

The Texas Commission on Environmental Quality (commission or TCEQ) proposes to amend §§17.1, 17.2, 17.6, 17.10, 17.12, 17.14, 17.17, 17.20, and 17.25 and repeal §17.15.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The program for providing tax relief for pollution control property was established under a constitutional amendment 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 new constitutional provision. The commission adopted 30 TAC Chapter 277 on September 30, 1994, to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was 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 Texas 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 Texas Legislature enacted HB 3732 during the 80th legislative session. HB 3732 amended Texas Tax Code, §11.31 by adding three new 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 current rules contain the two-part Equipment and Categories List (ECL), codified in §17.14(a). Part A of the ECL covers property that the TCEQ has reviewed often enough to establish that it 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, §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. In the existing and proposed rules, applicants are required to calculate an application-specific determination for each piece of equipment, but the method is being changed as is discussed elsewhere in this preamble. The executive director determines the proper use percentage. The inclusion of a piece of equipment on the ECL or the assertion that a piece of equipment falls under a category set forth on the list does not mean that the equipment would receive a positive use determination. The use percentage is calculated for each piece of property on an application-by-application basis.

Prior to the 81st legislative session, the Legislative Budget Board (LBB) prepared a report including recommendations to the legislature on the TCEQ Tax Relief Program for Pollution Control Equipment. The report recommended that the TCEQ use the Cost Analysis Procedure (CAP) contained in its rules for all partial determinations, including applications for property located on the list in Texas Tax Code §11.31(k) (also known as Tier IV applications). The LBB report acknowledged that the CAP took into account the economic benefit of property to the property owner and recommended the creation of a permanent advisory committee for the program. Both HB 3206 and HB 3544 from the 81st Legislature, 2009, 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 is codified as Part B of the ECL in the current 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 proposed rulemaking would apply the CAP to all partial use determinations for property that does not meet the fixed use percentage criteria established by the commission under §17.14(a) of the rules. The proposed rulemaking would eliminate Tier IV applications. Applying the CAP to all partial use determinations would require Tier III applications for all partial determination requests, including a calculation of the percentage on the use of the property for pollution control. Implementation of this proposal would require items that are found on the current Part A of the ECL that are not at 100% or that are used partially for pollution control to be filed as Tier III applications. Additionally, items listed in the current Part B of the ECL that are used partially for pollution control would be filed in Tier III applications. Although some items on the current Part A of the ECL have use percentages below 100%, the executive director cannot validate that the listed

percentages are appropriate in all cases. In most cases, the percentage is an average of the actual partial use from various applications. Items on Part A of the ECL with a percentage less than 100% are proposed to be removed from the new Tier I Table because the executive director does not have information that verifies the use percentage can be consistently applied to every piece of equipment in a specific category. Other items on the current Part A of the ECL are listed at 100% pollution control although in some cases the equipment could be used for production purposes as well. Therefore, Tier III applications would be 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 certain categories of equipment. When sufficient information is available to determine a fixed partial use percentage for a category of property, the commission will consider adding through rulemaking that property to the Tier I Table with the appropriate partial use percentage specified.

The change to Tier III applications for items on the current Part B of the ECL that are used partially for pollution control would change the way that applicants calculate the partial use percentage. The current provision of allowing applicants to choose their own method for calculating a use percentage for these properties has 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 codified as Part B of the ECL in the current rules. For these partial use items, a Tier III application with the calculation of actual use percent would be 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 certain category of use. In these cases, the item will be added to the Tier I Table, such as is proposed for flue gas recirculation. 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 better fit this new review structure it will be modified, as described elsewhere in this preamble, by replacing the term "byproduct" with "marketable product." Because the term "byproduct" is defined as a waste material, applying the CAP is limited. However, the more expansive term "marketable product" would allow the CAP to more appropriately factor in other products from particular types of equipment (for example, equipment that results in energy production). Currently, the calculation of byproduct value only subtracts costs for transportation and storage, but the calculation of a marketable product value would subtract all costs associated with the production of the marketable product, which would more accurately determine the product value produced by pollution control property.

As discussed elsewhere in this preamble, Tier IV applications are proposed to be eliminated, and for consistency, applicants would be required to use the CAP to determine the appropriate use percentage rather than selecting their own method of calculation. Because Texas Tax Code, §11.31(k) requires the current Part B of the ECL to be in the rules, this list would be moved to §17.17.

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 would add provisions for staff sending 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 Tax Relief for Pollution Control Property Advisory Committee has provided several recommendations for this proposed rulemaking.

Where agency staff had sufficient information to implement the advisory committee's recommendations, they have been included in the proposed rule language. In some cases, there was not sufficient information to implement the advisory committee's recommendations. The commission is soliciting public comment on these recommendations by including them verbatim as follows:

At the May 21, 2010, advisory committee meeting, the committee made the following recommendation: Part B of the ECL should be changed to include descriptions of the property similar to the program's draft guidance document and to set certain use percentages at 100%. The advisory committee's proposed changes are shown in the following table:

Figure: 30 TAC Chapter 17--Preamble

No.	Property	Description	%
B-1	Coal Cleaning or Refining Facilities	<u>Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.</u>	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	<u>Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric & bubbling or circulating; gasification combined cycle systems; or pressurized & bubbling or circulating systems.</u>	V
B-3	Ultra-Supercritical Pulverized Coal Boilers.	<u>Boiler system designed to provide 4500 psig/1100°/1100°/1100° double reheat configuration.</u>	V
B-4	Flue Gas Recirculation Components	<u>Ductwork, blowers, etc. — used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include flyash collection in coal fired units.</u>	100 ∇

B-5	Syngas Purification Systems and Gas-Cleanup Units	<u>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.</u>	V
B-6	Enhanced Heat Recovery Systems	<u>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.</u>	V
B-7	Exhaust Heat Recovery Boilers	<u>Used to recover the heat from boiler to generate additional steam.</u>	V
B-8	Heat Recovery Steam Generators	<u>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.</u>	V
B-9	<u>Heat Transfer Sections for Heat Recovery Steam Generators</u> Super heaters and Evaporators	<u>Super-heaters, Evaporators, Re-heaters & Economizers.</u>	V
B-10	Enhanced Steam Turbine Systems	<u>Enhanced efficiency steam turbines.</u>	V
B-11	Methanation	<u>Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.</u>	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	<u>Used for handling, storage, or treatment of byproducts 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.</u>	100 N
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	<u>Installed to reduce pollution by using biomass as a supplementary fuel.</u>	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology]	<u>Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology).</u>	V
B-15a	Oxy-Fuel Combustion Technology; Amine or Chilled Ammonia Scrubbing, Catalyst-based Fuel or Emission Conversion Systems; Enhanced Scrubbing Technology;	<u>Installed to allow the feeding of O2, rather than air, and a proportion of recycled flue gases to the boiler.</u>	V

	<u>Modified Combustion Technologies, Cryogenic Technology</u>		
B-15b	<u>Amine or Chilled Ammonia Scrubbing</u>	<u>Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulating carbon dioxide as a pollutant).</u>	<u>100</u> ✕
B-15c	<u>Catalyst based Systems</u>	<u>Installed to allow the use of catalysts to reduce emissions.</u>	<u>100</u> ✕
B-15d	<u>Enhanced Scrubbing Technology</u>	<u>Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.</u>	<u>100</u> ✕
B-15e	<u>Modified Combustion Technologies</u>	<u>Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.</u>	V
B-15f	<u>Cryogenic Technology</u>	<u>Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by the USEPA regulating carbon dioxide as a pollutant).</u>	V
B-16	<u>Greenhouse Gas Capture & Sequestration Equipment</u> If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state	<u>Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide or other regulated greenhouse gasses from an anthropogenic source in this state that is then sequestered in this state. (This item is only in effect upon the effective date of a USEPA final rule regulating carbon dioxide as a pollutant.)</u>	V
B-17	<u>Fuel Cells used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.</u>	<u>Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.</u>	V
B-18	<u>Regulated Air Pollutant Control Equipment</u> Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.	<u>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.</u>	V

The commission requests public comment on whether these changes to the table would be preferable to moving this list of equipment to §17.17, as discussed elsewhere in this preamble. For the designations of 100% use percentages for certain items on the above table, the commission invites public comment on whether these percentages are appropriate for the property indicated. Commenters are asked to note that item B-4 is on the proposed Tier I Table (discussed elsewhere in this preamble) as item A-83.

