



January 2003

Property Tax Exemptions for Pollution Control Property

Draft Guidelines Document for Preparation of Use Determination Applications

DISCLAIMER

This document is intended to assist persons in applying for a use determination, pursuant to Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Conformance with these guidelines is expected to result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These guidelines are not regulation and should not be used as such. Personnel should exercise discretion in using this guidelines document. It should be used along with other relevant information when developing an application.

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INTRODUCTION

Purpose of This Document

This document provides information explaining how to apply for a property tax exemption for capital expenditures for pollution control property. The term *pollution control property* means a facility, device, or method for control of air, water, or land pollution. Under Texas law, a person or business may obtain an exemption from ad valorem property taxes for equipment installed to comply with environmental laws or rules. This document explains how to determine whether you have equipment that qualifies for a tax exemption and how to apply to the Texas Commission on Environmental Quality (TCEQ) to ultimately obtain the exemption. The document issued by TCEQ that authorizes the tax exemption is referred to as a use determination.

Legislative Background

On November 2, 1993, the Texas voters approved a constitutional amendment (Proposition 2) providing an exemption from property taxation for pollution control property. This amendment added Section (§) 1-1 to Article VIII of the Texas Constitution. Legislation to implement the amendment was approved in House Bill 1920 during the regular session of the 73rd Legislature. This legislation added §11.31 to Chapter 11 of the Texas Tax Code and §26.045 to Chapter 26 of the Texas Tax Code. Copies of Tax Code §11.31, §26.045, and §1-1 of Article VIII of the Texas Constitution are located in Appendix E of this document. The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules and regulations did not raise a facility's property taxes.

In 2001, the 77th Legislature amended the Texas Tax Code, §11.31, Pollution Control Property, to require the Commission to adopt specific standards for evaluating applications for tax exemptions and provide a formal procedure to allow an applicant or an appraisal district to appeal a ruling by TCEQ on a specific application.

The TCEQ adopted Chapter 17 (originally titled Chapter 277) under Title 30 of the Texas Administrative Code to establish the procedures and mechanisms for obtaining a use determination. A copy of the program rules is located in Appendix E of this document.

Benefit to Taxpayers

The legislation established a two-step process for securing an exemption from property taxes for pollution control property:

1. A facility must first receive a determination from the TCEQ that the property is used for pollution control purposes.
2. The applicant then submits this use determination to the local tax appraisal district to obtain the property tax exemption.

ELIGIBILITY AND EXCLUSIONS

Effective Date

To be eligible for a positive use determination the property must have been purchased, acquired, constructed, installed, replaced or reconstructed after January 1, 1994, in order to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation. Property or equipment that existed prior to that date will not be eligible

Eligible Property

Property that is installed wholly or partly for pollution control purposes is eligible for a positive use determination. It is the responsibility of the applicant to demonstrate that the equipment or property is used for pollution control purposes. The applicant must show that the property was installed to meet or exceed environmental regulations of the United States, the State of Texas, or political subdivisions of Texas. For partial determinations, i.e., property used *partly* for pollution control, the applicant must perform a cost analysis to determine the percentage of the capital cost that qualifies. This requires using the Cost Analysis Procedure that is described later in this document.

A. Dedicated Purpose Vehicles

Vehicles that are used solely for pollution control purposes, such as vacuum trucks, street sweepers, surface watering trucks, and spill response vehicles are eligible for a positive determination.

B. Qualifying Land

Land may be eligible for a positive determination, but it is restricted to land that actually contains pollution control property. Examples include the actual square footage of land that contains a bag-house, scrubber, settling pond, or waste water containment. The land must have been acquired after January 1, 1994.

C. Used Equipment

Property purchased from another owner is eligible for a positive use determination if it meets the following criteria:

1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.
2. It will be used wholly or partly as pollution control property.
3. It has not been taxable by any taxing unit in which the property is located.

Property Excluded from the Exemption

The law specifies that the following classifications of property may not receive the exemption:

- # motor vehicles, except as explained above;

- # residential property;
- # property used for recreational, park, or scenic uses, which includes sporting activities, camping, scenic areas and historical, archeological, or scientific sites ; and
- # property subject to a tax abatement agreement executed before January 1, 1994, except for property that is acquired, constructed, or installed after the abatement agreement has expired.

A. Commercial Waste Management Facilities

The statute does not allow property to receive the exemption solely because the facility manufactures or produces a product that is used in pollution control or provides a service that monitors, controls, or reduces pollution. For example, suppose that a company operates a hazardous waste incinerator and contracts with other companies to dispose of their hazardous waste. The incinerator would be considered commercial waste disposal equipment and would not be eligible for a positive use determination. However, pollution control equipment, such as bag-houses or scrubbers as needed to comply with environmental regulations, would be eligible. If a company installed and operated a non-commercial incinerator to dispose of its own waste then it would be eligible for a positive use determination.

B. Buffer Zones

The language in the statute includes land as being eligible for a use determination; however, only that part of the land that actually contains pollution control property or is used as pollution control property will be considered. Property used solely as a buffer zone is not eligible.

COMPLETING AN APPLICATION

Application Submission Requirements

Any application that is submitted to the TCEQ must meet the following requirements:

- # Timing Deadline: Applications must be postmarked by January 31 for property constructed or installed during the previous calendar year. This deadline was established to allow sufficient time for TCEQ to complete review of all applications and issue a use determination prior to May 1. The county tax appraisal districts have a May 1 deadline for businesses to submit their tax appraisal information. TNRCC will review the applications in the order received. The agency will make every effort to issue a determination prior to May 1 for all applications received.
- # Single Facility Extending into Two Counties: If the property listed on an application is located in more than one appraisal district, each affected appraisal district must be listed on the application. Separate applications are not required.
- # Multiple Plant Sites in One County: A company that installs identical or similar equipment at more than one location within a single appraisal district may submit a single application for all such equipment. The application must list the address of each location and the specific property installed at each location. It is permissible to file separate applications for each plant site. However, a

separate application fee is required for each application.

Example: A company that installs Stage II vapor recovery equipment at a number of gasoline service stations within the same county may submit one application to cover all of the stations. Site information including the physical location or street address and a description of the pollution control property should be provided for each site.

- # **Multiple Projects at One Site:** A separate application must be submitted for each project that involves a separate production unit at a facility. If such multiple projects are filed as a single application, it will be returned to the applicant with no determination.

Example: A project to upgrade stormwater control at a facility would only require one application. Installing identical stormwater control equipment at multiple sites within the same county would also require only one application. However, a project to reduce emissions or discharges at several different production units located at a single plant or facility would require separate applications for each unit.

- # **Applications Submitted After the First Year of Eligibility:** Positive use determinations will be issued only for property that would first become taxable during the tax year in which the use determination application is submitted. Alternatively, pollution control property that became taxable after January 1, 1994, but for which no positive use determination has been issued would also be eligible for a positive use determination. However, the tax exemption would not be retroactive for the taxable years prior to issuance of the use determination.

- # **Eligible Property Must Have Capital Expenditures Incurred:** Positive use determinations will not be issued on a prospective basis. Upon request, the TCEQ will review proposed future projects or purchases and issue a letter stating which specific equipment or parts of a project may be eligible for a positive determination at the time of construction or purchase. In order to receive a positive use determination the requestor will still need to submit a use determination application in the year that the property would first become taxable.

- # **Inclusion of Fee with Applications:** As stated in the rules, an applicant whose application is not accompanied with the proper fee payment will be mailed a deficiency letter. Review of the application will not commence until the proper fee is received.

Preparing the Application

If a company has installed equipment or made process changes that were intended to control, reduce or prevent air, water, or waste pollution, and that either met or exceeded an adopted environmental regulation, then such equipment or process changes may be eligible for a full or partial use determination. A Decision Flow Chart has been developed to assist applicants in preparing use determination applications. The Decision Flow Chart is to be used by all applicants to determine if each device or equipment item qualifies as pollution control property.

An application form and instructions are provided in Appendix B of this document. Applicants are allowed to use a copy or similar reproduction of the TCEQ application form. All applications must be made using the most recent version of the application form. An electronic version of the application form is available to be downloaded from the TCEQ Web page. Instructions for downloading forms can be found in the section **Obtaining Publications** within this document.

Appendix D of this document contains a list of frequently asked questions related to the tax exemption program and the corresponding answers.

Application Tier Levels

There are 3 different tiers, or levels, of applications that can be submitted for a use determination. The Decision Flow Chart is used to determine what tier is applicable to your property.

Tier I

This is for property that is on the TCEQ's Predetermined Equipment List (PEL), which is located in Appendix A of this document. The PEL consists of specific equipment that the TCEQ has "predetermined" to be pollution control property. Tier I applications have a \$150 fee. In order for the application to be considered Tier I, all items listed on the application must be located on the PEL or must be necessary for the installation or operation of property located on the PEL.

Tier II

This is for property that is 100 percent pollution control property but is not on the PEL. Tier II applications have a \$1,000 fee.

Tier III

This is for property that is partially used for pollution control and is not on the PEL. Tier III applications have a \$2,500 fee. Tier III applications have both environmental benefits and process improvements or benefits.

If an application includes property for more than one tier, it can all be submitted as a single application. The appropriate application fee will be for the highest tier level for which equipment is included in the application. For example, if the application contains PEL equipment (Tier I), 100% pollution control property not on the PEL (Tier II), and partial determinations (Tier III), then the appropriate fee would be \$2,500. It is acceptable to submit separate applications for Tier I, Tier II, and Tier III equipment, but this is not required and will increase the amount of application fees.

