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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: Tennessee Air Pollution Control Board
Division: Air Pollution Control
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Revision Type (check all that apply):

- 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 Please make sure that ALL new rule and repealed rule numbers are listed in the chart below.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 Fee Schedule
Rule Number	Rule Title
1200-03-26-.01	Tennessee Visible Emission Evaluation Course Fees
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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-03-26
Administrative Fee Schedule

Amendments

Paragraph (1) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (1) The effective date of the fee schedule in subparagraph (2)(b) of this rule shall be July 1, 2020. The fee schedule in subparagraph (2)(a) of this rule continues to apply until June 30, 2020.

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

Paragraph (2) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (2) Fee schedules.
 - (a) Until June 30, 2020, the following course fees apply:
Initial Certification Tennessee Applicant \$125.00
Recertification Tennessee Applicant \$95.00
Initial Certification Out-of-State Applicant \$175.00
Recertification Out-of-State Applicant \$125.00
 - (b) Beginning July 1, 2020, the following course fees apply:
Initial Certification \$180.00
Recertification \$150.00

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

Subparagraph (a) 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:

- (a) It is the purpose of this rule to establish fees for sources subject to permitting pursuant to Division 1200-03 sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.

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

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the language "subjected" and substituting instead the language "subject" so that as amended the subpart shall read:

- (iii) Any pollutant that is subject to any standard promulgated under section 111 of the Federal Act; provided, however, that any such pollutant shall not be a regulated pollutant solely because the pollutant is a constituent of greenhouse gases;

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

Part 12 of subparagraph (i) 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:

12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a source subject to paragraph (11) of Rule 1200-03-09-.02.

CAS No.	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane

84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)

108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes

108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds ¹
0	Glycol ethers ^{2 6}
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds ³
0	Fine mineral fibers
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

¹ X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

² Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n- OR'.

Where:

n = 1, 2, or 3;

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA).

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C

⁵ A type of atom which spontaneously undergoes radioactive decay.

⁶ The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. § 7412(b)(1).

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

Subparagraph (b) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) All annual fees must be paid in full by the due dates specified in subparagraph (6)(c) and paragraph (9) of this rule.

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

Subparagraph (i) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (i) Where more than one allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.

1. Major sources subject to the provisions of paragraph (9) of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.

- (i) Sources that are subject to federally promulgated hazardous air pollutant

standards that can be imposed under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38 will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category.

- (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part (2)(i)12 of this rule that do not have an allowable emission standard under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates.
- (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000 ton cap provisions of subparagraph (2)(i) of this rule.
- (iv) Major sources that wish to pay annual fees for PM10 on an allowable emission basis may do so if they have a specific PM10 allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual fees on an actual PM10 emission basis, it may do so if the PM10 actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM10 emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM10 emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000 ton cap provisions of subparagraph (2)(i) of this rule shall also apply to PM10 emissions.

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

Subparagraph (c) of paragraph (4) 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) The Division shall denote the date that all applications for construction permits are received in its Central office. Applications received after 4:30 p.m. local time will be considered as being received the next working day.

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

Subparagraph (d) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (d) Upon receipt of a construction permit application, the Division must examine it to ensure that it is complete within 30 days. If the application is found to be incomplete, parts 1 through 4 of this subparagraph apply. The 30 days completeness evaluation time period is extended to 90 days for minor and conditional major sources of the nonattainment pollutant or its precursor pollutants as identified in part (4)(b)47 of Rule 1200-03-09-.01 located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency.
 - 1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.
 - 2. After receiving notice from the Division that the application was incomplete, the applicant shall have 180 calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with this chapter and Chapter 1200-03-09. If the deficiencies are not corrected within the 180-day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.

3. It is the express intent of the Board that the 180-day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by Chapter 1200-03-09.
4. Upon receipt of a corrected application revised pursuant to part 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the applicant has the remainder of the initial 180-day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within 30 days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.

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

Subparagraph (a) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) On and after October 24, 1991, a responsible official applying for the construction permit [i.e. construction as defined in subparagraph (2)(j) of this rule] required by Rule 1200-03-09-.01 must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g), Schedule A of this rule unless exempted from construction permit fees pursuant to subparagraph (9)(a) of this rule. The fee determined from subparagraph (5)(g), Schedule A of this rule shall be calculated based on increases in emissions of regulated pollutants.

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

Subparagraph (c) of paragraph (5) 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) A responsible official applying to make a change to a source or permit such that a new construction permit is required must pay a permit filing/processing fee equal to one-half the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

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

Subparagraph (f) of paragraph (5) 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) In the event that the Division fails to process the construction permit application within the time lines established in subparagraph (e) of this paragraph, the Division will refund the permit filing/processing fee to the applicant in full. The refund will be made within 30 days following the date that the deadline for a decision on that particular permit application was established. For refunds in excess of \$1,000, additional time to allow review and approval of the refund by the Office of the Attorney General shall be allowed.

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

Paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (6) Annual Fees for Minor and Conditional Major Sources.

- (a) A responsible official of a minor source and/or a conditional major source must pay an annual fee to the State of Tennessee. The annual fee shall be based on the source's allowable emissions as defined in subparagraph (2)(d) of this rule.
- (b) 1. The minor source and conditional major source annual emission fee must be calculated using the sum of the allowable emissions of all regulated pollutants at a source. 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 requirement must be specified in the permit, and must include the method(s) used to determine compliance with the limitation(s). The documentation procedure to be followed by the source owner or operator must also be included to ensure that the limit is not exceeded. Exceedances of the mutual agreement limit will be considered by the Board as circumvention of the required annual emissions fee and a matter in which enforcement action must be pursued.
2. To reduce the amount of the fee as provided in part 1 of this subparagraph, the responsible official must submit a letter to the Technical Secretary requesting reduced allowable emissions and providing the method or methods that will be used to ensure compliance with the requested limit or limits. This request must be received at least 90 days prior to the applicable due date of the annual fee. Any request received after that deadline may only apply to the fee for the following year and not for the year being invoiced.
- (c) All minor and conditional major source annual fees are due and payable to the State of Tennessee in full according to Schedule I of this subparagraph. The county in which a source is located determines when the source's annual fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the State of Tennessee in full by the first day of the month that the fee is due. The Technical Secretary may extend this due date an additional 90 days where the source owner or operator's fee notice was mailed by the Department to an incorrect mailing address.

SCHEDULE I

Month the Annual Fee is Due (Accounting Period) Counties in the Monthly Grouping

January	Anderson, Bedford, Benton, Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison

August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and Shelby
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

- (d) A newly constructed minor or conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual fee for the remainder of the annual accounting period. A minor or conditional major source ceasing operations during the annual accounting period will not receive a refund for annual fees paid.
- (e) The appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.
- (f) Deleted.
- (g) Deleted.
- (h) Deleted.
- (i) The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (j) Deleted.
- (k) Conditional major sources must pay an annual permit review fee in accordance with the table below in addition to the annual emission fees specified in subparagraph (e) of this paragraph. This fee is due and payable to the State of Tennessee according to Schedule I found in subparagraph (c) of this paragraph. When determining the permit review fee, the allowable tons per year shall be calculated in accordance with subparagraph (b) of this paragraph except that carbon monoxide emissions shall be included.

