

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendments to §§17.2, 17.10, 17.12, 17.14, and 17.17 *with changes* to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6255). Sections 17.1, 17.6, 17.20, and 17.25 and the repeal of §17.15 are adopted *without changes* to the proposed text, and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The program for providing tax relief for pollution control property (tax relief program) was established under a constitutional amendment through the approval of Proposition 2 on the state ballot on November 2, 1993. This amendment added §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature, 1993, added Texas Tax Code, §11.31, Pollution Control Property, and Texas Tax Code, §26.045, Rollback Relief for Pollution Control Requirements, to implement the 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 moved to Chapter 17 to be consistent with the commission's policy of placing general or multimedia rules within 30 TAC Chapters 1 - 100. In 2001, the legislature enacted House Bill (HB) 3121 during the 77th Legislative Session. HB 3121 amended Texas Tax Code, §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 a process for appealing a use determination from the executive director by the applicant 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 legislature enacted HB 3732 during the 80th Legislative Session. HB 3732 amended Texas Tax Code, §11.31 by adding three subsections. Texas Tax Code, §11.31(k) required the commission to adopt, by rule, a list of pollution control properties that must include 18 categories of items listed in the statute. Texas Tax Code, §11.31(l) required the commission to adopt a procedure to review the list at least once every three years and allowed the removal of items from the list when there is compelling evidence that the item does not provide pollution control. Finally, Texas Tax Code, §11.31(m) required the executive director to review applications containing items on the adopted list and to issue a determination without regard to the information provided in response to Texas Tax Code, §11.31(c)(1) within 30 days of receipt of the required information.

The existing rules contain a two-part Equipment and Categories List (ECL) codified in §17.14(a). Part A of the ECL is intended to cover property that is normally used consistently for pollution control at a listed average percentage of use. This part was adopted under Texas Tax Code, §11.31(g). Texas Tax Code, §11.31(k) required the TCEQ to adopt a list containing the 18 categories of equipment. This list was adopted as Part B of the ECL. However, Texas Tax Code, §11.31(k) did not provide the pollution control percentage for each of the 18 categories of equipment. Staff reviewed these items and determined that the pollution control percentage varies depending upon many different factors, including the type of facility where the property is located and the function of the property. Under the existing rules, applicants have been required to calculate an application-specific use percentage for each piece of equipment, subject to executive director review and approval, but with this rule change, the applicant is required to use the Cost Analysis Procedure (CAP) in §17.17(c). The inclusion of a piece of equipment on the

Tier I Table or on the table in §17.17(b) or the assertion that a piece of equipment falls under a category set forth on either list does not mean that the equipment would receive a positive use determination in all circumstances. A partial use percentage must be calculated for each piece of property on an application-by-application basis.

Prior to the 81st Legislature, 2009, the Legislative Budget Board (LBB) prepared a report including recommendations to the legislature on the tax relief program. The report recommended that the TCEQ use the CAP contained in its rules for all partial determinations, including applications for property located on the list in Texas Tax Code, §11.31(k). The LBB report acknowledged that the CAP took into account the economic benefit of property to the property owner and further recommended the creation of a permanent advisory committee for the program. Both HB 3206 and HB 3544 from the 81st Legislature, contain language requiring the standards and methods established in the rules to be uniformly applied to all applications for determinations, including applications for property listed in Texas Tax Code, §11.31(k), which with this rule adoption, is codified as the Expedited Review List in §17.17(b) in these revised rules. The legislation specifically does not apply to applications filed prior to January 1, 2009, or to applications filed after January 1, 2009, that received final determinations prior to September 1, 2009.

To implement the uniformity requirements in HB 3206 and HB 3544, the adopted rulemaking applies the CAP to all partial use determinations for property that do not meet the fixed use percentage criteria established by the commission under the Tier I Table in §17.14(a) of the rules. The adopted rulemaking eliminates Tier IV applications. To apply the CAP to all partial use determinations, Tier III applications are required for all partial determination requests,

including use of the CAP to calculate the percentage of use of the property for pollution control. Adoption and implementation of this amendment will require items that were formerly on Part A of the ECL at less than 100% or used partially for pollution control to be filed as Tier III applications. Additionally, items listed in the table in §17.17(b) that are used partially for pollution control must be filed as Tier III applications. Although some items that were on Part A of the ECL had use percentages below 100%, the executive director could not validate that the listed percentages are appropriate. In most cases, the percentage was an average of the actual partial use from various applications. Items that were on Part A of the ECL with a percentage less than 100% were removed from the Tier I Table because the executive director did not have information verifying that the use percentage can be consistently applied to every piece of equipment in a specific category. Other items on Part A of the ECL were listed at 100% pollution control although in some cases the equipment could be used for production purposes as well. Therefore, Tier III applications are now required for all of these items to ensure review consistency and to calculate the actual use percentage for each item until the commission has sufficient information to establish partial use percentages appropriate to all property within a category of equipment. When sufficient information is available to determine a fixed partial use percentage for a category of property, the commission will consider addressing through a future rulemaking whether to add that property to the Tier I Table with the appropriate partial use percentage.

The change to Tier III applications for items on the former Part B of the ECL that are used partially for pollution control changes the way that applicants calculate the partial use percentage. The former provision of allowing applicants to choose their own method for calculating a use percentage for these properties resulted in applications for the same types of

property with widely varying calculated use percentages. HB 3206 and HB 3544 specifically require that the standards and methods established in the rules be uniformly applied to all applications for determinations, including applications for property listed in Texas Tax Code, §11.31(k), which is now codified in the table in §17.17(b). For these partial use items, a Tier III application with the calculation of an actual use percent is required in all cases until the commission determines that a specific item is always used for pollution control at the same use percentage within a category of use. In these cases, the item will be added to the Tier I Table. The higher fees for the Tier III applications are appropriate for the partial items removed from the ECL because of the greater review needed for applications for partial determinations and in evaluating whether a fixed partial use percentage is applicable to various categories of use.

To allow the CAP to provide a better calculation of the production benefits of property used partially for pollution control and partially for production, the equation is modified by replacing the term "by-product" with "marketable product." The term "by-product" is limited to waste material. However, the more expansive term "marketable product" allows the CAP to factor in other products from particular types of equipment (for example, equipment that results in energy production). Formerly, the calculation of by-product value only subtracted costs for transportation and storage, but the calculation of a marketable product value subtracts all costs associated with the production of the marketable product, which more accurately determines the product value produced by pollution control property. Based on a recommendation from the Tax Relief for Pollution Control Property Advisory Committee (advisory committee), the CAP is modified to replace the prime lending rate factor in the net present value of the marketable product (NPVMP) calculation with a capitalization rate of 10%. This change is discussed in the discussion section of this preamble.

Additionally, HB 3544 allows the commission the use of electronic means of transmission of information. As part of the implementation of this legislation, the commission adopts provisions for staff to send letters and use determinations to appraisal districts and applicants electronically.

As required by HB 3206 and HB 3544, the commission established a permanent advisory committee to provide input on the implementation of Texas Tax Code, §11.31. The advisory committee provided several recommendations for this rulemaking.

SECTION BY SECTION DISCUSSION

In addition to the amendments discussed in this section of the preamble, the commission also makes various stylistic non-substantive changes to update rule language to current *Texas Register* style and format requirements, as well as establish more consistency in the rules. These changes are non-substantive and generally are not specifically discussed in this preamble.

§17.1, Scope and Purpose

The commission makes a non-substantive change to correct a grammatical error.

§17.2, Definitions

The commission adds 30 TAC Chapter 3 to the list of laws with definitions pertinent to this chapter in the introductory paragraph. Chapter 3 contains general definitions that are applicable to all commission rules, and the addition is only for clarity.

The commission deleted the definition of "Byproduct." This term was used as a factor in the CAP in §17.17, but the commission replaces this factor with "Marketable product," as discussed elsewhere in this section. Subsequent paragraphs are renumbered.

To address comments of the advisory committee, the definition of "Capital cost old" is changed at adoption to incorporate by reference the methods for calculating this variable in the equation in §17.17(c)(1). The definition was proposed with a change to include cases where old pollution control property is replaced with new pollution control property. When a piece of equipment is not replacing previous equipment, instead of zero, capital cost old is the cost of a comparable piece of equipment without the pollution control feature. Changes are made at adoption to the standards for the capital cost old variable in the equation in §17.17(c)(1) to address the advisory committee's concern about the possible impact to facilities that are replacing equipment that already has a use determination with new pollution control property. Because the standards are changed at adoption and to avoid any confusion because of differences between the definition and the standards, the definition is changed at adoption to reflect the standards.

The commission deletes the definition of "Decision flow chart" because of the deletion of the two flow charts as discussed elsewhere in this section.

At the request of the advisory committee, the rule provides a definition of "Environmental benefit." The definition approved by the advisory committee and adopted in the rule links environmental benefit to the actions of a person to control pollution but excludes pollution control or reductions achieved through the use of a product, good, or service. The definition

further states that environmental benefit means the same as pollution control within the context of this chapter.

The revisions to the rule delete the definition "ePay" because the use of the term is clear in the rules.

The commission is deleting the definition "Equipment and categories list." Because the list required to be adopted by Texas Tax Code, §11.31(k) will be moved with revisions to the table in §17.17(b) and Part A of the ECL is renamed to the "Tier I Table," this definition is no longer needed.

The revisions to the rule delete the definition of "Installation" as the use of the term is consistent with the standard dictionary definition making the inclusion of the definition in this section unnecessary.

As stated elsewhere in this section, the commission includes a definition of "Marketable product." This definition is broader than the existing definition of by-product, which is deleted, because of inclusion of things other than wastes recovered and sold (for example, co-products or electricity). The new definition includes anything produced or recovered from pollution control property that is sold or traded, accumulated for later use by the producer, or used in a manufacturing process, with the exception of emissions credits and emissions allowances. Since the production of valuable assets by pollution control property is a type of production, the value of these assets should be considered in determining the percentage of environmental use of the property. The value of a marketable product is used in the CAP for Tier III applications.

The commission deletes the definition "Part B decision flow chart" because the corresponding flow chart located in §17.15(b) is deleted. Therefore, this definition is no longer needed.

The commission deletes the definition "Production capacity factor." This term is defined within the variables for the equation in the CAP in §17.17(c), and therefore a separate definition in this section is unnecessary.

The commission adopts changes to the definitions to Tier I, Tier II, and Tier III for consistency with the change renaming Part A of the ECL to the Tier I Table as discussed in this section for §17.14(a). Additional rewording of these definitions for clarity is made. For the Tier III definition, the rewording is intended to mean that Tier III includes, but is not limited to, property used partially for pollution control that is similar to items on the Tier I Table but that is used in a different manner, such as generation of a marketable product, or at a different use percentage than shown on the Tier I Table.

The commission deletes the definition of Tier IV because this level of applications is eliminated. All partial use determinations will be submitted as a Tier III for uniformity. Applications for property used wholly for pollution control will be submitted as a Tier I if the equipment is on the Tier I Table or as Tier II for other property. Therefore, this term is no longer needed in the rules.

The commission deletes the definition "Use determination letter." The meaning of the term is clear, and a definition is unnecessary.

§17.6, Property Ineligible for Exemption from Taxation

Consistent with the recommendations of the advisory committee, the commission adopts the amendment to §17.6(1). Paragraph (1) is amended to specify three circumstances that make property ineligible to receive a positive use determination. The three circumstances are the following: 1) the only use of the property is to produce a good or service; 2) the property is not used at all for pollution control; or 3) the only environmental benefit arises from the use or characteristics of the good or service.

The commission revises the term "Tax Code" to "Texas Tax Code" in §17.6(2) for clarity and uniformity.

§17.10, Application for Use Determination

The commission amends §17.10(a)(1) to add "completed and signed" before "application form" to clarify that the applications must be complete when submitted. Additionally, "completed and signed" is added before "copy" to ensure that a completed and signed copy is available to send to the appraisal district.

The commission revises §17.10(b) by deleting the wording "facility consisting of" before "group of integrated units" for clarity. The use of "facility" could be interpreted as meaning that all environmental property at any site can be placed in a single application resulting in applications covering very large amounts of property and where property has little relation to one another. However, because the program is statutorily required to recover review costs through application fees, the size of applications needs to be limited to reasonable amounts of property. This revision is to clarify the intent of the existing language that property that works together or

sequentially to control pollution from one or more specific emission points can be put into the same application. Additionally, "have" is changed to "has" to emphasize that it is the group of units that serve a common purpose rather than the individual units. As an example of what is intended by the rule, a series of air control devices for a specific vent gas stream are an integrated unit although the devices may treat different pollutants (such as volatile organic compounds, nitrogen oxides, particulates, etc.), but a baghouse is not an integrated unit with a vacuum truck even though both are used to control particulates at a facility. The revisions do not change applicants' ability to include multiple identical units or systems in a single application.