The fees were developed with the intent of recovering the costs to administer the program. Fees are higher for the second and third tiers because there are greater administrative costs involved in reviewing applications for property that has not already been determined to be pollution control property.

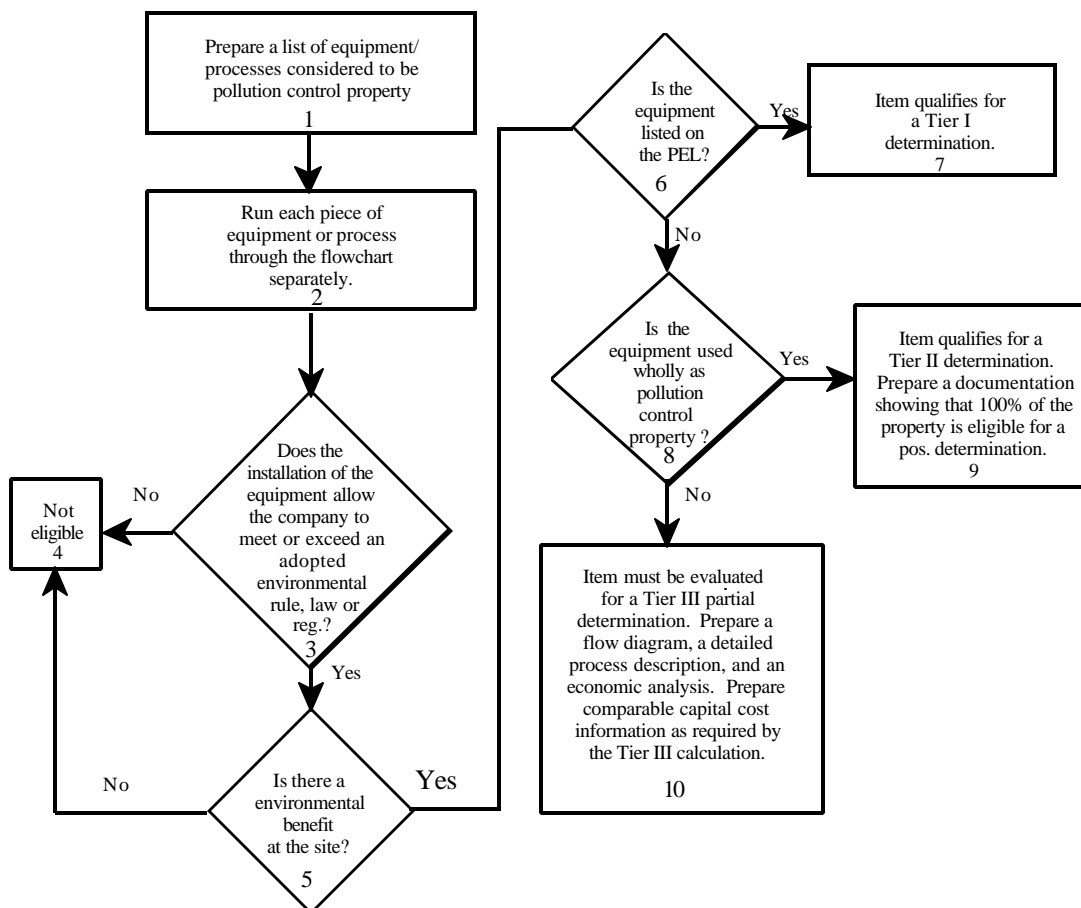
Applicant Decision Flow Chart

Applicants must use the Decision Flow Chart for each item of pollution control property or process change. You must proceed step-by-step through the chart to determine "how" and "if" the particular equipment item will qualify as pollution control property.

Note: The numbers in the chart and instructions listed here do not match exactly with the Decision Flow Chart as adopted in Chapter 17. These instructions are intended to explain, in more detail, the process of using the chart in preparing a tax exemption application.

Prop 2 Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5.



The following instructions should be used with the flow chart. **The numbered items below do not correspond to the box numbers in the flow chart.**

1. Prepare a list of all process equipment and pollution control equipment that is considered to be pollution control property (Box 1).
2. Each item on the list must be run through the flow chart separately (Box 2). Some items will likely end at different points on the flow chart..
3. Determine whether the item is required to meet or exceed a specific state, local, or federal environmental regulation, rule or law (Box 3). If no specific rule citation can be made, then this item does not qualify as pollution control property (Box 4).
4. Determine if there is an environmental benefit at the site where the equipment is installed (Box 5). A yes answer to this question is needed to continue evaluating the equipment. If the answer is no, then the equipment does not qualify (Box 4).
5. Determine whether the equipment is listed on the Predetermined Equipment List (PEL) (Box 6). If so, then determine the reference number for that item (Box 7).

6. Include all PEL equipment for the project in a single list that is included with the application.
7. If the equipment is not on the PEL, then determine whether the equipment is used wholly for pollution control, i.e., the equipment is not production related and/or does not increase production or improve product quality (Box 8).
8. If it is wholly for pollution control, then the equipment may qualify as 100% pollution control property (Box 9). The applicant must provide sufficient written documentation and justification to prove that it qualifies.
9. If the equipment has both environmental and production elements, then the equipment must be evaluated as a partial determination (Box 10). The applicant must provide a detailed capital cost analysis following the procedures established in the Partial Determination section of this document. The results of these calculations will determine the partial use percentage.

TIER I - PREDETERMINATIONS

The TCEQ has developed a list of equipment that it has determined to be pollution control property. The PEL is located in Appendix A of this document. The most current version of this list may be obtained by contacting the TCEQ Tax Relief for Pollution Control Property Program or by accessing the TCEQ Web page. Follow the instructions in the section **Obtaining Publications** in this document.

The list contains property that is both wholly and partially pollution control. The specific types of equipment that are less than 100% were analyzed by TCEQ staff to determine the appropriate percentages. Most of the property contained on the list is entirely for pollution control and is listed at 100%. Once a percentage has been established on the PEL, that percentage is fixed for Tier I applications. Anyone seeking to obtain a different percentage than that which is assigned to a particular item on the PEL must apply for a Tier III determination. The PEL is generic in nature and will not specify brand names.

The PEL will be periodically updated by the TCEQ. Generally, for Tier II and Tier III property approved as pollution control property, that property, if it is considered by the TCEQ to have general applicability, may be placed on the PEL. In addition, the staff of the TCEQ from time to time will add, remove, or revise items from the PEL.

Outside parties may propose additions to the PEL by submitting a written request to the Tax Relief for Pollution Control Property program manager. The request must provide a description of the equipment and justification for adding it to the PEL. The Tax Relief for Pollution Control Property program manager will provide a determination after reviewing the request.

TIER II - 100% NON-PREDETERMINED PROPERTY

The predetermined equipment list contains property items that TCEQ has reviewed and “predetermined” to qualify as pollution control property. It is not practical to include all possible types of qualifying property on the list. For property that an applicant believes is 100% pollution control property but is not contained on the PEL, a Tier 2 application should be prepared. The applicant has the burden of demonstrating that the property is indeed “100% pollution control property”. The applicant must provide financial or other information to

prove that the property has no production benefits and serves entirely for pollution control.

TIER III - PARTIAL DETERMINATIONS

This section addresses property for which a Tier III application is required. This is property that is not on the predetermined equipment list and that is not used wholly for pollution control. It includes new or modified process equipment that has both environmental and production elements. An example would be replacement of a reactor vessel with a new reactor that has improved mixing and reduces waste. Since the reactor is essential to production but also has environmental benefits, the equipment would be considered partial pollution control property.

If there are one or more parts of the property that both control pollution and are essential to the manufacturing process, the applicant is asked to specify the proportion of the property used for pollution control purposes. In order to make a partial determination, the applicant must use the Cost Analysis Procedure described below. This procedure requires the use of cost accounting principles to calculate the percentage of the project that qualifies for a positive use determination as pollution control property. Detailed examples of how to calculate the partial percentages are shown in Appendix C. If an applicant needs assistance in determining a partial percentage, please contact the program at (512) 239-6348 or (512) 239-1917.

Cost Analysis Procedure

The following procedure must be used to determine the creditable partial percentage for a Tier III application:

$$\text{Partial Use Determination} = \frac{[(\text{PCF} \times \text{CCN}) - \text{CCO} - \text{BP}]}{\text{CCN}} \times 100$$

Production Capacity Factor (PCF): This is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process.

$$\text{PCF} = \frac{\text{Production Capacity of Existing Equipment or Process}}{\text{Production Capacity of New Equipment or Process}}$$

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

Capital Cost New (CCN): This is the estimated total capital cost of the new equipment or process.

Capital Cost Old (CCO): This is the cost of comparable equipment/process without the pollution control. The standards used for calculating CCO are as follows:

1. If comparable equipment without the pollution control feature is on the market in the U.S., then an average market price of the most recent generation of technology must be used.

2. If condition 1 above does not apply, and the company is replacing an existing unit, then the company shall index the original cost of the unit to today's dollars by using a published industry specific standard.

3. If neither conditions 1 nor 2 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.

For all three methods, generally accepted accounting principles must be used.

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

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

Byproduct Value: The retail value of the recovered byproduct for a one year period. Typically, use the most recent three-year average price of the material as sold on the open market. If the price varies from state-to-state, then calculate an average, and explain how the figures were determined.

Storage and Transport: These costs are the costs to store and transport the byproduct which will reduce the market value of the byproduct. Provide verification of how these costs were determined and itemized.