Allowable Tons Per Year	Review Fee
0-50	\$250
50.1-100 TPY	\$500
100.1-250 TPY	\$1,000
250.1 and up	\$2,000

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

Paragraph (7) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (7) Payment of Fees.
 - (a) All fees regulated by this chapter shall be payable to the State of Tennessee.

- (b) Fees not paid, late fees, and returned checks are subject to the provisions of paragraph (8) of this rule.
- (c) Returned checks for any reason (i.e. insufficient funds, account closed, etc.) are considered failure to pay until such time collected funds are forwarded to the State of Tennessee. Returned checks are subjected to additional handling charges.
- (d) Annual fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" or "Facility ID" specified in the source's permit(s) and the invoice number, if available, or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.
- (e) When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within one year from the date on which the State of Tennessee received payment of the fee.
- (f) Online payment can be made to the State of Tennessee for annual fees by following the established State of Tennessee online payment process. Online payments require the inclusion of the customer identification number and the invoice number, if available, to ensure proper crediting of payment.

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

The title for paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it and replacing with a title that reads as follows:

(8) Late Fees – Failure to Pay

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

Subparagraph (b) of paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) If any part of any fee imposed under this rule is not paid within 15 days of the due date, a late payment penalty of 5% of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of 5% of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within 15 days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly. The Division will consult with the State of Tennessee's Department of Finance and Administration to determine the appropriate rate of interest.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 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 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 fee to the State of Tennessee. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual 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 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 as long as the source remains a major source or Paragraph 11 source.

2. Effective January 1, 2018, the following shall apply:
 - (i) Sources choosing to pay annual fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay 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 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 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 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 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 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 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 fee, then an application must be filed at least 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 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 fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual 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 fee based on the state fiscal year and allowable emissions.

- (c) Reserved.
- (d) 1. Notwithstanding the 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 fee of \$5,000 for fees due on and after January 1, 2021. This base fee shall be paid in addition to the annual emission fee established by subpart 2(iii) 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 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 (11)(b)14 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) \$9,000 for all other sources subject to this paragraph (9) for fees due on and after January 1, 2021.
- (iii) The emission fee rates applied to calculate the annual fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:
 - (I) Fee based on actual emissions: \$64.20 per ton for non-EGU sources and \$90.00 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: \$40.20 per ton for non-EGU sources and \$57.00 per ton for EGU sources.
- (iv) The fees and fee rates enumerated in this subparagraph (d) must be supported by the Division's annual workload analysis that is approved by the Board.
- 3. The fees and fee rates specified in this subparagraph (d) shall remain in effect until the effective date of an amendment to this subparagraph (d). Any revision to the fees and 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 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 shut down, 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 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. However, in no case shall the annual fee be less than the minimum annual fee established in subpart (d)2(ii) of this paragraph. 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 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 fee based on allowable emissions wishes to restructure the allowable emissions of a major source or Paragraph 11 source for the purpose of lowering the annual 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 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 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 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 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 fee owed pursuant to subparagraph (a) of this paragraph.
 - (i) An annual 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 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 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 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 fee payment of no less than 65% of the annual fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual 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 fee.
- (ii) A responsible official choosing to pay the annual 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: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

The title of Rule 1200-03-26-.02 is amended by changing the title from "Construction and Annual Emission Fees" to "Construction and Annual Fees."

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

The table of contents to Chapter 1200-03-26 Administrative Fee Schedule is amended by changing the title of Rule 1200-03-26-.02 from "Construction and Annual Emission Fees" to "Construction and Annual Fees," so that as amended the table of contents shall read:

1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees
 1200-03-26-.02 Construction and Annual Fees
 1200-03-26-.03 Repealed

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 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				
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	
Mike Haverstick Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer	X				
Greer Tidwell, Jr. Conservation Interests	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 Air Pollution Control Board on 12/11/2019, 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: (10/04/19)

Rulemaking Hearing(s) Conducted on: (add more dates). (11/25/19)

Date: December 12, 2019

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: 12/12/19

Notary Public Signature: Kimberly Bernal Tidings

My commission expires on: 9-6-22

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

Herbert H. Slatery III
Attorney General and Reporter

1/14/2020

Date

Department of State Use Only

Filed with the Department of State on: 1/16/20

Effective on: 4/14/20

Tre Hargett

Tre Hargett
Secretary of State

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Public Hearing Comments

Comment: A commenter requested information regarding four specific items pertaining to Visible Emissions Evaluation Course ("Smoke School") Fees.

1. How the proposed increased costs compare to offerings in the private sector.
2. Why the Board has chosen to move away from a dual fee structure (in which out-of-state applicants pay a higher fee than Tennessee applicants) to a uniform fee structure.
3. Why the Division, unlike previous years, has decided not to provide training in East Tennessee in 2020.
4. The number of individuals the Division has trained, certified or recertified in the past years and where the people are from in the state of Tennessee.

Response:

1. The proposed rates for Smoke School will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest provider (Aeromet).
2. Due to the increase of private company offerings of Smoke Schools in surrounding states, the Division does not receive the amount of out-of-state participants that it has in the past. Tennessee is the only state that the Division is aware of that still uses the dual fee structure. Eliminating the dual fee structure will reduce confusion and tracking costs and align Tennessee's structure with other providers in this area.
3. The Division does have schools at Roane State Community College in East Tennessee currently scheduled through the 2021 season and has no plans to discontinue these schools in the future.
4. The Division certifies approximately 150 people, which includes approximately 30 Division staff, every six months at six Smoke Schools per year. Individuals attend from every part of the state at each school.

Comment: A commenter noted that the language of subparagraph 1200-03-26-.02(1)(a), which contains the description of the purpose of 1200-03-26-.02, is changed from "to establish construction fees, annual emission fees, and permit review fees" to simply "to establish fees". The commenter claimed that this change grants the Division the broad authority to create new fees beyond these categories.

Response: The existing minimum and base fees are not technically emission fees, although the minimum fees are related to emissions. This change merely aligns the wording of the rule to the existing contents and streamlines the wording. The Board, not the Division, has the sole authority to promulgate rules, and any changes must always go through public participation procedures before being taken to the Board for approval or denial.

Comment: Throughout the proposal, the term "annual emissions fee" is replaced with the term "annual fee". A commenter asserted that changing this term in a wholesale manner is too broad and that moving away from this terminology will cause confusion. The commenter stated that "until such time that the department proposes a fee collection method that does not rely on the amount of allowable or actual emissions, the term 'annual emissions fee' should be retained."