The commission revises §17.10(c) to delete the word "not" and substitute "as a lower priority than" for "until after review of all." This revision removes the implication that all applications postmarked before January 31 must be completely processed before applications postmarked after January 31 are started. The change avoids delays from a strict interpretation of the plain rule language in the start of processing of later applications while waiting for response to requests for additional information on applications that were postmarked before January 31st. Therefore, the change allows more efficient processing of applications. Based on a recommendation from the advisory committee, an additional change is made at adoption to the language in §17.10(c): The wording "of the following year" at the end of the first sentence is changed to "of the same tax year." This change clarifies that use determinations must be requested before the tax roll is certified for the year in which a tax exemption is sought.

The commission deletes the wording "except for paragraph (1) of this subsection" in §17.10(d) and the wording "for Tier I, II, and III use determination applications" in §17.10(d)(1) to make the rule consistent with Texas Tax Code, §11.31(c)(1). In addition, the rulemaking revises

§17.10(d) to replace the word "shall" with "must" to be consistent with the rule drafting standards in the *Texas Legislative Council Drafting Manual* (September, 2010). The word "must" applies to objects and establishes a condition precedent (i.e., in this case, the items listed in this subsection must be present for a submission to be an application), while the word "shall" is used to establish an obligation for a person.

The revisions replace "that is pollution control property" with "that is for pollution control" in §17.10(d)(3) to clarify that the executive director, rather than the applicant, determines whether equipment is pollution control property. Additionally, the commission adopts the addition of "such as a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled" to clearly list what is normally expected for most property in an application without establishing a requirement for all possible entries in an application. For example, a process flow diagram may not be appropriate for certain pollution control equipment, such as a waste container. Based on a recommendation from the advisory committee, an additional change is made at adoption to §17.10(d)(3) by adding the wording "if deemed by the executive director to be relevant and essential to the use determination," after "such as" in the second line. This change was requested by the advisory committee to emphasize that process flow diagrams are not required for all applications. For clarity, the language suggested by the advisory committee is changed to reflect that applications are processed by staff of the executive director.

In §17.10(d)(4), the commission adopts the addition of "sections of" to clarify that citations requiring use of the equipment should be section specific. In addition, the rulemaking revises

"law, rules, or regulations" to "law(s), rule(s), or regulation(s)" to emphasize that there may be more than one requirement for the use of a specific piece of equipment. An application must show at least one law, rule, or regulation requiring the use of each piece of property listed.

The commission amends §17.10(d)(5) to change the phrase "Equipment and Categories List" to "Tier I Table" and to modify the citation for the CAP. This paragraph continues to require applicants to provide a worksheet showing how they determined the appropriate applicable percentage of partial use pollution control equipment through the use of the CAP.

The commission adopts the deletion of §17.10(d)(6) as a separate worksheet for Tier IV applications because it is not necessary due to the elimination of the Tier IV applications. The subsequent paragraphs are renumbered. The commission deletes §17.10(d)(10) because it is not necessary due to the elimination of the two decision flow charts as discussed in this preamble concerning §17.15, Review Standards.

§17.12, Application Review Schedule

The commission adds the wording "or electronic mail" to §17.12(1) to fulfill the HB 3544 requirement that the commission encourage the utilization of electronic information transmission.

The commission revises §17.12(2) to replace "within three days of" with "as soon as practicable after" to allow sufficient time for the review of applications while still allowing payment processing of application fees to occur. The short time period was not practical in the period around January 31st when large numbers of applications are received. The word "mail" is

replaced with "send" to allow transmittal of the notices by electronic means as allowed by HB 3544.

Revisions to §17.12(2)(A) modify the process that the commission uses to resolve administrative deficiencies in applications. The revised process allows 30 days for the applicant to provide the requested deficient information. By changing the word "will" to "may" and adding at adoption "decide to," the adopted rules give the executive director the option to continue processing an application. Revisions to §17.12(2)(B) also modify the procedures through which the executive director requests additional technical information and removes direct references to Tier levels I, II, and III as they are no longer applicable. The word "will" is changed to "may" and "decide to" is added at adoption for the same reasons as in subparagraph (A). Revisions to §17.12(2)(C) are adopted to maintain program consistency with the application process revisions adopted under subparagraphs (A) and (B) while retaining the applicant's ability to re-file an application.

Revisions to §17.12(3) reflect the elimination of Tier IV applications while still requiring the statutory deadline and information requirements for processing applications for property listed in Texas Tax Code, §11.31(k). Additionally, the word "documents" is changed to "information" for consistency with the statutory provision in Texas Tax Code, §11.31(m) specifying that the 30-day period begins when all required information has been received by the commission rather than on the submittal date of the original application form. At adoption, the wording "the table in" is inserted before the reference to §17.17(b) because of the items listed in that section being changed to a table at adoption.

The commission revises for clarity §17.12(4) to replace the phrase "some or all" with "the

portion." By statute, the executive director is authorized to grant positive use determinations for the portion of the property used for pollution control. Under §17.12(4)(C), the wording "or electronic" is added to fulfill the requirement of HB 3544 that the commission encourage the utilization of electronic information transmission.

§17.14, Tier I Pollution Control Property

The commission revises §17.14 to rename the section, to reorganize the application tier structure, to add property that has been found to be used wholly for pollution control, and to eliminate the two-part ECL. Under the revisions, Part A of the ECL is replaced with a Tier I Table of properties used for pollution control at a standard use percentage. Former Part B of the ECL list is relocated to §17.17 and properties formerly in Part B are listed there.

The commission revises §17.14(a) to delete the references to the ECL. The new wording for subsection (a) specifies that Tier I applications are only for property that is used for pollution control at a standard use percentage and that a Tier III application is required for any property that is used at a non-standard use percentage, including items on the Tier I Table from which a marketable product is generated.

The commission removes the pollution control property list under §17.14(a), formerly labeled the "Equipment Categories List," and replaces it with a revised Tier I Table. The adopted Tier I Table in §17.14(a) is a table of the properties determined by the executive director to be used for pollution control purposes at a standard use percentage and with no associated marketable product. Pollution control properties previously included in the Part B section of the ECL are deleted. Because the use percentages in the old ECL could not be confirmed to be accurate for all

facilities, all properties with partial use percentages are deleted; the items on the old ECL that are deleted for this reason include the following: A-43, Refrigerant Recycling Equipment; A-93, High-Pressure Fuel Injection System; A-200, Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines; A-201, Cartridge and Spin Disc Filtration Systems; A-202, Petroleum Dry-to-Dry Cleaning Machines; A-203, Petroleum Re-claimers; and A-204, Refrigerated Vapor Condenser (includes only the components that recover the vapors). Additionally, the following equipment that generates a marketable product are deleted: A-184, Vapor/Liquid Recovery Equipment for Fugitive Emissions; A-186, Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention or control); A-188, Powder Coating System - Installed to replace an existing paint booth; A-189, Powder Coating System - New construction; and A-206, Direct Coupled Solvent Delivery Systems. Additionally, the following items from the old ECL are deleted because they are obsolete: A-86, Burners Out of Service; A-87, Lean-Burn Gas-Fired Compressor Engines; and A-90, Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines.

For the introductory paragraph to the Tier I Table and for some items on the Tier I Table, changes are made to correct grammar, punctuation, and spelling and to remove unnecessary wording as needed throughout the table. Because of removed items and to provide a consistent numbering pattern throughout the list, the items on the Tier I Table are renumbered as needed.

The following changes are made to the introductory paragraph. The first sentence is changed to specify that a Tier I application is only appropriate if the equipment is used as shown in the description column of the table at the use percentage shown and if there is no marketable product that arises from the use of the property. The fourth sentence is changed to provide

examples of when items would not be used in a standard manner. The former fifth sentence is removed because applications would be reviewed based on the information that they contain. The former sixth through eighth sentences are removed because the provisions for reviewing and amending the table are covered in the rules. The former ninth and tenth sentences are removed because they are not relevant to a table that contains items used for pollution control. For clarity, the fifth sentence (the former eleventh sentence) is reordered so that the property on applications is mentioned first. The sixth sentence (the former twelfth sentence) is changed to remove the reference to "Part A" of the list.

The following significant changes are made to specific items retained on the Tier I Table. In the description section of item A-65, Predictive Emissions Monitors, the word "solely" is added because use of the monitors for production has a percentage of use that varies by facility; this amendment was suggested by the advisory committee. In the description section of item A-80, Selective Catalytic and Non-catalytic Reduction Systems, the wording "engines/boilers" is changed to "combustion sources" to allow Tier I applications for this type of pollution control property on other types of equipment, and the word "non-selective" in the description is changed at adoption to "non-catalytic" to avoid any confusion. As requested by the advisory committee, the description section of renumbered item A-86, Low nitrogen oxides (NO_x) burners, is changed to cover use of this equipment in a new installation rather than only as replacement burners. Former item A-89, Over-Fire Air Systems, is deleted because the equipment is covered under item A-85, Over-fire Air & Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other pollutant-reducing agents. Former items A-110, Activated Carbon Systems, and A-115, Carbon Absorber, are combined into a single A-110, Carbon Absorption Systems. In the description section of item renumbered A-134, Photochemical Oxidation, a

sentence, "These units are only eligible if mercury is removed from flue gas." is added because these systems only provide an environmental benefit if mercury emissions are reduced. A typographic error in the proposed category header "Sulfur Dioxide Controls" is corrected at adoption. For renumbered item A-185, Paint Spray Booth Attached to a Final Control Device (New Construction), the name is changed to clarify that the item only covers the control devices attached to a paint booth. Former item A-205, Secondary Containment, is deleted because this equipment is also covered under item S-6, Secondary Containment. In the description section of item W-59, Wastewater Treatment Facility/Plant, wording is added to clarify that this item includes septic systems. For item S-1, Stationary Mixing and Sizing Equipment, the phrase "or in-house recycling" is deleted from the description because this part pertains to a marketable product. The titles of item S-7, Liners (Noncommercial Landfills or Impoundments), and renumbered item S-16, Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment, are amended to clarify that these items do not pertain to commercial landfills or injection wells because of the statutory prohibition for commercial waste operations. For renumbered item S-22, Double-Hulled Barge, the description is changed to require that the incremental cost of the second hull be calculated, rather than specifying 30% use for pollution control for all of these barges. Because the equipment is used for worker protection rather than pollution control, the phrase "safety equipment" is deleted from the description of item M-1, Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies, and the phrase "personal protection" is deleted from the description of item M-2, Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant. The name of item M-5 is changed to Solvent Recovery Systems to increase the scope of the item to cover all types of systems that allow the reuse of a solvent within a facility; to be covered on a Tier I application, a system could

not provide production benefits or create a marketable product. In the description section of renumbered item M-7, Environmental Paving located at Industrial Facilities, wording is added to specify that this item does not apply to storm water control, which is covered under item W-57, Conveyances, Pumps, Sumps, Tanks, Basins, nor does it include dirt or gravel paving, which do not control dust; based on a suggestion from the advisory committee, item M-7 also has the phrase "environmental rule, regulation, or law" in the description column changed to "air quality rule, regulation, or law." For renumbered item M-11, Structures, Enclosures, Containment Areas, Pads for Composting Operations, the wording "for Composting Operations" is added to the title to specify better the property to which the item applies. In the description section of renumbered item M-12, Methane Capture Equipment, the scope of the item is increased to allow Tier I applications used to capture methane resulting of decomposition of wastes that were not generated on site, and a punctuation error is corrected at adoption. Because the use percentage is specified as 100%, the item only applies to methane capture equipment used to capture methane that is sent to a control device without providing any production benefits. The changes to item M-12 allow landfills and other facilities to submit Tier I applications for methane capture equipment when the methane is routed to a flare or other environmental control device. For clarity in item M-17, Low NO_x Combustion System for drilling rigs, the specification that the item applies to drilling rigs is moved from the description to the title; based on a recommendation from the advisory committee, the word "solely" is added to the description and the wording "components of" is changed to "equipment on." Additionally, three items (A-115, External Floating Roofs; A-161, Selective Catalytic and Non-catalytic Reduction Systems, under the Sulfur Oxides Control category; and S-28, Landfill fencing for control of windblown trash or access control) are added to the table because the equipment has been found to be consistently

used wholly for pollution control. Additionally, for A-161, the word "non-selective" in the description is changed at adoption to "non-catalytic" to avoid any confusion.