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

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

The statute requires that the applicant provide any information requested by the Executive Director. If an applicant is unable to provide the information required in order to use the formula, then a negative determination will be issued.

If the above procedure produces a negative number or a zero, then there is no creditable partial percentage for the project and results in a negative use determination.

APPLICATION REVIEW

The Flow Chart for Obtaining a Use Determination in this section summarizes the use determination application process. An application is filed with the TCEQ. On receiving the application, the TCEQ will mail a letter to the applicant acknowledging the receipt and listing the application tracking number.

Administrative Review

The TCEQ has 30 days from the receipt of an application to determine whether the application is administratively complete. For an application to be administratively complete all of the required fields on the application form must have an entry. If some fields are left blank or incomplete, then a notice of deficiency (NOD) will be mailed by TCEQ within 30 days of receiving the application. This notice will specify the information that is needed to complete the application. The applicant then has 30 days to submit the requested information to the TCEQ. Failure to respond in the allotted time will result in termination of the application and forfeiture of the fee. The applicant may then reapply, but it will be considered as a new application requiring payment of a new application fee.

Technical Review

Once the application is determined to be administratively complete, the technical review will commence. The technical review consists of a detailed review of the information provided in Sections 7, 8, and 9 of the application. The TCEQ has 60 days from the date that an application has been declared administratively complete to conduct the technical review. If the application is deemed technically incomplete, a technical NOD explaining the specific deficiencies will be sent to the applicant. The applicant has 30 calendar days from receipt of the NOD to address the deficiencies and reply to the TCEQ. If the response does not answer all of the deficiencies, the application will be returned to the applicant. If the applicant chooses to refile the application, it will be treated as a new application and will require the payment of the appropriate fee.

Use Determination

Once the technical review has been completed, the applicant will receive a use determination letter and the use determination. The executive director may not make a determination that the property is pollution control property unless the property meets the standards established under Chapter 17. If a positive use determination is made, the applicant must then submit the TCEQ use determination, along with the appropriate exemption request form, to the appraisal district in order to receive the tax exemption. Exemption request forms can be obtained from the appraisal district. If a negative use determination is made, the applicant will be provided with the reason(s) for the denial.

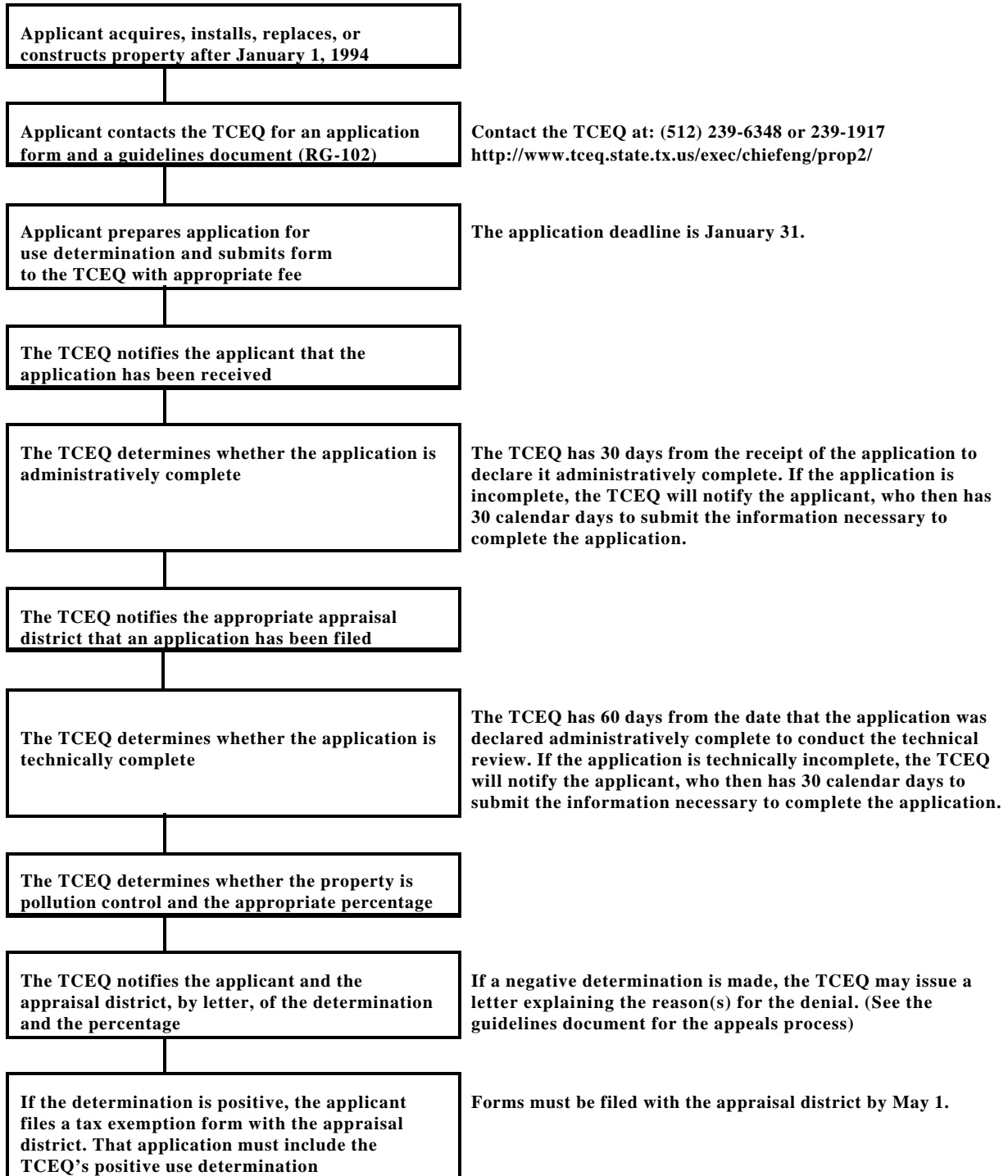
Obtaining the Tax Exemption

The appraisal districts have a filing deadline for exemption requests of May 1 for each tax year. The chief appraiser has the authority to disallow exemption requests that are not filed by the deadline. The TCEQ provides written notice to the appraisal district when a use determination is filed and a copy of the final use determination. However, it is the responsibility of the applicant to submit the exemption request to the appraisal district in order to obtain the tax exemption.

Return of Fees

Fees shall be forfeited for applications which are denied or returned. Fees will be refunded for applications withdrawn by the applicant if a written refund request is filed before the technical review of the application has been completed.

FLOWCHART FOR OBTAINING A USE DETERMINATION



APPEALS PROCESS

As per the statute, it is the applicants burden to supply the TCEQ with the information necessary to make a use determination. If the applicant is unable to provide the required information, then the application will be returned to the applicant. If the TCEQ determines that the property is not eligible for a positive determination a negative determination will be issued. For Tier III applications if alternative equipment is not currently available on the market or if it is not possible to develop a cost of the property without the pollution control feature, then no partial will be issued.

A use determination may only be appealed by the applicant or the chief appraiser of the county where the pollution control property is located. A written appeal request must be received by the TCEQ Chief Clerk within 20 days after receipt of the use determination letter. The applicant is presumed notified 3 working days after the use determination letter is mailed.

The appeal request must contain the following information:

1. Name, address, and daytime telephone of the person requesting the appeal.
2. Name and address of the applicant receiving the use determination.
3. The use determination application number assigned by TCEQ.
4. A description of what is being appealed.
5. An explanation of the basis for the appeal.

Upon receipt of the appeal request, the chief clerk shall forward a copy to the executive director and schedule the appeal for the next commission meeting for which adequate notice can be given. The chief clerk will also mail a copy of the appeal to whichever party did not request the appeal, either the applicant or the appraisal district.

Both the applicant and the chief appraiser may testify at the commission meeting that is scheduled to hear the appeal. The commission may either deny the appeal or remand the matter back to the executive director. If it is remanded, then the executive director must conduct a new technical review of the application and issue a new use determination. The new determination may then be appealed using the same procedures as for the initial appeal.

CONFIDENTIAL MATERIAL

The agency suggests that the applicant **NOT** submit confidential information as part of the use determination application. However, if this cannot be avoided, a general description should be provided in nonconfidential terms as part of the application. A separate document containing the confidential information should be submitted as an attachment to the application. Each page of the confidential information should be conspicuously marked "CONFIDENTIAL."

Reasons for confidentiality include the concept of trade secrecy and other related legal concepts that give a business the right to preserve the confidentiality of business information to obtain or retain advantages resulting from the content of the information. The TCEQ will maintain information marked as being confidential in a separate file.

OBTAINING PUBLICATIONS

The most current versions of the Application and Instructions for Use Determination for Pollution Control Property and Predetermined Equipment List (TCEQ-0611) and the Technical Guidance Document can be obtained by contacting the TCEQ Tax Relief for Pollution Control Property Program at (512) 239-6348 or (512) 239-1917.

Current copies of these documents may also be downloaded from the TCEQ web site. The URL is www.tceq.state.tx.us for the main web page. Click on the [Subject Index](#) link, next the letter **T**, and then click on the link for [Tax Exemptions for Pollution Control](#) which will connect to the Prop 2 web page. From there, click on the link for [Application Forms and Guidance Documents](#). All of the available forms and instructions can be downloaded from that link.