Response: The existing Title V minimum and base fees are not technically emission fees. This change merely aligns the wording of the rule to agree with the existing structure to increase transparency and cause less confusion.

Comment: A commenter requested an explanation of the variation in the fee payment schedule for Cotton Gin Operations. In particular, the commenter inquired as to why they pay at the end of the year while other entities have a rotating schedule based on county location.

Response: Cotton gins are seasonal operations and many are not staffed year-round. Because of this, the Division found it difficult to ensure delivery of fee invoices, and many companies failed to pay fees in a timely manner, resulting in the assessment of penalties and interest pursuant to 1200-03-26-

.02(8) as provided below. The State of Tennessee's Department of Finance and Administration reports the current rate of interest is 10% annually.

If any part of any fee imposed under this Rule 1200-03-26-.02 not paid within fifteen (15) days of the due date, a late payment penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly.

The change being proposed improves customer service to these facilities that may not be in operation during the month in which their invoice would arrive.

- Comment: A commenter proposed that the Division survey those facilities that pay only the minimum fee to determine if they would qualify as a "small business stationary source" under Section 507(c) of the Clean Air Act (using only subparts (A) and (B) of that definition). The commenter suggested that if there are a meaningful number of facilities that are truly small businesses then it would be reasonable to retain their minimum fee level at \$7,500 for those sources. Another commenter also proposed that a special rate could be established for a small business if small business could be defined.
- Response: The Division currently does not require facilities to identify themselves as small businesses and does not have the means to identify small businesses on its own. Therefore, the Board does not currently have the information necessary to implement the proposals or to investigate any potential revenue impact that would occur from such a provision. This proposal was not brought up or developed during any of the previous Title V fee stakeholder or listening sessions; therefore, the Board will evaluate this proposal in future rulemakings.
- Comment: A commenter supported retaining the current alternative minimum fee of \$5500 for "once in always in sources".
- Response: The Board appreciates the commenter's support for retaining the current alternative minimum fee of \$5500 for "once in always in sources". However, this alternative minimum fee may soon become obsolete as the result of US EPA's January 25, 2018, guidance memorandum withdrawing the "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act and EPA's July 26, 2019, proposed rule "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act".
- Comment: A number of commenters supported increasing the base fee from \$4000 to \$5000. Two of these commenters also supported increasing the minimum fee from the current rate of \$7500 to \$9000.
- Response: The Board appreciates the support of the proposed base fee and minimum fee.
- Comment: A commenter stated that it would be appropriate for the Board to provide a justification for the \$9000 minimum fee.
- Response: During the 2016 stakeholder process, TDEC's Policy Office conducted an analysis of the estimated cost of implementing the Title V program for several facilities of different levels of emissions. The average annual cost of implementing the Title V program for the two lowest emitting sources ranged from \$5,189.37 to \$29,065.87 depending largely on how certain costs (e.g., administrative, Small Business Environmental Assistance Program, regulatory and guidance development, ambient monitoring, and training) were allocated among Title V facilities. The proposed \$9000 minimum fee falls within that range.
- Comment: A commenter objected to the proposed budget for multiple years (2020-2022) without annual evaluation after a fee increase. In addition, a number of commenters requested that the proposed rule should be modified to reflect adjustments to the Title V emission fees for FY2021 only. In support of this request, a commenter stated that annual discussions of the of the Division's

budgetary needs, including production of the annual Title V Workload Analysis, are an effective and appropriate part of the Board's oversight of the Division. This commenter noted that the significant reduction in emissions in recent years has proved challenging to the Title V fee revision process and that the commenter does not foresee this trend of emission reductions reversing course, requiring continued examination of the Division's expenses to keep costs growing beyond reasonable funding levels. This comment was supported by another commenter. A third commenter noted that the Department recently presented a budget request for fiscal year 2020-2021 before Governor Lee and the Title V fee rule, therefore, should only establish a fee for one year. Another commenter asserted that the current board should establish a fee rate for fiscal year 2020-2021 and future boards should set the rates for future years.

Response: Based on these comments, the Board will remove the proposed fee increase for fiscal year 2021-2022 from the rule. The Board agrees that the significant reduction in emissions in recent years and the challenge that this reduction has created regarding Title V fees will require continued examination of the revenue and expenses necessary to maintain a properly funded Title V program. However, the Board understands that the Division has no reason to expect the same level of dramatic reductions that have occurred in the last 5-10 years to continue into the future at comparable levels. The Board expects that the Division will evaluate the need for a fee increase and will present that evaluation to the Board each year, in accordance with provisions of 1200-03-26-.02(9)(d). At a minimum, this evaluation will examine the impact of inflationary costs, such as increased costs of rent, employee benefits, and pay for performance salary increases as required under the TEAM Act. Based on the reduced fiscal year 2020-2021 fees discussed elsewhere in this response to comments document, the analysis for fiscal year 2021-2022 will also need to include an evaluation of any fee increase necessary to ensure that the Title V program is fully funded and maintains an adequate Title V fee reserve.

Comment: A commenter encouraged TDEC to reconsider its proposal and see if a more reasonable increase could sustain the Title V program in Tennessee. Several commenters asserted that an increase in fees exceeding 20% (or 20.6%) annually could not be supported. One commenter provided the following table comparing the proposed fee increase for fiscal year 2020-2021 and a 20% (20.6%) increase.

Fee Rates	Status quo	Proposed in Rule		Chamber's upper limit	
	2019 current	FY2021 proposal	% increase	if 20% increase	% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$40.20	20%
NEGU Actual	\$53.50	\$69.50	29.9%	\$64.20	20%
EGU Allowable	\$47.00	\$61.00	29.8%	\$57.00	20%
EGU Actual	\$75.00	\$97.50	30.0%	\$90.00	20%
with current base & min fee	\$5,656,986	\$7,050,443	24.6%	\$6,590,389	16.5%
& adjust Base & Min. Fee	n/a	\$7,278,333	28.7%	\$6,819,868	20.6%
new funds collected		\$1,621,347		\$1,162,882	

Response: Based on comments received, the Division recommended two separate proposals for the Board to consider, both of which were lower than the noticed proposal. One proposal was the 20.6% fee increase recommended by the commenters. The second proposal was an approximate 25% increase illustrated in the table below that was recommended by the department. However, it is important to note that both proposals would result in Title V fee revenue below the estimates of the Title V fee program expenses and would result in a significant reduction or complete depletion of the Title V fee reserve. The Board adopted the 20.6% proposal. As a result, the Board expects that the Division will evaluate the need for a fee increase each year in the future and the analysis for fiscal year 2021-2022 will also include an evaluation of any fee increase necessary to fully fund the Title V program and rebuild a reserve.

