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Sequence Number: 09-14-17
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File Date: 9/13/17

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

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

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Conference Room D, 3rd Floor		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	11/09/17		
Hearing Time:	9:30 AM	_X_ CST/CDT ___ EST/EDT	

Additional Hearing Information:

Section 502(b)(3)(A) of the Clean Air Act requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA") to administer a Title V major source operating permit program ("Title V 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[.]" To comply with this requirement, the proposed rule amendments establish a base fee (in addition to the minimum fee, but which will count toward the minimum fee) applicable to all Title V sources, revise the magnitude of the dollar/ton ($/ton) fees for EGU and non-EGU sources, establish a lower minimum fee for a specific category of Title V sources (once in always in, or OIAI, sources, as described in a 1995 EPA memorandum referenced in the proposed amendments), clarify that all sources subject to paragraph (11) of rule 1200-03-09-.02 are subject to the same annual emission fees as major sources, and make other minor clarifications. While the Division is proposing the fee structure that it has determined to be adequate for funding needs and the most responsive to comments received from stakeholders during the development process, the Division is also soliciting certain comments beyond the

proposed amendments. Specifically, the Division seeks comments on the following:

- Alternative $/ton rates of:
  - $45.00 for non-EGU allowable emissions (compared to $49.00 as proposed)
  - $64.00 for EGU allowable emissions (compared to $69.00 as proposed)
  - $73.00 for non-EGU actual emissions (compared to $65.00 as proposed); and
  - $102.00 EGU actual emissions (compared to $91.00 as proposed)

AND

- The appropriate alternative minimum fee for OIAI sources as low as $4,000/year and as high as the proposed amount of $5,500/year.

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board for the promulgation of amendments to the Tennessee Air Pollution Control Regulations under the authority of Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be distributed to the members of the Tennessee Air Pollution Control Board for their review in regard to the proposed rule amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-201 et seq. and will take place in Conference Room D of the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, Tennessee 37243.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on November 9, 2017, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten days prior to November 9, 2017 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 22nd Floor, Nashville, Tennessee 37243, (615) 532-0200. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of these rule changes, you may contact Lacey J. Hardin at (615) 532-0545. For information about reviewing these documents, please contact Malcolm Butler, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243, telephone (615) 532-0600.

Revisions considered at this hearing may be adopted by the Tennessee Air Pollution Control Board under T.C.A. § 68-201-105, the Board general authority to promulgate rules.

Materials concerning the proposed actions will be available at www.tn.gov/environment/topic/ppo-air and also for public inspection during normal working hours starting on October 2, 2017, at the office of the Technical Secretary and the public depositories listed below:

Air Pollution Control Division
15th Floor, WR SnodgrassTN Twr
312 Rosa L. Parks Avenue
Nashville, TN 37243

Pollution Control Division
Metropolitan Health Dept.
2500 Charlotte Avenue
Nashville, TN 37209

Air Pollution Control Division
Cookeville EFO
1221 South Willow Avenue
Cookeville, TN 38506

Air Pollution Control Division
Knoxville EFO
3711 Middlebrook Pk., Suite 220
Knoxville, TN 37921

Air Pollution Control Division
Johnson City EFO
2305 Silverdale Road
Johnson City, TN 37601-2162

Air Pollution Control Division
Jackson EFO
1625 Hollywood Drive
Jackson, TN 38305

Air Pollution Control Division
Columbia EFO
1421 Hampshire Pike
Columbia, TN 38401

Knox County Department of
Air Quality Management
140 Dameron Avenue, Suite 242
Knoxville, TN 37917

Air Pollution Control Program
Memphis /Shelby County Health Dept.
814 Jefferson Avenue
Memphis, TN 38105

Air Pollution Control Division
Chattanooga EFO

Air Pollution Control Division
Nashville EFO

Kingsport Public Library
400 Broad Street

1301 Riverfront Parkway, Suite 206 Chattanooga, TN 37402	711 R. S. Gass Boulevard Nashville, TN 37243	Kingsport, TN 37660
Chattanooga-Hamilton County Air Pollution Control Bureau 6125 Preservation Drive Chattanooga, TN 37416	U.S. EPA, Region IV, c/o Mr. Scott Davis, Chief APTMD - 12th Floor, Atlanta Federal Center 61 Forsyth Street S.W. Atlanta, GA 30303	

All persons interested in the air quality of the state of Tennessee are urged to attend and will be afforded the opportunity to present testimony to the hearing officer regarding the promulgation of amendments to the Tennessee Air Pollution Control Regulations. Any person desiring to present lengthy comments should be prepared at the hearing to offer a written statement to be incorporated into the record. Written statements not presented at the hearings will only be considered part of the records if received by 4:30 p.m. CDT on November 9, 2017, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

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

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Chapter 1200-03-26
Administrative Fee 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 CFR 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 ~~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, 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 (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: $65.00 per ton for non-EGU sources and $91.00 per ton for EGU sources; and

(II) Fee based on allowable emissions: $49.00 per ton for non-EGU sources and $69.00 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.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: September 13, 2017

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Director, Tennessee Division of Air Pollution Control

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

Subscribed and sworn to before me on: September 13, 2017

Notary Public Signature: Malcolm H. Butler

My commission expires on: September 7, 2020

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Filed with the Department of State on: 9/13/17

Tre Hargett
Secretary of State

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