CONTACTING THE PROGRAM

Mail a completed application along with the appropriate fee to:

TCEQ - Cashiers Office MC-214
Tax Relief for Pollution Control Property Program
PO Box 13088
Austin, TX 78711-3088

Questions relating to this program can be sent by U.S. mail to the following address:

TCEQ - MC-110
Attention: Tax Relief for Pollution Control Property Program
PO Box 13087
Austin TX 78711-3087

or by electronic mail to the following address: prop2@tceq.state.tx.us

or by fax to the following telephone number: (512) 239-3165 or (512) 239-6763

or by telephone to the following program staff:

Ron Hatlett (512) 239-6348
Gary McArthur (512) 239-1917

Appendix A

PREDETERMINED EQUIPMENT LIST

PREDETERMINED EQUIPMENT LIST

AIR POLLUTION CONTROL EQUIPMENT

No.	Media	Equipment	Description	Percent
Particulate Control Devices				
A-1	Air	Baghouses (not used for product collection)	Baghouses, filters, blowers, piping — used to remove particulate matter from air/gas streams	100%
A-2	Air	Demisters	Mesh pads or cartridges — used to remove entrained liquid droplets from exhaust gas streams	100%
A-3	Air	Electrostatic Precipitator	Wet or dry particulate collection by creating an electric field between positive and negative electrodes.	100%
A-4	Air	Cyclone (not used for product collection)	Cyclone, blowers, piping, etc. — used to remove particulate matter from exhaust gas streams	100%
A-5	Air	Scrubbers (not used for product collection)	Scrubber, circulation pumps, piping, etc. — used to remove particulates from exhaust gas stream	100%
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. — used to reduce particulate emissions	100%
Combustion Control Devices				
A-12	Air	Thermal Oxidizers	Thermal destruction of VOCs by direct flame combustion.	100%
A-13	Air	Catalytic Oxidizer	Oxidation or destruction of VOCs by use of a catalyst.	100%
A-14	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. — used to destroy air contaminants in a vent gas stream	100%
Non-VOC Gaseous Control Devices				
A-21	Air	Molecular Sieve	Used to remove H ₂ S	100%
A-23	Air	Strippers Used in Conjunction with Final Control Device	Stripper, pumps, piping — used to remove contaminants from a gas or liquid stream	100%
A-24	Air	Sorbent Injection Systems	Multiple-pollutant, SO _x , or NO _x	100%

A-25	Air	CFC Replacement Projects. Property includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	Projects to replace one CFC with an alternative CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit.	A-25
Monitoring and Sampling Equipment				
A-31	Air	Fugitive Emission Monitors	Organic vapor analyzers — used to discover leaking piping components	100%
A-32	Air	Continuous Emission Monitors	Specific for NO _x , CO, SO ₂ , opacity, THC _s , and VOC _s , respectively	100%
A-33	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100%
A-34	Air	Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100%
A-35	Air	Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, etc. constituting a monitoring system required to demonstrate compliance with emission limitations.	100%
A-36		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing in order to reduce vehicle emissions. Automotive dynamometers installed for the purpose of testing vehicles which are not part of the company's fleet do not qualify for a positive use determination.	100
A-37	Air	Noncontinuous Emission Monitors, Portable	Monitors, analyzers, structures, trailers, air conditioning equipment, etc.	100%
A-38	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100%
Control of Nitrogen Oxides				
A-50	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors — used to reduce NO _x emissions from engines/boilers	100%
A-51	Air	Catalytic Converters for Stationary Sources	Used to reduce NO _x emissions from internal combustion engines	100%

A-52	Air	Air/Fuel Ratio Controllers for Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO _x formation for fuel injected, naturally aspirated, or turbocharged engines.	100%
A-53	Air	Flue Gas Recirculation	Ductwork, blowers, etc. — used to redirect part of the flue gas back to the combustion chamber for reduction of NO _x formation. May include flyash collection in coal fired units.	100%
A-54	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial boilers or the atomizer ports for gas turbines, used to reduce NO _x formation.	100%
A-55	Air	Over Fire Air Systems	Advanced over-fire air for NO _x	100%
A-56	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO _x emissions.	100%
A-57	Air	Lean-Burn Gas-Fired Compressor Engines	Gas-fired engines, which utilize lean-burn technology, that are used for the compression of natural gas for the purpose of storage or transmission.	20%
A-58	Air	Low-NO _x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO _x burners for pollution control purposes (does not include electrical power generation burners).	100%
A-59	Air	Low Emissions Conversion Kit for IC compressor engines	Existing internal combustion engines used to drive natural gas compressors that install conversion kits to reduce NO _x emissions. These kits include ignitor cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the ignitor cell and power cylinders, power pistons, and power cylinder heads to replace the existing cylinders, pistons and heads.	100
A-60	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO _x formation.	100%

A-61	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NOx including directly related equipment.	100%
A-62	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx and CO emissions. System includes injectors, fuel lines, and electronic controls.	40%
VOC Control				
A-70	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers — used to remove VOCs or odors from exhaust gas streams	100%
A-71	Air	Storage Tank Secondary Seals and Internal Floating Roofs (with or without clear-span roofs)	Used to reduce evaporation losses from storage tanks	100%
A-73	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.	100%
A-74	Air	Replacement of existing pumps, valves, or seals in piping service	Replacement of these parts for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100%
A-75	Air	Welding of pipe joints in VOC service	Welding of piping joints rather than using threaded or flanged fittings to eliminate fugitive emission leaks.	100%
A-77	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals	100%
Miscellaneous Control Equipment				
A-90	Air	Hoods and Collection Systems for Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. — used to collect air contaminants and route them to a control device	100%
A-91	Air	Stacks and Stack Modifications	Construction of new exhaust stacks, stack extensions, and stack repairs.	100%
A-92	Air	Vapor/Liquid Recovery Equipment for Fugitive Emissions	Hoods or other enclosures including piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	100%

A-93	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - used to capture a waste gas or liquid stream and vent to a control device. VOC & nonVOC. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges	100%
A-94	Air	Paint Spray Booth Attached to Final Control Device	Booth, piping, etc. — used to contain and control over spray. Includes water curtain, filters, or other devices to capture paint fumes.	100%
A-96	Air/ Water	Preparation Room	A room designed for mixing paint, cleaning tools, and preparation of painting equipment	100%
A-98	Air	Powder Coating System	All equipment such as booths, powder recovery devices associated with a Powder Coating System. Ovens are not included.	100
A-99	Air	Ultra-violet Electron Beam Infrared (E-Coat) Coating System	All equipment such as booths and ovens associated with an E-Coating System	70
A-100	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60%
A-101	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40
A-102	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60
A-103	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60
A-104	Air	Refrigerated Vapor Condenser	A device that uses refrigerants to condense vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	90%
A-105	Air	Blast Cleaning Booth Vented to Control Device	Enclosed cabinet for blast cleaning of metal parts that includes a particulate control device	50%

WASTEWATER POLLUTION CONTROL EQUIPMENT

No.	Media	Equipment	Description	%
Solid Separation and De-watering				
W-1	Wastewater	API Separator	Mechanical oil, water, and solids separator	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	Hydrocarbon	100%
W-5	Wastewater	Decanter	Used to decant hydrocarbon from process wastewater	100%
W-6	Wastewater	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices	100%
W-7	Wastewater	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100%
W-8	Wastewater	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100%
W-9	Wastewater	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams	100%
W-10	Wastewater	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100%
Disinfection				
W-20	Wastewater	Chlorination	Wastewater disinfection treatment using chlorine	100%
W-21	Wastewater	De-chlorination	Chlorine removal equipment	100%
W-22	Wastewater	Electrolytic Disinfection	Disinfect water without use of chemicals	100%
W-23	Wastewater	Ozonization	Wastewater disinfection treatment	100%
W-24	Wastewater	Ultraviolet	Wastewater disinfection treatment	100%
W-25	Wastewater	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection	100%
Biological Systems				
W-30	Wastewater	Activated Sludge	Biological treatment used to remove pollutants	100%
W-31	Wastewater	Adsorption	Used in conjunction with biological treatment to remove pollutants	100%

W-32	Wastewater	Aeration	Aeration equipment used in activated sludge treatment	100%
W-33	Wastewater	Rotary Biological Contractor	Biological treatment used to remove pollutants	100%
W-35	Wastewater	Trickling Filter	Biological treatment used to remove pollutants	100%
W-36	Wastewater	Wetlands and Lagoons (artificial)	Biological treatment used to remove pollutants	100%
W-37	Wastewater	Digester	Biological treatment used in conjunction to solids management and removal of pollutants	100%
Other Equipment				
W-50	Wastewater	Irrigation	Equipment used to irrigate and disburse treated wastewater	100%
W-51	Wastewater	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall	100%
W-52	Wastewater	Activated Carbon Treatment (ACT) and Powdered ACT	Treatment used to remove pollutants and polish effluent	100%
W-53	Wastewater	Oxidation Ditches and Ponds	Technology used to remove pollutants and polish effluent	100%
W-54	Wastewater	Filters: Sand, Gravel, Microbial	Treatment used to remove pollutants and polish effluent	100%
W-55	Wastewater	Chemical Precipitation	Process used to remove heavy metals from wastewater	100%
W-56	Wastewater	Ultra-filtration	Mechanical device used to remove solids	100%
W-57	Wastewater	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water	100%
W-58	Wastewater	Water Conservation Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water	100%
W-59	Wastewater	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site	100%
W-60	Wastewater	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants	100%