The commenters' proposal results in estimated Title V fee collections of \$6,819,868. This is \$990,971 less than the projected Title V expenses for fiscal year 2020-2021 and would likely deplete the Title V reserve (estimated to be \$1,000,000 at the beginning of fiscal year 2020-2021). While not significant, the commenters' proposal also deviates from the Division's historical practice that dollar per ton rates are rounded to the nearest 50 cents and deviates slightly from the actual-to-allowable ratio of 1.6 to 1 and EGU to non-EGU ratio of 1.4 to 1, which has consistently received approval from both stakeholders and the Board.

The department recommended option is an approximate 25% increase as indicated below.

Fee Rates	Status quo	Proposed in Rule		Division's Recommended Option	
	2019 current	FY2021 proposal	% increase		% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$42.00	25.4%
NEGU Actual	\$53.50	\$69.50	29.9%	\$67.00	25.2%
EGU Allowable	\$47.00	\$61.00	29.8%	\$59.00	25.5%
EGU Actual	\$75.00	\$97.50	30.0%	\$94.00	25.3%
with adjust Base & Min.	n/a	\$7,278,333	28.7%	\$7,066,366	24.9%
new funds collected		\$1,621,347		\$1,409,398	

Comment: Several commenters noted that the staffing size of the Division could be reduced in order to reduce the amount of revenue needed to administer the Title V program. One commenter pointed to the significant reduction in emissions since enactment of the Clean Air Act amendments of 1990 resulting from substantial capital improvements and cleaner fuel sources. The commenter predicted continued improvements will occur in industry's efforts to reduce emissions, placing additional downward pressures on revenue in the years ahead and, quoting Commissioner Salyers regarding the air quality in Tennessee, suggested that the Division be redesigned to focus on maintenance of standards rather than a regulatory regime.

Another commenter suggested that that the level of effort required by TDEC to provide governance and oversight to the Title V program, while not directly proportional, should at least mirror the direction of the state emissions profile.

Response: The Board agrees that air quality in Tennessee has significantly improved since 1990, as evidenced in the Commissioner's statement. However, an equally important aspect of the Clean Air Act is that the positive improvements in air quality must be maintained through a responsible regulatory program. The status of attainment under the Clean Air Act, in and of itself, does not provide opportunity for the Board or the Division to relax implementation of regulatory requirements. Nor does the status of attainment, in and of itself, remove critical regulatory program elements such as the issuance of permits, performing full compliance evaluations, conducting ambient air quality monitoring and responding to citizen complaints. In fact, it is because of the Board's and the Division's efforts to ensure compliance with applicable regulatory requirements, with the support of our Title V industry partners, that the state of Tennessee is able to enjoy the cleanest air since the dawn of the industrial era today and hopefully well into the future.

The regulatory requirements that make up the Title V program are mandated by federal regulation and statute. The requirements for facilities to obtain Title V permits, what those permits must contain, and the process for issuing and amending those permits are all specified in federal Part 70 regulations. Even though there have been significant emission reductions from Title V facilities (billable tons have dropped from 287,382 in 2004 to 113,135 tons in 2019), the number of Title V facilities is basically the same as it was ten years ago (221 in fiscal year 2009-2010 and 220 in the current fiscal year 2019-2020). Many Title V facilities are subject to federal NESHAP, NSPS, section 111(d), and section 129 standards and federal regulations require the Division to incorporate these standards and appropriate compliance methods into Title V permits. The

Division is also required to enforce provisions of its federally approved State Implementation Plan and incorporate those requirements into Title V permits. Major new source review requirements, which require both permitting and modeling staff, are required by federal PSD and Nonattainment NSR regulations. The requirements for enforcing Title V permits, including inspections, report reviews, source testing, enforcement actions, and reporting when violations are discovered, are all established by federal regulations or guidelines. Engaging the public through public process requirements and responding to complaints is also a critical aspect of Title V program requirements. Emission inventory and Title V regulatory and SIP development are all required by or driven by federal regulations. The requirement to operate and maintain an ambient monitoring program is done in accordance with Part 58 regulations and a large compendium of federal guidance documents. Part 70 regulations require the Department's Small Business Environmental Assistance Program to be funded by Title V fees. Federal Part 70 regulations require that these costs, as well as the general administrative costs of running the Title V permit program, be funded using Title V fees. Many of these activities can easily be attributed to individual Title V facilities and must be charged to Title V funds. A few of these activities, such as ambient monitoring, may or may not be specifically linked to specific Title V sources, but are collectively measuring the level of air pollution in the ambient air from all sources of air pollution within specific distances from the monitors, including air emission from Title V sources. The Division has begun the process of evaluating various approaches for determining what portion of the ambient monitoring should be funded by Title V fees. The Division has also begun an evaluation of the Title V inspection frequency to see if changes can be made while still ensuring that the current compliance rate for Title V facilities is not eroded. In summary, each of the activities that comprise Tennessee's Title V program today are required by federal regulations and cannot be simply eliminated or diminished in a way that would impact the adequacy of Tennessee's operation of the Title V program.

While some Title V facilities have not had to deal with changing air quality requirements for a significant amount of time and may be able to move towards a "maintenance of standards" mindset, that is not the case with all Title V facilities in the state and is not the case for the Board or the Division. Recent work in transition from a geographic-based permitting organization to a sector-based organization identified 73 separate industry categories (sectors) in Tennessee subject to 109 different federal regulations. The Division's staff is responsible for having a working knowledge of and staying up to date with the state and federal regulations that apply to each sector. Based on information contained on EPA's Residual Risk/Technology Rules website, EPA has promulgated 40 new or revised standards in the past 10 years, 20 more have been signed but not yet published in the Federal Register, and 35 more are scheduled to be reviewed and potentially revised within the next two years. This trend is expected to continue as EPA proposes and promulgates residual risk standards as required under the federal Clean Air Act. In addition, the Board and Division are tasked by federal regulation to develop several new air quality plans and revisions over the next few years including Regional Haze (due June 2021), the Affordable Clean Energy rule (due July 2022), and a 111(d) plan for existing Municipal Waste Landfills that was due in August 2019. Additionally, the Division is responsible for addressing the one remaining nonattainment area in Kingsport, Tennessee.

In addition to these specific regulatory changes, the Clean Air Act requires U.S. EPA to review federal ambient air quality standards every five years and revise them if necessary. Revision of federal air quality standards often leads to additional regulatory and permitting burdens for Title V facilities and additional responsibilities for the Division. Changes to federal air quality standards may also change or increase ambient air monitoring requirements for the Division. In September 2019, EPA issued a Policy Assessment for review of the PM standard and in October 2019, EPA issued a similar document for the ozone standard. Either or both of these could lead to tighter standards in the near future that may impact the workload of the Division. The Division and the Department have also spent a considerable amount of time addressing ozone transport challenges from other states by responding to EPA petitions or participating in matters as they proceed through the court system. Much of this work is specific to Title V facilities in the state and, while not mandated by federal law, is beneficial to Tennessee and the facilities at issue.

