

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§17.2, 17.10, 17.12, 17.14, 17.17, 17.20, and 17.25 and add new §17.18.

### **Background and Summary of the Factual Basis for the Proposed Rules**

The commission's rules in 30 Texas Administrative Code (TAC) Chapter 17 implement the exemption from taxation established in Texas Tax Code (TTC), §11.31 for certain property that is used wholly or partially as a facility, device, or method for the control of air, water, or land pollution. Under the requirements of 30 TAC Chapter 17, an owner of property may submit an application to the executive director to determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. The proposed rulemaking would amend the provisions in 30 TAC Chapter 17 to update the requirements of the Tax Relief for Pollution Control Property Program based on the recommendations and advice of the Tax Relief for Pollution Control Property Advisory Committee (committee), established under TTC, §11.31(n), make clarifying changes to existing items on the Tier I Table, and provide other updates as discussed in the Section by Section Discussion. This rulemaking would also fulfill the requirement of TTC, §11.31(l) that the commission, by rule, update the list adopted under TTC, §11.31(k), the Expedited Review List (ERL), at least once every three years and fulfills the requirement of 30 TAC §17.14(b) that the commission review and update the Tier I Table every three years.

On December 1, 2022, the committee submitted its recommendations to TCEQ as part

of the triennial review of the Tier I Table located in §17.14(a) and the ERL included as part of §17.17(b). The committee evaluated Tier II and Tier III applications submitted from April 1, 2018, through April 30, 2021, that received positive use determinations (PUD) to determine whether the pollution control property, if any, had been demonstrated consistently to be wholly used as pollution control property in the same manner on each application for any given property. The committee determined that one type of pollution control property currently submitted as Tier II property should be considered Tier I property in the Tier I Table, which would no longer require a Tier II application. Additional proposed changes include clarifying changes to existing items on the Tier I Table.

Applications for use determinations may be submitted under Tiers I, II, and III. A Tier I application may be submitted for property used as listed on the Tier I Table that is used for pollution control in accordance with the description listed in the Tier I Table for that property type. A Tier II application may be submitted for property that is not listed on the Tier I Table, but is used wholly for the control of air, water, and/or land pollution. A Tier III application may be submitted for property that is used partially for pollution control. For Tier III applications, a cost analysis procedure (CAP) is used to determine the proportion of the property used for pollution control purposes.

The proposed rulemaking would remove existing requirements that the commission review and update the Tier I Table every three years. This review is not required by statute and would not preclude the commission from reviewing the table or the

committee from providing advice regarding the Tier I Table at any time. The requirement to review the ERL would not change because it is required in TTC, §11.31(l).

This proposed rulemaking would allow for appeal-related documents and executive director notifications to be sent and received electronically to make the process more efficient.

The commission also proposes to amend the corresponding provisions in Chapter 18, Voter-Approval Tax Relief for Pollution Control Requirements, to mirror the proposed changes in Chapter 17.

### **Section by Section Discussion**

In addition to the proposed amendments to address recommendations from the advisory committee and to update and clarify program requirements, the commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. Non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

### *§17.2 Definitions*

The commission proposes to update references included in certain definitions in §17.2 to reflect revisions to other sections of the chapter. The proposed relocation of the ERL from §17.17(b) to a new section, §17.18, would make the reference to §17.17(b)(1) obsolete; therefore, the reference to 17.17(b)(1) of this title relating to Partial Determinations will be replaced with a reference to §17.18 of this title (relating to Expedited Review List) in the definition of “capital cost old.” Similarly, the proposed removal of subsection (b) in §17.14 would make references to §17.14(b) obsolete, and those references are proposed for revision from §17.14(b) to §17.14 in the definitions for “Tier I,” “Tier II,” and “Tier III.”

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

The commission proposes amendments to §17.10(a)(1) to provide that the executive director specifies the form of applications submitted to the program instead of requiring applicants to submit two printed copies of the application. This would allow for the executive director to require electronic submittal of applications, which is more efficient for the program to administer than processing paper applications. Proposed amendments to §17.10(c) would remove references to the postmarking of applications and replace them with references to submittal of applications.