W-61	Wastewater	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream	100%
W-62	Wastewater	Recycled Water Cleaning System	A high-pressure water system for cleaning equipment and pavement that is able to collect and recycle the cleaning water	100%
W-63	Wastewater	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment	100%
W-65	Wastewater	Storm-water Containment Systems	Structures or liners used for containment of runoff from rainfall	100%
W-66	Wastewater	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation	100%
Control/Monitoring Equipment				
W-70	Wastewater	pH Meter, Dissolved Oxygen Meter, Chart Recorder, etc.	Used for operations control and monthly reporting requirements	100%
W-71	Wastewater	On-line Analyzer	Used for operations control	100%
W-72	Wastewater	Neutralization	Control equipment used to adjust pH	100%
W-73	Wastewater	Respirometer	Monitor microbial respiration rates	100%
W-74	Wastewater	Diversion	Structures used for control of storm water and process wastewater or emergency diversion of process material	100%
W-76	Wastewater	Building	Used for housing control and monitoring equipment	100%
W-77	Wastewater	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam	100%
W-78		Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100%

SOLID WASTE MANAGEMENT POLLUTION CONTROL EQUIPMENT

No.	Media	Equipment	Description	%
Solid Waste Management				
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100%

S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from mobile sources	100%
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100%
S-4	Land/ Water/ Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. (Does not include fire alarms)	100%
S-5	Land/ Water	Solid Waste Treatment Vessels (not used for product recovery)	Any vessel used for waste treatment	100%
S-6	Land/ Water	Secondary Containment	External structure or liner used to collect liquids released from a primary containment device and/or ancillary equipment	100%
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100%
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100%
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure	100%
S-10	Land/ Water	Final Cover Systems for Landfills	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	100%
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit (e.g., below the treatment zone of a land treatment unit, etc.)	100%
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit (e.g., detection monitoring systems, compliance monitoring systems)	100%

S-13	Air	Continuous/Noncontinuous Emission Monitors	Carbon monoxide monitor, oxygen monitor, total hydrocarbon monitors, etc.	100%
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment	100%
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water	100%
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants (e.g., pump-and-treat systems, etc.)	100%
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100%
S-18	Land/ Water	Noncommercial Landfills and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill	100%
S-19	Land/ Water	RCRA Containment Buildings	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC 335.431).	100%
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Storage Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100%
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal (e.g., RCRA Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc.	100%
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities (e.g., coverings for conveyors, chutes, enclosed areas for processing equipment, enclosed areas for loading and unloading activities, etc.)	100%

MISCELLANEOUS POLLUTION CONTROL EQUIPMENT

No.	Media	Equipment	Description	%
M-1	Air/ Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100%
M-2	Air/ Land	HEPA Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal	RCF/Asbestos abatement — required removal of asbestos contaminated material	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	100%
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste	100%
M-5	Land/ Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from solvents and paints by heat, vaporization, and condensation	100%
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled	100%
M-7	Water	Potable Water Systems	Tanks, pumps, and associated equipment necessary to provide potable water	100%
M-8	Air/ Land/ Water	Environmental Paving	Paving of parking lots, roadways, or plant areas in order to meet or exceed an adopted environmental rule, regulation or law.	100%
M-9	Air/ Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100%

UNDERGROUND AND ABOVEGROUND STORAGE TANKS

No.	Media	Equipment	Description	%
Spill and Overfill Prevention Equipment				

T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100%
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100%
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100%
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100%
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves	100%
Secondary Containment				
T-11	Water	Double-walled Tanks	Tanks equipped with a double wall or jacketed liner.	50%
T-12	Water	Double-walled Piping	Piping equipped with a double wall to contain leakages that may occur from the primary pipe wall.	50%
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100%
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100%
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100%
Release Detection for Tanks and Piping				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100%
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation	100%
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100%
T-24	Water	Automatic Line Leak Detectors	Mechanical and electronic devices are acceptable	100%
T-25	Water	Under Pump Check Valve	This device is only used on suction pump piping systems.	100%
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100%
Cathodic Protection				

T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground tanks and piping.	100%
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100%
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100%

Appendix B

APPLICATION FORM AND INSTRUCTIONS



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APPLICATION FOR USE DETERMINATION
FOR POLLUTION CONTROL PROPERTY**

The Texas Commission on Environmental Quality (TCEQ) has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the TCEQ Tax Relief for Pollution Control Property Program at (512) 239-6348. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, P.O. Box 13088, Austin, Texas 78711-3088

1. GENERAL INFORMATION

A. What is the type of ownership of this facility:

- Corporation Sole Proprietor
 Partnership Utility
 Limited Partnership Other _____

B. Size of company:

Number of Employees

- 1 to 99
 100 to 499
 500 to 999
 1,000 to 1,999
 2,000 or more

C. Business Description: (Provide a brief description of the type of business or activity at the facility)

2. TYPE OF APPLICATION

A. **Tier I \$150 Application Fee.**

If all property listed in Section 8 of this application is on the predetermined equipment list (PEL) or is necessary for the installation or operation of equipment on the list, then check this box.

B. **Tier II \$1,000 Application Fee.**

If any property listed in Section 8 is not on the PEL, and all of this property is used 100% for pollution control, then check this box.

C. **Tier III \$2,500 Application Fee.**

If any property listed in Section 8 is not on the PEL and if a partial use determination is being requested for ANY of the property included in the application, then check this box.

Note: Enclose a check or money order to the TCEQ along with the application to cover the required fee.

3. NAME OF APPLICANT

A. Company Name: _____

B. Mailing Address (Street or P.O. Box): _____

C. City, State, ZIP: _____

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- A. Name of Facility or Unit: _____
- B. Type of Mfg. Process or Service: _____
- C. Street Address: _____
- D. City, State, ZIP: _____
- E. Tracking Number Assigned by Applicant (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

- A. Name of Appraisal District: _____

6. CONTACT NAME (must be provided)

- A. Company/Organization Name: _____
- B. Name of Individual to Contact: _____
- C. Mailing Address: _____
- D. City, State, ZIP: _____
- E. Telephone number and fax number: _____
- F. E-Mail address (if available): _____

7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which the property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law. Do not list permit numbers or registration numbers in this table. If the property or equipment was installed or constructed in response to an agreed order, do not list the order — list the rule, regulation, or law that requires the installation or construction of the property.

MEDIUM	RULE/REGULATION/LAW
Air	
Water	

8. DESCRIPTION OF PROPERTY (Complete for all applications)

Provide a description and purpose of the property for which this application is being filed. This description must include the anticipated environmental benefits for the prevention, monitoring, control, or reduction of air, water, or land pollution that will be realized by the installation of the property. Do not simply repeat the description from the predetermined equipment list. Instead describe the property and how it will be used at your facility. Include sketches of the equipment and flow diagrams of the processes where appropriate.

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question. Only that land which is actually used for pollution control purposes or that houses pollution control property is eligible for a positive use determination.

Used Equipment: If the property identified above has been purchased from another owner who previously used the property as pollution control property. Provide information that shows that the property was not taxable on or before January 1, 1994, by any taxing unit in which the property is now located.

9. DECISION FLOWCHART

Each piece of equipment or process change must be processed through the following Decision Flow Chart. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 11 to document which box (7, 9 or 10) was the final destination of each piece of equipment.

The following instructions should be used with the flow chart. **The numbered items below do not correspond to the box numbers in the flow chart.**

1. Prepare a list of all process equipment and pollution control equipment that is considered to be pollution control property.
2. Each item on the list must be run through the flow chart separately. Some items will likely end at different points on the flow chart.
3. Determine whether the item is required to meet or exceed a state, local, or federal environmental regulation, rule or law. If no specific rule citation can be made, then this item does not qualify as pollution control property (Box 4).
4. Determine if there is an environmental benefit at the site where the equipment item is installed. A yes answer to this question is needed to continue evaluating the equipment. If the answer is no, then the equipment does not qualify (Box 4).
5. If the equipment is listed on the Predetermined Equipment List (PEL), then it qualifies as

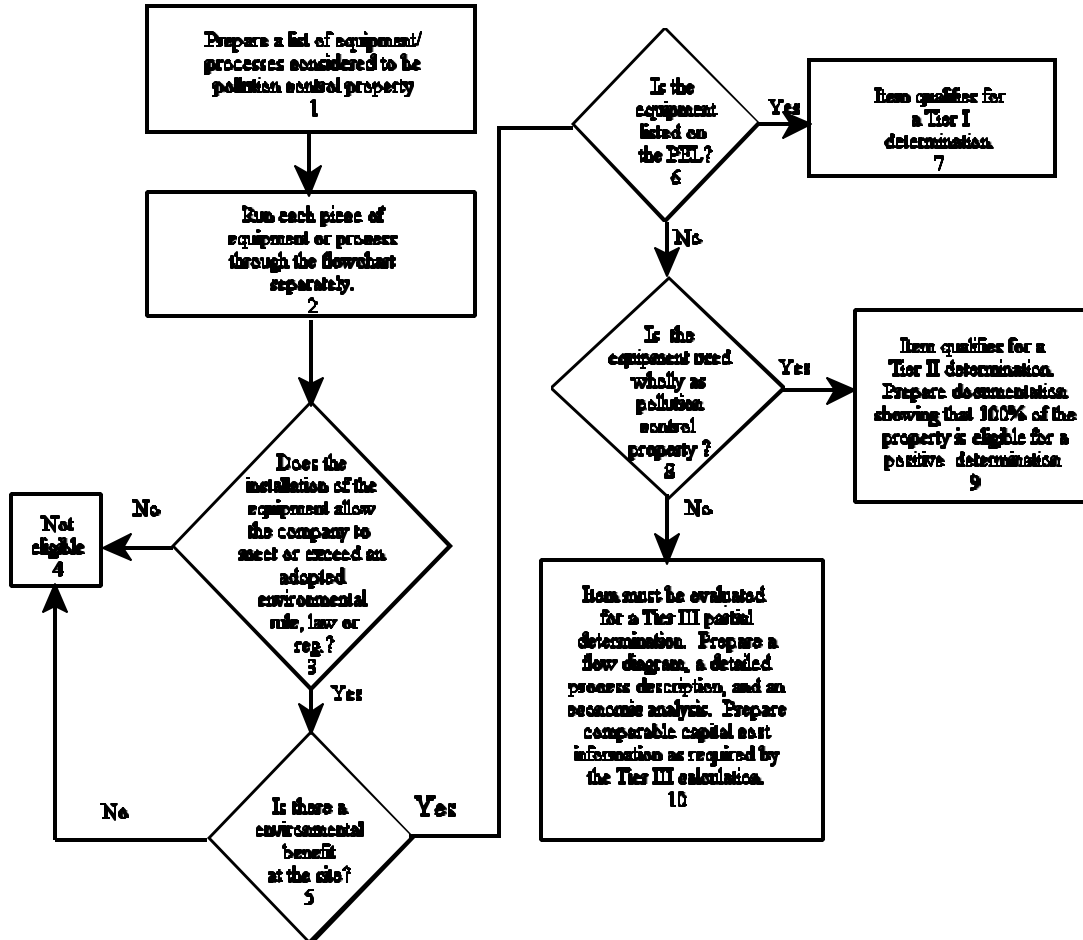
Tier I (Box 7). Determine the appropriate PEL number for each item.

