The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendment to §17.14 *with change* to the proposed text as published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1823). Sections 17.4 and 17.12 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts the amendments to Chapter 17 to implement 2013 legislation, perform a review of property on the Tier I Table and Expedited Review List, and make various editorial or administrative changes within the rules for the TCEQ's tax relief for pollution control property or *Prop 2* program.

In 1993, the Texas Legislature, 73rd Legislature, enacted House Bill (HB) 1920, which created Texas Tax Code, §11.31 and §26.045. Texas Tax Code, §11.31 established a property tax exemption program for property that is used wholly or partly for pollution control. Texas Tax Code, §26.045 created a rollback tax relief program for political subdivisions. Texas Tax Code, §11.31 required the TCEQ to adopt rules to implement the tax relief program. Texas Tax Code, §26.045 gave the commission the authority to adopt rules but did not require the adoption of rules. In response, the commission adopted 30 TAC Chapter 277, Use Determinations for Tax Exemptions for Pollution Control Equipment, on September 30, 1994, to implement Texas Tax Code, §11.31. Chapter 277 was later repealed and replaced with Chapter 17 through rulemaking adopted May 26,

1999.

In 2007, the 80th Legislature modified Texas Tax Code, §11.31 through the passage of HB 3732. The legislature modified Texas Tax Code, §11.31 by adding three new subsections, (k), (l), and (m). Texas Tax Code, §11.31(k) requires the commission to adopt by rule a list of 18 categories of property listed in Texas Tax Code, §11.31(k). Texas Tax Code, §11.31(l) requires the commission to adopt a procedure to review the list at least once every three years. In addition, it allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control. Texas Tax Code, §11.31(m) requires the executive director to review applications, containing only items on the adopted list within 30 days of receipt of the required application documents. The executive director must issue a determination without regard to the information provided in response to §11.31(c)(1). On January 16, 2008, the commission adopted Chapter 17 amendments to implement the requirements of HB 3732. Included in that rulemaking was the commission's adoption of the Expedited Review List (now in §17.17(b)), taken from Texas Tax Code, §11.31(k).

In 2009, the 81st Legislature modified Texas Tax Code, §11.31 through the passage of HB 3206 and HB 3544. The legislature modified Texas Tax Code, §11.31 by adding subsection (g-1). Texas Tax Code, §11.31(g-1) requires 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). Additionally, HB 3544 allows the commission the use of electronic means of transmission of information. On November 18, 2010, the commission adopted Chapter 17 amendments to implement the requirements of HB 3206 and HB 3544.

In 2013, during the 83rd Legislature, HB 1897 was passed amending Texas Tax Code, §11.31 by adding §11.31(e-1) requiring the executive director and the commission to take final action, including initial appeal, within one year from the date the executive director declares an application to be administratively complete. The commission is required to adopt rules implementing Texas Tax Code, §11.31(e-1) by September 1, 2014. To implement the requirements in HB 1897, the adopted rulemaking makes changes to §17.12 to establish a maximum of a 230-day technical review period from the date an application is declared to be administratively complete.

In addition to implementing HB 1897, the commission adopted revisions to the Tier I Table as part of the triennial review required in §17.14(b). A triennial review is required for the Expedited Review List by §17.17(b), in accordance with Texas Tax Code, §11.31(l). The Expedited Review List has been reviewed and the commission determined that no updates are necessary. Therefore, no changes to §17.17 were proposed for this rulemaking.

In a corresponding rulemaking published in this issue of the *Texas Register*, the commission amends 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements.

Section by Section Discussion

In addition to the adopted amendments associated with the rulemaking for Chapter 17, various stylistic non-substantive changes are included to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

§17.4, Applicability

The adopted amendment to §17.4 removes a reference to §17.15 which was repealed during a 2010 rulemaking.

§17.12, Application Review Schedule

The commission adopts several revisions to §17.12 in order to implement Texas Tax Code, §11.31(e-1) added by HB 1897 (83rd Legislature, 2013). Texas Tax Code, §11.31(e-1) is designed to prevent open-ended application reviews by limiting the technical review process, including the processing of the first appeal if one is filed, to one year

from the date the application is declared to be administratively complete.