Unless exactly matching the criteria for an item on the Tier I Table, any equipment used partially for pollution control is covered under the Tier III application process under §17.17. In addition to the changes, property and descriptions included in the Tier I Table under §17.14(a) are updated from the existing ECL Part A list of equipment to remove duplications and outdated technology, to revise for clarity, and to include updated pollution equipment and pollution control device descriptions.

Based on a recommendation from the advisory committee, three items from Part B of the ECL are added at adoption to the Tier I Table with use percentages of 100%: A-187, Amine or Chilled Ammonia Scrubber - Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant); A-188, Catalyst-based Systems - Installed to allow the use of catalysts to reduce pollutants in emission streams; and A-189, Enhanced Scrubbing Technology - Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber. In A-188, a wording change from the advisory committee's recommendation is made for this item. The suggested wording for the description "Installed to allow the use of catalysts to reduce emissions" is changed to "Installed to allow the use of catalysts to reduce pollutants in emission streams." The reason for this change is that catalysts are used in equipment other than pollution control property, including some production equipment, and that the suggested wording could be interpreted as allowing a 100% use

determination for such production equipment if said equipment reduces emissions in any way. The adopted language is meant to clarify that only the wholly pollution control equipment is eligible at this time via a Tier I application, while catalyst-based production equipment that reduces emissions would need to apply as a partial-use Tier III application. Although these items are added to the Tier I Table, the fact that they and item A-83, Flue Gas Recirculation, are also on the Expedited Review List demonstrates that they are entitled to an expedited review. The advisory committee also recommended the inclusion of a new item M-23, Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities, but this item was not added to the table because the property is used in producing marketable products, which is not consistent with the new Tier I Table.

The commission revises §17.14(b) such that the designation "ECL" is changed to "Tier I Table" to reflect the changes to the list as described previously in this preamble. For clarity and for consistency with the rule drafting standards in the *Texas Legislative Council Drafting Manual*, §17.14(b)(1) and (2) are amended to state that the commission may add or remove items from the Tier I Table.

§17.15, Review Standards

The commission repeals §17.15. The two decision flow charts are not necessary for establishing the eligibility criteria for property because these are provided in §17.6, Property Ineligible for Exemption from Taxation. The main flow chart is moved to guidance. The Part B decision flow chart will not be retained in guidance because of the deletion of the Tier IV level of applications.

§17.17, Partial Determinations

The commission revises §17.17(a) to specify that all requests for partial use determinations must be made through the submittal of a Tier III application.

The items listed in §17.17(b) are changed at adoption into a table named the Expedited Review List. The new table in §17.17(b) is adopted to itemize the list of pollution control facilities, devices, or methods included in Texas Tax Code, §11.31(k), as amended based on recommendations from the advisory committee. In §17.17(b) before the new table, wording changes are made at adoption to reflect the change of the proposed list into a table called the Expedited Review List and to show that the statutorily required list is adopted with changes. Based on recommendations from the advisory committee, the following changes to this subsection are also made at adoption: 1) the proposed list is changed to a table; 2) the property description for each item from the program guidelines is incorporated into the table, as well as the item numbers from Part B of the old ECL list; and 3) item B-15 is divided into six parts (B-15a - B-15f) to clarify that the items are separate. The recommendation from the advisory committee to expand item B-16 to include greenhouse gases other than carbon dioxide and any method of sequestration is not incorporated. The recommended changes are not appropriate because they go beyond the scope of the category of equipment listed at Texas Tax Code, §11.31(k)(16). The commission is familiar with the method of geologic sequestration. The commission does not have sufficient experience with various alternative methods of sequestration that would make an expedited review warranted or even feasible at this time. There is not compelling evidence to expand the category of equipment from capturing and geologically sequestering carbon dioxide to equipment capturing all greenhouse gases and sequestering them in any manner. Limiting the item to carbon dioxide that is geologically

sequestered will not preclude applicants from filing applications for other greenhouse gases or types of sequestration, should the EPA adopt final regulations controlling greenhouse gases, it only means that these applications will not be processed in an expedited manner. The recommendation from the advisory committee to list 100% use percentages for certain items on this table is not incorporated because this section is not intended to identify 100% use items. Instead, where appropriate, the same items are listed as 100% on the Tier I Table.

Amended §17.17(c) is relettered from the former §17.17(b) and revised to reflect the elimination of Tier IV applications.

New §17.17(c)(1) codifies the modified CAP. This paragraph applies to applications where there is no marketable product produced by the property used partially for pollution control. The change adopted for the CAP is that the former variable for by-product is changed to a variable for the NPVMP. Because the former definition of by-product covers only recovered waste materials, the former CAP did not account for some production benefits provided by certain property used partially for pollution control, such as production of co-products and power generation. The change to marketable product, as discussed in this preamble for §17.2, allows for implementation of HB 3206 and HB 3544 that require that the standards and methods established in the rules apply uniformly to all applications for determinations, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution as listed in Texas Tax Code, §11.31(k). Another change adopted for the revised CAP requires that applicants submit copies of any information received from the manufacturer on their pollution control property if that information is used in the CAP calculation. Because of the general use of the CAP equation, the variable NPVMP is defined in item 4 as being calculated

using the equation in the figure in §17.17(c)(2), although this paragraph covers applications where there is no marketable product and the value of NPMVP is zero. The next paragraph covers applications where a marketable product is generated and provides the equation for calculating NPVMP. In response to concerns expressed by the advisory committee, changes are made at adoption to the standards for calculating Capital Cost Old (CCO) in the equation in §17.17(c)(1). The advisory committee recommended that the new definition of CCO proposed in §17.2 not be adopted because the definition could impact facilities that replace pollution control property that has already received a positive use determination with new property for which they would also seek a use determination. The advisory committee assumed that the definition change would limit the value of CCO that could be calculated, but the effect arises from the methods for calculating the CCO variable, which are under the CAP equation in §17.17(c)(1). The definition change was proposed to be consistent with the calculation methods. To address the advisory committee's concern, a new standard for this situation is added at adoption and the subsequent standards are renumbered and have minor changes to accommodate the new standard. The new standard will allow facilities that replace equipment with a use determination to use the CCO value from the application for the replaced equipment in the CAP equation in the application for the new equipment. This change ensures that the facility does not lose the use percentage from the original equipment when that equipment is replaced.

The commission adds new §17.17(c)(2) for applications that include property that produces a marketable product. In this paragraph, the new equation for calculating NPVMP is codified. This equation is similar to the former equation for calculating the by-product value, except for the change from by-product to marketable product and a change for production costs, both as discussed previously. Under the former equation for by-product, only costs for storage and

transportation are subtracted from the retail value of the by-product in the numerator of the equation. In the adopted equation for NPVMP, production costs are defined as "costs directly attributed to the production of the product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs such as overhead and depreciation," and these costs are subtracted from the retail value of the marketable product in the numerator of the equation. Based on a recommendation from the advisory committee, the variable "interest rate" is changed at adoption from being the prime lending rate to 10%. Wording is added at adoption to clarify that the value calculated for NPVMP is used in the CAP for calculating the partial use percentage if the pollution control property generates a marketable product.

The commission deleted former §17.17(d) due to the elimination of the Tier IV applications and revised §17.17(d), formerly §17.17(e), to delete reference to alternate methods for determining the use determination percentage.

§17.20, Application Fees

Revisions to §17.20(a)(1) and (2) amend the reference to the former ECL to reference the Tier I Table for rule consistency. In addition, former §17.20(a)(4) is deleted to remove references to Tier IV applications.

The revisions to §17.20(b) replace the phrase "which are sent back" with "on which the executive director will take no further action" to maintain consistency with the revisions to application processing in §17.12(2). In addition, language is added to codify the process for requiring payment of additional fees when appropriate, including a provision that previously paid fees

may be forfeited if an applicant fails to respond within 30 days of receiving a request for additional fees.

The commission revises §17.20(c) to reference both of the commission's systems for electronic payment of fees and to move the word "or" to clarify that both electronic funds transfers and the commission's ePay system are available.

§17.25, Appeals Process

Revisions to §17.25(a) replace the existing language as it applies to appeals of applications that were administratively complete after September 1, 2001, with the word "all" to clarify that any application processed under the amended rules can be appealed. The existing rule language accommodated the effective date of Texas Tax Code, §11.31(e), which provided for appeals of use determinations after September 1, 2001. Because the period for filing an appeal is 20 days after issuance of a use determination, reference to the date on which appeals became an option is no longer needed. Section 17.25(a)(2) is revised to delete the phrase "Persons who may appeal a determination by the executive director" for consistency with the rule drafting standards in the *Texas Legislative Council Drafting Manual*.

Revisions to §17.25(b) add the word "must" to the first sentence to clarify that both listed requirements are conditions precedent for appeals.

Adopted §17.25(d) is added to provide a mechanism for the general counsel to remand appeals back to the executive director without formal action by the commission when the action is requested by the executive director or the public interest counsel. Subsequent subsections are

relettered.

At adoption, the phrase "in district court" is added to the end of §17.25(d)(3) to clarify how a decision of the commission can be appealed.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the statute. Under Texas Government Code, §2001.0225, a "major environmental rule" is 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, the adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule that: 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) was adopted solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking amends the Tax Relief for Pollution Control Property rules. Because the adopted rulemaking is 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. The adopted rulemaking does not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector or the economy, productivity, competition, or jobs. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No public comments were received.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The commission determined that Texas Government Code, Chapter 2007 does not apply to these adopted rules. 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 adopted regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

Public hearings on this proposal were held on August 9, 2010, at 1:00 p.m. in Houston, Texas, at the Houston Galveston Area Council Offices, Conference Room A, 3555 Timmons; August 10, 2010, at 9:00 a.m. in Beaumont, Texas, at the TCEQ Region 10 Offices, Conference Room, 3870 Eastex Freeway; August 10, 2010, at 2:00 p.m. in Austin, Texas, at the TCEQ complex located at 12100 Park 35 Circle, Building E, Room. 201S; August 12, 2010, at 2:00 p.m. in Corpus Christi, Texas, at the NRC Building at Texas A&M University - Corpus Christi, 6300 Ocean Drive; and August 13, 2010, at 1:00 p.m. in Fort Worth, Texas, at the TCEQ Region 4 Offices, Public Meeting Room, 2309 Gravel Drive. Question and answer sessions were held 30 minutes prior to the hearings. The hearing scheduled for 2:00 p.m. on August 11, 2010, in Austin, Texas, was not officially opened because no party indicated a desire to provide comment. Oral comments were provided by seven persons at the public hearing in Houston, three persons in Beaumont, four persons in Corpus Christi, and one person in Fort Worth. Oral comments were provided by the advisory committee; Texas City Independent School District (Texas City ISD); Deer Park Independent School District (DPIISD); Harris County Appraisal District (HCAD); two representatives of Thompson and Horton, L.L.P.; the City of Houston; Houston Independent School District (HISD); College of the Mainland; two representatives of Goose Creek Independent School District (Goose Creek ISD); Lee College; Corpus Christi Independent School District (CCISD); Del Mar College; and Gregory-Portland Independent School District (Gregory-Portland ISD). The comment period opened on July 16, 2010, and closed on August 16, 2010.

Written comments were accepted via mail, fax, and through the eComments system. There were 38 written comments received. The commission received written comments from the advisory

committee; the Association of Electric Companies of Texas, Inc. (AECT); Aransas Pass Independent School District (Aransas Pass ISD); Beeville Independent School District (Beeville ISD); College of the Mainland; CCISD; the Center for Public Policy Priorities (CPPP); City of Houston; the Clean Coal Technology Foundation of Texas (CCTFT); DPIISD; Del Mar College; Goose Creek ISD; Gregory-Portland ISD; the Gulf Coast Lignite Coalition (GCLC); HCAD; Harris County Attorney's Office; HISD; Henrietta Independent School District (Henrietta ISD); Ingleside Independent School District (Ingleside ISD); Lee College; Lone Star Sierra Club (Sierra Club); NRG Texas, L.L.C. (NRG); the Texas Commission on Environmental Quality's Office of Public Interest Counsel (OPIC); Polley-Kane and Associates, Inc. (Polley-Kane); Ricardo Independent School District (Ricardo ISD); Royal Independent School District (Royal ISD); the Texas Association of School Administrators (TASA); the Texas Association of Counties; the Texas Chemical Council (TCC); Texas City ISD; the Texas Conference of Urban Counties (TCUC); Thompson and Horton, L.L.P.; the Texas Taxpayers and Research Association (TTARA); West Sabine Independent School District (West Sabine ISD); and four individuals.