The commission proposes to add language in §17.10(d)(1) to specify that applications pertaining only to property listed on the ERL need not provide the environmental

benefits of the property. This change is consistent with TTC, §11.31(m), and existing requirements in Chapter 17.

The commission proposes to amend §17.10(d)(5) to change the reference to §17.17(c) to §17.17(b). This change would correspond with the proposed relocation of the ERL.

*§17.12. Application Review Schedule*

The commission proposes revisions to §17.12 to allow administrative completeness “notifications” to be sent in a form other than a letter, such as via electronic mail. Electronic correspondence for communications with applicants is more efficient. The commission also proposes an amendment to §17.12(3) to revise the reference to the ERL to reflect the proposed renumbering of the ERL to proposed new §17.18.

*§17.14. Tier I Pollution Control Property*

The commission proposes to amend §17.14 to remove subsection (b) and update the Tier I table. Proposed amendments to the table include adding an item based on a recommendation from the committee and revising existing items for clarity and to expand applicability.

The property listed in the table of §17.14 is designated as Tier I because the property has been predetermined to be pollution control property when used as described in the table. The commission proposes to add item number M-25 to the Tier I Table at 100% use for pollution control purposes as the committee recommended, but with

some deviations from the committee's recommendation. The commission agrees with the committee's recommendation to add Amine Treating Systems (components necessary to transfer impurities removed from natural gas to a final control device), when used as described in the committee's recommendation, to the Tier I Table because they are used wholly for pollution control purposes.

The committee recommended adding amine treating systems as an item number beginning with letter "A," to designate it as air pollution control equipment. However, the commission proposes to designate this as miscellaneous pollution equipment, using the letter "M" because this property could be used to control pollution from the air, water, or land. Similarly, the commission proposes to list Amine Treating Systems with the media Air/Land/Water. The commission proposes to add the item using the property name, description, and use determination percentage recommended by the committee. This property type is described in the proposed rule language and is not further discussed in the Section by Section Discussion of this preamble.

The committee recommended that amine treating systems be added to the Tier I Table based on a review and analysis of Tier II applications submitted from April 1, 2018, through April 30, 2021. The property type consistently received a PUD of 100% each time an applicant requested a use determination for such property, demonstrating the property was consistently used wholly for pollution control. Although the proposed item number is added to the Tier I Table as 100% for pollution control purposes, an applicant would still be required, under §17.14 and §17.17, to submit a Tier III

application if such property produces a marketable product or a Tier II or Tier III application if it is not used as described in the Tier I table.

The commission proposes to remove the requirement from item A-115 that external floating roofs be used to comply with a requirement in 30 TAC §115.112. This rule applies only to certain geographical areas in Texas, but external floating roofs may be used throughout the state to comply with a pollution control requirement other than those in §115.112. Additionally, other rules may be appropriate for applicants to cite when identifying the sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the external floating roofs. Removing this requirement for item A-115 would allow applicants outside of the areas specified in §115.112 to be able to apply for a use determination using a Tier I application.

The commission proposes an amendment to revise the description for item T-32 for Dielectric Coatings to clarify that the item includes factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. This change would clarify that newer and alternative technologies such as fusion-bonded epoxies that protect against corrosion of tanks or pipes could also qualify for Tier I applications.

The commission proposes to remove subsection (b) that requires the commission to update and review the Tier I Table at least once every three years. The scheduled

review required in this section is not required by statute and places an unnecessary burden on the commission to engage in a review and rulemaking on a rigid schedule. Further, the standard of review requiring “compelling evidence” in paragraphs (1) and (2) to add or remove items on the Tier I Table is not required by statute and does not need to be imposed on the commission. Any future rulemaking to revise the Tier I Table would be subject to the rulemaking authority conferred to the commission in the Texas Water Code, the Texas Government Code, and the TTC. Removal of the requirements and limitations would not preclude the commission from reviewing the table or the committee from providing advice on its contents at any time. The proposed removal of subsection (b) would result in a §17.14 that no longer requires subsection formatting. Corresponding changes to reflect reference to the renumbering of §17.14 would also be made.

