tier IV applications each year, the agency could see an estimated $250,000 increase in fee revenue each year.

Local governments who collect property taxes could be affected by this rulemaking. Businesses and individuals who own Tier IV equipment and who are granted a positive use determination by the commission, would be eligible for exemption from certain property taxes. In potentially exempting the additional categories of property listed in HB 3732, local governments could either realize a decrease in tax revenue for pollution control property currently installed or a decrease in their tax base for future equipment that will be installed by industry. Individuals living within the taxing jurisdiction of affected local governments could see either a decrease in levels of services provided by these local governments or an increase in taxes to compensate for decreases in revenue or the tax base.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and the provision of incentives for businesses and industries to use pollution control technologies which would result in a cleaner environment.

Fiscal implications are anticipated for industries, businesses, and individuals who own pollution control equipment that qualifies under the commission's Tax Relief Program. Qualifying businesses, industries, or individuals would be eligible for tax benefits.

Industries and businesses who own pollution control equipment would need to file a completed Tier IV Use Determination application and pay the appropriate fee ($500 for Tier IV application). Agency staff estimates that there could be 500 additional applications from businesses and industry filed each year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. Based upon previous program history, it is estimated that of the 500 new applications, approximately 21 small businesses and 2 micro-businesses may be affected by the proposed rulemaking each year. These businesses would realize the same tax benefits and savings as larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules would not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking 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 proposed rulemaking would amend the Tax Relief for Pollution Control Property. Because the proposed 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. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission’s preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed amendments. Promulgation and enforcement of these proposed rules would be neither a statutory or constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor 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 commission reviewed the proposed rulemaking and found the proposal is 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, therefore, not require that goals and policies of the CMP be considered during the rulemaking process. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be 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. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-055-017-AS. The comment period closes November 5, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ron Hatlett, Small Business and Environmental Assistance, (512) 239-6348.

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

The amendments and new rules are proposed 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 proposed under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The proposed amendments and new rules 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 [, including political subdivisions,] 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.

(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) [(6)] 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) [(7)] Partial Determination--A determination that an item of property or a process is not used wholly as pollution control. [This is property that is not on the predetermined equipment list (PEL) and that is not used wholly for pollution control.]

(11) [(8)] Pollution control property--A facility, device, or method for control of air, water, or land pollution as defined by Texas Tax Code, §11.31(b).

[(9) Predetermined equipment list--A list of property that the executive director has determined is either wholly or partially for pollution control purposes.]

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

(13) [(11)] 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) [on the PEL] or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List [the PEL].

(14) [(12)] 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 (relating to Equipment and Categories List) [PEL].

(15) [(13)] Tier III--An application for property used partially for the control of air, water, and/or land pollution.

(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, (relating to Equipment and Categories List).

(17) [(14)] 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) [(15)] 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) [(E)] 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 shall maintain a predetermined equipment list of property that is predetermined to qualify, either wholly or partially, as pollution control property.]

(c) [(d)] 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 [or political subdivision] shall submit to the executive director:

(1) a commission [Texas Natural Resource Conservation Commission] application form or a similar reproduction; 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 [, other than a political subdivision,] 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 [is] completed and without regard for any appraisal district deadlines.

(d) Except for paragraph (1) of this subsection, all use determination applications [The application] 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 [predetermined equipment list], a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this chapter (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) [(6)] any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(8) [(7)] if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability;

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

(10) [(9)] 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 [30] 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 [deficient], 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 [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) [(3)]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 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 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 is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. 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	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork— used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges — used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection 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	100

No.	Media	Property	Description	%
			from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	
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 Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control (VOC) Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H_2S) or Nitrogen Oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream. 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
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, 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	100

No.	Media	Property	Description	%
			of production equipment or processes is not included.	
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
Control of Nitrogen Oxides				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide ($NO_{x)}$ 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_x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x 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_x 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_x 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	20

No.	Media	Property	Description	%
			thereby lowering combustion temperatures, which reduces NOx formation.	
A-88	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x 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_x.	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NOx 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 delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO_x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NOx 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 NOx 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 NOx control.	100
Volatile Organic Compounds (VOC) Control				
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	Replacement of these parts 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	100

No.	Media	Property	Description	%
			joints in VOC service.	
A-115	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100
Mercury Control				
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
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
Control of Sulfur Oxides				
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
Miscellaneous Control Equipment				
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	100

No.	Media	Property	Description	%
			process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	
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
Dry Cleaning Related Equipment				
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	%
Solid Separation and De-watering				
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator	100
W-4	Waste water	Skimmer	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