6. Specify all PEL equipment for the project in a single list that is included with the application.
7. If the equipment is not on the PEL, then determine whether the equipment is used wholly for pollution control, i.e., the equipment is not production related and/or does not increase production or improve product quality.
8. If it is wholly for pollution control, then the equipment may qualify as 100% pollution control property under Tier II(Box 9). The applicant must provide sufficient written documentation and justification to prove that it qualifies.
9. If the equipment has both environmental and production elements, then the equipment must be evaluated as a Tier III partial determination (Box 10). The applicant must provide a detailed capital cost analysis following the procedures established in the Partial Determinations section of this document. The results of these calculations will determine the partial use percentage.

10. PARTIAL PERCENTAGE CALCULATION

Prop 2 Decision Flow Chart

Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5.



This section is to be completed only for Tier III applications. Process changes or construction of new process equipment that results in pollution control may result in a partial determination. On one or more separate sheets of paper, explain how the partial percentage was determined using the Cost Analysis Procedure that is described in the attached *Instructions for Completing Application Form*. Include financial data that demonstrates how this percentage was calculated. Provide as detailed information as possible, since the information provided will be used by the TCEQ to evaluate the use percentage requested in the application. Attach sketches and/or flow diagrams showing the property and its function. Examples of partial determinations are shown in Appendix C of the technical guidance document.

11. PROPERTY CATEGORIES AND COSTS

Identify the category and the estimated purchase cost of the property listed in Section 8. List each piece of property for which a use determination is being sought. If the application is for property

that is listed on the predetermined equipment list, list the appropriate item number(s) in the PEL column. Place an "N" in the second column to certify that the property was not taxable on or before January 1, 1994. Failure to answer this question for each piece of property will result in the issuance of a notice of deficiency letter and the possible rejection of the application. List the which box, (7, 9, or 10), was the final destination of each piece of property. List the estimated or actual purchase cost of the property. If the property is not wholly used for the purpose of pollution control, list the estimated percentage of pollution control calculated using the Partial Determination Cost Analysis Procedure.

Property	Property Taxable on or before 1/01/94?	Decision Flow Chart Box 7, 9, or 10	PEL Number	Estimated Purchase Cost	Partial Percentage
Land					
Property:					
Totals					

12. EMISSION REDUCTION INCENTIVE GRANT

Will an application for an Emission Reduction Incentive Grant be filed for this property/project:

Yes No

13. APPLICATION DEFICIENCIES

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

14. FORMAL REQUEST FOR SIGNATURE

By signing this application, you certify that this information is true to the best of your knowledge and belief.

NAME: _____ DATE: _____

TITLE: _____

Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine

of up to \$5,000.

INSTRUCTIONS FOR COMPLETING APPLICATION FORM

The following instructions are intended to provide assistance in completing the Texas Commission on Environmental Quality (TCEQ) *Application for Use Determination for Pollution Control Property*.

GENERAL INFORMATION

If you have questions or require additional clarification or assistance please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348, (512)239-1917, or by electronic mail at: prop2@tceq.state.tx.us

The TCEQ may request additional information by mailing a deficiency letter. This additional information must be provided within 30 days of receipt of the written request or the application will be returned to the applicant.

Applications not accompanied with the proper fee payment will be mailed a deficiency letter. Review of the application will not begin until the proper fee is received.

Obtaining Copies of the Application Form and Other Documents

A copy of the official application form is located in Appendix B of the guidelines document. It is also available on the TCEQ Web page. The predetermined equipment list is located in Appendix A of the guidelines document. The most current version of this list may be obtained by contacting the TCEQ Tax Relief for Pollution Control Property Program at the phone number or address listed below or by accessing the TCEQ Web page. All of the documents can be downloaded from the link titled Application Forms and Guidance Documents. The URL is: <http://www.tceq.state.tx.us/exec/chiefeng/prop2>.

Mailing Information

Applications — Mail completed applications to: TCEQ - Cashiers Office MC-214, Tax Relief for Pollution Control Property Program, P.O. Box 13088, Austin, Texas, 78711-3088.

All other written correspondence should be sent to: TCEQ - MC-110, Attention: Tax Relief for Pollution Control Property Program, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-3165. The telephone number for direct contact is (512) 239-6348 or (512) 239-1917.

APPLICATION INSTRUCTIONS

1. General Information

This section is used to provide general information about your company. The TCEQ does not use this information as part of the use determination review process. This information will be used by the TCEQ to compile a statistical analysis of use determinations processed by the agency.

Select the type of ownership of the facility by placing an “X” in the appropriate space. If “Other” is selected, use the space provided to explain.

Complete the “Size of Company” section by selecting the appropriate spaces for the number of employees for the entire corporation, not just the facility covered by the application.

Complete the “Business Description” section by providing a brief description of the nature of the business or activity that occurs at this facility.

2. Type of Application

Place an X on the proper line to identify the type of application being filed (Tier I, Tier II, Tier III). If a project includes the installation of both PEL-listed and non-PEL-listed equipment, the PEL-listed equipment may be listed on the Tier II or Tier III application along with the non-listed equipment. It is not necessary to file two applications.

The types of applications for pollution control property are:

- | | |
|----------|--|
| Tier I | This is for property that is on the PEL and for which the application seeks no variance from that determination. Tier I requires a payment of \$150. A Tier I application must only include items that are on the PEL or are necessary for the installation or operation of property located on the PEL. |
| Tier II | This is for property that is not on the PEL but is still considered to be 100% pollution control. Tier II requires a payment of \$1,000. |
| Tier III | This is for property that is partially used for pollution control and that is not on the PEL. Tier III requires a payment of \$2,500. |

3. Name of Applicant

Provide the name, mailing address, and telephone number of the owner of the facility for which this application is being filed.

4. Physical Location of Property Requesting a Tax Exemption

Provide the name of the facility, the type of facility, and the physical address of the facility. The facility address should be the address used by the local appraisal district to identify this facility. Provide the name of the county in which the facility is located. If multiple applications are submitted together, you may provide a unique tracking number for each application. This number will be referenced in correspondence sent by the TCEQ.

5. Name of Appraisal District with Taxing Authority over Property

Provide the name of the appraisal district(s) in which the property is located. This information is required and will be used by the TCEQ to notify the appropriate appraisal district(s) that an application for use determination has been filed.

6. Contact Name

Provide the company name, contact name, mailing address, telephone number, e-mail address, and fax number of the person whom the TCEQ is to contact in case of questions relating to this use determination application. All correspondence relating to this application will be directed to this person.

7. Relevant Rule, Regulation, or Statutory Provision

For each of the pollution control properties listed on this application, select the type of medium or media (air, water, waste) for which this property or device is required. Use the second column to cite the specific environmental rule, regulation, and/or law that is being met or exceeded by the installation of this property. The citation should be specific and should include the section and/or subsection of the rule, regulation, and/or law.

In order to receive a positive use determination, the application must list a rule, regulation, or statutory provision that has been adopted by an environmental protection agency of the United States, the state of Texas, or a political subdivision. Regulations adopted by health and safety agencies, such as Occupational Safety and Health Administration requirements, do not meet this criterion.

If the applicant is uncertain of a specific rule to list in this section, there are many sources available on the World Wide Web as references. Most, if not all, of the applicable environmental rules should be located in the Texas Environmental Code, Title 30 or in the Code of Federal Regulations, Title 40. The following sites may be helpful:

Title 40 CFR Chapter Index. URL is www.epa.gov/epahome/cfr40.htm

Code of Federal Regulations: URL is www.access.gpo.gov/nara/cfr/

TNRCC Rules (Chapter 30): URL is www.sos.state.tx.us

8. Description of Property

Do not simply repeat the description from the predetermined equipment list. In stead describe the property and how it will be used at your facility. If necessary, please attach sketches and/or flow diagrams to assist agency staff with the review process.

Land: provide a legal description and an accurate plot plan of the land in question.

9. Decision Flow Chart

Each piece of equipment or process change must be processed through the Decision Flow Chart. Specific instructions are included on the application form. Each item of property listed on the application must result in a yes answer to boxes 3 and 5. Use the table in section 10 to document which box (7, 9 or 10) was the final destination of each piece of equipment.