#### *§17.17 Partial Determinations*

The proposed rulemaking would move §17.17(b) concerning and including the ERL to proposed new §17.18. The rule provisions for applications for partial use determinations and applications for property on the ERL are different and should be addressed in separate sections. No changes are proposed to the ERL in the figure in existing 30 TAC §17.17(b). Subsections (c) and (d) and figures in 30 TAC §17.17(c)(1) and §17.17(c)(2) would be renumbered accordingly. References to §17.14(a) would also be removed from the rule language.

#### *§17.18 Expedited Review List*



The proposed rulemaking would add new §17.18 and move existing §17.17(b), including the ERL, into the new section. The proposed move would help clarify that the applicability of the ERL is independent of the application requirements for partial use determinations, which are provided in existing §17.17. No changes are proposed for the ERL in the existing figure in 30 TAC §17.17(b), proposed new figure 30 TAC §17.18. However, the rule language in proposed new §17.18 would be revised from existing §17.17(b) to indicate that an application that relies on an item from the ERL must still adhere to the requirements in Chapter 17 associated with application tier and fee.

#### *§17.20 Application Fees*

The proposed amendments would update rules related to the payment of application fees. The proposed rule revisions in §17.20(b) would clarify that if it is determined, during review of an application, that the fee originally remitted with an application was not appropriate for the application, the correct fee must be submitted before application review continues. Additionally, proposed revisions to §17.20(c) would specify how payment may be remitted and that the payment must be made payable to the Texas Commission on Environmental Quality. This change would reflect rule language used by other program areas for processing payments to the agency. Finally, the commission proposes an amendment to §17.20(d) to specify that either the application fee or a receipt for payment of the application fee must accompany the application.

#### *§17.25 Appeals Process*

The commission proposes amendments to §17.25 to provide for electronic submission of appeals and related correspondence by e-mail. Allowing such communications by e-mail provides more efficient administration of the program. This proposed rule would allow for appeal-related documents to be sent and received electronically. Currently, the rules specify appeals must be submitted via United States mail, facsimile or hand delivery, but do not specifically include e-mail. Conforming changes, including requiring the appeal to include the e-mail address of the person who files the appeal, to accommodate these changes, are also proposed in §17.25(b), (c), (f), and (g).

#### **Fiscal Note: Costs to State and Local Government**

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, the proposed rulemaking will not result in increased costs to TCEQ. Additionally, it is anticipated that there would be no or minimal revenue impacts to the agency. Addition of Amine Treating Systems and other minor revisions to the Tier I table (§17.14), would decrease the application fee for impacted systems from \$1,000 (Tier II fee amount) to \$150. However, only four Tier II applications received since 2020 would have been affected by these revisions.

The rulemaking is not anticipated to result in any fiscal implications for other state or local government entities.

#### **Public Benefits and Costs**

Mr. Girtten determined that the public benefit of this rulemaking is that the agency will

be compliant with state law, specifically the requirement in TTC, §11.31(l), that TCEQ update the list of pollution control properties in §17.14 at least once every three years. Additionally, the public will benefit from the addition of Amine Treating Systems and other minor revisions to the Tier I Table (§17.14), and this would reduce the application fee for applicants affected by these changes from \$1,000 (Tier II fee amount) to \$150. Lastly, the public will benefit from provisions allowing for electronic submittals of applications and uses of other electronic tools and communications (§17.10, §17.12, §17.20, and §17.25) and from non-substantive revisions which improve the clarity of the rule. This rulemaking would not result in any compulsory costs or requirements for any businesses or individuals.

### **Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

### **Rural Communities Impact Assessment**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

### **Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

### **Government Growth Impact Statement**

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed amendments in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined the rules do not meet the definition of "a major environmental rule." Under TGC, §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 proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §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. The commission rules in Chapter 17 implement a voluntary property tax exemption for owners of certain property used to control pollution as set out in TTC, §11.31. 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 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 invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the Draft Regulatory Impact Analysis 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 TGC, Chapter 2007 is applicable. The commission's preliminary assessment indicates TGC, Chapter 2007 does not apply to these proposed amendments. Enforcement of these proposed rules would be neither a statutory nor constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, 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 rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or

(4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### **Effect on Sites Subject to the Federal Operating Permits Program**

Participation in the Tax Relief for Pollution Control Property Program is voluntary, but sites subject to the Federal Operating Permits Program could choose to file an application for a use determination. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program may choose to apply consistent with Chapter 17.