While the Board and the Division cannot change the requirements of the Title V program, they can and have undertaken efforts to streamline processes and increase the efficiency of the Title V program. Tennessee's Title V industry partners have been a driver to improve the Division's work

product. As good stewards, the Division has pursued workforce modernization. The Title V program in Tennessee has undergone many changes since inception. It is the intention of the Division to continue to evolve and modernize the Title V program to meet the evolving needs of the public and regulated community. As with any workforce, modernization can create efficiencies, promote effectiveness, and reduce overhead. However, providing staff the tools to do the best job they can does come at a cost.

Some examples are:

- Development of an on-line system (known as SLEIS) for facilities to submit emissions inventory reports, permit fee AEAR reports, and compliance reports;
- Recent changes to air quality rules that will allow sources that are subject to federal standards to be considered insignificant activities for Title V purposes once those federal rules have been adopted into Tennessee's rules;
- Changes to Tennessee's construction permitting process (which were identified and developed through a LEAN process that included industry stakeholders) that should benefit Title V as well as non-Title V facilities;
- Reorganization to sector-based permitting that will provide for consistency and improve efficiency across industry sectors;
- Automation of non-Title V and semi-automation of Title V invoicing; and
- Modernization of the ambient monitoring network to reduce required staff travel time and make critical ambient data available anywhere in the state.

Many of these changes have already or will soon be implemented, while others will take longer to come to fruition.

The Division's Field Services Program has recently implemented and will continue to develop changes to improve the efficiency of its operations. Each Field Office has its own region with its own assigned counties. In the past, each Field Office was responsible only for its region. The Division has shifted workload between the Field Offices in order to use its resources more efficiently and effectively. This has allowed the Division to shift work, such as Title V inspections and report reviews, from one Field Office to another when needed, thereby spreading the workload more evenly and maximizing use of our resources. Previously, the program combined periodic Field Services meetings with the Smoke School training. The Division has reevaluated how it accomplished this training to ensure that we are using its resources effectively. The Division added an East Tennessee VEE school, which required only day travel for staff. All Field Services meetings and ambient monitor training are now conducted by WebEx, and the Division is currently developing self-instructional training courses. As a result of these adjustments, the program has eliminated almost all overnight travel, resulting in substantial savings of both time and money.

The department is currently reviewing the Alternate Workplace Solutions (AWS), a program which allows staff members to work from home in lieu of traditional offices. Programs within the Division have participated in AWS since 2017 and more will implement AWS in 2020. When fully implemented, AWS will allow the Division to substantially reduce office space needs, while increasing efficiency and maintaining workload productivity. The Division will continue to work with the department on the implementation of AWS.

As expectations for ready access to information and transparency have increased with the advent of mobile technology, the Division has met those expectations through its publicly available dataviewer and by maintaining its website pages. The Division has also improved response times for requests for information by digitizing all paper files across the state. The database (known as Smog Log) that maintains that information is now the backbone for the Division and is used daily in our permitting, inspection, and administrative work, and also for federally mandated reporting, invoicing, reports to the Board and the Tennessee General Assembly. The support and maintenance of this system is critical to the daily functionality of the Division.

In order to meet the requirements of a 100 percent digital work space, the Division had to transition from a historical clerical based administration group to a professional administrative services group. Becoming more sophisticated has required reclassification of clerical positions to

professional administrative services positions. A large portion of this group operate as data entry and administration specialists by receiving and entering applications, reports, and modifications; updating official information; and reviewing and uploading other documents to the database. Others continue to provide a face and voice to the citizens and regulated community by staffing a front desk and providing phone coverage for the Division, but now also spend considerable time using its website and the Internet to provide information to the public. In this regard, they work to ensure the Division's website and the Board's website are updated and include accurate information. Finally, they continue to manage Division personnel activities, time and activity, training, assistance with travel and expense reimbursements, required public participation processes for the Division, facilities and supplies support, procurement support, and Board administrative support. EPA requires Title V reporting semiannually that is conducted by the administrative staff by running queries of the database. In modernizing and moving to a digital work environment, the Division has eliminated seven administrative positions since 1993. As a whole, the Division has less staff than it has had since the very early days of the Title V program. The Board understands that the Division is committed to operating a program that is right sized for the needs of Tennessee and will continue to evaluate and implement opportunities for further efficiency gains in 2020.

Comment: Two commenters provided two specific suggestions of efficiencies that should be utilized by the Division. An additional commenter supported these suggestions generally but for future budgets. Another commenter mentioned the first suggestion in its comments.

1. One commenter noted that the Title V Workload Analysis is based on annual Title V inspection frequencies when EPA guidance allows for bi-annual inspections. The commenter asserted that Title V is a self-reporting and compliance certification based program and that sources should not be paying for inspections beyond the EPA recommendation. Another commenter requested the Division examine whether annual inspections are necessary or whether a less frequent and more focused approach would be more effective. One commenter estimated that cutting the number of inspections in half would move 3.19 FTEs from Title V to non-Title V. This commenter estimated that this change would also move 1.49 FTEs related to the Field Services program's program management and meetings to non-Title V, resulting in a total of 4.7 FTEs being moved from Title V to non-Title V activities. Another commenter also suggested shifting certain positions. Two of these commenters also asserted that it appears that the Title V program has been charged for Conditional Major source inspections.
2. Commenters questioned ambient monitoring expenditures. One commenter questioned the assumption in the Workload Analysis that 42% of the ambient air program should be borne by Title V and 38% by non-Title V (the remainder is funded by an EPA grant). This commenter pointed out that TDEC's ambient air monitoring network plan shows only four source oriented monitors versus about 20 population-oriented monitors. Another commenter proposed that the five source-oriented monitors be assigned to Title V and the remaining 19 be assigned to non-Title V. This commenter estimated that this would shift 3.4 FTEs from Title V to non-Title V funding. Another commenter requested the Division determine more accurately the relative burden of ambient monitoring expenditures that should be borne by Title V Sources.