RESPONSE TO COMMENTS

General Comments

General comments in support of the rule package, as proposed, were received from CPPP and OPIC. AECT commented that it supports the advisory committee's recommendations and comments submitted on the proposed rules. AECT commented that it appreciates the efforts of the advisory committee and TCEQ staff in supporting the advisory committee's work. CCTFT, GCLC, and TTARA commented that they fully endorse the recommendations of the advisory committee both before the proposed rules were released and during the public comment period. CCTFT also supported the comments submitted by TTARA and AECT. CCTFT commended the

commission for developing the proposed rules through an open process and for the commission's willingness to receive feedback from the advisory committee, taxing authorities, and the regulated community. GCLC joined in and supported the written comments of CCTFT, TTARA, and AECT. AECT, TCC, and TTARA commended the agency for the very open and inclusive rule revision process and the manner in which the advisory committee has operated. With the exception of the advisory committee's recommendation to add item M-23 to Tier I and making item B-12 100% exempt, Aransas Pass ISD, Gregory-Portland ISD, Ingleside ISD, Sierra Club, and TCUC supported the advisory committee's recommendations and comments. Gregory-Portland ISD asked whether the recommendations made by the advisory committee since the publication of the proposed rules would be subject to public review in the *Texas Register*. HCAD supported the comments submitted by TCUC, HISD, City of Houston, and the Harris County Attorney's Office. Harris County Attorney's Office was generally supportive of the proposed rules and recommendations made by the advisory committee at its July 30, 2010, meeting. Harris County Attorney's Office supported the comments submitted by the TCUC and incorporated them by reference into their comment letter. Henrietta ISD and Ricardo ISD commented that they support the advisory committee's recommendations regarding property eligibility. An individual commented in favor of granting tax exemptions for pollution control equipment located at refineries. Sierra Club was generally supportive of the provisions contained in the proposed rulemaking. NRG recommended that the commission improve the tax relief program through consensus-based methods that allow for thorough review by affected interests. NRG commented that it believes, to the extent possible, the commission should defer changing the tax relief program until the advisory committee has reached consensus on an issue. NRG supported the comments and recommended changes proposed by the advisory committee, AECT, and CCTFT. TASA commended the advisory committee and TCEQ staff for their work on the

proposed rules. Based on their understanding that the proposed rule changes would more clearly define the long standing practices of the TCEQ and not expand the exemptions granted, TASA supported the proposed rules. Texas Association of Counties encouraged the TCEQ to sustain a narrow and legally sound approach in its administration of the tax relief program and to continue to employ a thorough and cautious review process before granting an exemption. TCC endorsed the advisory committee's recommendations on the condition that the TCEQ remain open to the consideration of alternative methodologies rather than mandating the use of the CAP formula.

The commission appreciates these comments. In response to Gregory-Portland ISD's question regarding *Texas Register* publication, recommendations that the advisory committee has made in their written and oral comments are included in the RESPONSE TO COMMENTS section of this preamble. Consistent with its statutory role of advising the commission on the implementation of Texas Tax Code, §11.31, all of the advisory committee's recommendations will be made available to the commissioners during the public meeting where the rule adoption will be considered. In response to NRG's comment, while the commission agrees that consensus-based revisions to the tax relief program are ideal, in order to timely implement the requirements of HB 3206 and HB 3544 the commission has decided to adopt the rule revisions. The commission notes that the advisory committee will continue to advise the commission on the commission's implementation of these rule revisions. In response to TCC's comment, while the commission remains open to considering alternative methodologies instead of the CAP calculation, no alternatives have been suggested that would work as well as

the CAP for calculating partial use percentages. If a better method is developed, the commission will consider it as a replacement or alternative to the CAP in future rulemaking. No changes were made in response to these comments.

HCAD commented that the tax relief program may no longer be in the public interest and that, while initially incentives were afforded to the regulated community to support clean or cleaner air, water, and land through the use of qualified pollution control equipment, the manner in which the TCEQ administers the program is in need of greater review and reform. An individual requested that the commission not grant further tax relief. OPIC believed the rulemaking serves the public interest and supported its adoption. Royal ISD and West Sabine ISD commented that the removal of taxable properties from tax rolls should be postponed until a more stable economic climate exists in Texas.

The commission appreciates these comments. As discussed in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES section of this preamble, the tax relief program was established under a constitutional amendment through the approval of Proposition 2 on the state ballot on November 2, 1993, adding §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature, 1993, added Texas Tax Code, §11.31, Pollution Control Property, to implement the constitutional provision. The legislature amended Texas Tax Code, §11.31 in 2001, 2007, and 2009. The commission has implemented the statute, as amended, through rules. The commission is required by statute to administer the tax relief program in a manner that is consistent with Texas Tax Code, §11.31. No changes were made in response to these comments.

Fiscal Note Comments

Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD requested that the TCEQ enhance the predictability, transparency, and consistency related to the issuance of use determinations by formulating the most conservative rules possible, thereby minimizing the impact on property values. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that officials at the Texas Education Agency indicate that if aggregate tax rolls are significantly reduced by this rulemaking, this would reduce local school districts' abilities to raise revenue. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that while the state can buffer reductions in value and revenue to school districts for one budget cycle, beyond that school districts statewide would likely experience proration. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that shortfalls in local and state funding would lead to a dramatic reduction in programs and services to students. Finally, Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that with reduction of state aid due to the current budget deficit, the aggregate loss in property value due to TCEQ decision-making and rulemaking, and the state's inability to offset those losses, school districts will be at significant financial risk beginning in the fall of 2010. Beeville ISD urged the commission to "apply stricter, not broader, rules regarding pollution control devices." Beeville ISD commented that further reduction in revenue for schools will devastate already "strapped" school districts. CPPP commented that the proposed rules, as amended, would establish a fair process of defining pollution control equipment that would carry out the intended purpose of the tax exemption without unduly reducing the amount of property tax revenue available to support public education and other public services. Deer Park ISD commented that while it appreciates the economic impact that industry has on its finances, it also understands that losses in the industrial valuation category

have to be augmented and offset by all the other taxpayers of the district. OPIC commented that, due to the modifications to the CAP formula and the requirement that applicants cite the specific regulation or statute that requires the pollution control equipment, it believes the rulemaking will minimize reductions in property tax revenue from equipment that is not used solely for pollution control and that does not provide an environmental benefit in the jurisdiction losing tax revenue. Polley-Kane commented that, while some may fear that local taxing units will lose revenue when a business avoids a portion of its property tax, the local economy and local environment are the principal beneficiaries of every piece of pollution control equipment installed. Royal ISD commented that the proposed rulemaking will adversely affect the state's already difficult budget situation and therefore, adversely affect all public schools that are also struggling with budget shortfalls. TASA opposed any changes that would expand the exemptions granted and take additional property off the tax rolls. TASA commented that with the state facing an estimated \$18 billion shortfall next session, it is unlikely that the state will be in a position to make up the lost revenue to school districts. West Sabine ISD commented that the removal of taxable property from the tax rolls would hinder its ability to raise local tax dollars needed to meet the increasing costs of providing educational services to the state's children.

The commission appreciates these comments and is mindful of the potential property tax revenue impacts associated with the amendments to these rules. The amended rules do not reflect an expansion of the tax relief program. 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 as a dollar amount. Texas Tax Code, §11.31 does not authorize the commission to consider, and the commission does not consider, the actual dollar amount of tax exemptions received by applicants. Appraisal districts make this determination after the executive director's final decision on whether the equipment is used wholly or partly to control air, water, or land pollution. The commission is aware that tax exemptions are to be narrowly construed. However, when drafting regulations the commission is limited to implementing the language in the statute and relying upon legislative intent in cases of ambiguity. No changes were made in response to these comments.

Beeville ISD commented that the commission's decision in the pending Valero use determination appeals (Appeal of the Executive Director's Use Determinations Issued to Valero Refining - Texas, L.P.; Diamond Shamrock Refining Company, L.P.; and the Premcor Refining Group, Inc.; TCEQ Docket Numbers 2007-0724-MIS-U; 2007-0732-MIS-U; 2007-0733-MIS-U; 2007-0734-MIS-U; 2007-0735-MIS-U; 2007-0736-MIS-U; 2007-0737-MIS-U; 2007-0738-MIS-U; 2007-0739-MIS-U; 2007-0740-MIS-U) will negatively affect school districts. Beeville ISD commented that allowing Valero to receive a positive use determination would deny children in Texas opportunities to learn. HCAD commented that statements made during the commission's consideration of the Valero use determination appeals at its January 13, 2010, Agenda meeting indicate that the commission has decided to broadly interpret Texas Tax Code, §11.31. HCAD commented that there has not been a definitive assessment of what impact this

new interpretation would have as far as expanding the number of industries eligible to receive a positive use determination. HCAD recommended that the commission should not abandon on the eve of the next session of the legislature all previous TCEQ practices, policies, and procedures under the guise of a new interpretation of long-ago legislative intent. City of Houston commented that granting positive use determinations for hydrotreaters is not permissible under the Texas Constitution. An individual commented that they are against the commission's approval of Valero's use determination applications and that hydrotreaters make cleaner burning fuel for cars, but do not reduce pollution at refineries. Another individual commented that Valero should not receive a tax exemption for complying with federal regulations. The Texas Association of Counties expressed concern, given the narrow scope of the tax relief program, about the request by some industry representatives for an exemption of property used for producing a cleaner product, such as equipment installed to produce low sulfur diesel and gasoline. Thompson and Horton, L.L.P. commented that, while the rulemaking does not directly relate to current pending applications for property tax exemptions of hydrotreater equipment, the potential impact of those existing applications should be assessed as part of the fiscal note if the proposed rules would result in more equipment being exempted from the tax rolls.

The commission appreciates these comments; however, pending appeals of use determinations are outside the scope of this rulemaking. No changes were made in response to these comments. Additionally, the proposed rulemaking does not expand the rules.

HCAD commented that the TCEQ should return to its prior practice of publishing annual reports of all tax relief applications, whether they were granted or denied, and the county affected.

HCAD commented that appraisal districts and taxing units cannot adequately ascertain the fiscal impact of this category of exemptions without such a report.

The commission appreciates these comments. Publishing annual reports of all applications is outside the scope of this rulemaking. No changes were made in response to these comments, but the commission is considering this request outside of the rulemaking process.

Deer Park ISD commented that, under the current target revenue system prescribed by the legislature for school districts, much of the loss of local maintenance and operations revenue due to property tax exemptions will have to be replaced by state funds. Deer Park ISD commented that the fiscal note does not disclose or allude to the fact that there would be a direct and immediate impact on the state budget should the TCEQ grant exemptions for hydrotreating equipment. Goose Creek ISD and HCAD commented that the proposed rules did not contain a meaningful fiscal note. Goose Creek ISD asked if the rule revisions would expand the eligibility of property tax exemptions. HCAD also commented that the TCEQ has absolved itself of any obligation to consider the fiscal impact of its decisions. Harris County Attorney's Office commented that it does not agree with the statement that "the effect on revenue collected by a local government depends on the policies of local taxing authorities and appraisal districts." Thompson and Horton, L.L.P. commented that if there is any reason to believe that property that would be denied a positive use determination under the existing rules would be eligible for a positive use determination under the new rules (all else being equal), then TCEQ has an obligation under Texas Government Code, §2001.024(a)(4) to issue a fiscal note that provides a

reasonable estimate of the impact on local governments, state government, and local taxpayers from increased exemptions.

The amended rules do not represent an expansion of the tax relief program. HB 3206 and HB 3544 added two new subsections to Texas Tax Code, §11.31. Texas Tax Code, §11.31(g-1) requires that the standards and methods established in Chapter 17 are applied uniformly to all use determination applications. Texas Tax Code, §11.31(n) requires the commission to establish a permanent advisory committee to provide advice on how Texas Tax Code, §11.31 should be implemented. HB 3544 also amended Texas Tax Code, §11.31(d) to allow the executive director to send notices and determinations to appraisal districts electronically. The specific purpose of the rule amendments is to implement the recent revisions to Texas Tax Code, §11.31, clarify existing program practices, and resolve outstanding programmatic issues in a manner consistent with the legislative intent of Texas Tax Code, §11.31. The commission does not anticipate that property currently considered ineligible would become eligible to receive a positive use determination as a result of these amendments.

The fiscal note contained in the rule proposal complies with Texas Government Code, §2001.024(a)(4). Texas Government Code, §2001.024(a)(4)(C) requires notice of a proposed rulemaking to include a fiscal note stating, for the first five years that the rules will be in effect, the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rules. In the proposal, the commission provided a fiscal note that contained the

following language: "The proposed rules are not expected to have a fiscal impact on other state agencies, nor are the proposed rules expected to have a direct fiscal impact on local governments. However, determination that property is used for pollution control can exempt property from property tax rolls, and taxing authorities may experience a change in the amount of property that can be taxed. This in turn could affect the amount of tax revenue collected. The effect on revenue collected by a local government depends on the policies of local taxing authorities and appraisal districts."