At the June 4, 2010, advisory committee meeting, the committee adopted the following two resolutions:

1) "The advisory committee agrees that the uniformity requirement in the governing statute does not require the commission to rely upon a single formula when calculating partial use determinations;" and 2) "The committee recommends that the commission invite public comments during the public comment period regarding alternative methodologies for calculating partial use determinations to supplement or replace the CAP as it is proposed to be revised in the proposed rule." Based on these resolutions, the commission invites public comment on whether multiple formulae should be developed for calculating partial use determinations rather than just the method proposed in §17.17 (discussed elsewhere in this preamble) and, if so, the methodologies that should be added to the rules.

SECTION BY SECTION DISCUSSION

In addition to the proposed amendments discussed elsewhere in this preamble, the commission also proposes to make 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 proposes a non-substantive change to correct a grammatical error.

§17.2, Definitions

The commission proposes to add 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 proposes to delete the definition of "Byproduct." This term is used as a factor in the CAP in §17.17, but the commission proposes to replace this factor with "Marketable product," as discussed elsewhere in this section. Subsequent paragraphs would be renumbered.

The proposed revisions would expand the definition of "Capital cost old" 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 would be the cost of a comparable piece of equipment without the pollution control feature.

The commission proposes to delete the definition of "Decision flow chart" because of the deletion of the two flow charts as discussed elsewhere in this preamble.

At the request of the Tax Relief for Pollution Control Property Advisory Committee, the commission proposes to define "Environmental benefit." The definition approved by the committee and proposed in the rule links environmental benefit to the actions of a person to control pollution but that pollution

control or reductions achieved through the use of a product, good, or service is excluded. The definition further states that environmental benefit means the same as pollution control.

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

The commission is proposing to delete the definition "Equipment and categories list." Because the list required to be adopted by Texas Tax Code, §11.31(k) will be moved to §17.17(b) and Part A of the ECL will be renamed to the "Tier I Table," this definition is not needed.

The proposed revisions to the rule would 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 preamble, the commission proposes to include a definition of marketable product. This definition is broader than the existing definition of byproduct, which is proposed for deletion, because of inclusion of things other than wastes recovered and sold (for example, co-products or electricity). The proposed definition of marketable product 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, except that emissions credits and emissions allowances are excluded. 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. As

discussed elsewhere in this preamble, the value of a marketable product would be used in the CAP for Tier III applications.

The commission proposes to delete the definition "Part B decision flow chart" because the flow chart located in §17.15(b) (the Part B Decision Flow Chart) is proposed to be deleted. Therefore, this definition is no longer needed.

The commission proposes to delete 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 proposes changes to the definitions to Tier I, Tier II, and Tier III for consistency with the change of the ECL to the new Tier I Table as discussed elsewhere in this preamble. Additional rewording of these definitions for clarity would be made. For the Tier III definition, the rewording is intended to mean that Tier III includes property used partially for pollution control that is similar to items on the Tier I Table but that are used in a different manner or at a different use percentage than shown on the Tier I Table.

The commission proposes to delete the definition of Tier IV. As discussed elsewhere in this preamble, Tier IV applications would be eliminated, with all partial use determinations consolidated into the Tier III level for uniformity and applications for property used wholly for pollution control at the Tier I level if the equipment is on the Tier I Table or at the Tier II level for other property. Therefore, this term would no longer appear in the rules.

The commission proposes to delete 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 Tax Relief for Pollution Control Property Advisory Committee, the commission proposes an amendment to §17.6(1). Paragraph (1) would be amended to specify three additional circumstances that would 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 proposes to revise the term "Tax Code" to "Texas Tax Code" in §17.6(2) for clarity and uniformity.

§17.10, Application for Use Determination

The commission proposes to amend §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" would be added before "copy" to ensure that a completed and signed copy is available to send to the appraisal district.

The commission proposes to revise §17.10(b) such that the wording "facility consisting of" would be deleted 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 could be put into the same application. Additionally, "have" would be 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 would be an integrated unit although the devices may treat different pollutants (such as volatile organic compounds, nitrogen oxides, particulates, etc.), but a baghouse would not be an integrated unit with a vacuum truck even though both are used to control particulates at a facility.

The commission proposes to revise §17.10(c) to delete the word "not" and substitute "as a lower priority than" for "until after review of all." This revision is proposed to remove the implication that all applications postmarked before January 31st would need to be completely processed before applications postmarked after January 31st are started. The proposed change would avoid any 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 would allow more efficient processing of applications.

The commission proposes to delete 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 the Texas Tax Code, §11.31(c)(1). In addition, the proposed rulemaking would revise

§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* (August, 2008). 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 proposed revisions to the rulemaking would 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 proposes 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. In §17.10(d)(4), the commission proposes the addition of "sections of" to clarify that citations requiring use of the equipment should be section specific. In addition, the proposed rulemaking would revise "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 proposes to amend §17.10(d)(5) to change the phrase "Equipment and Categories List" to "Tier I Table" and to modify the citation for the CAP to be consistent with proposed amendments discussed elsewhere in this preamble. This proposed paragraph would continue to require applicants to provide in an application a worksheet showing how they determined the appropriate applicable

percentage of partial use pollution control equipment through the use of the CAP.

The commission proposes 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 as discussed elsewhere in this preamble. The subsequent paragraphs would be renumbered. The commission proposes the deletion of §17.10(d)(10) because it is not necessary due to the elimination of the two decision flow charts as discussed elsewhere in this preamble.

§17.12, Application Review Schedule

The commission proposes to add 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 proposes the revision of §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 current short time period is not practical in the period around January 31st when large numbers of applications are received. The word "mail" would be replaced with "send" to allow transmittal of the notices by electronic means as allowed by HB 3544.

The commission proposes revisions to §17.12(2)(A) to modify the current process that the commission uses to resolve administrative deficiencies in applications. The new process allows 30 days for the applicant to provide the requested deficient information. By changing the word "will" to "may," the proposed rules would give the executive director the option to continue processing an application. Proposed revisions to §17.12(2)(B) would also modify the procedures through which the executive

director would request additional technical information and would remove direct references to Tier levels I, II, and III as they are no longer applicable. The word "will" would be changed to "may" for the same reason as in subparagraph (A). Revisions to §17.12(2)(C) are proposed to maintain program consistency with the application process revisions proposed under subparagraphs (A) and (B) while retaining the applicant's ability to re-file an application.