No.	Media	Property	Description	%
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or 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
Biological Systems				
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
Other Equipment				
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from 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

No.	Media	Property	Description	%
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
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
Control/Monitoring Equipment				
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_2) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100

No.	Media	Property	Description	%
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, 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	100

No.	Media	Property	Description	%
			emissions from a waste management unit or ancillary equipment.	
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 Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	100
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

No.	Media	Property	Description	%
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	%
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 disposal 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

No.	Media	Property	Description	%
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 Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-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	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100

T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
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 discharges or leaks.	100
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
Release Detection for Tanks and Piping				
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
Cathodic Protection				
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

Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Part B

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. Part B is a list adopted under TTC, §11.31(m).

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.

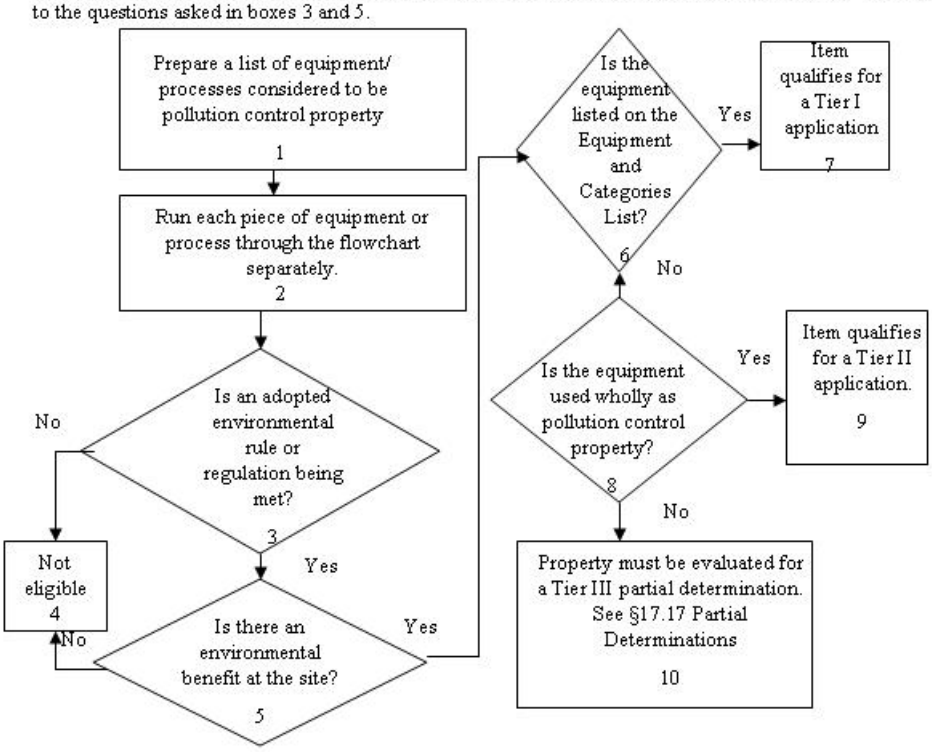
(a) The [Prop 2] Decision Flow Chart shall be used for each item of [pollution control] property or process, submitted in a non-Tier IV use determination application to determine whether the particular [equipment] item will qualify as pollution control property. The executive director shall apply the standards in the [Prop 2] Decision Flow Chart when acting on a non-Tier IV use determination application.

Figure: 30 TAC §17.15(a)

[Figure: 30 TAC §17.15]

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.



Where:

1. Prepare a list of all property that is considered to be pollution control property.
2. Process each item on the list through the flow chart separately.
3. Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
4. Determine the environmental benefit that this property provides at the site where it is installed.
5. If the equipment is listed in Part A on the equipment and categories list, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application.
6. If the equipment is not in Part A on the list, determine whether the equipment is used wholly for pollution control.
7. If the equipment is not used wholly for pollution control then a Tier III application must be filed and the partial determination calculation detailed in §17.17 Partial Determinations must be used.

