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Sequence Number: 01-10-18
Rule ID(s): 6678
File Date: 1-11-18
Effective Date: 4-11-18

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

| | |
|---|---|
| **Agency/Board/Commission:** | Air Pollution Control Board |
| **Division:** | Air Pollution Control |
| **Contact Person:** | Lacey J. Hardin |
| **Address:** | William R. Snodgrass Tennessee Tower<br>312 Rosa L. Parks Avenue, 15th Floor<br>Nashville, TN |
| **Zip:** | 37243 |
| **Phone:** | (615) 532-0545 |
| **Email:** | Lacey.Hardin@tn.gov |

**Revision Type (check all that apply):**

X Amendment
___ New
___ Repeal

**Rule(s)** (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

| **Chapter Number** | **Chapter Title** |
|---|---|
| 1200-03-26 | Administrative Fees Schedule |
| **Rule Number** | **Rule Title** |
| 1200-03-26-.02 | Construction and Annual Emission Fees |

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Subparagraph (c) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(c) Annual emission fees collected from major sources and all sources subject to paragraph (11) of Rule 1200-03-09-.02 shall be used to pay for the direct and indirect costs of:

1. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

2. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry;

4. Implementing and enforcing the terms of any 40 C.F.R. Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

5. Emissions and ambient monitoring;

6. Modeling, analyses, or demonstrations;

7. Preparing inventories and tracking emissions; and

8. Providing direct and indirect support to sources under the Small Business Environmental Assistance Program.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Subparagraph (f) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(f) "Legally enforceable" means all limitations and conditions which are enforceable by the Technical Secretary, including those under this Division 1200-03, Division 0400-30, the State Implementation Plan, and any permit requirements established pursuant to Chapter 1200-03-09. For major sources and sources subject to paragraph (11) of Rule 1200-03-09-.02, legally enforceable also includes a limitation or condition that is enforceable by the United States Environmental Protection Agency or its administrator.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) ANNUAL EMISSION FEES FOR MAJOR SOURCES AND SOURCES SUBJECT TO PARAGRAPH 11 OF RULE 1200-03-09-.02.

(a) 1. A responsible official of a major source or a source subject to paragraph (11) of Rule 1200-03-09-.02 (hereinafter, "Paragraph 11 source") must pay an annual emission fee to

the Division. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual emission fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source or Paragraph 11 source begins to pay major source annual emission fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source.

2. Effective January 1, 2018, the following shall apply:

(i) Sources choosing to pay annual emission fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph:

(I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or

(II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.

(ii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part (g)3 of this paragraph.

(iii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated sixty-five percent (65%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual emission fee is due July 1 of each year, except as allowed by part (g)3 of this paragraph.

(b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:

(i) Either a calendar year or state fiscal year; and

(ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.

2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.

3. If the responsible official wishes to restructure allowable emissions for a major source or Paragraph 11 source for the purpose of lowering the annual emission fee, then an application must be filed at least ninety (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.

4. The responsible official of a newly constructed major source, Paragraph 11 source, or minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual emission fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up.

5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.

(c) Reserved.

(d) 1. Notwithstanding the emission fee rates established by part 2 of this subparagraph, a responsible official of any source subject to this paragraph (9) shall pay an annual base emission fee of $4,000. This base emission fee shall be paid in addition to the annual emission fee established by part 2 of this subparagraph, but shall be counted toward the applicable minimum fee set forth in subpart 2(ii) of this subparagraph.

2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.

(ii) Notwithstanding the annual emission fee rates established by subpart (iii) of this part, the annual emission fee required to be paid by a responsible official of any source subject to this paragraph (9) shall be no less than:

(I) $5,500 for sources (once in always in or OIAI sources) subject to this paragraph (9) solely due to the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, provided that the source has permitted allowable emissions below the major source thresholds found in part 14 of subparagraph (b) of paragraph (11) of Rule 1200-03-09-.02. If the source's permitted allowable emissions are not below those major source thresholds as of October 31 of the annual accounting period for which fees are due under this part, then item (II) of this subpart applies; and

(II) $7,500 for all other sources subject to this paragraph (9).