#### **Announcement of Hearing**

The commission will hold a virtual public hearing on this proposal on September 29, 2025, at 10:00 a.m. Central Daylight Time (CDT). The hearing is structured for the receipt of oral comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m. CDT.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, September 25, 2025. To register for the hearing, please e-mail [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, September 26, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

<https://events.teams.microsoft.com/event/2a564f09-897c-468b-a887-20536f00caa5@871a83a4-a1ce-4b7a-8156-3bcd93a08fba>

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to



comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-123-017-AI. The comment period closes on October 6, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Elizabeth Sartain, Air Quality Planning Section, at (512) 239-3933 or [elizabeth.sartain@tceq.texas.gov](mailto:elizabeth.sartain@tceq.texas.gov), Tax Relief for Pollution Control Property Program 12100 Park 35 Circle, Bldg. F, Austin, TX 78753, Mail: MC-110, P.O. Box 13087, Austin TX 78711-3087.

**§§17.2, 17.10, 17.12, 17.14, 17.17, 17.18, 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 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 proposed under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the tax exemption for pollution control property.

The proposed amendments implement TTC, §11.31.

**§17.2. Definitions.**

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms that are defined by Chapter 3 of this title (relating to Definitions), the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Capital cost old--The cost of the equipment that is being or has been replaced by the equipment covered in an application. The value of this variable in the cost analysis procedure is calculated using one of the four hierarchal methods for this variable in the figure in §17.18 [§17.17(b)(1)] of this title (relating to Expedited Review List[ Partial Determinations]).

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

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

(5) Marketable product--Anything produced or recovered using pollution control property that is sold as a product, is accumulated for later use, or is used as a

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

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

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

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

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

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

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

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

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

(1) a completed and signed[commission] application form specified by the executive director [and one copy of the completed, signed form]; and

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

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

(c) If the applicant desires to apply for a use determination for a specific tax year, the application must be submitted [postmarked] no later than January 31 of the same tax year. Applications submitted [postmarked] after this date will be processed

as a lower priority than applications submitted [postmarked] by the due date and without regard for any appraisal district deadlines.

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

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, and/or land pollution, except for applications containing only equipment on the Expedited Review List located in §17.18 of this title (relating to Expedited Review List);

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

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as, if deemed by the executive director to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled;

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

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

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

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

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

#### **§17.12. Application Review Schedule.**

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

for pollution control, the executive director shall determine the proportion of the property used for pollution control.

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

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

(A) If the application is not administratively complete, the notification will specify the deficiencies, and allow the applicant 30 days to provide a revised application with the requested information. If the applicant does not submit the requested information within 30 days, the executive director 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 notification [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 notification [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 §17.18[§17.17(b)] of this title (relating to Expedited Review List[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. Unless otherwise designated with a partial use percentage on the Tier I 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**

**[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 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, except heat recovery steam generators listed as a partial use percentage. 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 [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

No.	Media	Property	Description	%
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 <sub>2</sub> S) or nitrogen oxides (NO <sub>x</sub> ) 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, flowmeter, 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

No.	Media	Property	Description	%
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 <sub>x</sub> ) 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 <sub>x</sub> emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO <sub>x</sub> formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork and blowers used to redirect part of the flue gas back to the combustion chamber for reduction of NO <sub>x</sub> 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 <sub>x</sub> 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