Texas Tax Code, §11.31 establishes a two-step process for securing a property tax exemption for pollution control property. First, the applicant must receive a use determination from the TCEQ that the property is used for pollution control. This determination includes the percentage of property use that pertains to pollution control. Second, the application submits the use determination to the local appraisal district to obtain the property tax exemption. The local appraisal district determines the value of the property. The commission does not believe that this rule constitutes an expansion or that additional property would become subject and consequently affect the amount of taxes collected. However, changes to the amount of a property tax exemption are not calculable by the commission because the valuation of pollution control property is outside the scope of the commission's review under Chapter 17. Therefore, no changes were made in response to these comments.

HCAD commented that the TCEQ should include a provision that the financial information submitted as part of an applicant's use determination application must be consistent with the financial information submitted to the appraisal district where the subject property is located.

Section 17.10(d)(2) and Texas Tax Code, §11.31(c)(2) require an applicant to submit the estimated cost of the pollution control property on the applicant's application. Information required by appraisal districts for property valuation purposes are outside the scope of this rulemaking. No changes were made in response to this comment.

Comments on the Cost Analysis Procedure

At its July 30, 2010, meeting, the advisory committee advised that the existing definition of "Capital Cost Old" be retained, which was included in the committee's written comments. AECT commented that the proposed definition should not be adopted and agreed with the unanimous recommendation of the advisory committee to retain the existing definition. AECT commented that the proposed definition of "capital cost old" may be interpreted to exclude from a positive use determination the cost of any qualifying pollution control property that is being replaced, a result that is contrary to the intent of Texas Tax Code, §11.31.

The commission understands the concern that the new definition could be interpreted in a way that would lead to lower positive use determination percentages for partial pollution control equipment if the equipment was installed to replace an existing piece of equipment that had already received a previous partial use determination. Under the existing rules, CCO is defined in §17.2(3), but

the definition is not consistent with the three methodologies for calculating CCO listed under the proposed equation in §17.17(c)(1). The revised adopted definition removes this inconsistency by including new language that is consistent with method 3.2 for calculating CCO. Based on previous Tier III applications, most applications containing replacement equipment should be calculated using method 3.1, which is based on the cost of comparable equipment without pollution controls that is sold in the United States market. Only in cases when this comparable equipment is no longer manufactured in the United States would method 3.2 come into play. In method 3.2, the cost of the original equipment is adjusted for inflation and any change in production capacity, and the resulting value is used as CCO. If an applicant uses method 3.2 for equipment that already has a positive partial determination, the CAP would calculate only the value of the additional pollution control aspect of the new equipment. The determination would not include the pollution control portion of the equipment for which the previous determination had been issued. Under these adopted rules the value used for CCO would be the same value as that used in the original application for the first use determination. This adjustment will allow the new partial determination to take into account the full pollution control value of the property, rather than just the incremental pollution control value.

The CCTFT urged the commission to remove the definition of "marketable product" and all references to the term in the final regulations and in the CAP formula. In the alternative, if the commission does not wish to entirely remove the definition of "marketable product," the CCTFT recommended the following language be added to the definition: The term "marketable product"

does not include by-products that would be disposed of as a solid waste under the Texas Health and Safety Code, Chapter 361, or as an industrial discharge subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26, but for the sale or other use of the by-product through recycling or beneficial reuse. CCTFT and TTARA commented that neither Texas Tax Code, §11.31 nor the Texas Constitution requires a limitation on a use determination for pollution control property that produces a by-product. CCTFT and AECT commented that the value of a marketable by-product is relevant to a taxing authority's property valuation, not the commission's issuance of a use determination. CCTFT and TTARA objected to the concept of deducting the value of marketable products produced by pollution control property from an applicant's use determination percentage. AECT, CCTFT, and TTARA argued that such a deduction would negatively impact an applicant's incentive to recycle by-products and co-products that would otherwise be disposed of in a landfill, which runs counter to the state's policy of encouraging waste minimization and recycling, particularly through the development of the markets for recycled materials. CCTFT commented that applicants for property listed on the Tier I Table would be required to file a Tier III application if the pollution control property produces a marketable product. CCTFT contended that this requirement is unnecessary and inappropriate because several types of pollution control property would produce marketable products with net present values that are negative under all foreseeable scenarios. CCTFT recommended that, if the commission retains the deduction for marketable products, the commission revise the definition of "marketable product" as follows: "Marketable product- Anything produced or recovered using pollution control property that is sold as product, is accumulated for later use, or is used as a raw material in a manufacturing process, and that has a positive net present value, as determined by the equation in . . . §17.17(c)(2). . ." AECT requested that the commission exclude from the adopted rules: 1) the proposed definition of "marketable

product" and the existing definition of "byproduct," along with all references to these terms, and 2) any requirement to calculate NPVMP, or any other by-product value adjustment, for inclusion in any partial use determination equation. AECT commented that it does not support the inclusion of a "marketable product" variable in the Tier III partial use determination evaluation. AECT argued that discounting a partial use determination based upon the value of incidental by-products is not contemplated by the Texas Constitution or Texas Tax Code, §11.31, and is wholly inappropriate when such by-products are not the primary production or business purpose of the facility. AECT commented that a primary business purpose could be defined by those facility products listed under the respective facility's North American Industry Classification System (NACIS) Code. AECT commented that the definition of "marketable product" is not contemplated by Texas Tax Code, §11.31. City of Houston commented that it cannot determine the usefulness of definition changes in §17.2 relating to "byproduct" or "marketable product." NRG recommended that the commission postpone changing the definition of "marketable product" until the advisory committee has reached consensus on developing one or more formulas to be used to evaluate equipment that is used for both production and pollution control purposes. TTARA commented that the governing law does not require or contemplate a limitation on the use determination for pollution control property when its use results in a by-product of some sort.

The commission appreciates these comments, but will retain the proposed definition of "Marketable product." Texas Tax Code, §11.31(d) requires the executive director of the TCEQ to determine whether a facility, device, or method is used wholly or partly for the control of air, water, or land pollution. As set forth in Texas Attorney General's Letter Opinion Number 96-128, Texas Tax Code, §11.31

was intended to give tax relief to businesses compelled by law to install or acquire pollution control equipment that generates no revenue for such businesses. The rules have included, since January 9, 2002 (see 27 TexReg 185), provisions that require partial use percentages to be reduced by the net present value of the by-product generated by the pollution control equipment. As explained in the preamble to the proposed rules, the existing definition of by-product is limited to recovered waste materials. Using this definition as a variable in the CAP formula does not account for the production benefits provided by certain property used partially for pollution control, such as production of co-products and power generation. The definition of "marketable product" accounts for these production benefits, and its use in the CAP is consistent with the commission's mandate under Texas Tax Code, §11.31(d). The commission does not anticipate that the definition of "Marketable product" and its inclusion in the CAP formula will have a significant effect on an applicant's waste minimization or recycling practices.

The commission also respectfully disagrees with CCTFT's assessment of when a Tier III application is necessary and appropriate. A Tier III application is required when the subject property is used partially for the control of air, water, or land pollution and does not correspond exactly to an item on the Tier I Table. The introductory paragraph of the Tier I Table contains language specifying the items listed on the table are used wholly for pollution control purposes and produce no marketable product. The commission's rules require a Tier III application when any marketable product is generated. Market conditions dictate whether by-products or co-products recovered or produced by pollution control property are

sold, traded, accumulated for later use, recycled into the manufacturing process, or disposed of as a waste. When pollution control property generates a marketable product, the commission needs to account for that marketable product in order to fulfill its statutory mandate under Texas Tax Code, §11.31(d); regardless of whether the NPVMP generated is positive or negative. No changes were made in response to these comments.

AECT does not support the adoption of the equation proposed in §17.17(c)(2). AECT commented that, although a form of the equation may be appropriate in some circumstances, it objects to the universal application of the proposed methodology for all partial use determinations. CCTFT recommended that the commission include a provision to allow use of a different formula when an applicant can demonstrate that the CAP would yield an incorrect or unreasonable result. City of Houston commented that it is not taking a position on changes to the CAP formula due to the difficulty in analyzing the impact of the changes, that it has no position on the use of a single or multiple CAP formulas, and that it seeks a clear and fair CAP formula or formulas. City of Houston recommended that the partial use formula(s) result in a lower percentage when facilities violate emission laws and rules. Sierra Club commented that when equipment that has received a partial use determination is replaced with new equipment that is also used partly for pollution control, the proposed CAP does not work well. Sierra Club urged the commission to explore adjustments to the proposed CAP formula or to allow applicants to explain why the CAP formula is not appropriate and propose an alternative formula. NRG recommended that the commission postpone revising the CAP formula until the advisory committee has reached consensus on developing one or more formulas. TCC recommended that the commission consider other methodologies for calculating partial exemptions rather than mandating the use

of the proposed CAP. TCC commented that examples of other approaches include a partial exemption factor based on the quantity of emissions reduced by new equipment versus the replaced equipment.

The commission appreciates the concerns regarding the CAP. Prior to the 81st Legislature, the LBB prepared a report including recommendations to the legislature on the tax relief program. The LBB report recommended that the commission use the CAP contained in its rules for all partial determinations, including applications for property located on the list in Texas Tax Code, §11.31(k). The report acknowledged that the CAP takes into account the economic benefit of property to the owner. Texas Tax Code, §11.31(g-1) specifically requires the standards and methods established in the rules to be uniformly applied to all applications. In the rule proposal, the commission requested public comment on whether multiple formulas should be developed for calculating partial use percentages rather than just the method proposed in §17.17. The commission received alternative approaches during the public comment period, evaluated them, and decided not to adopt any of those approaches because they did not calculate the percent of environmental use of partial use property. Section 17.15(b) of the existing rules, relating to applications for the equipment listed in Texas Tax Code, §11.31(k), allows applicants to provide application-specific calculations of partial use percentages. This provision has led to applications with widely varying use determination percentages for the same categories of equipment. The commission interprets Texas Tax Code, §11.31(g-1) to require uniformity in the methods and standards used to review applications, not the use of one method to

all partial use calculations. The proposed rule solicited comments or suggestions for alternative equations, but no workable methods were submitted. In the absence of other workable calculation methods, and due to the commission's belief that application-specific methodologies are contrary to the statutory uniformity requirement, the commission has decided to adopt the proposed CAP with the minor amendments discussed in the SECTION BY SECTION DISCUSSION section of this preamble. No changes were made in response to these comments.

During its August 4, 2010, teleconference, the advisory committee recommended that the commission modify the proposed formula for determining the NPVMP by replacing the prime lending rate with 10%, which was included in the committee's written comments. The advisory committee commented that it is confident the prime lending rate was not an appropriate discount rate and based their recommendation on "an abundance of appraisal experience and research indicating 10% is in the low range of discount rates for most business appraisals using the discounted cash flow income approach to value." The advisory committee commented that actual discount rates vary by industry and often by property and that its recommendation, while not ideal, is more reasonable than the prime lending rate in the proposed rule. NRG recommended that, if the commission decides to change the CAP formula, the commission use a realistic discount rate for the determination of NPVMP. NRG commented that the use of the prime lending rate as proposed will grossly overestimate the value of marketable product, especially with low interest rates. NRG recommended the use of applicant-specific weighted cost of capital rather than prime lending rate. NRG commented that the commission could specify in rule how the weighted cost of capital would be calculated or allow the advisory committee to

work on this issue and have the methodology included in subsequently issued guidance materials.

The commission appreciates these comments and agrees that a facility's actual discount rate varies from the prime lending rate based on facility-specific issues, such as type of industry, location, specific project, and the risk associated with the project. The commission recognizes that the advisory committee, which consists of members representing various industries, appraisal districts, taxing units, and environmental groups, possesses extensive property appraisal and valuation experience. During the August 4, 2010, conference call, there was general agreement that capital rates vary from 8% to over 20% and that 2% is a reasonable property tax estimate. The commission agrees that the combined rate of 10% is a more reasonable discount rate than the prime lending rate. The commission agrees with the suggested revision and has modified the rules in response to the recommendation.