In order to ensure timely processing of applications, the commission adopts a revision to §17.12(2)(A) to limit the number of administrative notice of deficiency letters. This revision removes *may decide to* and inserting *shall* in the second sentence and to eliminate the need to send additional correspondence if an applicant fails to respond to the first administrative notice of deficiency letter. The commission also adopts two provisions to §17.12(2)(A). The first provision requires the executive director to send a second administrative notice of deficiency letter if the revised application received in response to the first letter is determined to be deficient. The second provision limits the number of administrative deficiency letters to two by requiring the executive director to take no further action on an application if the applicant fails to provide a second revised application within 30 days or the second revised application is deficient.

In order to provide a more robust explanation of the technical review process, the commission revises §17.12(2)(B) by inserting *revised application is determined to be incomplete or the* between *the* and *applicant* and inserting *the executive director may request additional technical information or* between *days,* and *the* in the second sentence. While current practice allows for up to three technical notice of deficiency letters to be sent, these adopted changes will by rule provide that the executive director end the technical review process if it is determined that the applicant did not provide a

technically complete application.

In order to implement the requirements of Texas Tax Code, §11.31(e-1), the adopted revisions re-letters existing §17.12(2)(C) to §17.12(2)(D) and add new §17.12(2)(C). Adopted §17.12(2)(C) limits the technical review process to a total of 230 days from the day the application is declared to be administratively complete. Texas Tax Code, §11.31(e-1) requires the executive director and the commission to take final action, including initial appeal, within one year from the date the executive director declares an application to be administratively complete. The appeals process can take up to 135 days leaving a maximum of 230 days for the technical review process. In addition, the adopted revisions explain that if an application is considered to be incomplete after 230 days, the executive director will issue a negative use determination based on the failure of the applicant to document the eligibility of the property for a positive use determination.

§17.14, Tier I Pollution Control Property

The commission adopts a new Tier I Table in subsection (a). The new table is reformatted for accessibility and includes non-substantive changes for punctuation and spelling corrections. The adopted revisions also include modifying property names and descriptions to better reflect the equipment eligible for a 100% positive use determination. As discussed in the Response to Comments portion of this preamble, the

commission has decided not to delete items A-42: Chlorofluorocarbon (CFC) Replacement Projects; A-43: Halon Replacement Projects; A-67: Automotive Dynamometers; W-58: Water Recycling Systems; W-62: Recycled Water Cleaning System; S-27: Concrete Reclaiming Equipment; M-5: Solvent Recovery Systems; M-6: Boxes, Bins, Carts, Barrels, Storage Bunkers; and M-17: Low NOx Combustion System for Drilling Rigs from the previous Tier I Table as originally proposed. Additionally, the commission is not adopting the proposed revisions to the descriptions of items A-186: Blast Cleaning System – Connected to a Control Device and M-4: Compactors, Barrel Crushers, Balers, and Shredders. These 11 items appear in the new adopted Tier I Table as the items were listed in the previous version of the table. Additionally, since no items are being removed from the Tier I Table, no items in the table are renumbered. Specific adopted changes from the previous Tier I Table are discussed in the following.

Specifically, the commission adopts the following revisions to the Air Pollution Control Equipment section of the Tier I Table. The property name for item A-1 was changed from *Baghouse Dust Collectors* to *Dust Collection Systems* to clarify that not all dust collection systems include a baghouse. The description for item A-1 was clarified by adding *in order to prevent release of particulate matter to ambient air* after *streams.* The description of item A-61, Continuous and Noncontinuous Emission Monitors, was clarified by adding *used* between *instruments* and *to demonstrate* to grammatically correct the sentence. The property description of item A-110, Carbon Adsorption

Systems, was clarified by replacing *VOCs or odors* with *VOC emissions and odors* to more accurately describe the use of the equipment. The property description of item A-130, Sorbent Injection Systems, was clarified by changing *reacts* to *react* in the first sentence and inserting a "," between *nozzles* and *ductwork* in the second sentence to grammatically correct the sentences. The property description for item A-180, Hoods, Duct and Collection Systems connected to Final Control Devices, was modified by replacing *pumps* with *blowers* to clarify that the eligible equipment is used to capture and control a gas stream. The property description for item A-184, Vapor/Liquid Recovery Equipment (for venting to a control device), was clarified by adding *those* between *including* and *used* to grammatically correct the sentence.