No.	Media	Property	Description	%
A-86	Air	Low- NO <sub>x</sub> Burners	Installation of low-NO <sub>x</sub> burners. The eligible portion is the incremental cost difference. For a replacement burner, the incremental cost difference is calculated by comparing the cost of the new burner with the cost of the existing burner. For new installations, the incremental cost difference is calculated by comparing the cost of the new burner to the cost of a similarly sized burner without NO <sub>x</sub> 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 <sub>x</sub> formation.	100
A-88	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NO <sub>x</sub> including directly related equipment.	100
A-89	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NO <sub>x</sub> control.	100
A-90	Air	Dry Low- NO <sub>x</sub> Emission Systems	Equipment installed on natural gas-fired compression turbines to reduce NO <sub>x</sub> emissions including combustor liners, injectors, fuel conditioning system, fuel ring, fuel control valve, pilot valve, sensors, controls, fuel gas treater, fuel nozzle assemblies, transition piece assemblies, cap assemblies, inner crossfire tubes and outer crossfire tubes.	100
A-91	Air	Lean-Burn Portions of Reciprocating Engines	Turbocharger, fuel injection system consisting of fuel nozzles positioned within a pre-combustion chamber, and pre-combustion chamber for engines.	100
A-92	Air	Heat Recovery Steam Generators	A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions.	65



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
A-116	Air	Fixed Storage Tank Roofs	Fixed roofs installed on external floating roof tanks used to store any product containing VOC as an additional VOC control measure.	100

No.	Media	Property	Description	%
A-117	Air	Geodesic Domes	Geodesic domes installed on external floating roof storage tanks as a means of controlling VOC emissions.	100
A-118	Air	Submerged Fill Pipes	Submerged fill pipes installed in storage tanks used to store any product containing VOC.	100
A-119	Air	Dual Mechanical Pump Seals	The incremental cost difference between the cost of dual mechanical seal pumps and comparable single sealed pumps.	100
A-120	Air	Seal-Less Pumps	The incremental cost difference between the cost of seal-less pumps and the cost of similarly sized pumps with seals.	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

No.	Media	Property	Description	%
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 (CO <sub>2</sub> ) upon the effective date of a final rule adopted by the <u>U.S.</u> [ United States]	100

No.	Media	Property	Description	%
			Environmental Protection Agency (EPA) regulating CO <sub>2</sub> as a pollutant).	
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
A-190	Air	Airless Paint Spray Gun	The incremental cost difference between an airless paint spray gun and a comparable standard air powered paint spray gun.	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	Wastewater	CPI Separator	Mechanical oil, water, and solids separator.	100
W-3	Wastewater	Dissolved Air Flotation	Mechanical oil, water, and solids separator.	100
W-4	Wastewater	Skimmer	Used to remove hydrocarbon from process wastewater.	100
W-5	Wastewater	Decanter	Used to decant hydrocarbon from process wastewater.	100
W-6	Wastewater	Belt Press, Filter Press, or Plate and Frame	Mechanical de-watering devices.	100

No.	Media	Property	Description	%
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

No.	Media	Property	Description	%
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 <u>stormwater</u> [storm water] from process water, control <u>stormwater</u> [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 <u>stormwater</u> [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



No.	Media	Property	Description	%
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	<u>Stormwater</u> [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 <u>stormwater</u> [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

No.	Media	Property	Description	%
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 CO <sub>2</sub> release in wastewater treatment systems.	100
W-74	Water	Diversion	Structures used for the capture and control of <u>stormwater</u> [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)	Solid waste incinerators, feed systems, ash handling systems, and controls.	100

No.	Media	Property	Description	%
		and export or material recovery)		
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

No.	Media	Property	Description	%
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

No.	Media	Property	Description	%
S-18	Land / Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of 30 TAC Chapter 335, Subchapter O – Land Disposal Restrictions, §335.431.	100
S-19	Land / Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, and pumps.	100
S-20	Land / Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, and vent controls (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities).	100
S-21	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities).	100
S-22	Water	Double-Hulled Barge	If double-hulled to reduce chance of leakage into public waters, calculate the incremental cost difference between a single-hulled barge and a double-hulled barge.	100
S-23	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.)	100
S-24	Land	Compost Application Equipment	Equipment used to apply compost that has been generated on-site.	100
S-25	Land	Vegetated Compost Sock	Put in place as part of a facility’s permanent Best Management Plan	100