(iii) The emission fee rates applied to calculate the annual emission fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:

(I) Fee based on actual emissions: $53.50 per ton for non-EGU sources and $75.00 per ton for EGU sources; and

(II) Fee based on allowable emissions: $33.50 per ton for non-EGU sources and $47.00 per ton for EGU sources.

(iv) The emission fee rates enumerated in subpart (iii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.

3. The emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c)

of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.

(e) 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.

2. No annual emission fee under this paragraph (9) will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.

(f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source or Paragraph 11 source that is shutdown, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.

(g) Responsible officials required to pay the major source or Paragraph 11 source annual emission fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:

1. (i) If a responsible official paying the annual emission fee based on allowable emissions wishes to restructure the allowable emissions of a source subject to paragraph (11) of Rule 1200-03-09-.02 for the purpose of lowering the annual emission fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation procedure to be followed by the major source or Paragraph 11 source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.

(ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ninety (90) days prior to December 31 of the annual accounting period.

2. The responsible official shall file an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the date the fee is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source or Paragraph 11 source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.

(i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated

pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.

(ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the source's emissions to the satisfaction of the Technical Secretary.

3. (i) Responsible officials choosing to pay the annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ninety (90) days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than sixty-five percent (65%) of the annual emission fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.

(ii) A responsible official choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.

(h) Reserved.

(i) Reserved.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| **Dr. Ronne Adkins** Commissioner's Designee, Dept. of Environment and Conservation | X | | | | |
| **Dr. John Benitez** Licensed Physician with experience in health effects of air pollutants | | | | X | |
| **Karen Cisler** Environmental Interests | | | | X | |
| **Dr. Wayne T. Davis** Conservation Interests | X | | | | |
| **Stephen Gossett** Working for Industry with technical experience | X | | | | |
| **Dr. Shawn A. Hawkins** Working in field related to Agriculture or Conservation | X | | | | |
| **Richard Holland** Working for Industry with technical experience | X | | | | |
| **Caitlin Roberts Jennings** Small Generator of Air Pollution representing Automotive Interests | | | | X | |
| **Ken Moore** Working in Municipal Government | | | | X | |
| **Dr. Joshua Fu** Involved with Institution of Higher Learning on air pollution evaluation and control | | | | X | |
| **Vacant** Working in management in Private Manufacturing | | | | | |
| **Amy Spann, PE** Registered Professional Engineer | X | | | | |
| **Larry Waters** County Mayor | X | | | | |
| **Jimmy West** Commissioner's Designee, Dept. of Economic and Community Development | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/13/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/13/17

Rulemaking Hearing(s) Conducted on: (add more dates). 11/09/17

MALCOLM H. BUTLER STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Date: December 15, 2017

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: December 15, 2017

Notary Public Signature: Malcolm H. Butler

My commission expires on: September 7, 2020

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Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s):1200-03-26

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

1/10/2018
Date

**Department of State Use Only**

Filed with the Department of State on: 1-11-18

Effective on: 4-11-18

Tre Hargett
Secretary of State

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PUBLICATIONS

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

Comment: The Division received updated financial information, so the proposed fee rates (the $/ton of actual and allowable emissions) have been revised downward. The revised fee rates are included in this written comment.

Proposed rates based on an EGU to non-EGU ratio of 1.4 to 1, an Actual to Allowable ratio of 1.325 to 1, a minimum fee of $7500, and a base fee of $4000, which counts toward the minimum fee:

$36.00/ton for non-EGU allowable emissions (was $49)
$50.50/ton for EGU allowable emissions (was $69)
$48.00/ton for non-EGU actual emissions (was $65)
$67.00/ton for EGU actual emissions (was $91)

Alternative proposed rates based on EGU to non-EGU ratio of 1.4 to 1, Actual to Allowable ratio of 1.6 to 1, and a base fee of $4000, which counts toward the minimum fee:

$33.50/ton for non-EGU allowable emissions (was $45)
$47.00/ton for EGU allowable emissions (was $64)
$53.50/ton for non-EGU actual emissions (was $73)
$75.00/ton for EGU actual emissions (was $102)

Response: No response necessary.