The commission adopts the following revisions to the Water and Wastewater Pollution Control Equipment section of the Tier I Table. The description of item W-30, Activated Sludge, was replaced with *Wastewater treatment using microorganisms to metabolize biodegradable organic matter in aqueous waste streams. Can include tanks, aeration equipment, clarifiers, and equipment used to handle sludge* in order to more accurately reflect the activated sludge process. The description of item W-31, Adsorption, was clarified by removing *water* from between *organic* and *contaminants* and adding *from wastewater* after *contaminants* to reflect that the eligible equipment is used for the treatment of wastewater. The description of item W-36, Wetlands and Lagoons (artificial), was modified by adding *from wastewater or stormwater* after *pollutants* to

reflect that the eligible equipment must be used to treat wastewater or stormwater. The description of item W-56, Ultra-filtration, was clarified by adding *from wastewater* after *solutes* to reflect that the eligible equipment must be used to treat wastewater.

The commission adopts the following revisions to the Miscellaneous Pollution Control Equipment section of the Tier I Table. The description for M-2, Hazardous Air Pollutant Abatement Equipment – required removal material contaminated with asbestos, lead, or some other hazardous air pollutant, was be revised by adding the word *Containers* after *Disposal* to clarify that the eligible item is the disposal containers and not the cost of disposal. The Media for item M-7, Environmental Paving located at Industrial Facilities, was amended by removing *land and water*. The description for M-7, limits this item to paving of outdoor vehicular traffic areas in order to meet or exceed an adopted air quality rule, regulation, or law; therefore, the media should be air and not air/land/water. The description of item M-15, Odor Neutralization and Chemical Treatment Systems, was amended by changing *absorption* to *adsorption* in two locations to reflect the correct chemical process used to treat odors.

The adopted revised table amends the heading of the Equipment Located at Service Stations section to Equipment Located at Tank Installations including Service Stations to reflect that equipment located in this section is often used at tank farms and other facilities with tanks for the same pollution control purposes as when used at service

stations. This heading precedes the property designated as T-1 through T-5.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rules 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, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rules apply to the property tax relief program. Because the adopted rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure

but to implement a tax relief 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 invited public comment regarding the draft regulatory impact analysis determination during the comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

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

Consistency with the Coastal Management Program

The commission reviewed the 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 adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The notice of public hearing published in the March 14, 2014, issue of the *Texas Register* (39 TexReg 1984) erroneously included references to the *State Implementation Plan* in the title of the notice as well as the first paragraph on page 1985 that corrected the title and first paragraph without the reference to the *State Implementation Plan*. A correction of error was published in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2363). A public hearing on this proposal was scheduled at 2:00 p.m. on April 3, 2014, at the TCEQ complex in Austin located at 12100 Park 35 Circle, Building E, Room 201S. A question and answer session was held 30 minutes prior to the meeting. The hearing was not officially opened because no party indicated a desire to provide comment. The comment period opened on March 14, 2014, and closed on April 14, 2014. Written comments were accepted via mail, fax, and through the eComments system.

There were seven written comments received. The commission received written comments from the Tax Relief for Pollution Control Property Advisory Committee (TRPCPAC), Jackson Walker L.L.P. (Jackson Walker), Association of Electric Companies of Texas (AECT), Freescale Semiconductor, Inc. (Freescale), Texas Association of Business (TAB), Texas Taxpayers and Research Association (TTRA), and one individual.

RESPONSE TO COMMENTS

Comment

Jackson Walker, AECT, Freescale, and TAB expressed support for the proposed amendments to §17.12 implementing the requirements of HB 1897.

Response

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

Comment

TRPCPAC commented that it recommends the retention of A-186, W-58, W-62, S-27, M-4, M-5, and M-6 on the Tier I Table. Jackson Walker and Freescale support the recommendation of the TRPCPAC. TTRA, AECT, and TAB commented that items A-186,

W-58, W-62, S-27, M-4, M-5, and M-6 should not be eliminated from the Tier I Table.

