

Department of State
Division of Publications
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 Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 01-04-13
 Rule ID(s): 5358
 File Date: 01/08/13
 Effective Date: 04/08/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9 th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0554
Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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. 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>)

Amendments

Chapter 1200-03-26 Administrative Fees Schedule

Subparagraph (d) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and replacing it with the following so that, as amended, subparagraph (d) shall read as follows:

- (d) The rate at which major source actual-based annual emission fees are assessed for non-EGU sources shall be \$40.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for non-EGU sources shall be \$29.50 per ton. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$7,500. The rate at which major source actual-based annual emission fees are assessed for EGU sources shall be \$56.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for EGU sources shall be \$45.50 per ton. These annual emission fee rates remain in effect until the effective date of an amendment to this subparagraph. Any revision to these rates must result in the collection of sufficient fees to fund the activities identified in subparagraph (1)(c) of this rule. These fee rates shall be supported by the Division's annual workload analysis that is approved by the Board. For purposes of this subparagraph, 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.

Authority: T.C.A. §§ 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:

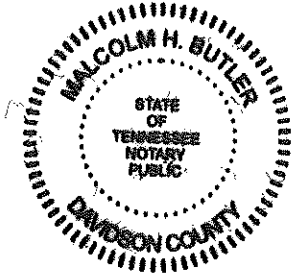
Board Member	Aye	No	Abstain	Absent	Signature (if required)
J. Ronald Bailey				✓	
Elaine Boyd	✓				<i>Elaine Boyd</i>
Brian Christman				✓	
Karen Cisler	✓				<i>Karen Cisler</i>
Wayne T. Davis	✓				<i>Wayne T. Davis</i>
Stephen Gossett	✓				<i>Stephen Gossett</i>
Tommy Green				✓	
Shawn A. Hawkins	✓				<i>Shawn A. Hawkins</i>
Helen Hennon	✓				<i>Helen A. Hennon</i>
Richard Holland	✓				<i>Richard Holland</i>
John Roberts	✓				<i>John A. Roberts</i>
Larry Waters	✓				<i>Larry Waters</i>
Jimmy West	✓				<i>James R. West</i>
Alicia Wilson	✓				<i>Alicia Wilson</i>

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 12/12/2012, 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: 10/18/12

Rulemaking Hearing(s) Conducted on: (add more dates). 12/10/12



Date: Dec. 13, 2012

Signature: [Handwritten Signature]

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: December 13, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

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.

[Handwritten Signature]
Robert F. Cooper, Jr.
Attorney General and Reporter
1-8-13
Date

Department of State Use Only

Filed with the Department of State on: 01/08/13

Effective on: 04/08/13

[Handwritten Signature]
Tre Hargett
Secretary of State

RECEIVED
2012 JAN -8 AM 11:27
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.

Comments received from Wayne K. Scharber, Executive Vice-President for Environmental Affairs, Tennessee Chamber of Commerce and Industry.

Comment: The Chamber supports a fee level that is predicated on a tonnage fee and a base charge for minimum fees of no greater than necessary to fund the projected/authorized expenditures for Fiscal Year 2012-2013.

Response: The Division appreciates the Chamber's support and cooperation in the fee process. The projected fees are estimated to provide only sufficient funds to operate the Title V permit program for fiscal year 2012-2013.

Comment: Likewise, in the funding needs analysis, we remain concerned about the growth of administrative overhead costs and the allocation charged to the Title V program as it continues to increase and we do desire that the administrative overhead areas should be reviewed thoroughly and not be increasing simply because the program expenditures may be increasing.

Response: The Department has met with members of the Chamber to discuss this concern and will continue to evaluate the comments received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rulemaking amendment to subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is federally mandated and, hence, exempt from the provisions of the Regulatory Flexibility Act of 2007, Acts 2007, § 6 of Public Chapter 464. The rule subject to this amendment is part of the requirements of § 502(b)(3)(A) of the Federal Clean Air Act which 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 title".

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 Department anticipates that this amended rule 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;

This rule revision increases the annual emission fees for major (Title V) sources of air pollution. The increase is \$1 per annual ton of emissions for sources that are not electric utility generating units (EGUs) and \$17 per annual ton of emissions for EGU sources.

- (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 title".

- (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 major sources in the state. These sources 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;

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

- (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 estimated that this revision will result in increased state revenues of approximately \$1.2 million. The increase is necessary because insufficient funds were collected to fund the program for 2011-2012, and the fund balance was reduced by \$1.1 million. Expenditures are predicted to increase by approximately \$100,000 for the 2012-2013 fiscal year.

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

Lacey J. Hardin
Division of Air Pollution Control
9th Floor, L & C Annex
401 Church Street
Nashville, Tennessee 37243-1531

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

Alan M. Leiserson
Legal Services Director
Tennessee Department of Environment and Conservation

- (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
SS-7039 (October 2011)

Tennessee Department of Environment and Conservation
401 Church Street
20th Floor, L & C Tower
Nashville, Tennessee 37243-1531
Phone: (615) 532-0131
Alan.Leiserson@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.

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Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
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Amendments

Chapter 1200-03-26
Administrative Fees Schedule

Subparagraph (d) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and replacing it with the following so that, as amended, subparagraph (d) shall read as follows:

- (d) The rate at which major source actual-based annual emission fees are assessed for non-EGU sources shall be \$39.00 \$40.00 per ton for the annual accounting period July 1, 2011 through June 30, 2012. The and the rate at which major source allowable-based annual emission fees are assessed for non-EGU sources shall be \$28.50 \$29.50 per ton for the annual accounting period July 1, 2012 through June 30, 2012. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$7,500 for the annual accounting period July 1, 2011 through June 30, 2012. An annual The rate at which major source actual-based annual emission fees are assessed for EGU sources shall be \$56.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for EGU sources shall be \$45.50 per ton. These annual emission fee rates remain in effect until the effective date of an amendment to this subparagraph. Any revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph (1)(c) of this rule. These annual fee rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board. For purposes of this subparagraph, 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.

Authority: T.C.A. §§ 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)
J. Ronald Bailey					
Elaine Boyd					
Brian Christman					
Karen Cisler					
Wayne T. Davis					
Stephen Gossett					
Tommy Green					
Shawn A. Hawkins					
Helen Hennon					
Richard Holland					
John Roberts					
Larry Waters					
Jimmy West					
Alicia Wilson					

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Rulemaking Hearing(s) Conducted on: (add more dates). 12/10/12

Date: _____

Signature: _____

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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- (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 title".

- (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 major sources in the state. These sources 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;

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

- (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;

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