Comment: Because of the new information received, the Division is extending the public comment period to the close of business November 16, 2017.

Response: No response necessary.

Comment: The Tennessee Chamber of Commerce and Industry (TCCI) supports the suggested change to the rule reinstating the base fee as it appears that removal of the base fee negatively impacted the fund balance and could be a driver for deficits in the future.

Response: The Air Pollution Control Board thanks TCCI for its support.

Comment: TCCI supports an EGU to non-EGU ratio of 1.4:1 and an actual to allowable ratio of 1.6:1 (corrected). The EGU to non-EGU ratio is more equitable for members who pay Title V fees.

Response: The alternative proposed rates (adopted in the rulemaking) reflect these ratios. No additional response necessary.

Comment: TCCI has no comment on the minimum fee other than that it should reflect the cost of servicing a basic Title V permit.

Response: The Division does not maintain records on the cost associated with issuing and enforcing each individual Title V permit. However, during the 2016 stakeholder process, the Division estimated the cost of several sample facilities using available data and a number of assumptions. Estimated costs varied widely based on a number of factors, such as number of sources, number and complexity of applicable MACT standards, frequency of permit amendments, and compliance history. The current minimum fee, which is not being revised, is within the range of the cost estimates for the lower emitting facilities.

Comment: TCCI believes that with proper management the supported ratios and base fee should prevent having to raise fees again in the near future.

Response: The Air Pollution Control Board cannot predict whether fees will need to be adjusted again in the near future.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Due to increased program expenses, the rule amendment proposes to increase emission fee rates in order to generate sufficient revenue for the Division to administer the major source "Title V" permitting program, as mandated by federal law. The rule amendment to paragraph (9) of Rule 1200-03-26-.02, Construction and Annual Emission Fees, relative to the amount of emission fees and emission fee rates is therefore federally mandated and exempt from the provisions of the Regulatory Flexibility Act as provided in Tenn. Code Ann. § 4-5-404. Generally businesses that are issued a Title V air pollution permit are large industrial businesses; however, it is believed that Title V permits are issued to some small businesses. The Division does not collect information on the number of employees during the permitting process. Small businesses that are subject to Title V fees will likely experience increased fees, although some of these small businesses may pay the minimum fee and so will not experience a fee increase.

**Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Air Pollution Control Board anticipates that these amended rules will not have a financial impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

**(A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Section 502(b)(3)(A) of the Federal Clean Air Act requires Tennessee, as an EPA approved program, to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title." Failure to meet this requirement would cause the state to be in violation of federal law and, among other consequences, force EPA to collect the fee from these sources using their presumptive fee rate. To collect this required annual fee, the Department proposes to amend its rules to:

1) Add an annual base fee of $4,000 which will count as partial payment of the minimum fee;
2) Increase the annual fee for allowable emissions from non-EGU sources by $1.00/ton and increase the annual fee for actual emissions from non-EGU sources by $10.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator); and
3) Increase the annual fee for allowable emissions from EGU sources by $8.00/ton and increase the annual fee for actual emissions from EGU sources by $25.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator).

The owner/operator must pay the greater of an unchanged minimum fee of $7,500 (or $5,500 for certain small sources) or the amount calculated using the $/ton fee plus the base fee. An EGU source is a source considered to be an electric utility generating unit.

**(B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter."

**(C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Owners and operators of sources subject to Title V fees in the state. These persons recognize the necessity of the rule.

**(D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

**(E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

It is anticipated that FY2018-2019 state revenues will increase by $985,021 (above current revenue projections without the rule change) as a result of this rulemaking. This estimate is based on current revenue collections and current knowledge of upcoming changes at affected entities that will impact fee collections. However, this program must be entirely funded by fees per federal law, and the projected revenues are approximately equal to anticipated program expenditures in FY2018-2019.