Response:

1. The Division follows the Federal Fiscal year (October 1st to September 30th) for its inspection cycle. The Division's current inspection frequency began on October 1, 2019, and each Field Office manager developed his or her annual Field Office workload plan. The Division has operated the Title V program in Tennessee for over twenty years and has had a fairly consistent approach to conducting inspections during that operation. The suggestion for a change to the Title V inspection frequency was made during the second listening session held with stakeholders, but had not been previously discussed or suggested by stakeholders in the previous three years of stakeholder engagement regarding Title V fees. Following the September listening session, the Division began evaluating data related to compliance for Title V facilities in Tennessee and what impact a revision of the inspection frequency for Title V facilities may have on compliance. The Board understands that the Division is committed to conducting a full evaluation that assesses whether and how a program change involving a less frequent on-site facility inspection could be designed and implemented to accomplish

some level of Title V workload relief, but would also ensure compliance levels within the Title V program are not unnecessarily diminished. Once completed, this evaluation and any associated recommendations will be presented to the Board for feedback and direction before any changes to inspection frequency are implemented. Based on the data and information assessed to date, the Board understands that the Division anticipates that there may be an increase in High Priority Violations (HPVs) should inspection frequencies be reduced. (HPVs are a subset of violations that receive additional scrutiny by U.S. EPA to ensure that enforcement agencies respond to them in a timely and appropriate manner.) Reduced inspection frequencies may also result in a longer duration of non-compliance at a facility. The Board understands that the Division does agree that Title V regulations and permits do require self-reporting (generally semi-annually) and annual compliance certifications. However, the Division states that these requirements have not necessarily resulted in lower compliance rates when compared to facilities that are not subject to Title V requirements. The Division has compiled data regarding Title V, conditional major (CM), and true minor (TM) source inspections from 2008 through 2019. This data shows that Title V sources have a higher rate of non-compliance than non-Title V sources.

Inspection Period*	Title V	Title V Non-Compliance Rate	CM	CM Non-Compliance Rate	TM	TM Non-Compliance Rate
2008-2009	258	9%	385	10%	209	8%
2009-2010	247	9%	373	9%	234	14%
2010-2011	245	18%	370	11%	308	17%
2011-2012	230	20%	369	12%	254	15%
2012-2013	209	15%	358	12%	325	18%
2013-2014	206	24%	349	18%	501	19%
2014-2015	213	17%	339	15%	324	23%
2015-2016	237	17%	324	12%	226	25%
2016-2017	234	19%	329	10%	216	18%
2017-2018	231	26%	327	12%	438	6%
2018-2019	227	13%	343	8%	321	3%
Total	2537	427- 17%	3866	410 - 11%	3356	497 - 15%

*Inspection period is October 1 through September 30.

The Board also understands that the Division anticipates that an adjustment to the Title V facility's inspection frequency would not result in a 50% decrease in workload hours worked to determine compliance associated with Title V sources as the commenter suggests. According to the EPA's October 4, 2016 memo, a Full Compliance Evaluation (FCE) should be conducted at a minimum of once every two Federal fiscal years at all Title V major sources, except those classified as mega-sites. An on-site inspection is only one part of a FCE; it also includes the review of all required reports¹, visible emission observation (as needed), a review of facility records and operating logs, an assessment of process parameters, an assessment of control equipment performance parameters, and (if applicable or deemed appropriate) a stack test. The Division currently has eight facilities that are classified as mega-sites. Seven of these facilities are inspected on a three year cycle, and one is currently inspected on a two year cycle. A three year cycle is one in which the inspectors will inspect one-third of the emission sources at these facilities each year until a FCE is completed within the three year cycle.

Each Title V facility is required to submit semi-annual reports and annual compliance certifications to the Division. The Division is required to review these reports in a timely manner and to enter the data into EPA's database (ICIS-Air) within sixty days of receipt. Inspectors must review the reports and enter the data in a timely manner in order to meet

¹ Reports include- continuous emission monitoring, continuous parameter monitoring, malfunction, excess emission, semi-annual, annual compliance certification, periodic monitoring reports, and any other reports required by the permit.

federal requirements; therefore, workload associated with a facility's full compliance evaluation will occur on an annual basis regardless of the frequency of the facility inspection.

The Division receives complaints regarding Title V facilities. When the Division receives a complaint about a permitted facility, the inspectors conduct an on-site inspection to ensure that the facility is complying with its permit conditions. If a complaint is received regarding a Title V facility, the Division will complete an on-site inspection in order to verify compliance with the permit conditions and be responsive to the complainant regardless of the frequency of the facility inspections.

Inspection Period	Title V complaints
2008-2009	47
2009-2010	75
2010-2011	34
2011-2012	13
2012-2013	13
2013-2014	18
2014-2015	18
2015-2016	24
2016-2017	27
2017-2018	26
2018-2019	32

Since the Field Services Program's program management and meetings workload is due to a variety of activities, the Board understands that the Division cannot at this time determine how many, if any FTEs associated with these tasks would be moved from Title V to non-Title V, but the Division will include this in its assessment.

The Board understands that the Division has confirmed that all time associated with conditional major facilities is charged as non-Title V time. A facility may initially be classified as a Title V source until it is issued a permit that includes conditions that limit its emissions to below major source thresholds (i.e., a conditional major permit). While the facility is still classified as a Title V source, activities related to that facility will be charged to Title V. There are currently three facilities in Tennessee that fit into this category. Once a conditional major permit is issued, the facility will be reclassified as a conditional major source and activity will be charged to non-Title V.

2. The Division currently operates 28 ambient air quality monitors within the state located at 24 different monitoring sites. The various monitoring sites are classified as maximum concentration, background, population weighted emission index (PWEI), transport, population oriented, and source oriented in accordance with federal regulations. The cost of operating and maintaining an ambient monitoring network is an eligible Title V cost under both state (1200-03-06-.02(1)(c)5) and federal regulations (40 CFR 70.9(b)(iv)(v)). Five of Tennessee's sites are classified as source oriented or maximum concentration. The cost of operating these source oriented and maximum concentration monitors are charged to Title V or non-Title V, based on the type of source they are located near (four are near a single Title V source and the fifth near a now-closed non-Title V facility).

The monitors that are not source oriented or maximum concentration measure air pollution emitted from or formed from emissions from a wide variety of sources, including Title V facilities. Since it is impossible to determine where the air pollution measured at the non-source oriented monitors originated, permitting authorities have the discretion to determine what portion of ambient monitoring costs should be charged to Title V fees.

The Board does not agree with the comments suggesting the costs associated with all non-source oriented monitors should be charged to non-Title V. The commenters provide no basis for this suggestion, but the suggestion assumes that emissions from Title V facilities

have nothing to do with the requirements or necessity for those monitors. The population associated monitors that measure ozone and particulate matter are sited following federal requirements and guidance. The monitor siting objective is to place the monitor where there is likely to be the most amount of people exposed to air pollution coming from any source, including Title V facilities. For ozone, EPA regulations and guidance advise to locate monitors within about 30 miles from where the ozone precursor emissions of NOx and VOCs may originate, although it is readily acknowledged that the area of influence for ozone is likely much larger. Within Tennessee, there are about 99 Title V facilities located within a 30 miles radius of the ozone monitors. Additionally, mechanisms under the Clean Air Act like the Good Neighbor Provision and EPA's historic NOx SIP call rule that was aimed at reducing impacts to ozone levels in neighboring states provide ready evidence that large Title V facilities can have an impact on air quality a large distance from the actual facility. The reach of particulate matter pollution is longer and can occur within up to 400 miles from the source; therefore, Tennessee's Title V sources with particulate matter and particulate matter precursor emissions may impact many of Tennessee's particulate monitors as may sources from other states. Finally, the calculations made by the commenter suggesting shifting cost from Title V to non-Title V included some incorrect assumptions regarding the monitoring program. First, one of the five source-oriented monitors is a lead monitor in Bristol which is near a now-closed non-Title V site and is therefore charged to non-Title V not Title V. Second, the commenter included a vacant position in the calculations that the Division has no current plans to fill.

