

Advice to TCEQ Regarding "At the Site" in Title 30, TAC, Chapter 17  
Submitted by TCEQ Tax Relief for Pollution Control Property Advisory Committee

On March 26, 2010, during a public meeting at the Texas Commission on Environmental Quality's (TCEQ) office in Austin, the TCEQ Tax Relief for Pollution Control Property Advisory Committee ("the Committee") approved the following language by an 11-0 vote of 13 members. One committee member did not vote because he was absent as previously indicated. According to Rule 58 of Robert's Rules of Order, the chairman is entitled to vote "where the vote would change the result." As the chairman's vote would not change the result, the chairman did not vote.

The Tax Relief for Pollution Control Advisory Committee advises the TCEQ to replace the "at the site" requirement with a requirement that the portion of the property under consideration is:

- (a) not used, constructed, acquired or installed solely to produce a good or service; and
- (b) being wholly or partly used, constructed, acquired or installed to meet or exceed an adopted environmental rule or regulation that requires the prevention, control, monitoring or reduction of air, water, or land pollution that results from the actions of the applicant in the production of a good or service and not solely from the use or characteristics of the good or service produced or provided.

Based on the above language, the committee advises the TCEQ to revise the following rules in Title 30, Texas Administrative Code, Chapter 17. Underlines indicate additions. ~~Strikethroughs~~ indicate deletions. Highlights are applied to certain deletions to allow an easier review of those deletions. This advice is based on committee discussions and decisions developed on a relatively short timeline to meet a TCEQ deadline of April 1. We recognize improvements to this advice may be attainable if additional time were available. The Committee or individual Committee members may revise this specific advice during the rulemaking process, but we do not anticipate a revision of the general advice and intent. We request TCEQ to review these proposed revisions and revise as necessary to align with all applicable law and rules. However, we advise that any revisions remain within the concept of the above motion by the Committee.

1. **§17.2 Definitions**

(8) Environmental Benefit – The prevention, monitoring, control, or reduction of air, water, or land pollution. A benefit that results from the actions of the applicant in the production of a good or service to meet or exceed an adopted environmental rule or regulation that requires the applicant to prevent, control, monitor or reduce air, water, or land pollution. For purposes of this chapter, environmental benefit does not include the prevention, monitoring, control, or reduction of air, water, or land pollution that results benefit from the use or characteristics of the applicant's good or service produced or provided. For the purpose of this chapter, the terms "environmental benefit" and "pollution control" benefit a shall be synonymous considered the same as environmental benefit.

***After inserting a new (8), renumber all definitions under the new (8).***

**2. 17.6(1) Property Ineligible for Exemption from Taxation**

Property is not entitled to an exemption from taxation if it is:

(a) the property is used, constructed, acquired or installed wholly solely to produce a good or service; or and

(b) the property is not wholly or partly used, constructed, acquired or installed to meet or exceed an adopted environmental law, rule or regulation adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution; or that requires the prevention, control, monitoring or reduction of air, water, or land pollution that results from the actions of the applicant in the production of a good or service and not solely

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

**3. 17.14 Equipment and Categories List**

Equipment and Categories List Part A

Part A of the Equipment and Categories List is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The use percentages on Part A of the ECL are established based on standard uses of the pieces of equipment involved. If the executive director determines that the equipment is not being used in a standard manner, the executive director may require that a Tier III analysis, using the Cost Analysis Procedure, be conducted by the applicant in order to calculate the appropriate use determination percentage. The executive director may also use the Cost Analysis Procedure, where it is appropriate, in order to more accurately reflect the environmental benefit at the site.

**4. Figure: 30 TAC §17:15(a) Decision Flow Chart**

Box 3: *Is an adopted environmental law, rule, or regulation being met or exceeded?*

Box 5: *Is there an environmental benefit at the site as defined in §17.2(8)?*

5. **Figure: 30 TAC §17:15(b) Part B Decision Flow Chart**

Box 2: *Is there an environmental benefit at the site as defined in §17.2(8)?*

Box 3: *Was this equipment installed in order to meet or exceed an adopted environmental law, rule, or regulation?*

Based on the above language, the committee advises the TCEQ to revise the following language in introduction to rules identified as Draft RG 461 Effective September 1, 2009.

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- Determine the environmental benefit that this property offers at the site where it is installed.
- 2. Is there an environmental benefit at the site as defined in §17.2(8)? If the answer is no, then the property is not eligible for a positive use determination.

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Part A of the ECL is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without brand names or trademarks; for each, the list gives a defined use percentage based on standard uses of the equipment involved. If the executive director determines that the equipment is not being used in a standard manner, he or she may require that the applicant conduct a Tier III analysis, using the cost-analysis procedure, to calculate the appropriate use percentage. The executive director may also use the cost-analysis procedure where it is appropriate to more accurately reflect the environmental benefit at the site.

In accordance with bylaws of the Committee, the above advice is respectfully submitted April 1, 2010 to the TCEQ on behalf of the Committee by:

Bob Adair, Chairman, Tax Relief for Pollution Control Property Advisory Committee,  
Texas Commission on Environmental Quality