**(F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

James Johnston and Lacey Hardin
Division of Air Pollution Control

William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
Lacey.Hardin@tn.gov

**(G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

**(H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any additional relevant information.

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*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

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| **Agency/Board/Commission:** | Air Pollution Control Board |
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**Rule(s)** (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

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| 1200-03-26-.02 | Construction and Annual Emission Fees |

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Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Subparagraph (c) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(c) Annual emission fees collected from ~~sources named by the Board in the Division's Workload Analysis as being major sources pursuant to the provisions of Title V of the federal Clean Air Act and the federal regulations at 40 CFR Part 70 [FR Vol 57, No. 140, Tuesday, July 21, 1992 p32295-32312] and the definition of a major source in subparagraph 1200-03-26-.02(2)(g)~~ major sources and all sources subject to paragraph (11) of Rule 1200-03-09-.02 shall be used to pay for the direct and indirect costs of:

1. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

2. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry;

4. Implementing and enforcing the terms of any ~~part~~ 40 C.F.R. Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

5. Emissions and ambient monitoring;

6. Modeling, analyses, or demonstrations;

7. Preparing inventories and tracking emissions; and

8. Providing direct and indirect support to sources under the Small Business Environmental Assistance Program.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Subparagraph (f) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(f) "Legally enforceable" means all limitations and conditions which are enforceable by the Technical Secretary, including those under this Division 1200-03, Division 0400-30, the State Implementation Plan, and any permit requirements established pursuant to Chapter 1200-03-09. For ~~Major~~ major sources and sources subject to paragraph (11) of Rule 1200-03-09-.02, legally enforceable also includes a limitation or condition that is enforceable by the United States Environmental Protection Agency or its administrator.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) ANNUAL EMISSION FEES FOR MAJOR SOURCES AND SOURCES SUBJECT TO PARAGRAPH 11 OF RULE 1200-03-09-.02.

(a) 1. A responsible official of a major source or a source subject to paragraph (11) of Rule 1200-03-09-.02 (hereinafter, "Paragraph 11 source") must pay an annual emission fee to the Division. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual emission fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source or Paragraph 11 source begins to pay major source annual emission fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source.

2. Effective January 1, 2018, the following shall apply:

(i) Sources choosing to pay annual emission fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph:

(I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or

(II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.

(ii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay one hundred percent (100%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part (g)3 of this paragraph.

(iii) Sources choosing to pay annual emission fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated sixty-five percent (65%) of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual emission fee is due July 1 of each year, except as allowed by part (g)3 of this paragraph.

(b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:

(i) Either a calendar year or state fiscal year; and

(ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.

2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.

3. If the responsible official wishes to restructure ~~a major source's~~ allowable emissions for a major source or Paragraph 11 source for the purpose of lowering the ~~major source's~~ annual emission fee, then an application must be filed at least ninety (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.

4. The responsible official of a newly constructed major source, Paragraph 11 source, or ~~a~~ minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual emission fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up.

5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.

(c) Reserved.

(d) 1. Notwithstanding the emission fee rates established by part 2 of this subparagraph, ~~the annual emission fee required to be paid by~~ a responsible official ~~relative to a major source pursuant to subparagraph (a) of this paragraph shall be no less than $7,500~~ of any source subject to this paragraph (9) shall pay an annual base emission fee of $4,000. This base emission fee shall be paid in addition to the annual emission fee established by part 2 of this subparagraph, but shall be counted toward the applicable minimum fee set forth in subpart 2(ii) of this subparagraph.

2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.

(ii) Notwithstanding the annual emission fee rates established by subpart (iii) of this part, the annual emission fee required to be paid by a responsible official of any source subject to this paragraph (9) shall be no less than:

(I) $5,500 for sources (once in always in or OIAI sources) subject to this paragraph (9) solely due to the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, provided that the source has permitted allowable emissions below the major source thresholds found in part 14 of subparagraph (b) of paragraph (11) of Rule 1200-03-09-.02. If the source's permitted allowable emissions are not below those major source thresholds as of October 31 of the annual accounting period for which fees are due under this part, then item (II) of this subpart applies; and

(II) $7,500 for all other sources subject to this paragraph (9).

~~(ii)~~(iii) The emission fee rates applied to calculate the annual emission fee assessed pursuant to ~~paragraph~~ subparagraph (a) of this paragraph shall be as follows:

(I) Fee based on actual emissions: $~~43.00~~ 53.50 per ton for non-EGU sources and $~~49.50~~ 75.00 per ton for EGU sources; and

(II) Fee based on allowable emissions: $~~32.50~~ 33.50 per ton for non-EGU sources and $~~39.00~~ 47.00 per ton for EGU sources.