Proposed revisions to §17.12(3) would 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" would be 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.

The commission proposes to revise 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 proposed §17.12(4)(C), the wording "or electronic" would be 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 proposes revisions to §17.14 to rename the section, to reorganize the pollution control 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 proposed revisions, Part A of the ECL would be replaced with a Tier I

Table of properties used for pollution control at a standard use percentage. Part B of the current ECL list would be relocated to §17.17 and properties currently in Part B would be listed there.

The commission proposes revisions to §17.14(a) to delete the references to the ECL. The proposed new wording for subsection (a) would specify 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 any value is recovered.

The commission proposes the removal of the pollution control property list under §17.14(a), formerly labeled the "Equipment Categories List," and replacing it with a revised Tier I Table. The proposed Tier I Table in §17.14(a) would be 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 would be deleted.

Because the use percentages in the ECL cannot be confirmed to be accurate for all facilities, all properties currently with partial use percentages would be deleted; the items 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, any pollution control equipment from which any marketable product or product of value is recovered would be deleted; the items deleted for this reason include the following: 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 would be deleted because they are old technology: A-86, Burners Out of Service; A-87, Lean-Burn Gas-Fired Compressor Engines; A-89, Over-Fire Air Systems; and A-90, Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines.

For the introductory paragraph and for some items on the old ECL that are retained on the new Tier I Table, changes would be 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 would be renumbered as needed.

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

The following significant changes would be made to specific items retained on the new Tier I Table: In the description section of current item A-65, Predictive Emissions Monitors, the word "solely" would be added because use of the monitors for production has a percentage of use that varies by facility; this amendment was suggested by the Tax Relief for Pollution Control Property Advisory Committee. In the description section of current item A-80, Selective Catalytic and Non-catalytic Reduction Systems, the wording "engines/boilers" would be changed to "combustion sources" to allow Tier I applications for this type of pollution control property on other types of equipment. As requested by the Tax Relief for Pollution Control Property Advisory Committee, the description section of current item A-88, Low NO_x burners, would be changed to cover use of this equipment in a new installation rather than only as replacement burners. Current item A-89, Over-Fire Air Systems, would be deleted because the equipment is covered under current item A-85, Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents. Current items A-110, Activated Carbon Systems, and A-115, Carbon Absorber, would be combined into a single new A-110, Carbon Absorption Systems. In the description section of current item A-138, Photochemical Oxidation, proposed sentence, "These units are only eligible if mercury is removed from flue gas." would be added because these systems only provide an environmental benefit if mercury emissions are reduced. For current item A-187, Paint Spray Booth Attached to a Final Control Device (New Construction), the name would be changed to clarify that the item only covers the control devices attached to a paint booth. Current item A-205, Secondary Containment, would be deleted because this equipment is also covered under current item S-6, Secondary Containment. In the description section of current item W-59, Wastewater Treatment Facility/Plant, wording would be added to clarify that this item includes septic systems. For current item S-1, Stationary Mixing and Sizing Equipment, the phrase "or in-house

recycling" would be deleted from the description because this part pertains to a marketable product. The title of S-7, Liners, would have "(Noncommercial Landfills or Impoundments)" added and the title of current S-16, Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment, would have "Noncommercial" added to the title to clarify that these items do not pertain to commercial landfills or injection wells because of the statutory prohibition for commercial waste operations. For current item S-23, Double Hulled Barge, the description would be 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" would be deleted from the description of current item M-1, Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies, and the phrase "personal protection" would be deleted from the description of current item M-2, Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant. The name of current item M-5, Distillation Recycling Systems, would be 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 current item M-8, Environmental Paving located at Industrial Facilities, wording would be added to specify that this item does not apply to storm water control (which is covered under current 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 Tax Relief for Pollution Control Property Advisory Committee, current item M-8 would also have the phrase "environmental rule, regulation, or law" in the description column changed to "air quality rule, regulation, or law." For current item M-12, Structures, Enclosures, Containment Areas, Pads, the wording "for Composting Operations" would be added to the title to specify better the property

to which the item applies. In the description section of current item M-13, Methane Capture Equipment, the scope of the item would be increased to allow Tier I applications used to capture methane resulting of decomposition of wastes that were not generated on site; because the use percentage is specified as 100%, the item would only apply to methane capture equipment used to capture methane that is sent to a control device without providing any production benefits. The changes to current item M-13 would 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 current item M-17, Low NO_x Combustion System, the specification that the item applies to drilling rigs would be moved from the description to the title; based on a recommendation from the Tax Relief for Pollution Prevention Property Advisory Committee, the word "solely" would be added to the description and the wording "components of" would be changed to "equipment on." Additionally, three items (external floating roofs, selective catalytic and non-catalytic reduction systems for sulfur oxides, and landfill fencing for control of windblown trash or access control) would be added to the table because the equipment has been found to be consistently used wholly for pollution control.

Any equipment used partially for pollution control, unless it exactly matches the criteria for an item on the Tier I Table, would be covered under the Tier III application process under §17.17 as discussed elsewhere in this preamble. In addition to the proposed changes, property and descriptions included in the new Tier I Table under §17.14(a) would be 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.

The proposed introductory paragraph preceding the new Tier I Table in §17.14(a) would be revised from the existing ECL introductory description for consistency in describing the new Tier I Table and to replace references to the ECL with those to the Tier I Table. The introduction would clarify that equipment included in the table is property determined to be used for pollution control purposes at a set use percentage and is only applicable to a Tier I application when used as shown in the description section of the table and when no marketable product arises from the property. In addition, the proposed introduction to the table in §17.14(a) specifies that the listed equipment is generic.

The commission proposes to revise §17.14(b) such that the designation "ECL" would be 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) would be amended to state that the commission may remove items from the Tier I Table.

§17.15, Review Standards

The commission proposes to repeal §17.15. The two decision flow charts are not necessary for establishing the eligibility criteria for property because these are provided elsewhere in the rules. The main flow chart will be 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 as discussed elsewhere in this preamble.

§17.17, Partial Determinations

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

Section 17.17(b) is proposed to itemize the list of pollution control facilities, devices, or methods included in Texas Tax Code, §11.31(k).

Proposed §17.17(c) would be relettered from the existing §17.17(b) and would be revised to reflect the elimination of Tier IV applications. There would no longer be separate calculations for these two current application levels.

Proposed §17.17(c)(1) would codify the modified CAP. This paragraph would apply to applications where there is no marketable product produced by the property used partially for pollution control. The calculation change proposed for the CAP is that the variable for byproduct would be changed to a variable for the net present value of any marketable product(s). Because the current definition of byproduct covers only recovered waste materials, the current CAP does 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 elsewhere for §17.2, would allow for implementation of HB 3206 and HB 3544 that requires that the standards and methods that are 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 proposed for the new CAP would be to require 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 for net present value of the marketable product (NPVMP) would be defined in proposed item 4 in the figure located in §17.17(c)(1), although its value is specified as zero for applications under this paragraph. This process does not apply to applications under the next paragraph, which covers applications where a marketable product is generated.

The commission proposes the addition of §17.17(c)(2) for applications that include property that produces a marketable product. In this paragraph, the new equation for calculating NPVMP would be codified. This equation is similar to the current equation for calculating the byproduct value, except for the change from byproduct to marketable product as discussed previously and a change for production costs. Under the current equation for byproduct, only costs for storage and transportation are subtracted from the retail value of the byproduct in the numerator of the equation. In the proposed 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.