10. Partial Percentage Calculation

The variables used in the equations in this section are defined as follows:

Capital Cost New - The estimated total capital cost of the equipment or process.

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

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.

If the conditions in variable 3.1 of §17.17(b) do not apply and the company is replacing an existing unit, then the company shall convert the original cost of the unit to today's dollars by using a published industry specific standard. If the production capacity of the new equipment or process is lower than the production capacity of the old equipment or process CCO is divided by the PCF in order to reduce CCO to reflect the same capacity as CCN.

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

Production Capacity Factor - A calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property or process. It is calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process. The Production Capacity Factor is only used when there is an increase in production capacity.

Byproduct (BP). For property that generates a marketable byproduct, the net present value of the byproduct is used to reduce the partial determination. The value of the byproduct is calculated by subtracting the transportation and storage of the byproduct from the market value of the byproduct. This value is then used to calculate the net present value (NPV) of the byproduct over the lifetime of the equipment.

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

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

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

Interest rate - This is the current Prime Lending Rate that is in effect at the time the application

is submitted. The Prime Lending Rate is defined by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. The Prime Lending Rate is posted daily in the Wall Street Journal and on most financial or investment web sites.

In order to receive a partial determination you must use the cost analysis procedure as detailed in 30 TAC 17.17. The cost analysis procedure requires the use of the following equation:

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

On a separate piece of paper provide a response for each of the following sections:

1. Production Capacity Factor – Provide a description of the process and explain if there is an increase in capacity related to the installation of this property. If there is a capacity increase use the following equation to calculate the Production Capacity Factor:

$$\text{Production Capacity Factor} = \frac{\text{Production Capacity of Old Property}}{\text{Production Capacity of New Property}}$$

2. Capital Cost New – Provide a description of how the estimated dollar value was calculated.
3. Capital Cost Old – Provide a description of how the estimated dollar value was calculated. Explain which of the three options was used to determine the capital cost old.
4. Byproduct: Does the installation of this property result in the creation of a byproduct. If the answer is yes, provide a description of the byproduct. Use the following equation to calculate the value of the byproduct. Explain how each variable of the equation was determined. Show the calculation.

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

5. Calculation of partial percentage – show the equation and the calculated partial percentage.

11. Property Categories and Costs

The first column of this table is for categorizing the type of property. There are two category types, *Land* and *Property*. In the property section, list the property or equipment that was described in section 8 of this application.

The second column is used to certify that the property listed in the first column was not taxable on or before January 1, 1994. Enter "No" in this column to show that the property was not purchased, constructed, or

installed on or before January 1, 1994. If the answer is "Yes", then the property is not eligible for a tax exemption.

The third column is used to record which box on the Decision Flow Chart was the final destination of the property – 7, 9, or 10.

The fourth column is used for property that is listed on the predetermined equipment list (PEL). Place the appropriate PEL item numbers in this column.

The fifth column is used to record the estimated or actual purchase cost of the property listed in the first column.

The sixth column is used to list the partial use determination percentage. For property that is not used wholly for pollution control, enter the estimated pollution control percentage calculated above in section 10 or the percentage listed on the PEL.

12. Emission Reduction Incentive Grant

Senate Bill 5, 77th Legislative Session, established the Texas Emission Reduction Program (TERP). The TERP program is authorized to provide incentive grants for certain emission reduction activities. The amount of the grant is reduced by the amount of any additional financial incentives received for the property/project. A tax exemption granted under this program is considered to be a financial incentive.

Place an X in either the Yes or No box. More information about the TERP program may be obtained by calling 512/239-4900 or by e-mailing: terp@tceq.state.tx.us.

13. Application Deficiencies (provided for informational purposes only)

14. Formal Request for Signature

To be considered complete, the application must be signed and dated. The application should be signed by either the applicant/owner or by their designated representative. By signing this application, you certify that the information provided is true to the best of your knowledge and belief.

Appendix C

SAMPLE CALCULATIONS FOR DETERMINATION OF TIER III PARTIAL PERCENTAGES

CALCULATION OF PARTIAL USE DETERMINATION PERCENTAGE

Example 1

Type of facility:

Sulfur recovery unit at a petroleum refinery

Analysis:

A new sulfur recovery unit was constructed consisting of the following:

200-ton/day Claus unit	\$10,000,000
Amine recovery unit	\$18,000,000
Tail gas incinerator	\$8,000,000
Sour water stripper	\$7,000,000

The tail gas incinerator and the sour water stripper serve no purpose and have no benefit other than pollution control. Therefore, these units are 100 percent pollution control, and no further analysis is needed. However, the amine unit and Claus unit are interdependent and have a cost benefit to the company of generating a marketable product: sulfur. This means that each of these units must be evaluated to determine the partial percentage creditable as pollution control property. The capital costs of the amine unit and the Claus unit may be combined and evaluated as one system, because the amine unit is a necessary component of the sulfur recovery unit.

Capital cost of amine and Claus units: $\$10,000,000 + \$18,000,000 = \$28,000,000$

Product value from sulfur sales: based on average sale price of sulfur of \$25 per ton

$$\begin{aligned} & (\text{Average sulfur price}) \times (\text{Design sulfur production rate}) \times (\text{Days per year operated}) = \\ & (\$25/\text{ton}) \times (200 \text{ tons/day}) \times (365 \text{ days/year}) = \$1,800,000 \end{aligned}$$

Storage and transportation costs per year: \$500,000

By-product value of sulfur: based on 10 year life of equipment ($t=10$) and 10% interest rate (Interest rate = 0.10)

$$BP = \sum \frac{(\text{Byproduct Value}) - (\text{Storage \& Transport})}{(1 + \text{Interest Rate})^t} = \sum \frac{\$1,800,000 - 500,000}{(1 + 0.1)^{10}}$$

BP = \$8,000,000

Partial exemption percentage:

$$CF = 1 \quad CCN = \$28,000,000 \quad CCO = 0$$

$$\text{Partial Percentage} = \frac{(1 \times 28,000,000) - 0 - 8,000,000}{28,000,000} = 0.71 = 71\%$$

Thus, 71% of the capital cost of the Claus Unit and the Amine Unit would be eligible for a partial determination. In addition, 100% of the capital cost of the Tail Gas Incinerator and the Sour Water Stripper would be eligible.

CALCULATION OF PARTIAL USE DETERMINATION PERCENTAGE

Example 2

Type of facility:

Ground Support Equipment Replacement

Analysis:

In order to meet the requirements of the state implementation plan, an airline located in a nonattainment area is required to reduce NOx emissions related to their use of ground service equipment (gse). The airline decides to replace their tugs which are powered by internal combustion gasoline engines with electric tugs. Tugs are the vehicles used to move luggage carts and tow aircraft. Due to duty cycle limitations the airline must purchase 3 electric tugs to replace every two existing tugs. The airline has 20 tugs at this airport. The cost for an electric tug is \$31,800. The cost the same model gasoline tug is \$18,500.

Capacity factor = 1 (No increase in capacity)

Cap. Cost New = \$31,800/tug × 30 tugs = \$954,000

Cap. Cost Old = \$18,500/tug × 20 tugs = \$370,000

By-Product = 0

$$\text{Partial Determination} = \frac{[(PCF \times CCN) - CCO - BP]}{CCN} \times 100$$

$$\text{Partial determination} = \frac{(1.0 \times 954,000) - 370,000 - 0}{954,000} = 0.61 = 61\%$$

A positive use determination of 61% for the electric tugs.

Appendix D

FREQUENTLY ASKED QUESTIONS

FREQUENTLY ASKED QUESTIONS

Question: What is the benefit to my company?

Answer: A positive use determination will allow your company to apply for a property tax exemption for the property listed on the use determination application. This will lower the appraised value of the facility and thereby lower the amount of property tax due.

Question: What costs qualify?

Answer: The rule defines facility, device, or method for the control of air, water, or land pollution as land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property that is used, constructed, acquired, or installed after that date. All costs associated with the property are eligible. This includes costs such as engineering, design, and overhead.

Question: Do I need to apply each year?

Answer: You need only apply with the TCEQ once. The positive use determination is good for the life of the property. The appraisal district may require that you refile your exemption request each year with their office, but they must notify you if this is the case.

Question: When do I apply if my project covers several years?

Answer: Each year you file an application with the local tax appraisal district for that portion of the project which has become taxable.

Question: What do I do if my facility is located in more than one county?

Answer: If the pollution control property is located in only one county, then list only that appraisal district on the application. If the pollution control property is located in more than one county, then list all of the appraisal districts on the application. You do not need to file separate applications with TCEQ; but you must file with each appraisal district for the portion of the property located within that district.

Question: What if my facility is taxed by more than one taxing authority within the appraisal district such as school districts?

Answer: Only one application would be filed with the appraisal district. The appraisal district will notify any other taxing authorities within the district.

Question: What if I install the same property at more than one facility?

Answer: If all of the facilities are located in the same county, you would need to file only one application. On this application, you would list the addresses of all of the facilities. If the facilities are located in different counties, you would file one application per county.

Question: What if my project includes both equipment that is listed on the predetermined equipment list (PEL) and nonlisted equipment?