~~(iii)~~(iv) The emission fee rates enumerated in subpart (iii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.

3. The emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.

(e) 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.

2. No ~~major source~~ annual emission fee under this paragraph (9) will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.

(f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source or Paragraph 11 source that is shutdown, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.

(g) Responsible officials required to pay the major source or Paragraph 11 source annual emission fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:

1. (i) If a responsible official paying the annual emission fee based on allowable emissions wishes to restructure the allowable emissions of a source subject to paragraph (11) of Rule 1200-03-09-.02 for the purpose of lowering the ~~major source's~~ annual emission fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation procedure to be followed by the major source or Paragraph 11 source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.

(ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ninety (90) days prior to December 31 of the annual accounting period.

2. The responsible official shall file an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the date the fee

is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source or Paragraph 11 source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.

(i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.

(ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the ~~major~~ source's emissions to the satisfaction of the Technical Secretary. ~~The procedure for quantifying actual emission rates shall be specified in the major source operating permit.~~

3. (i) Responsible officials choosing to pay the ~~major source~~ annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ninety (90) days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than sixty-five percent (65%) of the annual emission fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.

(ii) A responsible official choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.

(h) Reserved.

(i) Reserved.

Authority: §§ 68-201-101 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|---|---|---|---|---|---|
| **Dr. Ronne Adkins** Commissioner's Designee, Dept. of Environment and Conservation | X | | | | |
| **Dr. John Benitez** Licensed Physician with experience in health effects of air pollutants | | | | X | |
| **Karen Cisler** Environmental Interests | | | | X | |
| **Dr. Wayne T. Davis** Conservation Interests | X | | | | |
| **Stephen Gossett** Working for Industry with technical experience | X | | | | |
| **Dr. Shawn A. Hawkins** Working in field related to Agriculture or Conservation | X | | | | |
| **Richard Holland** Working for Industry with technical experience | X | | | | |
| **Caitlin Roberts Jennings** Small Generator of Air Pollution representing Automotive Interests | | | | X | |
| **Ken Moore** Working in Municipal Government | | | | X | |
| **Dr. Joshua Fu** Involved with Institution of Higher Learning on air pollution evaluation and control | | | | X | |
| **Vacant** Working in management in Private Manufacturing | | | | | |
| **Amy Spann, PE** Registered Professional Engineer | X | | | | |
| **Larry Waters** County Mayor | X | | | | |
| **Jimmy West** Commissioner's Designee, Dept. of Economic and Community Development | X | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/13/2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *09/13/17*

Rulemaking Hearing(s) Conducted on: (add more dates). *11/09/17*

Date: December 15, 2017

Signature: _____

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: September 7, 2020

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Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-26

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

_____
Herbert H. Slatery III
Attorney General and Reporter

_____
Date

**Department of State Use Only**

Filed with the Department of State on: _____

Effective on: _____

_____
Tre Hargett
Secretary of State

**Public Hearing Comments**

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable

Comment: The Division received updated financial information, so the proposed fee rates (the $/ton of actual and allowable emissions) have been revised downward. The revised fee rates are included in this written comment.

Proposed rates based on an EGU to non-EGU ratio of 1.4 to 1, an Actual to Allowable ratio of 1.325 to 1, a minimum fee of $7500, and a base fee of $4000, which counts toward the minimum fee:

$36.00/ton for non-EGU allowable emissions (was $49)
$50.50/ton for EGU allowable emissions (was $69)
$48.00/ton for non-EGU actual emissions (was $65)
$67.00/ton for EGU actual emissions (was $91)

Alternative proposed rates based on EGU to non-EGU ratio of 1.4 to 1, Actual to Allowable ratio of 1.6 to 1, and a base fee of $4000, which counts toward the minimum fee:

$33.50/ton for non-EGU allowable emissions (was $45)
$47.00/ton for EGU allowable emissions (was $64)
$53.50/ton for non-EGU actual emissions (was $73)
$75.00/ton for EGU actual emissions (was $102)

Response: No response necessary.