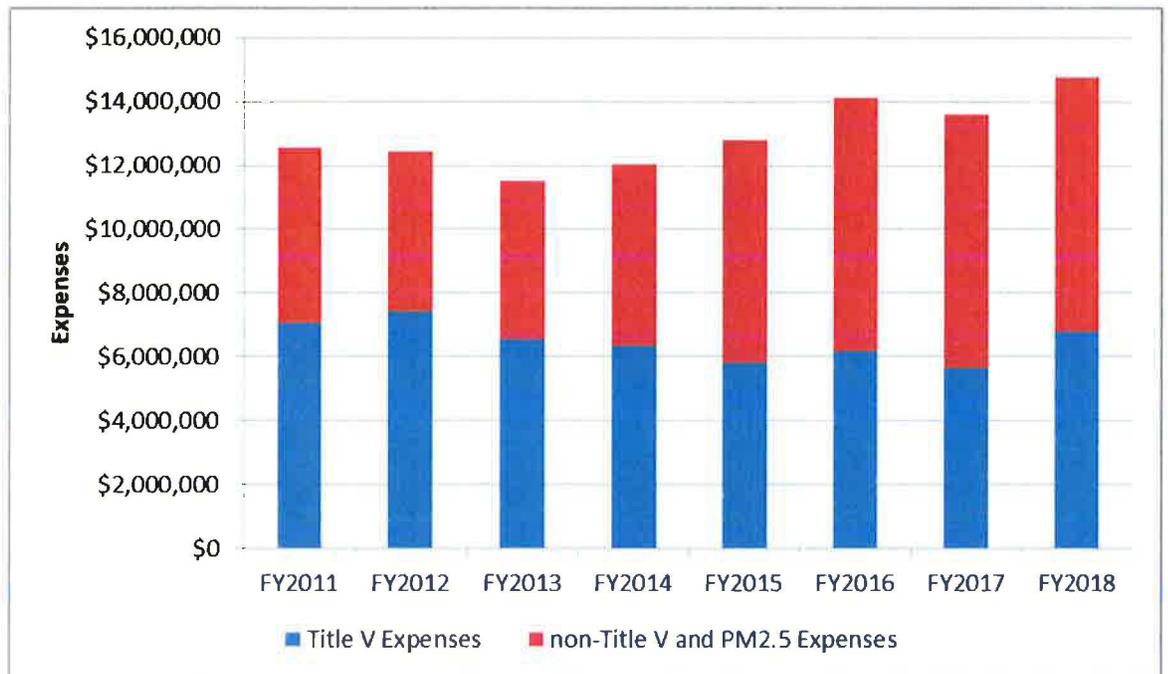
Since fiscal year 2017-2018, the Division has charged the costs of operating and maintaining its ambient monitoring network (excluding source oriented and maximum concentration monitors) using a "default ratio" of 52% Title V/48% non-Title V. The Division also receives approximately \$210,000 per year from an EPA section 103 PM_{2.5} grant that is used to fund a portion of the fine particulate monitoring network. When considering the amounts charged to Title V and non-Title V for source-oriented monitors, the amount charged to the PM_{2.5} grant, and the amount charged to the default ratio, the portion of the total ambient monitoring cost covered by Title V fees is approximately 42%. Since initiating this approach in 2017, the approach has been discussed and has received general support during stakeholder meetings and from the Board. The Division agrees that there are likely other evidence based approaches for charging ambient monitoring costs, but until such alternatives have been fully developed and vetted with stakeholders and the Board, the Board believes it is appropriate to retain the current approach. The Board understands that the Division is committed to conducting an analysis and providing the Board a proposed allocation between Title V and non-Title V for the costs of the monitoring program that has some connection to the state's relative emissions profile or other factors that influence the need for the monitors.

Comment: A commenter encouraged department leadership to examine expenses currently assigned as Title V activities that may not serve the purpose of the Title V program. The commenter presented data indicating that the average Title V expenses from fiscal year 2009-2010 through fiscal year 2017-2018 averaged \$6.7 million dollars per year compared to the projected fiscal year 2020-2021 Title V expenses of \$7,810,839. The commenter also referred to the Division's September 11, 2019, presentation to the Board that projects Title V expenses reaching \$9,784,927 in fiscal year 2025-2026.

Response: The Board understands that the Division reviews expenses charged to all funding sources, including Title V, on at least a monthly basis. Those reviews are conducted on a routine basis by the Division's Business Administrator and the managers of each program within the Division to ensure that they are legitimate Division expenses and have been charged to the proper funding source. When an incorrect charge is found, the Business Administrator corrects the error and, when necessary, initiates process changes to prevent similar errors in the future. This process allows the department and the Division to ensure that activities charged to Title V are eligible costs for the program under federal and state law.

As indicated in the draft fiscal year 2020-2021 Title V Workload Analysis, previous workload analyses, and during numerous stakeholder and Board meetings, the Division made changes to how employee time and other expenses are entered into the Department's time and expense management system to ensure that expenses are charged to the proper funding sources.

Therefore, the levels of Title V expenses prior to fiscal year 2017-2018 are not representative of the actual cost of running Tennessee's Title V program. As can be seen from the following graph, the Division's total expenses have increased steadily since fiscal year 2012-2013 (FY2013). (Expenses in FY2016 were somewhat elevated due to increased equipment purchases that were funded by a significantly higher EPA grant that year and expenses in FY2017 were slightly reduced due to a large number of positions held vacant pending a reorganization of the Division and the completion of fee rules that would adequately fund both the non-Title V and Title V programs. There was also a significant reduction between FY2012 and FY2013 due to a reduction in the amount of indirect expenses for the Department and the Bureau of Environment that were charged to the Division.) However, even though total Division expenses increased from FY2013 through FY2017, Title V expenses dropped. This is due to the fact that expenses were intentionally shifted from Title V to non-Title V because of 1) an anticipated decline in Title V fees due to reduced emissions, and 2) a misperception that the Division had surplus funds available in its non-Title V fee reserve. (It was later discovered that a significant amount of non-Title V expenses were being charged to Title V. This was corrected and the expenses were reallocated in 2016. These expenses are properly allocated in the figure below as well as in Table 15 of the Title V Workload Analysis.) Projected FY2021 expenses were developed using best available information as explained in the draft FY2021 Title V workload analysis. If the actual FY2021 Title V expenses were to be estimated by simply increasing FY2018 Title V expenses by the actual rate of increase for the past several years of 4.6%, one would arrive at an estimate very close to projected FY2021 Title V expense amount specified in the draft FY2021 Title V Workload Analysis of \$7,810,839



Comment: General and Administrative Expenses

One commenter described its comments as being with respect to a portion of the Title V expenses labeled "TDEC General & Administrative Expenses" in the Workload Analysis prepared by the Division of Air Pollution Control (the "Division"), which the commenter described as the basis for the proposed increase in Title V fees in these proposed rules. The commenter stated that the workload analysis lists a series of expenses, without amounts, and then states that "G&A (General & Administrative) expenses are charged to the Division according to formulae based on the percentage of the Division's budget in proportion to that of other BOE division budgets and special reserve funds and the Division's headcount. The Division's G&A expenses are charged to Title V funds, non-Title V funds, and federal grant revenue."