The commission proposes to delete current §17.17(d) due to the elimination of the Tier IV applications and to revise proposed §17.17(d), currently §17.17(e), to delete reference to alternate methods for determining the use determination percentage.

§17.20, Application Fees

Proposed revisions to §17.20(a)(1) and (2), would amend the reference to the current ECL to reference the Tier I Table for rule consistency. In addition, the commission proposes to delete §17.20(a)(4) to remove references to Tier IV applications.

The proposed revisions to §17.20(b) would 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 proposed for §17.12(2), as discussed elsewhere in this preamble. In addition, new language would be 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 receipt to a request for additional fees.

The commission proposes revisions to §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 proposed §17.25(a) would replace the current 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 current rule language accommodates the effective date of Texas Tax Code, §11.31(e), which provided for appeals of use determinations. Because the period for filing an appeal is 20 days after issuance of a use determination, the language is no longer needed. Section 17.25(a)(2) would be 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*.

Proposed revisions to §17.25(b) would add the word "must" to the first sentence to clarify that both listed requirements are condition precedents for applications.

Proposed §17.25(d) would be 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 would be relettered.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, fiscal implications, although not significant, are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules are expected to increase the amount of fee revenue collected by the agency when reviewing applications to determine whether property is used as pollution control equipment. 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.

HB 3206 and HB 3544 amended the Texas Tax Code to require uniform application of standards and methods to determine whether property and equipment can be wholly or partially classified as pollution control property and to authorize the use of electronic means to issue notices, orders, and other information. The Texas Tax Code provides a tax exemption for property if the property is used wholly or partially for pollution control. Owners of property can voluntarily submit an application to the agency to determine the use of the property. The submission of an application is voluntary in nature, and the number of applications can vary from one year to another.

The proposed rules amend Chapter 17 to ensure that uniform standards and methods are applied when determining whether property is wholly or partially used for pollution control. The proposed rules revise the CAP to allow for a more complete evaluation of the portion of property and equipment that is used for pollution control versus the portion that is used for production. The CAP revision will be more comprehensive when determining the proper partial use percentage of equipment and property. The proposed rules may result in a decrease in the number of partial use determinations and thereby increase the amount of property on tax rolls. Until the commission receives sufficient information to determine appropriate partial use percentages that are consistent for certain categories of property, the proposed rules will also require that all property determined to be partial pollution control property be classified as Tier III property and not appear on Tier I applications. The proposed rules will eliminate the current Tier IV category and require most Tier IV property to be evaluated as Tier III property. The proposed rules will also codify current agency guidance that requires property listed on applications be limited to individual units or integrated systems of pollution control equipment installed for a common purpose. In addition, the proposed rules will provide for the electronic transmission of notices.

The proposed rules are expected to increase revenue and decrease postage costs because of the electronic transmission of notices, but any increases in revenue or cost savings are not expected to be significant.

Any cost savings will be used to help cover expanded administrative costs for the program. Pollution Control Exemption Application Fees are deposited in Fund 0001 - General Revenue.

The bulk of applications received by the TCEQ are for Tier I property. Historically, partial use pollution control property submitted on Tier I applications has been primarily for gas pipelines. Since 2008, the TCEQ has also received applications for Tier IV property, which is typically used by power plants, chemical plants, or refineries.

Under current rules, fees for evaluation of pollution control property applications are as follows: Tier I is \$150 per application, Tier IV is \$500 per application, and Tier III application is \$2,500. Under the proposed rules, the revenue increase could be \$2,350 per application for former partial use Tier I property. For former Tier IV property, the revenue increase is estimated to be \$2,000 per application. Based on historical trends and recent manufacturing changes, the TCEQ estimates that an average of 34 Tier IV and 100 Tier I will be filed as Tier III applications, and the estimated revenue increase could be as much as \$303,000 per year.

Postage costs are expected to decrease when notices are transmitted electronically. If the TCEQ mails three notices on average for each application, and 1,100 applications are received, the savings in postage costs could be as much as \$1,452 per year under the proposed rules.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and a more comprehensive, uniform approach when evaluating pollution control property eligible for tax exemption.

The proposed rules will not have significant fiscal implications for individuals and businesses. The proposed rules apply to pollution control property, most of which is owned by large businesses such as gas pipelines, power plants, chemical plants, and refineries. Submission of applications for use determination is voluntary, and businesses are not expected to submit applications and pay increased fees unless tax exemption status is economically advantageous. Local taxing authorities and appraisal districts determine tax policies that determine the economic impact of use determinations.

Businesses that submit applications for use determination will see an increase in fees if applying for property formerly classified as Tier I partial use or for property formerly classified as Tier IV. Applications for these types of properties will pay a Tier III fee of \$2,500 per application. This charge would be an increase of \$2,350 per application for former Tier I partial use pollution control property and \$2,000 per application for former Tier IV property.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Submission of applications for use determination is voluntary, and small businesses typically do not own or operate equipment that will be reclassified as Tier III property. If a small business were to

submit an application, it would pay the same fees as a large business. As with a large business, a small business would be expected to submit an application only if tax exempt status for pollution control property is more beneficial than the cost of submitting an application.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect. Property affected by the proposed rules is not typically owned by small businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of "a major environmental rule." Under Texas Government Code, §2001.0225, "a major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in

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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking amends the Tax Relief for Pollution Control Property rules. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these amended rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted amendments. Enforcement of these adopted rules would be neither a statutory nor constitutional taking of private real property.

Specifically, the adopted rules do not affect a landowner's rights in private real property, because this

rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §5.05.11(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 proposed rulemaking is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF HEARINGS

The commission will hold five public hearings on this proposal. The first hearing will be held in Houston on August 9, 2010, at 1:00 PM in Conference Room A at the Houston Galveston Area Council (HGAC) located at 3555 Timmons, Suite 120, Houston. The second hearing will be held in Beaumont on August 10, 2010, at 9:00 a.m. in the commission's Beaumont regional office located at 3870 Eastex Freeway, Beaumont. The third hearing will be held in Austin on August 10, 2010, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The fourth hearing will be held on August 12, 2010, at 1:00 p.m. in Conference Room 1003 in the NRC Building on the Texas A&M Corpus Christi campus located at 6300 Ocean Drive, Corpus Christi. The fifth hearing will be held in Fort Worth on August 13, 2010, at 1:00 p.m. in the public meeting room of the commission's Dallas/Fort Worth regional office located at 2309 Gravel Drive, Fort Worth. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings;

however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-050-017-EN. The comment period closes August 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Emmanuel Wada, Air Quality Division, at (512) 239-1917.

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

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.102, 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 rules are also proposed under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The proposed amendments implement the legislative mandate under HB 3206 and HB 3544, 81st Legislature, 2009, which add 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 commission 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 [which] 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) Byproduct--A chemical or material that would normally be considered a waste material requiring disposal or destruction, but due to pollution control property is now used as a raw material in a manufacturing process or as an end product. The pollution control property extracts, recovers, or processes the waste material so that it can be used in another manufacturing process or an end product.]

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

(2) [(3)] Capital cost old--The [This is the] cost of the equipment that is being or has been replaced by the equipment covered in an application. In a situation where a piece of equipment is not replacing previous equipment, capital cost old can be the cost of comparable equipment or process without the pollution control feature.