Response

After careful consideration of these comments and the discussion by the TRPCPAC at its March 27, 2014, meeting, the commission has decided not to remove property from the Tier I Table as originally proposed. The commission had proposed the removal of recycling equipment from the Tier I Table because recycling has the potential to generate a marketable product and would not be eligible for a 100% positive use determination. Other items were proposed for removal either because no applications containing the items had ever been received or due to the lack of an adopted environmental rule that required the installation of the item. Property cannot qualify as 100% pollution control property if any portion of its value is attributable to its capacity to produce goods and services. Although all equipment that was proposed to be deleted will be retained on the Tier I Table, the executive director will continue to evaluate Tier I applications to determine whether a Tier III application would be more appropriate for the particular piece of equipment. As stated in the introduction to the Tier I Table, if the executive director determines that the equipment is not being used in a standard manner (e.g., use in production or recovery of a marketable product), the executive director may require that a Tier III

application, using the Cost Analysis Procedure (CAP), be filed by the applicant at an additional cost to calculate the appropriate use determination.

Comment

Freescale commented that the executive director is forcing more applicants into the Tier III process, which is more expensive, takes more time, and consumes considerable more resources for both applicants and the commission.

Response

The commission does not agree that the executive director forces Tier I applicants into the Tier III process. When applications are initially reviewed and it's determined that the property cannot qualify as 100% pollution control, the applicant has the choice t0 then submit a Tier III application. Tier III applications require the applicant to pay more for the review because these applications require more staff time to review. The commission's current policies and practices follow the requirements of Texas Tax Code, §11.31 for providing a partial use determination. No changes were made in response to this comment.

Comment

Jackson Walker commented that the commission should clarify preamble statements that imply that Tier I can only include 100% pollution control items. Freescale and TAB commented that there is nothing in statute or rule that restricts the Tier I list to only 100% exempt items.

Response

The items listed on the Tier I Table are all listed as eligible for a 100% positive use determination as long as the property is used in the manner described in the table and the use of the property does not generate a marketable product. The Tier I Table does not list any pollution control equipment that is eligible for a pre-determined partial use determination percentage. The executive director does not have sufficient information to establish a partial use determination percentage that can be applied to all applicants for the same piece of equipment. If an item is used in a manner different from that described on the list or if the use of the property generates a marketable product, a Tier III application requesting a partial use determination is required. No changes were made in response to these comments.

Comment

Jackson Walker, AECT, and Freescale commented that the commission should clarify

preamble statements that imply that no recycling system can qualify for a 100% positive use determination.

Response

The commission agrees that some recycling systems may be eligible for a 100% positive use determination. Any statements that implied that recycling systems were not eligible for a 100% use determination have been removed. As discussed elsewhere in this Response to Comments section, the commission has decided not to remove listed property from the previously adopted Tier I Table.

Comment

Jackson Walker and Freescale commented that they support other comments that the commission should instruct the executive director to immediately initiate a rulemaking to eliminate the use of the term *marketable product* from consideration in the Tax Relief for Pollution Control Property program. TTRA commented that the TCEQ should re-evaluate and remove provisions of the rules that reduce the pollution control exemption in the event the equipment's use also produces a marketable product. TTRA urged the initiation of a rule project that focuses on the consideration of a more efficient, effective, and suitable partial use determination protocol. AECT encouraged the TCEQ to remove all *marketable product* considerations from Chapter 17 in

conjunction with this rulemaking or a subsequently initiated rulemaking.

Response

The commission did not propose to amend §17.2 and the definition of *marketable product* as part of this rulemaking and cannot amend the section now in response to comments. The commission is required to have rules that allow for use determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the portion of property that is used to produce goods or services. The inclusion of marketable product in the CAP captures the production value of a piece property. The commission agrees that the method used to calculate partial positive use determinations, including all of its variables, could be re-examined. The commission believes that these issues should be discussed first by TRPCAC and that rulemaking could occur after the committee has reached consensus. Because of the complexity of the issue and the differing viewpoints of the various stakeholders, the commission would appreciate specific advice from TRPCAC before deciding to launch a significant rulemaking project. No changes were made in response to these comments.