No.	Media	Property	Description	%
			(BMP).	
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
S-29	Land / Water	Reclamation Equipment	Construction type equipment such as dozers, front-end loaders and dump trucks used exclusively for land reclamation. Does not include commercial reclamation equipment.	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

No.	Media	Property	Description	%
M-7	Air	Environmental 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 <u>stormwater</u> [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’ <u>stormwater</u> [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	100



No.	Media	Property	Description	%
			Systems.	
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 <sub>x</sub> Combustion System for Drilling Rigs	Equipment on power generating units designed solely to reduce NO <sub>x</sub> 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

No.	Media	Property	Description	%
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
M-23	Land / Water / Air	Remote Controlled Block Valves	Valves installed on pipelines used to transport hydrocarbons and natural gas as a spill control measure.	100
M-24	Land / Water	Nondestructive Pipeline Testing	Expenditures for nondestructive pipeline testing such as radiography. Expenditures for non-pollution control purposes are not included.	100
M-25	Air/Land/Water	Amine Treating System (components necessary to transfer impurities removed from natural gas to a final control device)	<u>System components include the foul amine collection system used to collect amine that has absorbed impurities in the amine absorption system for transfer to the amine solvent regeneration system and the vent gas system that transfers to a final control device the impurities stripped from foul amine in the regeneration system. (Excludes the amine absorption system components that remove impurities from natural gas (methane) and the amine solvent regeneration system components used to recover amine for reuse in the amine absorption system).</u>	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

No.	Media	Property	Description	%
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

No.	Media	Property	Description	%
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	Includes factory[ 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	100

No.	Media	Property	Description	%
			include fuel delivery components of fuel dispensing unit.	

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

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

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

#### **§17.17. Partial Determinations.**

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

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

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

**[Figure: 30 TAC §17.17(b)]**

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

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

**Figure: 30 TAC §17.17(b)(1)**

**[Figure: 30 TAC §17.17(c)(1)]**

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

Where:

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

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

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

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

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

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

<sup>3.4</sup> If the conditions in variables 3.1, 3.2 and 3.3 do not apply, and the company can obtain an estimate of the cost to manufacture the alternative



equipment without the pollution control feature, then an average estimated cost to manufacture the unit must be used. The comparable unit must be the most recent generation of technology. A copy of the estimate must be provided with the worksheet including the specific source of the information.

<sup>4</sup> **NPVMP**--The net present value of the marketable product recovered for the expected lifetime of the property, calculated using the equation in paragraph (2) of this subsection. Typically, the most recent three-year average price of the material as sold on the open market should be used in the calculation. If the price varies from state-to-state, the applicant shall calculate an average, and explain how the figures were determined.

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

**Figure: 30 TAC §17.17(b)(2)**

**[Figure: 30 TAC §17.17(c)(2)]**

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

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

1. The retail value of the product produced by the equipment for one year periods. Typically, the most recent three-year average price of the material as sold

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

2. If the material is used as an intermediate material in a production process, then the value assigned by to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the internally assigned value is comparable to the value assigned by other similar producers of the product.

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

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

iv **Interest Rate**--10%

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

### **§17.18 Expedited Review List.**

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

appropriate item from this list must be submitted as the appropriate tier level described in §17.2 (Relating to Definitions) and remit the corresponding fee as listed in §17.20(a) (relating to Application Fees).

**Figure: 30 TAC §17.18**

Expedited Review List

No.	Property	Description
B-1	Coal Cleaning or Refining Facilities	Used to remove impurities from coal in order to boost the heat content and to reduce potential air pollutants.
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	Combustion systems that reduce pollution through the use of a fluidized bed that can be atmospheric and bubbling or circulating; gasification combined cycle systems; or pressurized and bubbling or circulating systems.
B-3	Ultra-Supercritical Pulverized Coal Boilers	Boiler system designed to provide 4500 pounds per square inch gauge (psig)/1100°/1100°/1100° double reheat configuration.
B-4	Flue Gas Recirculation Components	Ductwork, blowers, and ancillary equipment used to redirect part of the flue gas back to the combustion chamber for reduction of nitrogen oxides (NO <sub>x</sub> ) formation. May include fly ash collection in coal fired units.
B-5	Syngas Purification Systems and Gas-Cleanup Units	A system, including all necessary appurtenances, that (1) produces synthesis gas from coal, biomass, petroleum coke, or solid waste and is then converted to electricity via combined cycle power generation equipment and (2) equipment that removes sulfur, carbon, and other polluting compounds from synthesis gas streams.