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

(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.

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

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

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

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

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

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

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

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

(8) [(13)] Tier I--An application containing [which contains] property that is on the Tier I Table [in Part A of the figure] 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 [Part A of the Equipment and Categories List].

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

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

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

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

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

[(A) the name of the applicant;]

[(B) the name and location of the facility;]

[(C) the property description;]

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

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

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

§17.6. 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 [In order to] be granted a use determination a person shall submit to the executive director:

(1) a completed and signed commission application form [or a similar reproduction] 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 [facility consisting of a] group of integrated units that has [which have] been, or will be, installed for a common purpose.

(c) If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year. Applications postmarked after this date will [not] be processed as a lower priority than [until after review of all] applications postmarked by the due date [are completed] and without regard for any appraisal district deadlines.

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

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

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

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

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

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

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

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

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

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, and/or [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 [Within three days of] receipt of an application for use determination, the executive director shall send [mail] written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is not administratively complete, the notification will [shall] 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, [an adequate response, the application will be sent back to the applicant without further action by] the executive director may 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 [For Tier I, II and III applications,] additional technical information [may be requested] 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 application will be sent back to the applicant without further action by] the executive director may take no further action on the application and the application fee will be forfeited under §17.20(b) of this title.

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

(3) For [Tier IV] applications covering property listed 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 [documents].

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

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

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

(C) A letter enclosing a copy of the determination shall be sent by regular 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 [Equipment and Categories List].

(a) For [The Equipment and Categories List (ECL) is a two-part list. Part A is a list of] the property listed in the Tier I Table located in this subsection that [the executive director has determined] is used [either] wholly [or partly] 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. [Part B is a list of categories of property which is located in Texas Tax Code (TTC), §11.31(k).]

Figure: 30 TAC §17.14(a)

[Figure: 30 TAC §17.14(a)]

**Tier I Table [Equipment and Categories List
Part A]**

The property listed in this table [Part A of the Equipment and Categories List] is [a list of] property that the executive director has determined is used [either] wholly [or partly] for pollution control purposes 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 [and includes a defined use percentage]. The use percentages on all property on [Part A of] the table [ECL] are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner (*e.g., use in production or recovery of a marketable product*), the executive director may require that a Tier III application [analysis], using the Cost Analysis Procedure, be filed [conducted] by the applicant [in order] to calculate the appropriate use determination

percentage. [The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site. The commission will review and update the list at least once every three years. Items may be added only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection or for production is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property]. For items where the description limits the use determination [percentage] to the incremental cost difference, the cost of the property or device with [without] the pollution control feature is compared to a similar device or property without [with] the pollution control feature. [Part A was formerly referred to as the Predetermined Equipment List.] The table [Part A] is a list adopted under Texas Tax Code, [TTC] §11.31(g).

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

A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, <u>and</u> blowers [, etc. -] used to destroy air contaminants in a vent gas stream.	100
Non-Volatile Organic Compounds Gaseous Control [(VOC)] Devices				
A-40	Air	Molecular Sieve	Microporous filter used to remove <u>hydrogen sulfide</u> [Hydrogen Sulfite] (H ₂ S) or <u>nitrogen oxides</u> [Nitrogen Oxides] (NO _x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream. [Stripper associated with product or by-product improvement does not qualify.]	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
[A-43]	[Air]	[Refrigerant Recycling Equipment]	[Equipment used to recover and recycle CFC's and halocarbons.]	[50]
A-43 [A-44]	Air	<u>Halon</u> [Halogen] Replacement Projects	All necessary equipment needed to replace the <u>Halon</u> [Halogen] in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, <u>and optical gas imaging instruments</u> to [find Infrared (IR) Cameras, etc.] demonstrate compliance with emission limitations of regulated air contaminants, <u>(including</u> [. (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, <u>and other meters</u> [etc.] for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, <u>and power supplies used to monitor for levels of contaminants in ambient air</u> [, etc].	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, <u>and optical gas imaging instruments</u> [find IR Cameras, etc.] used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used <u>solely</u> to calculate or determine compliance	100

			with emission limitations.	
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	<u>Air</u>	Automotive Dynamometers	Automotive dynamometers used for [in-house] emissions testing of fleet vehicles [in order to reduce emissions].	100
[Control of] Nitrogen Oxides Controls				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce <u>nitrogen oxides</u> [Nitrogen Oxide] (NO _x) emissions from <u>combustion sources</u> [engines/boilers]. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO _x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO _x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork[, <u>and</u> blowers [, etc. -] used to redirect part of the flue gas back to the combustion chamber for reduction of NO _x formation. May include flyash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, <u>and</u> pumps [, etc.] to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO _x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100
[A-86]	[Air]	[Burners Out of Service]	[Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO _x emissions.]	[100]
[A-87]	[Air]	[Lean-Burn Gas-Fired Compressor Engines]	[Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NO _x formation.]	[20]

<u>A-86</u> [A-88]	Air	Low-NO _x Burners	Installation of low-NO _x [Replacement of existing incinerator, furnace or boiler] burners. <u>The eligible portion is the</u> [with low-NO _x burners for pollution control purposes. The] incremental cost difference. <u>For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of</u> [between] the existing burner. <u>For new installations, the incremental cost difference is calculated by comparing the cost of</u> [burners and] the new burner to the cost of a <u>similarly sized burner without NO_x controls from the most recent generation of burners</u> [is eligible for a positive use determination].	100
[A-89]	[Air]	[Over-Fire Air Systems]	[System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO _x .]	[100]
[A-90]	[Air]	[Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines]	[Installation of conversion kits to reduce NO _x emissions from existing internal combustion engines used to drive natural gas compressors These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.]	[100]
<u>A-87</u> [A-91]	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, [;] thereby reducing NO _x formation.	100
<u>A-88</u> [A-92]	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-93]	[Air]	[High-Pressure Fuel Injection System]	[Retrofit technology for large bore natural gas fired internal combustion engines to reduce NO _x and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.]	[40]
<u>A-89</u> [A-94]	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	[Activated] 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 <u>aboveground</u> [above ground] storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive emissions of VOCs [volatile organic compounds]. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints [in order] to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
[A-115]	[Air]	[Carbon Absorber]	[Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.]	[100]
<u>A-115</u>	<u>Air</u>	<u>External Floating Roofs</u>	Used to reduce VOC emissions caused by evaporation losses from <u>aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).</u>	<u>100</u>
Mercury Control				
<u>A-130</u> [A-133]	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, <u>and</u> particulate collection devices [, etc.] needed for the equipment to function.	100
<u>A-131</u> [A-134]	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
<u>A-132</u> [A-135]	Air	Mercury Absorbing Filters	Filters that [which] absorb mercury such as those using the affinity between mercury and metallic selenium.	100
<u>A-133</u> [A-136]	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives that [which] can be added to the flue gas or directly to the fuel.	100
<u>A-134</u> [A-138]	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. <u>These units are only eligible if mercury is removed from flue gas.</u>	100