- Answer: If the project contains both PEL-listed equipment and nonlisted equipment, then the application would be filed at the appropriate tier level (II or III) for the nonlisted equipment. The PEL-listed items would be included on this application. It is acceptable to submit separate applications for each tier level if desired, but the appropriate fee would be required for each application.
- Question: What do I do if I disagree with the final use determination?
- Answer: There is a formal appeals process specified in Chapter 17, Section 17.25. It is also explained in this guidelines document.
- Question: Where do I send the application?
- Answer: Mail your completed application to:
TCEQ Cashiers Office MC-214
Tax Relief for Pollution Control Property Program
PO Box 13088
Austin TX 78711-3088
- Question: How many checks do I need to send if I am sending multiple applications?
- Answer: It is up to you. You may send one check for the total fee amount or a separate check for each application.
- Question: What happens if I fail to file for a use determination during the year that the property was installed?
- Answer: The property will be placed on the tax rolls and you will pay property taxes on it. You may file for a Use Determination in a subsequent year and have the property removed from the tax rolls. You will not receive a refund for the taxes which have been paid.
- Question: Will an inspector come and look at my facility?
- Answer: No, the filing of a use determination application will not trigger an inspection of your facility.
- Question: My project is not complete. What dollar value do I use?
- Answer: List the estimated capital cost of the project. The TCEQ does not use the capital cost in reaching a determination. You will need an actual dollar value when you file your exemption request with the appraisal district.
- Question: I filed last year and have since incurred additional costs or added additional equipment. Do I need to refile?
- Answer: Yes. A new application listing the additional equipment would need to be filed.
- Question: Does a positive use determination guarantee a tax exemption?
- Answer: No. This is a two-step process. The positive use determination obtained from the TCEQ is the first step. The second step requires that the applicant file a property tax exemption request with the appropriate appraisal district. By law, this request must be filed by May 1.
- Question: Where do I find the relevant rule, regulation, or law?

Answer: If the facility is permitted, list the state or federal rule that requires the permit. For example, the requirements for a state air permit are contained in 30 TAC 116.111. State requirements for a permit exemption are contained in 30 TAC 116.211. If you still cannot find an appropriate rule, please contact the Tax Relief for Pollution Control Property Program at (512) 239-6348 for help.

Question: How detailed should the property description be?

Answer: For a Tier I application, the description should be brief. Simply list the property and explain its environmental benefit. For Tier II and Tier III applications, the description must be more detailed. The description should include an explanation of how the property or equipment is used at the facility. It should list the anticipated environmental benefits which will occur from the use of the property or equipment. A sketch of the property or equipment or a flow diagram of the process is also helpful.

Question: How do I determine the partial percentage for a Tier III application?

Answer: You must use the cost analysis procedure to calculate the partial percentage. Appendix C contains examples to guide you through the procedure.

Question: What if my application is filed after the January 31 filing deadline?

Answer: Applications are processed in the order in which they are received, with applications postmarked by the January 31 filing deadline being given priority.

Appendix E

Chapter 17: Tax Relief for Property Used for Environmental Protection
Texas Constitution: Article VIII, Section 1.1
Texas Tax Code: Sections 11.31 and 26.045

CHAPTER 17: TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

§§17.1, 17.2, 17.4, 17.6, 17.10, 17.12, 17.20

§17.1. Scope and Purpose.

The purpose of this chapter is to establish the procedure and mechanism for an owner, including political subdivisions, of pollution control property, to apply to the commission for a determination of pollution control use.

§17.2. Definitions.

Unless specifically defined in the TCAA, the TSWDA, the Texas Water Code (TWC), 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 field of pollution control. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Installation** - The act of establishing, in a designated place, something that is put into place for use or service.

(2) **Pollution control property** - A facility, device, or method for control of air, water, or land pollution as defined by the Tax Code, §11.31(b).

(3) **Predetermined equipment list** - A list of property, either wholly or partially, that the executive director has determined is pollution control property.

(4) **Use determination** - A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes.

§17.4. Applicability.

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

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

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

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

(4) Property purchased from another owner is eligible for a positive use determination if it is acquired, constructed, or installed by the new owner after January 1, 1994, will be used as pollution control

property, and was not taxable by any taxing unit in which the property is located on or before that date.

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

(c) The executive director shall maintain a predetermined equipment list of property that is predetermined to qualify, either wholly or partially, as pollution control property.

§17.6. Property Ineligible for Exemption from Taxation.

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

(1) property is not entitled to an exemption from taxation solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;

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

(3) motor vehicles; and

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

§17.10. Application for Use Determination.

(a) In order to be granted a use determination a person or political subdivision shall submit to the executive director:

(1) a Texas Natural Resource Conservation Commission application form or a similar reproduction; and

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

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

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

(d) The application shall contain at least the following:

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

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

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property;

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

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, sufficient cost or other information, presented by the person or political subdivision seeking the use determination, that demonstrates to the satisfaction of the executive director the proportion of the installation that is pollution control property;

(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, or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

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

(2) Within 30 days of receipt of an application for use determination, the executive director shall mail written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is deficient, the notification shall specify the deficiencies, and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

(B) Additional technical information may be requested within 60 days of issuance of an administrative completeness letter. If the applicant does not provide the requested technical information within 30 days, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title.

(C) If an application is sent back to the applicant under subparagraph (A) or (B) of this paragraph, the applicant may refile the application and pay the appropriate fee as required by §17.20 of

this title.

(3) The executive director shall determine whether the property is used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

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

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

§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 \$50 fee shall be charged for applications for property that is on the predetermined equipment list, as long as the application seeks no variance from that use determination.

(2) Tier II Application - A \$1,000 fee shall be charged for applications for property that is used wholly for the control of air, water, and/or land pollution, but not designated as eligible for predetermination.

(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 shall be forfeited for applications for use determination which are sent back under §17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed complete.

(c) All fees shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) and delivered with the application to the TNRCC, at the address listed on the application form.

Texas Constitution Article VIII

Section 1-1. Tax Relief for Property Used for Environmental Protection

Section 1-1. (a) The legislature by general law may exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

(b) This section applies to real and personal property used as a facility, device, or method for the control of air, water, or land pollution that would otherwise be taxable for the first time on or after January 1, 1994.

(c) This section does not authorize the exemption from ad valorem taxation of real or personal property that was subject to a tax abatement agreement executed before January 1, 1994.

Texas Tax Code Sec. 11.31. Pollution Control Property.

(a) A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution. Property used for residential purposes, or for recreational, park, or scenic uses as defined by Section 23.81, is ineligible for an exemption under this section.

(b) In this section, "facility, device, or method for the control of air, water, or land pollution" means land that is acquired after January 1, 1994, or any structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, that is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution. This section does not apply to a motor vehicle.

(c) In applying for an exemption under this section, a person seeking the exemption shall present in a permit application or permit exemption request to the executive director of the Texas Natural Resource Conservation Commission information detailing:

- (1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;
- (2) the estimated cost of the pollution control facility, device, or method; and
- (3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is pollution control property.

If the installation includes property that is not used wholly for the control of air, water, or land pollution, the person seeking the exemption shall also present such financial or other data as the executive director requires by rule for the determination of the proportion of the installation that is pollution control property.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Natural Resource Conservation Commission shall 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. As soon as practicable, the executive director shall send notice by regular mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a determination under this subsection. If the executive director determines that the facility, device, or method is used wholly or partly to control pollution, the director shall issue a letter to the person stating that determination and proportion of the installation that is pollution control property.

(e) The Texas Natural Resource Conservation Commission may charge a person seeking a determination that property is pollution control property an additional fee not to exceed its administrative costs for processing

the information, making the determination, and issuing the letter required by this section. The commission may adopt rules to implement this section.

(f) A person seeking an exemption under this section shall provide to the chief appraiser a copy of the letter issued by the executive director of the Texas Natural Resource Conservation Commission under Subsection (d). The chief appraiser shall accept the copy of the letter from the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property.

(g) This section does not apply to a facility, device, or method for the control of air, water, or land pollution that was subject to a tax abatement agreement executed before January 1, 1994.

Texas Tax Code Sec.26.045. Rollback Relief for Pollution Control Requirements.

(a) The rollback tax rate for a political subdivision of this state is increased by the rate that, if applied to the total current value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under Section 26.012(16), Tax Code, to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the Texas Natural Resource Conservation Commission.

(b) In this section, "facility, device, or method for control of air, water, or land pollution" means any land, structure, building, installation, excavation, machinery, equipment, or device, and any attachment or addition to or reconstruction, replacement, or improvement of that property, the is used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States or this state for the prevention, monitoring, control, or reduction of air, water, or land pollution.

- (1) the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution;
- (2) the estimated cost of the pollution control facility, device, or method; and
- (3) the purpose of the installation of the facility, device, or method, and the proportion of the installation that is pollution control property.

(d) Following submission of the information required by Subsection (c), the executive director of the Texas Natural Resource Conservation Commission shall 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. If the executive director determines that the facility, device, or method is used wholly or partly to control pollution, the director shall issue a letter to the political subdivision stating that determination and the portion of the cost of the installation that is pollution control property.

(e) The Texas Natural Resource Conservation Commission may charge a political subdivision seeking a determination that property is pollution control property an additional fee not to exceed its administrative costs for processing the information, making the determination, and issuing the letter required by this section. The commission may adopt rules to implement this section.

(f) A political subdivision of the state seeking an adjustment in its rollback tax rate under this section shall

provide to its tax assessor a copy of the letter issued by the executive director of the Texas Natural Resource Conservation Commission under Subsection (d). The tax assessor shall accept the copy of the letter from the executive director as conclusive evidence that the facility, device, or method is used wholly or partly as pollution control property and shall adjust the rollback tax rate for the political subdivision as provided for by Subsection (a).