No.	Property	Description
B-6	Enhanced Heat Recovery Systems	A heating system used to reduce the temperature and humidity of the exhaust gas stream and recover the heat so that it can be returned to the steam generator so as to increase the quantity of steam generated per quantity of fuel consumed.
B-7	Exhaust Heat Recovery Boilers	Used to recover the heat from boiler to generate additional steam.
B-8	Heat Recovery Steam Generators	A boiler designed to capture waste heat from combustion turbine exhaust for the generation of steam while reducing unit output-based emissions.
B-9	Heat Transfer Sections for Heat Recovery Steam Generators	Super-heaters, Evaporators, Re-heaters and Economizers.
B-10	Enhanced Steam Turbine Systems	Enhanced efficiency steam turbines.
B-11	Methanation	Coal Gasification process that removes carbon and produces methane, including the necessary support systems and appurtenances.
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	Used for handling, storage, or treatment of 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.
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	Installed to reduce pollution by using biomass as a supplementary fuel.
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology	Used to produce a cleaner burning coal (such as coal drying, moisture reduction, air jigging, precombustion decarbonization, or coal flow balancing technology).
B-15a	Oxy-Fuel Combustion Technology	Installed to allow the feeding of oxygen, rather than air, and a proportion of recycled flue gases to the boiler.
B-15b	Amine or Chilled Ammonia Scrubbing	Installed to provide post combustion capture of pollutants (including carbon

No.	Property	Description
		dioxide upon the effective date of a final rule adopted by EPA regulating carbon dioxide as a pollutant).
B-15c	Catalyst based Systems	Installed to allow the use of catalysts to reduce emissions.
B-15d	Enhanced Scrubbing Technology	Installed to enhance scrubber performance, including equipment that promotes the oxidation of elemental mercury in the flue gas prior to entering the scrubber.
B-15e	Modified Combustion Technologies	Systems such as chemical looping and biomass co-firing that are designed to enhance pollutant removal.
B-15f	Cryogenic Technology	Cryogenic cooling systems used to reduce pollution (including carbon dioxide upon the effective date of a final rule adopted by EPA regulating carbon dioxide as a pollutant).
B-16	Carbon Dioxide Capture and Geological Sequestration Equipment	Used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is then geologically sequestered in this state. (This item is only in effect upon the effective date of an EPA final rule regulating carbon dioxide as a pollutant.)
B-17	Fuel Cells	Used to generate electricity using hydrogen derived from coal, biomass, petroleum coke, or solid waste.
B-18	Regulated Air Pollutant Control Equipment	Any other facility, device, or method designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

#### **§17.20. Application Fees.**

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

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

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

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

(b) Fees will be forfeited for applications for use determination on which the executive director will take no further action under §17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed administratively complete. If it is determined [during a technical review] that an application was submitted at the wrong tier level, the executive director will notify the applicant of the amount in which the fees are deficient or in excess, and if there are deficient fees, the applicant shall remit the appropriate fee according to the requirements in subsection (a) of this section [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 be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality [either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality (TCEQ), by electronic funds transfer, or by using the commission's ePay system].

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

#### **§17.25. Appeals Process.**

(a) Applicability.

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

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

(A) the applicant seeking a use determination; and

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

(b) Form and timing of appeal. An appeal must be in writing and must be filed by United States mail, facsimile, e-mail, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive director's action is e-mailed or 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, e-mail 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, e-mail, or mail to the executive director a copy of the appeal;

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

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

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

(e) Action by the commission.

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

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

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

(f) Action by the executive director.

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

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

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

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

(g) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, e-mail address, 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, e-mail, or hand delivery with the chief clerk of the commission.