Comment

TAB commented that the proposed amendments to the Tier 1 list reflect an apparent belief that the commission is charged in evaluating the use of property for pollution control purposes with assessing the extent to which such pollution control function is also linked to cost avoidance opportunities on the part of an owner.

Response

The commission did not propose to amend §17.17 and cannot amend the section now in response to comments. The commission is required to have rules that allow for use determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the portion of property that is used to produce goods or services. The commission agrees that it is charged in evaluating the use of property for pollution control purposes. Property cannot qualify as 100% pollution control property if any portion of its value is attributable to its capacity to produce goods and services. No changes were made in response to these comments.

Comment

TTRA commented that the CAP calculation and the reduction of the net present value of a marketable product is the most problematic element of the program and can result in a use determination that does not accurately reflect how the pollution control product

actually functions. AECT commented that inclusion of the *marketable product* variable in the Tier III partial use determination is not appropriate.

Response

The commission did not propose to amend the CAP in §17.17 as part of this rulemaking and cannot amend the section now in response to comments. The commission is required to have rules that allow for use determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the portion of property that is used to produce goods or services. While stakeholders may not agree with all components of the current CAP used for partial determinations, the current rule does allow for determinations that distinguish the proportion of the property used for pollution control and production. The appropriate method for addressing these issues is for the commenters to request a discussion during a TRPCPAC meeting. The commission believes that these issues should be discussed by TRPCPAC first, and that a rulemaking that re-examines the current CAP could occur after the committee has reached consensus. No changes were made in response to these comments.

Comment

Jackson Walker, Freescale, and TAB commented that the proposed removal of A-42 and

A-43 from the Tier I Table requires discussion of how the executive director interprets the environmental citation requirement and what it means to *meet or exceed* an environmental rule. AECT commented that TCEQ is interpreting the *meet or exceed* requirement to mean that the regulatory citation provided by the applicant must require the specific pollution control property for which the use determination is sought.

Response

The requirement that the property must be installed to *meet or exceed* an adopted environmental law, rule, or regulation is located in §17.4 and was not proposed for amendment with this rulemaking. The purpose of this tax relief program is to provide tax relief for businesses required by law to use or possess pollution control devices or equipment. The commission does not interpret *meet or exceed* to mean that the cited law, rule, or regulation must specify the pollution control property to be used. The commission interprets *meet or exceed* to mean a rule citation that compels the use, construction, acquisition, or installation of pollution control equipment. No changes were made in response to these comments.

Comment

Jackson Walker and Freescale commented that the commission should interpret the phrase *wholly or partly to meet or exceed rules or regulations* to include situations: (1)

where an environmental rule sets a goal, target, or general standard that the property assists in achieving; and (2) where an environmental rule has been duly adopted but does not apply to the facility because of the timing of the property's installation or the manner in which it is utilized.

Response

The purpose of this tax relief program is to provide tax relief for businesses required by law to use or possess pollution control devices or equipment. The commission does not agree that rules that establish unenforceable goals or targets or that require the development of an unenforceable plan qualify as the type of environmental rule contemplated by the Texas Tax Code and the Constitution. If a cited environmental law has a *grandfathering* provision or an effective date such that the property owner is not subject to the law, then the property is not used, constructed, acquired, or installed to meet or exceed a 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. No changes were made in response to these comments.

Comment

Jackson Walker and Freescale commented that the commission should affirm that rules promulgated under the TCEQ's pollution prevention, recycling, and water conservation programs qualify as the type of environmental rule contemplated by the Texas Tax Code and the Constitution.

Response

The commission agrees that rules promulgated under the TCEQ's pollution prevention, recycling, and water conservation programs qualify as the type of environmental rule contemplated by the Texas Tax Code and the Constitution as long as the pollution control property is used, constructed, acquired, or installed wholly or partly to meet or exceed the rule. The purpose of this tax relief program is to provide tax relief for businesses required by law to use or possess pollution control devices or equipment. Rules that establish unenforceable goals or targets or require the development of a plan do not qualify as the type of environmental rules contemplated by the Texas Tax Code and the Constitution because the owner of the property is not required to use, construct, acquire, or install a device or equipment. No changes were made in response to these comments.