<u>A-135</u> [A-141]	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive, which is then removed in a particulate removal device.	100
[Control] of Sulfur Oxides Controls				
<u>A-160</u> [A-168]	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
<u>A-161</u>	Air	<u>Selective Catalytic and Non-catalytic Reduction Systems</u>	<u>Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-selective systems use a reducing agent without a catalyst</u>	<u>100</u>
Miscellaneous Control Equipment				
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, and ducts [, etc. -] used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions <u>to</u> [. In order to] meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack [in order] for that stack to provide the same level of pollution control as was previously provided.	100
[A-184]	[Air]	[Vapor/Liquid Recovery Equipment for Fugitive Emissions]	[Hoods or other enclosures including piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.]	[100]
<u>A-184</u> [A-185]	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, <u>and</u> compressors [, etc. -] used to capture a waste gas or liquid stream and vent to a control device, <u>including</u> [. Including] those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
[A-186]	[Air]	[Paint Spray Booth Attached to a Final Control Device (Replacement which provides increased pollution prevention or control)]	[The incremental cost difference between the new paint booth and the replaced paint booth.]	[100]

A-185 [A-187]	Air	Paint [Spray] Booth [Attached to a Final Control <u>Devices</u> [Device (New Construction)]	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
[A-188]	[Air]	[Powder Coating System - Installed to replace an existing paint booth]	[The incremental cost difference between the Powder Coating System and the Paint Spray Booth which was replaced.]	[100]
[A-189]	[Air]	[Powder Coating System – New construction]	[Powder recovery system.]	[100]
A-186 [A-190]	Air	Blast Cleaning System – Connected to a Control Device	Particulate control device and blast material recycling system.	100
[Dry Cleaning Related Equipment]				
[A-200]	[Air]	[Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines]	[Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.]	[60]
[A-201]	[Air]	[Cartridge and Spin Disc Filtration Systems]	[A control device used to lessen emissions of VOC for naphtha cleaning systems.]	[40]
[A-202]	[Air]	[Petroleum Dry-to-Dry Cleaning Machines]	[Closed loop system using naphtha instead of perchloroethylene.]	[60]
[A-203]	[Air]	[Petroleum Re-claimers]	[A unit used to collect VOC emissions in the drying process.]	[60]
[A-204]	[Air]	[Refrigerated Vapor Condenser. (Includes only the components that recover the vapors)]	[A device that uses refrigerants to condense recovered vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.]	[90]
[A-205]	[Air]	[Secondary Containment]	[External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.]	[100]
[A-206]	[Air]	[Direct Coupled Solvent Delivery Systems]	[Replacement of solvent delivery systems at existing dry cleaning facilities.]	[100]

<u>Water and Wastewater Pollution Control Equipment</u>				
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. [Hydrocarbon.]	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 [, etc.]	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or 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 [waste water] by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological	100

			purification of the wastewater.	
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 <u>wastewater</u> [waste water]. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water [in order] to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities (<u>including on-site septic systems</u>) constructed to process wastewater generated <u>on site</u> [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 [W-65]	Water	Storm water [Stormwater] Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-65 [W-66]	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66 [W-67]	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 [, etc.]	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or <u>carbon dioxide</u> [Carbon Dioxide] (CO ₂) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only [that] land <u>that</u> [which] is actually occupied by the <u>diversion</u> [division] or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment				
No.	Media	Property	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, <u>or grinding</u> [, etc.] of <u>self-generated</u>	100

			[self generated] waste material for the purpose of disposal [or in-house recycling].	
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles <u>that</u> [which] leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, <u>and</u> controls [, etc].	100
S-4	Land/ Water/Air	Monitoring and Control Equipment	Alarms, indicators, <u>and</u> controllers [, etc.], for high liquid level, pH, temperature, <u>or</u> flow [, etc.] in waste treatment system. <u>Does</u> [(does) not include fire alarms []].	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent <u>groundwater</u> [ground water] or soil contamination.	100
S-7	Land/ Water	Liners (<u>Noncommercial Landfills and Impoundments</u>)	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 <u>or</u> [,] landfill[, etc].	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, <u>and</u> piping [, etc].	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (<u>Noncommercial</u> [Non-Commercial])	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, <u>and</u> a biotic barrier [, etc].	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit [,] (e.g., below the treatment zone of a land treatment unit[, etc.]) ₂	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	100

			systems <u>or</u> [,] compliance monitoring systems). ₂	
<u>S-13</u> [S-14]	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
<u>S-14</u> [S-15]	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and <u>groundwater</u> [ground water].	100
<u>S-15</u> [S-16]	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants [.] (e.g., pump-and-treat systems [, etc.]). ₂	100
<u>S-16</u> [S-17]	Water	<u>Noncommercial</u> Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, <u>and</u> monitoring equipment [, etc].	100
<u>S-17</u> [S-18]	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
<u>S-18</u> [S-19]	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of <u>30 TAC Chapter 335, Subchapter O - Land Disposal Restrictions,</u> [(30 TAC) §335.431 [)].	100
<u>S-19</u> [S-20]	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, <u>and</u> pumps [, etc].	100
<u>S-20</u> [S-21]	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, <u>and</u> vent controls [, etc.] (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities [, etc.]). ₂	100
<u>S-21</u> [S-22]	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities [.] (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities [, etc.]). ₂	100
<u>S-22</u> [S-23]	Water	<u>Double-Hulled</u> [Double Hulled] Barge	If <u>double-hulled</u> [Double hulled] to reduce chance of leakage into public waters, <u>calculate the incremental</u> [. (Incremental) cost difference	100 [30]

			between a <u>single-hulled</u> [single hulled] barge and a <u>double-hulled</u> [double hulled] barge. [)]	
<u>S-23</u> [S-24]	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
<u>S-24</u> [S-25]	Land	Compost Application Equipment	Equipment used to apply compost <u>that</u> [which] has been generated on-site.	100
<u>S-25</u> [S-26]	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
<u>S-26</u> [S-27]	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
<u>S-27</u> [S-28]	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100
<u>S-28</u>	<u>Land</u>	<u>Fencing installed for the control of windblown trash or access control.</u>	<u>Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.</u>	<u>100</u>

Miscellaneous Pollution Control Equipment				
No.	Media	Property	Description	%
M-1	Air/Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, [safety equipment,] vacuum trailers, storage sheds, diversion basins, <u>tanks</u> [tankage], <u>and</u> dispersants [, etc].	100
M-2	Air/Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, <u>and</u> [Personal Protection,] Disposal.	100
M-3	Air/Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers,	Compactors and similar equipment used to change	100

		Balers, Shredders	the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	
M-5	Land/ Air/ Water	<u>Solvent Recovery</u> [[Distillation Recycling] Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, <u>by filtration, or by other means</u> . 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 [M-8]	Air/ Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted <u>air quality</u> [environmental] rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes <u>or storm water control</u> . <u>Does not include dirt or gravel</u> . Value of the paving must be stated on a square foot basis with a plot plan provided <u>that</u> [which] shows the paving in question.	100
M-8 [M-9]	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 [M-10]	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-10 [M-11]	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-11 [M-12]	Land/ Water	Structures, Enclosures, Containment Areas, Pads <u>for</u> <u>Composting Operations</u>	Required [in order] to meet 'no contact' storm water regulations.	100
M-12 [M-13]	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of [site generated] waste material <u>on site</u> . <u>Methane must be sent to a control device rather than used</u> .	100
M-13 [M-15]	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, <u>and</u> [&] Degasser.	100
M-14 [M-16]	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing <u>Units</u> , [Unit] and Choke Manifold <u>Systems</u> [System].	100