Comment: Because of the new information received, the Division is extending the public comment period to the close of business November 16, 2017.

Response: No response necessary.

Comment: The Tennessee Chamber of Commerce and Industry (TCCI) supports the suggested change to the rule reinstating the base fee as it appears that removal of the base fee negatively impacted the fund balance and could be a driver for deficits in the future.

Response: The Air Pollution Control Board thanks TCCI for its support.

Comment: TCCI supports an EGU to non-EGU ratio of 1.4:1 and an actual to allowable ratio of 1.6:1 (corrected). The EGU to non-EGU ratio is more equitable for members who pay Title V fees.

Response: The alternative proposed rates (adopted in the rulemaking) reflect these ratios. No additional response necessary.

Comment: TCCI has no comment on the minimum fee other than that it should reflect the cost of servicing a basic Title V permit.

Response: The Division does not maintain records on the cost associated with issuing and enforcing each individual Title V permit. However, during the 2016 stakeholder process, the Division estimated the cost of several sample facilities using available data and a number of assumptions. Estimated costs varied widely based on a number of factors, such as number of sources, number and complexity of applicable MACT standards, frequency of permit amendments, and compliance history. The current minimum fee, which is not being revised, is within the range of the cost estimates for the lower emitting facilities.

Comment: TCCI believes that with proper management the supported ratios and base fee should prevent having to raise fees again in the near future.

Response: The Air Pollution Control Board cannot predict whether fees will need to be adjusted again in the near future.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

Due to increased program expenses, the rule amendment proposes to increase emission fee rates in order to generate sufficient revenue for the Division to administer the major source "Title V" permitting program, as mandated by federal law. The rule amendment to paragraph (9) of Rule 1200-03-26-.02, Construction and Annual Emission Fees, relative to the amount of emission fees and emission fee rates is therefore federally mandated and exempt from the provisions of the Regulatory Flexibility Act as provided in Tenn. Code Ann. § 4-5-404. Generally businesses that are issued a Title V air pollution permit are large industrial businesses; however, it is believed that Title V permits are issued to some small businesses. The Division does not collect information on the number of employees during the permitting process. Small businesses that are subject to Title V fees will likely experience increased fees, although some of these small businesses may pay the minimum fee and so will not experience a fee increase.

**Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Air Pollution Control Board anticipates that these amended rules will not have a financial impact on local governments.

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

**(A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Section 502(b)(3)(A) of the Federal Clean Air Act requires Tennessee, as an EPA approved program, to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title." Failure to meet this requirement would cause the state to be in violation of federal law and, among other consequences, force EPA to collect the fee from these sources using their presumptive fee rate. To collect this required annual fee, the Department proposes to amend its rules to:

1) Add an annual base fee of $4,000 which will count as partial payment of the minimum fee;
2) Increase the annual fee for allowable emissions from non-EGU sources by $1.00/ton and increase the annual fee for actual emissions from non-EGU sources by $10.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator); and
3) Increase the annual fee for allowable emissions from EGU sources by $8.00/ton and increase the annual fee for actual emissions from EGU sources by $25.50/ton (the choice to pay fees on an actual or allowable emissions basis is made by the owner/operator).

The owner/operator must pay the greater of an unchanged minimum fee of $7,500 (or $5,500 for certain small sources) or the amount calculated using the $/ton fee plus the base fee. An EGU source is a source considered to be an electric utility generating unit.

**(B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter."

**(C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Owners and operators of sources subject to Title V fees in the state. These persons recognize the necessity of the rule.

**(D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

**(E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

It is anticipated that FY2018-2019 state revenues will increase by $985,021 (above current revenue projections without the rule change) as a result of this rulemaking. This estimate is based on current revenue collections and current knowledge of upcoming changes at affected entities that will impact fee collections. However, this program must be entirely funded by fees per federal law, and the projected revenues are approximately equal to anticipated program expenditures in FY2018-2019.

**(F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

James Johnston and Lacey Hardin
Division of Air Pollution Control

William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
Lacey.Hardin@tn.gov

**(G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

**(H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

**(I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any additional relevant information.