Comment

One individual expressed opposition to a particular facility on Moss Street in Odessa, Texas.

Response

This comment does not pertain to the rulemaking. It appears this e-comment was misdirected to this rulemaking and has been forwarded to the appropriate TCEQ staff. No changes were made in response to this comment.

CHAPTER 17: TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION
§§17.4, 17.12, 17.14

Statutory Authority

The amendments are adopted 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 TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rules are also adopted under Texas Tax Code, §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The adopted amendments implement the legislative mandate under House Bill 1897, 83rd Legislature, 2013, by adding subsection (e-1) to Texas Tax Code, §11.31. Texas Tax Code, §11.31(e-1) imposes time frame requirements on the executive director and the commission. Within one year from the date the executive director declares the application to be administratively complete, the executive director must issue a use determination letter, and if that use determination is appealed, the commission must also take final action on the appeal before the end of the one-year time period.

§17.4. Applicability.

(a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution. In addition, pollution control property must meet the following conditions.

(1) Property must have been constructed, acquired, or installed after January 1, 1994.

(2) Land must include only the portion of the land acquired after January 1, 1994, that actually contains pollution control property.

(3) Equipment, structures, buildings, or devices must not have been taxable by any taxing unit in Texas on or before January 1, 1994, except that if construction of pollution control property was in progress on January 1, 1994, that portion of the property constructed, acquired, or installed after January 1, 1994, is eligible for a positive use determination.

(4) Property purchased from another owner is eligible for a positive use determination if it is acquired, constructed, or installed by the new owner after January

1, 1994, will be used as pollution control property, and was not taxable by any taxing unit in which the property is located on or before that date.

(b) The executive director shall determine the portion of the pollution control property eligible for a positive use determination.

(c) The executive director may not make a determination that property is pollution control property unless all requirements of this section and the applicable requirements of §17.17 of this title (relating to Partial Determination) have been met.

§17.12. Application Review Schedule.

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

(1) As soon as practicable, the executive director shall send notice by regular mail or electronic mail to the chief appraiser of the appraisal district for the

county in which the property is located that the person has applied for a use determination under this chapter.

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

(A) If the application is not administratively complete, the notification will specify the deficiencies, and allow the applicant 30 days to provide a revised application with the requested information. If the applicant does not submit the requested information within 30 days, the executive director shall 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). If the first revised application is deficient, the executive director shall send written notification informing the applicant that the application is deficient and providing the applicant 30 days to provide a second revised application. If the second revised application is not administratively complete or the applicant does not provide a second revised application within the 30 days, the executive director shall take no further action on the application and the application fee will be forfeited under §17.20(b) of this title.

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

(C) The technical review process is limited to a total of 230 days from the date of declaration that the application is administratively complete. If at the end of the review period the application is considered to be incomplete, the executive director shall issue a negative use determination for failure to document the eligibility of the property/equipment to receive a positive use determination.

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

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

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

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

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

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

§17.14. Tier I Pollution Control Property.

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

Figure: 30 TAC §17.14(a)

Tier I Table

The property listed in this table is property that the executive director has determined is used wholly for pollution control purposes when used as shown in the Description section of the table and when no marketable product arises from using the property. The items listed are described in generic terms without the use of brand names or trademarks. The use percentages on all property on the table are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner (*e.g.*, use in production or recovery of a marketable product), the executive director may require that a Tier III application, using the Cost Analysis Procedure, be filed by the applicant to calculate the appropriate use determination percentage. For items where the description limits the use determination to the incremental cost difference, the cost of the property or device with the pollution control feature is compared to a similar device or property without the pollution control feature. The table is a list adopted under Texas Tax Code, §11.31(g).