M-15 [M-18]	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance [,] or to prevent/correct nuisance odors at off-site receptors.	100
M-16 [M-19]	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-17	Air	Low NOx Combustion System <u>for drilling rigs</u>	<u>Equipment on</u> [Components of] power generating units designed <u>solely</u> to reduce NOx generation [by operation of a drilling rig].	100
M-18 [M-20]	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-19 [M-21]	Land	Cathodic Protection	Cathodic protection installed [in order] to prevent corrosion of metal tanks and piping.	100
M-20 [M-22]	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100
M-21 [M-23]	Water/ Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed [in order] to prevent unauthorized discharges.	100
M-22 [M-24]	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed [in order] to prevent unauthorized discharges.	100

Equipment Located at Service Stations				
No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a	100

			bottom drain valve to return liquids to the tank [,] or a hand pump for liquid removal.	
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 [T-11]	Water	Double-walled Tanks	The difference between cost of <u>single-walled</u> [single walled] tanks and the cost of double-walled tanks, when the double-walled tanks are installed [in order] to prevent unauthorized discharges or leaks.	100
T-11 [T-12]	Water	Double-walled Piping	The difference between cost of <u>single-walled</u> [single walled] piping and the cost of double-walled piping, when the double-walled piping is installed [in order] to prevent unauthorized discharges or leaks.	100
T-12 [T-13]	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13 [T-14]	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14 [T-15]	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-15 [T-16]	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the <u>service station</u> [Service Station]. This item only applies to <u>service stations</u> [Service Stations].	100
Release Detection for Tanks and Piping				
T-20 [T-21]	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-21 [T-22]	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-22 [T-23]	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100

T-23 [T-24]	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-24 [T-25]	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-25 [T-26]	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from <u>aboveground</u> [above ground] tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

[Part B]

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

[No.]	[Property]	[%]
[B-1]	[Coal Cleaning or Refining Facilities]	[V]
[B-2]	[Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems]	[V]

[B-3]	[Ultra-Supercritical Pulverized Coal Boilers.]	[V]
[B-4]	[Flue Gas Recirculation Components]	[V]
[B-5]	[Syngas Purification Systems and Gas-Cleanup Units]	[V]
[B-6]	[Enhanced Heat Recovery Systems]	[V]
[B-7]	[Exhaust Heat Recovery Boilers]	[V]
[B-8]	[Heat Recovery Steam Generators]	[V]
[B-9]	[Super heaters and Evaporators]	[V]
[B-10]	[Enhanced Steam Turbine Systems]	[V]
[B-11]	[Methanation]	[V]
[B-12]	[Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities]	[V]
[B-13]	[Biomass Cofiring Storage, Distribution, and Firing Systems]	[V]
[B-14]	[Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology]	[V]
[B-15]	[Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology]	[V]
[B-16]	[If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state]	[V]
[B-17]	[Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste]	[V]
[B-18]	[Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant]	[V]

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

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

(2) The commission may remove an [An] item [may be removed] from the table [list] 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 [requested] for all property that is either-not on the Tier I Table [Part A of the Equipment and Categories List] located in §17.14(a) of this title (relating to Tier I Pollution Control Property), [Equipment and Categories List]) or does not fully satisfy the requirements for a 100% positive use determination under this chapter. [In order to calculate a partial determination percentage for pollution control property submitted in a Tier IV application, the cost analysis procedure described in subsection (d) of this section must be used.] For all [other] property for which a partial use determination is sought, the cost analysis procedure (CAP) described in subsection (c) [(b)] of this section must be used.

(b) The items in this subsection are adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This subsection consists of the list located in Texas Tax Code, §11.31(k). The commission shall review and update the items listed in this subsection at least once every three years. The commission may add an item to this subsection 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 subsection only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

(1) Coal Cleaning or Refining Facilities.

(2) Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems.

(3) Ultra-Supercritical Pulverized Coal Boilers.

(4) Flue Gas Recirculation Components.

(5) Syngas Purification Systems and Gas-Cleanup Units.

(6) Enhanced Heat Recovery Systems.

(7) Exhaust Heat Recovery Boilers.

(8) Heat Recovery Steam Generators.

(9) Super heaters and Evaporators associated with heat recovery systems.

(10) Enhanced Steam Turbine Systems.

(11) Methanation.

(12) Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities.

(13) Biomass Cofiring Storage, Distribution, and Firing Systems.

(14) Coal Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology.

(15) Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology.

(16) If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.

(17) Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste.

(18) Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

(c) [(b)] Consistent with subsection (a) of this section, the following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property that is filed on a Tier III application [submitted in a non-Tier-IV 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, 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.

^{3.3} If the conditions in variables 3.1 and 3.2 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.

[Figure: 30 TAC §17.17(b)]

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

[Where:]

[¹ The Production Capacity Factor (PCF) is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. When there is an increase in production capacity PCF is used to adjust the capacity of the new equipment or process to the capacity of the existing equipment or process. When there is a decrease in production capacity PCF is used to adjust the capacity of the existing equipment or process to the production capacity of the new equipment or process. In this case, the method of calculation shown in §17.17(b) is modified so that PCF is applied to Capital Cost Old rather than Capital Cost New.]

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

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

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

[^{3.2} If the conditions in variable 3.1 of §17.17(b) do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to

today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF in order to reduce CCO to reflect the same capacity as CCN.]

[^{3.3} If the conditions in variables 3.1 and 3.2 of §17.17(b) do not apply, and the company can obtain an estimate of the cost to manufacture the alternative equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology.]

(2) For property that generates a marketable product (MP), the net present value of the MP is used to reduce the partial determination. 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 net present value (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** -- This is the current Prime Lending Rate that is in effect at the time the application is submitted. The Prime Lending Rate is defined by the *Wall Street Journal* as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the *Wall Street Journal* and on most financial or investment web sites.

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

[Figure: 30 TAC §17.17(c)]

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

[ⁱ **Byproduct Value**--The retail value of the recovered [byproduct] for [a] one year period. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.]

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

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

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

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

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

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (3) [(4)] 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 [figure] in §17.14(a) of this title (relating to Tier I Pollution Control Property [Equipment and Categories List]), as long as the application seeks no variance from that use determination.

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

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

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

(b) Fees will [shall] be forfeited for applications for use determination on which the executive director will take no further action [which are sent back] under §17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed administratively complete. 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), [or] 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 [for use determination applications that are declared administratively complete on or after September 1, 2001]. A proceeding based upon an appeal filed under this subchapter is not a contested case for purposes of Texas Government Code, Chapter 2001.

(2) [Persons who may appeal a determination by the executive director.] 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 [directors] 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) [(d)] 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.

(f) [(e)] 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 [which] 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) [(f)] 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 proposed under Texas Water Code (TWC), §5.102, 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 rules are also proposed under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The proposed repeal implements the legislative mandate under HB 3206 and HB 3544, 81st Legislature, 2009, which add new subsection (g-1) 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.