Comments on Environmental Benefit and Ineligibility Criteria

At its March 26, 2010, meeting, the advisory committee advised the commission to replace the "environmental benefit at the site" requirement with a requirement that "the portion of the property under consideration is: (a) not used, constructed, acquired, or installed solely to produce a good or service; and (b) being wholly or partly used, constructed, acquired or installed to meet or exceed an adopted environmental rule or regulation that requires the prevention, control, monitoring, or reduction of air, water, or land pollution that results from the actions of the applicant in the production of a good or service and not solely from the use or characteristics

of the good or service produced or provided." The commission revised the advisory committee's recommendation and included this revised language in the proposed amendment to §17.6. The advisory committee commented that the proposed rule language reflects its intent and included the recommendation in their written comments. AECT commented that it supports the additions and clarifications to the description of property ineligible for exemption from taxation contained in §17.6(1)(B) - (D). City of Houston commented that it favors the proposed changes to §17.6 and that these clarifications serve to solidify the intent of Section 1-l, Article VIII of the Texas Constitution and Texas Tax Code, §11.31. Ricardo ISD commented that it is extremely pleased that the TCEQ has accepted the advisory committee's recommended changes regarding property that is eligible for an exemption to exclude certain types of equipment and thereby, avoid adverse effects on school districts. The Texas Association of Counties supported the rule revisions that clarify that the portion of property used for the production of a good or service is not eligible for a tax exemption.

The commission appreciates these comments. No changes were made in response to these comments.

AECT commented that it supports the elimination of the existing flow charts and the "environmental benefit at the site" requirement previously located at §17.15. AECT commented that the "environmental benefit at the site" requirement is not found in Section 1-l, Article VIII of the Texas Constitution or Texas Tax Code, §11.31, and has not proven to be a consistently reliable factor for identifying eligible pollution control equipment. Deer Park ISD commented that any pollution control exemption should be for equipment that provides a benefit on site or somewhere within the boundaries of the taxing jurisdiction from which the exemption is

requested. HCAD supported the relocation of the definition of "benefit at the site" from the Decision Flow Chart to the rules themselves and expressed concern that there is no clarifying statement that the proposed rules do not substantively change the existing rules. HCAD commented that it is concerned that unless the commission makes it abundantly clear that there has not been a substantive change to the "benefit at the site" definition, several pending use determination applications would be granted when they should not be. Absent such a clarifying statement, HCAD recommended that the phrase "benefit at the site" remain in the Decision Flow Chart in conjunction with the new proposed definition. Thompson and Horton, L.L.P. commented that its interpretation of the proposed rule changes (specifically replacing the "environmental benefit at the site" requirement with a new definition of "environmental benefit" in §17.2(4) and the additions to the list of properties that are ineligible for a positive use determination under §17.6) should not expand the exemptions granted. Thompson and Horton, L.L.P. commented to the extent that its interpretation of the proposed rule changes is correct, they do not oppose the changes. Thompson and Horton, L.L.P. commented that if TCEQ staff has any reason to believe that property that would have been denied a positive use determination under the "benefit at the site" requirement would now qualify, it strongly opposes the proposed rules. Thompson and Horton, L.L.P. requested that the TCEQ review past applications to determine whether equipment that was previously denied a positive use determination based on the "benefit at the site" requirement would be eligible for a positive use determination under the new rules and that the results of this review be made a part of the rulemaking record.

The commission appreciates these comments. The commission does not believe that eliminating the existing flow charts and rule language located at §17.15, adding

a definition of "environmental benefit" at §17.2(4), and modifying the eligibility requirements at §17.6 represent an expansion of the tax relief program. These changes stem from the advisory committee's recommendation, at its March 26, 2010, meeting and included in its written comments, that the commission remove the "environmental benefit at the site" requirement, define "environmental benefit," and modify the eligibility requirements in §17.6. Staff reviewed program files and found no use determination application that was denied solely on the basis of failure to meet the "environmental benefit at the site" requirement. Staff modified the advisory committee's recommendations to align them with governing law and the existing regulations and included these revisions in the commission's June 30, 2010, rule proposal. The commission believes that the rule language as proposed is consistent with the legislative intent of Texas Tax Code, §11.31 and provides additional guidance to applicants regarding the eligibility of certain types of equipment. No changes were made in response to these comments.

Comments on Processing and Deadlines

At its July 30, 2010, meeting, the advisory committee advised the commission to revise §17.10(c) to change "January 31 of the following year" to "January 31 of the same tax year." This advice was included in the committee's written comments. This revision is intended to align the rule language with current practice.

The commission appreciates this comment and agrees with the advisory committee's suggested revision. The rule language at §17.10(c) has been modified at adoption in response to the advisory committee's recommendation.

HCAD commented that the proposed rules lack clear guidelines for the timely processing of applications. HCAD also objected to TCEQ's current review process that allows applicants to amend their applications multiple times for several years. HCAD commented that it has grave concerns that the TCEQ allows applications to stay pending for several years, sometimes resulting in the refund of taxes that taxing units have already spent providing essential government services.

Section 17.12 sets out the time periods associated with use determination application review. In this adoption, the commission has revised §17.12(2)(A) and (B) outlining the Notice of Deficiency (NOD) process. After receiving an administrative or technical NOD, an applicant has 30 days to submit a revised application with the requested information. If the applicant does not provide a revised application with the requested information within 30 days, the executive director may decide to take no further action on the application, and the application fee may be forfeited pursuant to §17.20(b). When a final use determination is appealed, the appeal is scheduled to be considered at the commissioner's next regularly scheduled public meeting for which adequate notice can be given pursuant to Texas Tax Code, §11.31(e) and §17.25(c)(3). All of these provisions are designed to establish a timely use determination review and appeals process. No changes were made in response to these comments.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise proposed §17.10(d)(3) to read "the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as if deemed by TCEQ to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled." The recommendation was included in the committee's written and oral comments. The advisory committee commented that members were concerned that the proposed rule language "such as" conflicts with "must" at the beginning of §17.10(d). Advisory committee members also expressed concern that the proposed language may create an unreasonable and unnecessary burden for some applications. Finally, members expressed proprietary and homeland security concerns surrounding the release of certain process flow diagrams.

The commission appreciates this comment and agrees with the advisory committee's suggested revision. The commission notes that Texas Tax Code, §11.31(c) sets out the minimal amount of information that an applicant is required to include in their permit application, including any financial or other data that the executive director requires by rule for determining the proportion of the installation that is pollution control property. In the SECTION BY SECTION DISCUSSION of the rule proposal, the commission acknowledged that requiring the submission of a detailed process flow diagram would not be appropriate for all applications. As part of administering the tax relief program, staff will use their discretion to determine when the submission of additional information is relevant and essential to the use determination. The commission does not anticipate that

this rule revision will impose an unreasonable or unnecessary burden on applicants. Finally, use determination application information filed with the commission marked as containing proprietary or homeland security information will be maintained in accordance with 30 TAC §1.5, relating to Records of the Agency. The rule language in §17.10(d)(3) has been modified at adoption per the advisory committee's recommendation.

Comments on the Tier I Table and Expedited Processing List

At its July 30, 2010, meeting, the advisory committee advised the commission to revise the proposed property description for item A-83, Flue Gas Recirculation, on the Tier I Table located at §17.14(a) to add back "etc." to read as follows: "Ductwork, blowers, etc.-used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include fly ash collection in coal fired units." This advice was included in the committee's written comments.

The use of "etc." was deleted throughout the new Tier I Table. The definition of "Tier I" at §17.2(8) states that these applications are for items listed on the Tier I Table or for property that is necessary for the installation of items on the table. No changes were made in response to this comment.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise the Tier I Table to include the following: item A-187, Amine or Chilled Ammonia Scrubbing- Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulation carbon dioxide as a pollutant). This recommendation was included in the committee's written comments.

The commission appreciates this comment. The commission agrees that amine and chilled ammonia scrubbing equipment that is installed to provide post-combustion capture of pollutants is 100% pollution control equipment unless it is used to produce a marketable product, and as such, is adding this equipment under A-187 of the Tier I Table. The commission is also aware that amine scrubbers may be used as part of a production process, e.g., natural gas sweetening. The commission does not believe that such production processes that may use amines or chilled ammonia constitute post-combustion capture of pollutants. However, the commission reiterates that pollution control equipment associated with production processes requires a Tier III application for a partial use determination. The Tier I Table found at §17.14(a) has been modified in response to the advisory committee's recommendation.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise the Tier I Table to include the following: item A-188, Catalyst based Systems - Installed to allow the use of catalysts to control emissions. This recommendation was included in the committee's written comments.

The commission appreciates this comment. The Tier I Table currently includes a number of listings for catalyst-based systems for emission control. Specifically, A-21 (Catalytic Oxidizer), A-80 (Selective Catalytic and Non-Catalytic Reduction Systems), A-136 (Oxidation Systems), and A-81 (Selective Catalytic Converters for Stationary Sources) are on the Tier I Table. The commission is aware that catalysts

can be used in many production processes, e.g., fluid catalytic cracking units in refinery operations. It is possible that some catalyst-based production-related equipment could also result in pollution control. The commission reiterates that pollution control equipment associated with production processes requires a Tier III application for a partial use determination. In order to make this distinction clearer, the commission is adding additional language to the recommendation of the advisory committee and adding A-188 to the Tier I Table to read, "Catalyst-Based Systems-Installed to allow use of catalysts to reduce pollutants within an emission stream." The Tier I Table found at §17.14(a) has been modified accordingly.

At its July 30, 2010, meeting, the advisory committee recommended that the commission revise the Tier I Table to include the following: item A-189, Enhanced Scrubbing Technology - Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber. This recommendation was included in the committee's written comments.

The commission appreciates this comment and agrees that equipment installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber, may be 100% pollution control equipment. The oxidation of elemental mercury and scrubbers are already listed on the Tier I Table as A-136 and A-168, respectively, as 100% pollution control equipment when not used in the production of a marketable product. Accordingly, the commission is adding this item to the Tier I Table. The

commission is aware that scrubbers may be used in certain industrial processes, e.g., process gas cleaning. It is possible that some scrubber-based production related equipment could also result in pollution control. The commission reiterates that equipment used for both production and pollution control requires a Tier III application for a partial use determination. The Tier I Table found at §17.14(a) has been modified in response to the advisory committee's recommendation.

On August 4, 2010, the advisory committee recommended the commission add item M-23, Coal Combustion or Gasification By-Product and Co-product Handling, Storage, and Treatment Equipment to the Tier I Table and change the "variable" use determination percentage for item B-12, Coal Combustion or Gasification By-Product and Co-product Handling, Storage, and Treatment Equipment to 100%. The advisory committee recommended that the property description for both items M-23 and B-12 read as follows: "Used for handling, storage, or treatment of by-products or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur if such by-products are either disposed as solid waste or would be disposed of as solid waste if not beneficially reused." This recommendation was included in the committee's written comments. AECT supported the advisory committee's recommendation that the commission add item M-23 to the Tier I Table and a use percentage of 100% for item B-12 to the table in §17.17(b) to clarify that property used for the handling, storage, or treatment of coal combustion by-products that will or potentially will be disposed of as solid waste are entitled to a 100% use determination. Aransas Pass ISD Gregory-Portland ISD, Ingleside ISD, and TCUC commented that the advisory committee's recommendation to add item M-23 to the Tier I Table

and to amend item B-12 on the table in §17.17(b), each with a predetermined 100% positive use determination percentage, lacks sufficient basis and should not be done without knowing how it would impact the tax relief program. Aransas Pass ISD, Gregory-Portland ISD, and Ingleside ISD commented that making such a dramatic change without justification is unwarranted and could lead to a negative impact on Texas taxpayers. Harris County Attorney's Office urged the commission to maintain the proposed rules without incorporating the advisory committee's recommendation to make item M-23 and item B-12 100% exempt. Harris County Attorney's Office commented that this is a significant change toward sidestepping the more rigorous Tier III review that allows staff the discretion to make technical assessments of whether particular equipment deserves partial or full exemption. Harris County Attorney's Office commented that adopting the advisory committee's recommendation could have unintended consequences by opening the door to other applicants to demand the same exemption for similar components not contemplated by this action. Harris County Attorney's Office commented that such substantive changes at this late stage would require a reevaluation of the fiscal analysis relating to the costs to local and state governments. The Sierra Club urged the commission to retain a variable use percentage for equipment related to coal combustion waste. The Sierra Club commented that some companies could potentially use the equipment to gather by-products or co-products and then sell them on the market, meaning the equipment could be considered production equipment. Sierra Club and the TCUC commented that there is nothing in the proposed rules that would prevent a coal company from seeking a 100% exemption when appropriate. NRG recommended adding category B-12 to the Tier I Table with the description set out in the preamble to the proposed rule. NRG did not support the addition of the phrase "if such by-products or co-products are either disposed as solid waste or would be disposed as solid waste if not beneficially reused" as recommended by the advisory committee. NRG commented that

because the equipment described by this category is essential to the operation of pollution control equipment, it is immaterial whether the removed material is disposed of as waste or is used for some beneficial purpose. NRG commented that even if the subsequent use of the removed material was relevant to the determination of the value of the pollution control equipment, the materials handled by this equipment, such as fly ash, are not economically viable as products. NRG commented that to the extent that some of this material is recycled, it is recycled as a means of reducing disposal costs and conserving landfill space, not as a profit-generating activity. The TCUC commented that the argument that placing item M-23 on the Tier I Table would speed up the application process is flawed due to the fact that Coal Combustion or Gasification By-Product and Co-product Handling, Storage, and Treatment Equipment is eligible for expedited processing pursuant to Texas Tax Code, §11.31(m) and §17.12(3). The TCUC commented that it is a common business practice to seek out new uses for waste products to produce revenue, be a good corporate citizen, or reduce costs associated with waste disposal. The TCUC commented that the tax relief program was never intended to provide an exemption for these purposes.