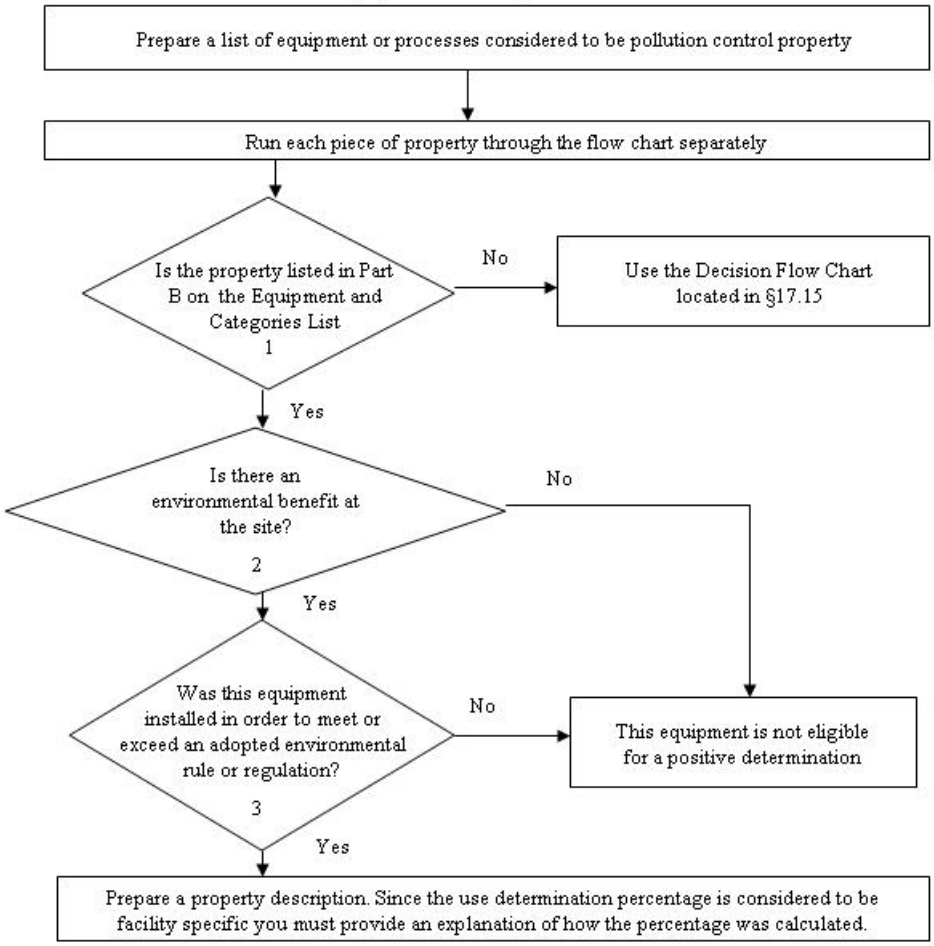
(b) For applications containing only property located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), the Part B Decision Flow Chart shall be used for each item or process to determine whether the particular item will qualify as pollution control property. 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)

PART B DECISION FLOW CHART

For Applications Containing Only Equipment listed in Part B on the Equipment And Categories List



Where:

1. Determine if the property is listed in Part B on the Equipment and Categories List. If no then use the Decision Flow Chart.
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) [the predetermined equipment list] or does not fully satisfy the requirements for a 100% positive use determination under this chapter. [and that is not wholly used for pollution control.] 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 [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 [or project which is not used wholly for pollution control]:

Figure 30 TAC §17.17(b) **(**No change.)

Figure: 30 TAC §17.17(b)

$$\frac{[(\text{Production Capacity Factor}^{1} \times \text{Capital Cost New}^{2}) - \text{Capital Cost Old}^{3} - \text{Byproduct}]}{\text{Capital Cost New}} \times 100$$

Where:

[1] The Production Capacity Factor (PCF) is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. When there is an increase in production capacity PCF is used to adjust the capacity of the new equipment or process to the capacity of the existing equipment or process. When there is a decrease in production capacity PCF is used to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In this case, 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.

[2] Capital Cost New is the estimated total capital cost of the new equipment or process.

[3] Capital Cost Old is the cost of comparable equipment or process without the pollution control. The standards used for calculating Capitol Cost Old are as follows:

[3.1] If comparable equipment without the pollution control feature is on the market in the United States, then an average market price of the most recent generation of technology must be used.

[3.2] If the conditions in variable 3.1 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.

[3.3] 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) **(**No change.)

Figure: 30 TAC §17.17(c)

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

[I] ***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.

[II] ***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.

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

[IV] ***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) [(d)] 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) [(3)] 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) [on the predetermined equipment 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) [on the predetermined equipment 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) [Texas Natural Resource Conservation Commission (TNRCC)] or by electronic funds transfer by using the commission's ePay system [and delivered with the application to the TNRCC, at the address listed on the application form].

(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.