Air Pollution Control Equipment

Particulate Control Devices

No.	Media	Property	Description	%
A-1	Air	Dust Collection Systems	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams in order to prevent release of particulate matter to ambient air.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection created by an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators with blowers and ductwork used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, and blowers needed for the equipment to function.	100
A-6	Air	Water/ Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, and pumps used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units to control particulate emissions and opacity on start-up.	100

Combustion Based Control Devices

No.	Media	Property	Description	%
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, and blowers used to destroy air contaminants in a vent gas stream.	100

Non-Volatile Organic Compounds Gaseous Control Devices

No.	Media	Property	Description	%
A-40	Air	Molecular Sieve	Microporous filter used to remove hydrogen sulfide (H_2S) or nitrogen oxides (NO_X) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100
A-43	Air	Halon Replacement Projects	All necessary equipment needed to replace the Halon in a fire suppression system with an environmentally cleaner substance.	100

Monitoring and Sampling Equipment

No.	Media	Property	Description	%
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations of regulated air contaminants (including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, and other meters for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, and power supplies used to monitor for levels of contaminants in ambient air.	100

A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, and optical gas imaging instruments used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used solely to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67	Air	Automotive Dynamometers	Automotive dynamometers used for emissions testing of fleet vehicles.	100

Nitrogen Oxides Controls

No.	Media	Property	Description	%
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce nitrogen oxides (NO_X) emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_X emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston- Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_X formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of NO_X formation. May include fly ash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, and pumps to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_X formation.	100

A-85	Air	Over-fire Air & Combination of asymmetric over-fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over-fire air layout injects preheated air and anhydrous ammonia or other pollutant-reducing agent through nozzles through a series of ducts, dampers, expansion joints, and valves.	100
A-86	Air	Low-NO_X Burners	Installation of low-NO_X burners. The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without NOx controls from the most recent generation of burners.	100
A-87	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots, thereby reducing NO_X formation.	100
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO_X including directly related equipment.	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO_X control.	100

Volatile Organic Compounds Control

No.	Media	Property	Description	%
A-110	Air	Carbon Adsorption Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove volatile organic compounds (VOC) emissions and odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks.	100

A-112	Air	Replacement of Existing Pumps, Valves, or Seals in Piping Service	The incremental cost difference between the cost of the original equipment and the replacement equipment is eligible only when the replacement of these parts is done for the sole purpose of eliminating fugitive VOC emissions. New systems do not qualify for this item.	100
A-113	Air	Welding of Pipe Joints in VOC Service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints to eliminate fugitive emission leaks.	100
A-114	Air	Welding of Pipe Joints in VOC Service (New Construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	External Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from aboveground storage tanks. Must be installed to meet or exceed §115.112 of this title (relating to Control Requirements).	100

Mercury Control

No.	Media	Property	Description	%
A-130	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically react to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles, ductwork, hoppers, and particulate collection devices needed for the equipment to function.	100
A-131	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-132	Air	Mercury Absorbing Filters	Filters that absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-133	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives that can be added to the flue gas or directly to the fuel.	100

A-134	Air	Photochemical Oxidation	Use of an ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury. These units are only eligible if mercury is removed from flue gas.	100
A-135	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive, which is then removed in a particulate removal device.	100

Sulfur Oxides Controls

No.	Media	Property	Description	%
A-160	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
A-161	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce sulfur oxide emissions from combustion sources. Non-catalytic systems use a reducing agent without a catalyst.	100

Miscellaneous Control Equipment

No.	Media	Property	Description	%
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, blowers, hoods, and ducts used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stack extensions to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack for that stack to provide the same level of pollution control as was previously provided.	100

A-184	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, and compressors used to capture a waste gas or liquid stream and vent to a control device, including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
A-185	Air	Paint Booth Control Devices	Pollution control equipment associated with the paint booth - including the items such as the control device, water curtain, filters, or other devices to capture paint fumes.	100
A-186	Air	Blast Cleaning System - Connected to a Control Device	Particulate control device and blast material recycling system.	100
A-187	Air	Amine or Chilled Ammonia Scrubber	Installed to provide post combustion capture of pollutants (including carbon dioxide upon the effective date of a final rule adopted by the United States Environmental Protection Agency (EPA) regulating carbon dioxide as a pollutant).	100
A-188	Air	Catalyst-based Systems	Installed to allow the use of catalysts to reduce pollutants in emission streams.	100
A-189	Air	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.	100

Water and Wastewater Pollution Control Equipment

Solid Separation and De-watering

No.	Media	Property	Description	%
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Waste water	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater.	100