The commission appreciates these comments and has decided not to add item M-23 to the Tier I Table or change the use determination percentage for item B-12 from "variable" to "100%" at this time. The proposed Tier I Table in §17.14(a) is a table of properties determined by the executive director to be used for pollution control purposes at a standard use determination percentage with no associated marketable product. Items M-23 and B-12 deal with equipment used to handle, store, and treat by-products and co-products produced from the combustion or gasification of coal. As set forth in Texas Attorney General's Letter Opinion

Number 96-128, Texas Tax Code, §11.31 was intended to give tax relief to businesses compelled by law to install or acquire pollution control equipment that generates no revenue for such businesses. Byproducts and co-products from the combustion or gasification of coal may meet the definition of "marketable product" located at §17.2(5). If by-products or co-products from coal combustion or gasification are sold as a product, accumulated for later use, or used as a raw material in a manufacturing process, a Tier III review is necessary to account for the production of these materials. Therefore, the inclusion of item M-23 on the Tier I Table and changing the use determination percentage for item B-12 from "variable" to "100%" is not appropriate. A Tier III review allows the commission to determine whether a piece of equipment provides both production and pollution control benefits. If, after multiple Tier III reviews, it becomes evident that certain equipment associated with the handling, storage, or treatment of coal combustion or gasification by-product or co-products are used wholly for pollution control purposes, the commission could modify the listing of item B-12 and include that equipment on the Tier I Table during one of its triennial reviews. No changes were made in response to these comments.

At its May 21, July 30, and August 4, 2010, meetings, the advisory committee recommended that the commission: 1) include minor revisions to the property category headings on Part B of the ECL; 2) subdivide item B-15 into six separate categories of equipment; 3) revise Part B of the ECL to include property descriptions that are consistent with agency guidelines; 4) add the following sentence to the introductory paragraph of the table in §17.17(b): "A Tier I application may be filed for items which have a designated positive use determination percentage;" and 5)

change the "variable" use determination percentage to "100%" for five categories of property (B-4, Flue-Gas Recirculation Components; B-12, Coal Combustion or Gasification By-product and Co-Product Handling, Storage and Treatment Facilities; B-15b, Amine or Chilled Ammonia Scrubbing; B-15c, Catalyst based Systems; and B-15d, Enhanced Scrubbing Technology) and add these categories to the Tier I Table. These recommendations were included in the committee's written comments. AECT supported the advisory committee's recommendations regarding the existing ECL Part A and Part B List. The CCTFT urged the commission to adopt the advisory committee's advice regarding the Part B List and include certain Part B items on the Tier I Table. The CCTFT commented that Coal By-product and Co-Product Handling, Storage and Treatment Facilities are entitled to a 100% positive use determination for two reasons. First, that the majority of the by-products produced by coal combustion or gasification are produced by the pollution control property itself, rather than the production process. Second, removing the incentive to recycle coal combustion by-products would have significant unintended consequences, such as overwhelming the existing supply of landfill space in Texas with coal combustion by-products. The CCTFT commented that to avoid potential ambiguity with the dual listing of items, the commission should add the following sentence to the introductory paragraph of the table in §17.17(b): "A Tier I application may be filed for items which have a designated positive use determination percentage." NRG supported the advisory committee's recommendation to expand the descriptions of equipment listed on Part B of the ECL. NRG supported the advisory committee's determination that five categories of property on Part B of the ECL are used for 100% pollution control purposes and should be added to the Tier I Table.

The commission appreciates these comments and made the following changes in response to these comments: 1) included the recommended minor revisions to the

property category headings on the table in §17.17(b); 2) subdivided item B-15 into the six recommended categories of equipment; 3) added the recommended property descriptions with minor modifications for items other than carbon dioxide sequestration; and 4) added listings for items B-4, B-15b, B-15c, and B-15d to the Tier I Table. The commission did not make the following changes: 1) the addition of Coal Combustion or Gasification By-product and Co-Product Handling, Storage, and Treatment Facilities, to the Tier I Table as item M-23; 2) the adoption of the advisory committee's recommendation to expand item B-16, Carbon Dioxide Capture and Sequestration Equipment, to cover all types of greenhouse gases and any type of sequestration; 3) the addition of the recommended language to the introductory paragraph of the table in §17.17(b); or 4) the inclusion of fixed 100% use determinations on the table in §17.17(b).

The reasoning behind the commission's decision to not add item M-23 to the Tier I Table is discussed earlier in this RESPONSE TO COMMENTS section. With regard to item B-16, the commission has determined that the advisory committee's recommended property description goes beyond the scope of the category of equipment listed at Texas Tax Code, §11.31(k)(16), which encompasses equipment 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." The advisory committee's proposed description would remove the requirement that carbon dioxide be geologically sequestered and expands the item to cover all greenhouse gases when the EPA adopts a regulation regulating carbon dioxide as a pollutant. Compelling evidence has not been provided to the

commission that all greenhouse gases and types of sequestration should receive expedited reviews. The commission has determined that the advisory committee's recommended description is broader than that contained in Texas Tax Code, §11.31(k) and adopts the description without the changes recommended by the advisory committee. This response does not limit applicants from applying for use determinations for equipment associated with greenhouse gases other than carbon dioxide or with other methods of sequestration. Such applications would simply not be processed in an expedited manner, as required by Texas Tax Code, §11.31(m) and §17.12(3).

With regard to adding the recommended language to the introductory paragraph of the table in §17.17(b), the commission believes that this revision is unnecessary. The commission has traditionally granted 100% positive use determinations for items listed on Part B of the ECL used wholly for pollution control (e.g., Flue Gas Recirculation Components). The dual listing of items is necessary because of the statutory requirement to adopt by rule a nonexclusive list of equipment that must include the 18 categories of equipment listed at Texas Tax Code, §11.31(k) unless the commission has compelling evidence for removing any of the categories.

In the rule revisions, the commission is eliminating the Tier IV level of applications. In order to fulfill the uniformity requirement in Texas Tax Code, §11.31(g-1), the commission has determined to subject all property not used wholly for pollution control to a Tier III review. Depending upon how the equipment is being utilized in the manufacturing process, several items listed at Texas Tax Code,

§11.31(k) may be used for both pollution control and production purposes. As such, a Tier III review is required to fulfill the uniformity requirement at Texas Tax Code, §11.31(g-1), and designated 100% use determinations are not appropriate in the table in §17.17(b).

CCTFT recommended that the commission remove the requirement that items may be added to the table in §17.17(b) only if there is "compelling evidence" to support the conclusion that the item provides pollution control benefits. CCTFT commented that there is no statutory basis requiring this showing before an item may be added to the list.

The commission appreciates this comment. In the 80th Legislative Session (2007), HB 3732 amended Texas Tax Code, §11.31 by adding subsections (k) - (m). Texas Tax Code, §11.31(k) required the commission to adopt by rule a nonexclusive list of pollution control property that must include the 18 categories of equipment listed. Texas Tax Code, §11.31(l) required the commission to adopt a procedure to review the list at least once every three years and to allow the removal of an item from the list when there is compelling evidence that it does not provide pollution control. On February 17, 2008, the commission amended Chapter 17 to implement HB 3732 and extended the compelling evidence standard to the addition of items to the nonexclusive list. The commission believes that this was an appropriate exercise of its rulemaking authority. No changes were made in response to this comment.

§§17.1, 17.2, 17.6, 17.10, 17.12, 17.14, 17.17, 17.20, 17.25

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.120, which authorizes the commission to perform any acts authorized by the TWC or other laws that 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. The amendments are also adopted under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The adopted amendments implement the legislative mandate under HB 3206 and HB 3544, 81st Legislature, 2009, which added new subsections (g-1) and (n) to Texas Tax Code, §11.31. Texas Tax Code, §11.31(g-1) requires uniform application to all applications of the standards and methods for processing; and §11.31(n) allows the executive director to use electronic mail for transmitting notices to appraisal districts.

§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 that are defined by Chapter 3 of this title (relating to Definitions), the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Capital cost old--The cost of the equipment that is being or has been replaced by the equipment covered in an application. The value of this variable in the cost analysis procedure is calculated using one of the four hierarchal methods for this variable in the figure in §17.17(b)(1) of this title (relating to Partial Determinations).

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

(4) Environmental benefit -- The prevention, monitoring, control, or reduction of

air, water, and/or land pollution that results from the actions of the applicant. For purposes of this chapter, environmental benefit does not include the prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the use or characteristics of the applicant's goods or service produced or provided. For the purpose of this chapter, the terms "environmental benefit" and "pollution control" are synonymous.

(5) Marketable product -- Anything produced or recovered using pollution control property that is sold as a product, is accumulated for later use, or is used as a raw material in a manufacturing process. Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property and sold, traded, accumulated for later use, or used in a manufacturing process (including at a different facility). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control property.

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

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

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

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

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

(11) Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

§17.6. Property Ineligible for Exemption from Taxation.

The following are not exempt from taxation and are not entitled to a positive use determination under this chapter:

1) property is not entitled to an exemption from taxation:

(A) solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;

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

(C) if the property is not wholly or partly used, constructed, acquired or installed to meet or exceed law, rule, or regulation adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas for the prevention, monitoring, control, or reduction of air, water, or land pollution; or

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

(2) property that is used for residential purposes, or for recreational, park, or scenic uses as defined by Texas Tax Code, §23.81;

(3) motor vehicles; and

(4) property that was subject to a tax abatement agreement executed before January 1, 1994. However, property acquired, constructed, or installed after expiration of a tax abatement agreement could be eligible for a positive use determination.

§17.10. Application for Use Determination.

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

(1) a completed and signed commission application form and one copy of the completed, signed form; and

(2) the appropriate fee, under §17.20 of this title (relating to Application Fees).

(b) An application must be submitted for each unit of pollution control property or for each group of integrated units that has been, or will be, installed for a common purpose.

(c) If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the same tax year. Applications postmarked after this date will be processed as a lower priority than applications postmarked by the due date and without regard for any appraisal district deadlines.

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

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, and/or land pollution;

(2) the estimated cost of the pollution control property;

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as, if deemed by the executive director to be relevant and essential to the use determination, a detailed description of the

pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled;

(4) the specific sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, and/or land pollution and is not on the Tier I Table, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17(c) of this title (relating to Partial Determination), and explaining each of the variables;

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

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

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

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, and/or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the executive director shall send notice by regular mail or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a use determination under this chapter.

(2) As soon as practicable after receipt of an application for use determination, the executive director shall send written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is not administratively complete, the notification will specify the deficiencies, and allow the applicant 30 days to provide a revised application with the requested information. If the applicant does not submit the requested information within 30 days, the executive director may decide to take no further action on the application and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

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

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

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

(4) The executive director shall determine whether the property is or is not used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for the portion of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant that describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

(C) A letter enclosing a copy of the determination shall be sent by regular or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.14. Tier I Pollution Control Property.

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

Figure: 30 TAC §17.14(a)

Tier I Table

The property listed in this table is property that the executive director has determined is used wholly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property. The items listed are described in generic terms without the use of brand names or trademarks. The use percentages on all property on the table are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner (*e.g.*, use in

production or recovery of a marketable product), the executive director may require that a Tier III application, using the Cost Analysis Procedure, be filed by the applicant to calculate the appropriate use determination percentage.. For items where the description limits the use determination to the incremental cost difference, the cost of the property or device with the pollution control feature is compared to a similar device or property without the pollution control feature. The table is a list adopted under Texas Tax Code, §11.31(g).