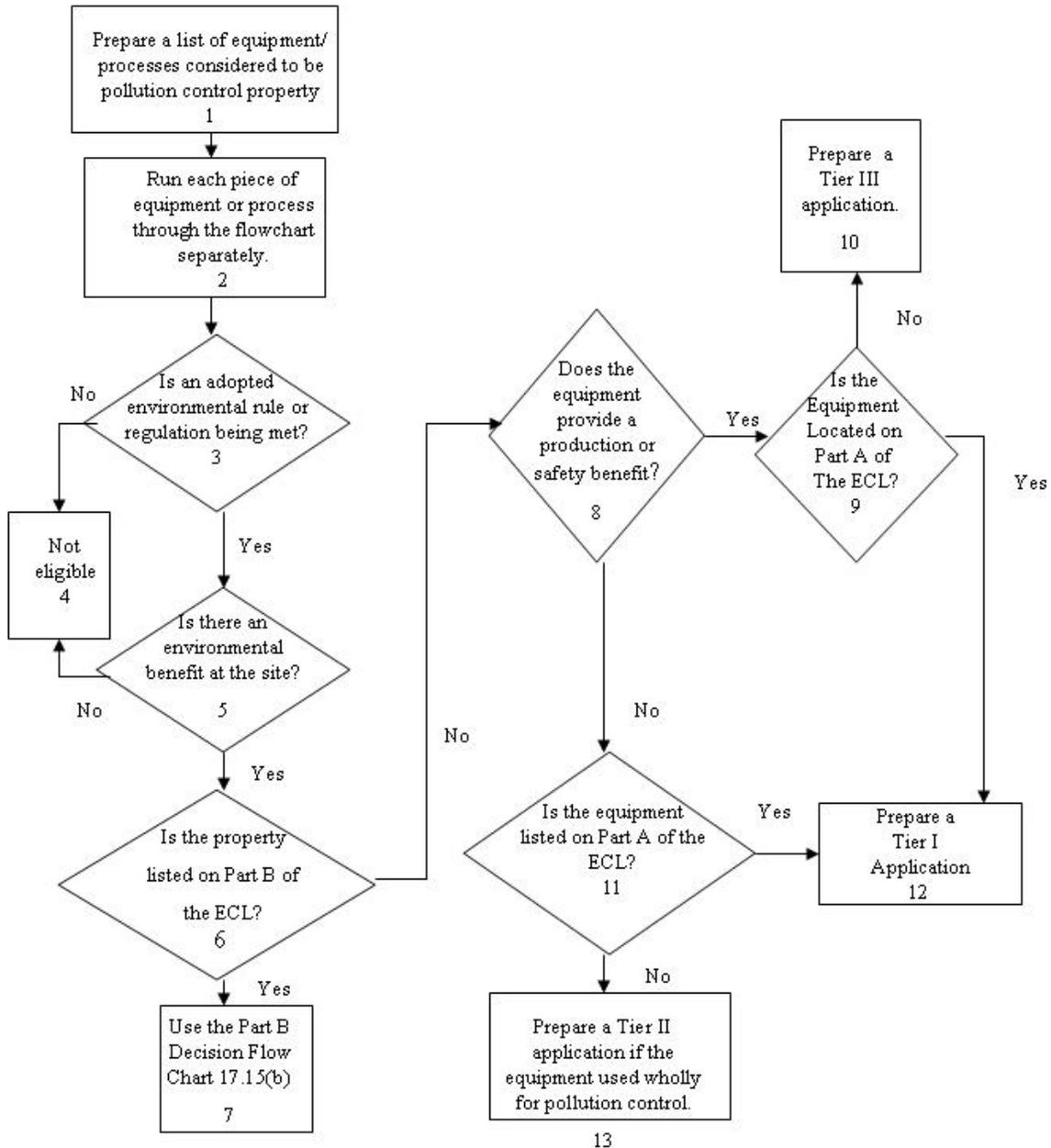
[§17.15. Review Standards.]

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

[Figure: 30 TAC §17.15(a)]

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

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

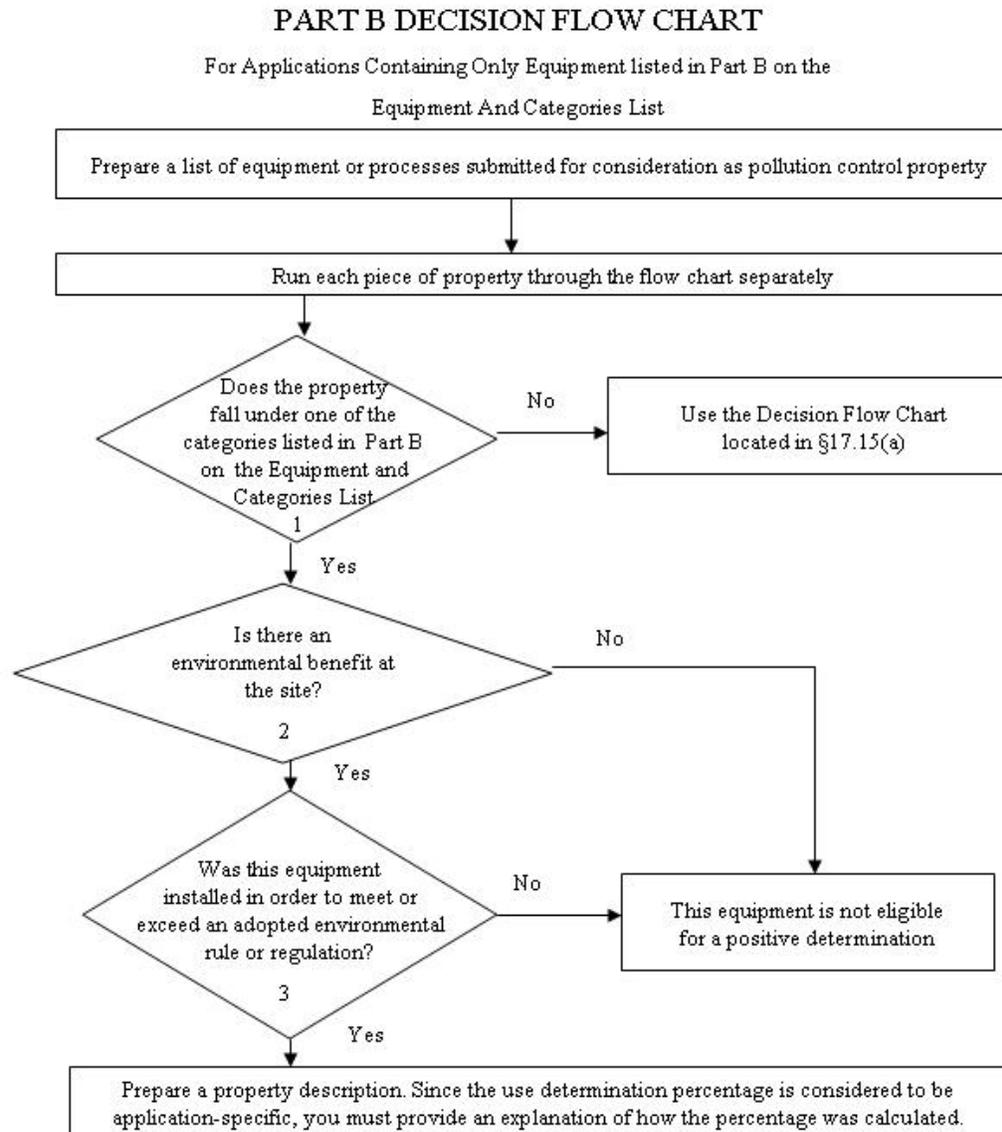


Boxes 2 through 5 are used to determine if the property is pollution control property. Boxes 6 through 13 are used to determine the percentage of the use determination.

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

[Figure: 30 TAC §17.15(b)]

Figure: 30 TAC §17.15(b)



Where:

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