W-6	Waste water	Belt Press, Filter Press, or Plate and Frame	Mechanical de-watering devices.	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100

Disinfection

No.	Media	Property	Description	%
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

No.	Media	Property	Description	%
W-30	Water	Activated Sludge	Wastewater treatment using microorganisms to metabolize biodegradable organic matter in aqueous waste streams. Can include tanks, aeration equipment, clarifiers, and equipment used to handle sludge.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic contaminants from wastewater.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100

W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants from wastewater or stormwater.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100

Other Equipment

No.	Media	Property	Description	%
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from wastewater. May be used in either fixed or 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, or Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes from wastewater.	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 gray water or storm water to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities (including on-site septic systems) constructed to process wastewater generated on site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-64	Water	Storm Water Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-65	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-66	Water	Oil/Water Separator	Mechanical device used to separate oils from storm water.	100

Control/Monitoring Equipment

No.	Media	Property	Description	%
W-70	Water	pH Meter, Dissolved Oxygen Meter, or Chart Recorder	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100

W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or carbon dioxide (CO_2) release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only land that is actually occupied by the diversion or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

Solid Waste Management

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

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

S-16	Water	Noncommercial Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, and monitoring equipment.	100
S-17	Land/ Water	Noncommercial Landfills (used for disposal of self-generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-18	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of Chapter 335, Subchapter O, §335.431 of this title (relating to Land Disposal Restrictions).	100
S-19	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, and pumps.	100
S-20	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).	100

S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-26	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-27	Air/Water / 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
S-28	Land	Fencing installed for the control of windblown trash or access control.	Fencing installed at landfills, solid waste transfer stations, or storage/treatment areas located at hazardous waste management facilities to meet environmental regulations.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/ Land/ Water	Spill Response/ Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, vacuum trailers, storage sheds, diversion basins, tanks, and dispersants.	100

M-2	Air/ Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, and Disposal Containers.	100
M-3	Air/ Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors , Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Air/ Land/ Water	Solvent Recovery Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation, by filtration, or by other means. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-7	Air	Environmenta l Paving Located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted air quality rule, regulation, or law. Does not include paving of parking areas or driveways for convenience purposes or storm water control. Does not include dirt or gravel. Value of the paving must be stated on a square foot basis with a plot plan provided that shows the paving in question.	100
M-8	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, wastewater, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100

M-9	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-10	Land/ Water	Poultry Incinerator	Incinerators used to dispose of poultry carcasses.	100
M-11	Land/ Water	Structures, Enclosures, Containment Areas, Pads for Composting Operations	Required to meet 'no exposure' storm water regulations.	100
M-12	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of waste material on site. Methane must be sent to a control device rather than used.	100
M-13	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, and Degasser.	100
M-14	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Units, and Choke Manifold Systems.	100
M-15	Air	Odor Neutralization and Chemical Treatment Systems	Carbon adsorption, zeolite adsorption, and other odor neutralizing and chemical treatment systems to meet local ordinance or to prevent/correct nuisance odors at off-site receptors.	100
M-16	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-17	Air	Low NO_X Combustion System for Drilling Rigs	Equipment on power generating units designed solely to reduce NO_X generation.	100
M-18	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-19	Land	Cathodic Protection	Cathodic protection installed to prevent corrosion of metal tanks and piping.	100

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

Equipment Located at Tank Installations including Service Stations

Spill and Overfill Prevention Equipment

No.	Media	Property	Description	%
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100

Secondary Containment

No.	Media	Property	Description	%
T-10	Water	Double-walled Tanks	The difference between cost of single-walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed to prevent unauthorized discharges or leaks.	100

T-11	Water	Double-walled Piping	The difference between cost of single-walled piping and the cost of double-walled piping, when the double-walled piping is installed to prevent unauthorized discharges or leaks.	100
T-12	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-13	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-14	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-15	Land/ Water	Concrete Paving Above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the service station. This item only applies to service stations.	100

Release Detection for Tanks and Piping

No.	Media	Property	Description	%
T-20	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-21	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-22	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-23	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-24	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100
T-25	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100

Cathodic Protection

No.	Media	Property	Description	%
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from aboveground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, 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

No.	Media	Property	Description	%
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

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

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

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