Air Pollution Control Equipment				
No.	Media	Property	Description	%
Particulate Control Devices				
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork – used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection created by an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators with blowers and ductwork used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, and blowers needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, and pumps used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units to control particulate emissions and opacity on start-up.	100
Combustion Based Control Devices				
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, and blowers used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control Devices				

A-40	Air	Molecular Sieve	Microporous filter used to remove hydrogen sulfide (H ₂ S) or nitrogen oxides (NO _x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Halon Replacement Projects	All necessary equipment needed to replace the Halon in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, and optical gas imaging instruments to demonstrate compliance with emission limitations of regulated air contaminants, (including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, and other meters for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, and power supplies used to monitor for levels of contaminants in ambient air.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used solely to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100

A-67	Air	Automotive Dynamometers	Automotive dynamometers used for emissions testing of fleet vehicles.	100
Nitrogen Oxides Controls				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce nitrogen oxides (NO _x) emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO _x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO _x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of NO _x formation. May include fly ash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, and pumps to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO _x formation.	100
A-85	Air	Over-fire Air & Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
A-86	Air	Low-NO _x Burners	Installation of low-NO _x burners. The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without NO _x controls from the most recent generation of burners.	100
A-87	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, thereby reducing	100

			NO _x formation.	
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO _x including directly related equipment.	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO _x control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Carbon Absorption Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove VOCs or odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks.	100
A-112	Air	Replacement of existing pumps, 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 VOCs. 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 to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	External Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).	100
Mercury Control				
A-130	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, and particulate collection devices needed for the equipment to function.	100
A-131	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-132	Air	Mercury Absorbing	Filters that absorb mercury such as those using	100

		Filters	the affinity between mercury and metallic selenium.	
A-133	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives that can be added to the flue gas or directly to the fuel.	100
A-134	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury. These units are only eligible if mercury is removed from flue gas.	100
A-135	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive, which is then removed in a particulate removal device.	100
Sulfur Oxides Controls				
A-160	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
A-161	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst	100
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, and ducts used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, and compressors used to capture a waste gas or liquid stream and vent to a control device, including those used to eliminate emissions associated with loading tank	100

			trucks, rail cars, and barges.	
A-185	Air	Paint Booth Control Devices	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-186	Air	Blast Cleaning System – Connected to a Control Device	Particulate control device and blast material recycling system.	100
A-187	Air	Amine or Chilled Ammonia Scrubber	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).	100
A-188	Air	Catalyst-based Systems	Installed to allow the use of catalysts to reduce pollutants in emission streams.	100
A-189	Air	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.	100

Water and Wastewater Pollution Control Equipment				
No.	Media	Property	Description	%
Solid Separation and De-watering				
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Waste water	Belt Press, Filter Press, or Plate and Frame	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing	100

			surface skimmers and sludge removal rakes.	
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or wastewater.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of wastewater.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of 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 wastewater by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100
Other Equipment				
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from wastewater. May be used in either fixed or	100

			fluidized beds.	
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, or Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities (including on-site septic systems) constructed to process wastewater generated on site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-64	Water	Storm water Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-65	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66	Water	Oil/Water Separator	Mechanical device used to separate oils from storm water.	100
Control/Monitoring Equipment				

W-70	Water	pH Meter, Dissolved Oxygen. Meter, or Chart Recorder	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations 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 land that is actually occupied by the diversion or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment				
No.	Media	Property	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, or grinding of self-generated waste material for the purpose of disposal.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles that leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, and controls.	100
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, and controllers, for high liquid level, pH, temperature, or flow in waste treatment system. Does not include fire alarms.	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary	100

			containment device and/or ancillary equipment. Main purpose is to prevent groundwater or soil contamination.	
S-7	Land/ Water	Liners (Noncommercial Landfills and Impoundments)	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment or landfill.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, and piping.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Noncommercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, and a biotic barrier.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit).	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems or compliance monitoring systems).	100
S-13	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-14	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and groundwater.	100
S-15	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems).	100
S-16	Water	Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, and monitoring equipment.	100

S-17	Land/ Water	Noncommercial Landfills (used for 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-18	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of 30 TAC Chapter 335, Subchapter O - Land Disposal Restrictions, §335.431.	100
S-19	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, and pumps.	100
S-20	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).	100
S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-26	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-27	Air/Water/	Concrete Reclaiming	Processes mixed, un-poured concrete	100

	Land	Equipment	batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	
S-28	Land	Fencing installed for the control of windblown trash or access control.	Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.	100

Miscellaneous Pollution Control Equipment				
No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, vacuum trailers, storage sheds, diversion basins, tanks, and dispersants.	100
M-2	Air/ Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, and Disposal.	100
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Land/ Air/ Water	Solvent Recovery Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, by filtration, or by other means. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-7	Air/	Environmental Paving	Paving of outdoor vehicular traffic areas in	100

	Land/ Water	located at Industrial Facilities	order to meet or exceed an adopted air quality rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes or storm water control. Does not include dirt or gravel. Value of the paving must be stated on a square foot basis with a plot plan provided that shows the paving in question.	
M-8	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, wastewater, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-9	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-10	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-11	Land/ Water	Structures, Enclosures, Containment Areas, Pads for Composting Operations	Required to meet 'no contact' storm water regulations.	100
M-12	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of waste material on site. Methane must be sent to a control device rather than used.	100
M-13	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, and Degasser.	100
M-14	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Units, and Choke Manifold Systems.	100
M-15	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance or to prevent/correct nuisance odors at off-site receptors.	100
M-16	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-17	Air	Low NO _x Combustion System for drilling rigs	Equipment on power generating units designed solely to reduce NO _x generation.	100
M-18	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring	100

			ambient odor, either empirically or chemical specific.	
M-19	Land	Cathodic Protection	Cathodic protection installed to prevent corrosion of metal tanks and piping.	100
M-20	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-21	Water/ Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges.	100
M-22	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges.	100

Equipment Located at Service Stations				
No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-10	Water	Double-walled Tanks	The difference between cost of single-walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges or leaks.	100
T-11	Water	Double-walled Piping	The difference between cost of single-walled piping and the cost of double-walled piping,	100

			when the double-walled piping is installed to prevent unauthorized discharges or leaks.	
T-12	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-15	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the service station. This item only applies to service stations.	100
Release Detection for Tanks and Piping				
T-20	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-21	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-22	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-23	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-24	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-25	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from aboveground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels,	100

			fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

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

(1) The commission may add an item to the table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

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

§17.17. Partial Determinations.

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

determination under this chapter. For all property for which a partial use determination is sought, the cost analysis procedure (CAP) described in subsection (c) of this section must be used.

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

Figure: 30 TAC §17.17(b)

Expedited Review List

No.	Property	Description
B-1	Coal Cleaning or Refining Facilities	Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems.
B-3	Ultra-Supercritical Pulverized Coal Boilers	Boiler system designed to provide 4500 pounds per square inch gauge (psig)/1100°/1100°/1100° double reheat configuration.
B-4	Flue Gas Recirculation Components	Ductwork, blowers, and ancillary equipment used to redirect part of the flue gas back to the

		combustion chamber for reduction of nitrogen oxides (NO _x) formation. May include fly ash collection in coal fired units.
B-5	Syngas Purification Systems and Gas-Cleanup Units	A system, including all necessary appurtenances, that (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment and (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.
B-6	Enhanced Heat Recovery Systems	A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.
B-7	Exhaust Heat Recovery Boilers	Used to recover the heat from boiler to generate additional steam.
B-8	Heat Recovery Steam Generators	A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.
B-9	Heat Transfer Sections for Heat Recovery Steam Generators	Super-heaters, Evaporators, Re-heaters and Economizers.
B-10	Enhanced Steam Turbine Systems	Enhanced efficiency steam turbines.
B-11	Methanation	Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	Used for handling, storage, or treatment of by-products or co-products produced (resulting) from the combustion or gasification of coal such as boiler and Gasifier slag, bottom ash, flue gas desulfurization (FGD) material, fly ash, and sulfur.
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	Installed to reduce pollution by using biomass as a supplementary fuel.
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, or coal flow balancing technology).
B-15a	Oxy-Fuel Combustion Technology	Installed to allow the feeding of oxygen, rather than air, and a proportion of recycled flue gases to the boiler.

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

(c) Consistent with subsection (a) of this section, the following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property that is filed on a Tier III application:

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

Figure: 30 TAC §17.17(c)(1)

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

Where:

¹ **The Production Capacity Factor (PCF)** is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. When there is an increase in production capacity, PCF is used to adjust the capacity of the new equipment or process to the capacity of the existing equipment or process. When there is a decrease in production capacity, PCF is used to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In this case, this calculation is modified so that PCF is applied to Capital Cost Old (CCO) rather than Capital Cost New.

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

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

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

^{3.2} If the conditions in variable 3.1 do not apply and the company is replacing an existing unit that already has received a positive use determination, the company shall use the CCO from the application for the previous use determination.

^{3.3} If the conditions in variable 3.1 and 3.2 do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF to adjust CCO to reflect the same capacity as CCN.

^{3.4} If the conditions in variables 3.1, 3.2 and 3.3 do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology. A copy of the estimate must be provided with the worksheet including the specific source of the information.

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

recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

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

Figure: 30 TAC §17.17(c)(2)

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

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

1. The retail value of the product produced by the equipment for one year periods. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.
2. If the material is used as an intermediate material in a production process, then the value assigned by to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the internally assigned value is comparable to the value assigned by other similar producers of the product.

ⁱⁱ **Production Cost** -- The costs directly attributed to the production of the product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs, such as overhead and depreciation.

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

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

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

§17.20. Application Fees.

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

(1) Tier I Application--A \$150 fee shall be charged for applications for property that is located in the Tier I Table located in §17.14(a) of this title (relating to Tier I Pollution Control Property), as long as the application seeks no variance from that use determination.

(2) Tier II Application--A \$1,000 fee shall be charged for applications for property that is used wholly for the control of air, water, and/or land pollution, but not in the Tier I Table located in §17.14(a) of this title.

(3) Tier III Application--A \$2,500 fee shall be charged for applications for property used partially for the control of air, water, and/or land pollution.

(b) Fees will be forfeited for applications for use determination on which the executive director will take no further action under §17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the

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

(c) All fees shall either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality (TCEQ), by electronic funds transfer, or by using the commission's ePay system.

(d) The check, money order, or electronic funds transfer receipt must be delivered with the application to the commission, at the address listed on the application form.

§17.25. Appeals Process.

(a) Applicability.

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

(2) The following persons may appeal a use determination issued by the executive director:

(A) the applicant seeking a use determination; and

(B) the chief appraiser of the appraisal district for the county in which the property for which a use determination is sought is located.

(b) Form and timing of appeal. An appeal must be in writing and must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive director's action is mailed by first class mail. If an appeal meeting the requirements of this subsection is not filed within the time period specified, the executive director's use determination is final. An appeal filed under this subchapter must:

(1) provide the name, address, and daytime telephone number of the person who files the appeal;

(2) give the name and address of the entity to which the use determination was issued;

(3) provide the use determination application number for the application for which the use determination was issued;

(4) request commission consideration of the use determination; and

(5) explain the basis for the appeal.

(c) Appeal processing. The chief clerk shall:

(1) deliver or mail to the executive director a copy of the appeal;

(2) deliver or mail a copy of the appeal to the applicant if the appeal was filed by the chief appraiser or to the chief appraiser if the appeal was filed by the applicant; and

(3) schedule the appeal for consideration at the next regularly scheduled commission meeting for which adequate notice can be given.

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

(e) Action by the commission.

(1) The person seeking the determination and the chief appraiser may testify at the commission meeting at which the appeal is considered.

(2) The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's use determination.

(3) If the commission denies the appeal and affirms the executive director's use determination, the commission's decision shall be final and appealable in district court.

(f) Action by the executive director.

(1) If the commission remands a use determination to the executive director, the executive director shall:

(A) conduct a new technical review of the application that includes an evaluation of any information presented during the commission meeting; and

(B) upon completion of the technical review, issue a new determination. A copy of the new determination shall be mailed to both the applicant and the chief appraiser of the county in which the property is located.

(2) A new determination by the executive director may be appealed to the commission in the manner provided by this subchapter.

(g) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, address, and daytime telephone number of the person who files the withdrawal, and the withdrawal shall indicate the

identification number of the use determination. The withdrawal must be filed by United States mail, facsimile, or hand delivery with the chief clerk of the commission.

[§17.15]

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.120, which authorizes the commission to perform any acts authorized by the TWC or other laws that 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. The rule is also repealed under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The adopted repeal implements the legislative mandate under HB 3206 and HB 3544, 81st Legislature, 2009, which added new subsections (g-1) and (n) to Texas Tax Code, §11.31. Texas Tax Code, §11.31(g-1) requires uniform application to all applications of the standards and methods for processing; and §11.31(n) allows the executive director to use electronic mail for transmitting notices to appraisal districts.

[§17.15. Review Standards.]