The commenter had concerns that the amount of G&A charged to the Title V program may be greater than is reasonable. The commenter stated that it has repeatedly in this budgeting process, and in prior years, asked for the specific formulae used to allocate G&A expenses among the various divisions in the Department, and further allocate the Division's allocated portions to the Title V and non-Title V programs. The commenter further stated that while the commenter had been advised as described in this quoted language that it is based on the percentages of budgets, reserve funds and headcount, the Chamber has not been provided any specifics on this. The commenter requested that it be provided with these formulae, and also requested that the specifics of how these formulae are applied in the allocations among the divisions and within the Division between Title V and non-Title V programs, including the dollar amounts of these allocations.

A commenter noted that in the department's comments during its budget hearing with the Governor's office the week of November 4, the Commissioner stated that approximately \$24 million, or about 6% of the Department's budget, was for department-wide support services. The G&A expenses allocated to the Title V program have consistently been over twice this percentage of the Title V program budget, other than the two years when the G&A expense was not allocated to the Title V program. The commenter stated that it presumed that there are some expenses included in this Title V G&A expense number that were not included in the 6% figure for department-wide support services, but the commenter did not know what those are. The commenter requested that the department provide a description of the department-wide support services that are included in the G&A expenses in the Title V workload analysis and the total costs thereof to provide an apples-to-apples comparison with the 6% department budget figure, or otherwise provide information that would explain the difference in the percentage of the G&A expenses in the Title V workload analysis and the 6% department-wide support services.

A commenter made an oral comment during the hearing that the Chamber had not been informed of what constitutes "special reserve funds" that are referred to in the general verbiage included in the Title V workload analysis. This commenter stated that he had not seen the formulae and the numbers of how they are allocated: the number of people in each division, the dollars in each division, and how decisions are made with respect to how allocations are made from reserve funds. He stated that it is difficult for the Chamber and its members to determine whether these allocations are fair are appropriate and comment accordingly. He commented that the Chamber believes this is a flaw in this process and that excess amounts may be allocated to Title V. He stated that the Chamber has had specific discussions regarding costs that they believe should be allocated to non-Title V, and the Chamber has been rebuffed on every suggestion so far to move those costs. His concern is that this is driven more by the inability to fund them with non-Title V than the fairness or accuracy of those suggestions. He stated that these are his assumptions and that the Chamber hasn't seen these numbers yet. His stated that his personal concern is further magnified by the fact that when the Chamber pressed on this approximately 10 years ago and had a sit down with the head economic person at the Department, there were changes in allocations that were made and there were things that they agreed were not fair. He stated that the Chamber is concerned that we may be there again. He said that this is a statement of ignorance because the Chamber has not seen the numbers and not because he knows that this is the case.

Response: Each Division that collects Environmental Protection Fund (EPF) fees and or Other Special Revenue Fund (OSR) fees contributes a portion of those annual fees to 32701, which is characterized as department wide administrative support services, and 32730, which is characterized as environmental administrative support (collectively TDEC General and Administrative Expenses or TDEC G&A).

The methodology for funding department administrative support services is based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services (32701). For example, if Division A's budget is 25% of the total eligible divisions' budgets, then Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative Services (32701).

The methodology for funding 32730, Environmental Administration, would be prorated based on the full time position count at the environmental field offices (EFOs). All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions. For example, if Division A had 25% of the positions in the EFOs, then Division A would be responsible for 25% of the Environmental Divisions' funding required for Environmental Administration, 32730.

As the TDEC budget changes each year, this calculation is performed at the beginning of each fiscal year using the new budget numbers for both administrative support service divisions and eligible Bureau of Environment divisions. A new memo is sent to the Department of Finance and Administration (F&A) each year which approves it. Attached is a copy of the May 2, 2019, memo from the department to F&A.

TDEC G&A is shared among two Air Pollution Control programs, Title V and non-Title V. A portion of non-Title V TDEC G&A is covered by federal grants. The TDEC G&A expenses are calculated based on the percentage of the Division's total employees to perform the respective services. The Division's Title V workload analysis is prepared annually which outlines the number of employees necessary to perform the services for the Title V program.

The Department's proposed FY2021 budget includes funding for both the Bureau of Environment (BOE) and Parks and Conservation. While the \$24,000,000 referenced in the Governor's hearing is 6% of the overall Department budget of \$416,000,000, this amount is inclusive of only department-wide administrative services, of which \$11.3 million is supported by various divisions of the BOE based on the funding formulae described herein. These administrative support services are provided by the Office of General Counsel, Commissioner's Office, Internal Audit, Procurement, Communications, Human Resources, Talent Management, shared services for technology and accounting, and other administrative functions. It is important to note that this figure does not include support services from the eight Environmental Field Offices (EFOs). These services are inclusive of EFO facility rent, utilities, maintenance, BOE leadership, and administrative staff.

The legislature can designate any fund a special reserve fund when it is created. Special reserve funds are statutory reserves that are held for a specific, "special" purpose. There are a variety of special reserve funds throughout the BOE. For example, the UST fund is a special reserve fund, specifically for UST fees. The funds in the UST account are used for the operation of the division, including personnel, and their related work such as cleanups. Another example is the Hazardous Waste Remedial Action Fund, which is also used for their operations and related cleanup or other work.

Comment: A commenter stated that it was the commenter's understanding that that the budget request is two million dollars more than the loss that will occur with the loss of revenue from elimination of the vehicle emissions inspection program and that all of these funds are going to the non-Title V program. The commenter's position is that if additional monies granted by the legislature go to the Air Pollution Control Division that some of these should go to the help with Title V fees either directly to fund some of the costs that the commenter has suggested are currently charged to Title V but should be funded with non-Title V fees.

Response: The Department of Environment and Conservation has submitted a request to the Governor's office for 3.6 million dollars in additional recurring funds for the Division of Air Pollution Control. As shown in the table titled "SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule" and the end of this response to comments document, the Division has projected a 3.4 million dollar shortfall in non-Title V revenue following elimination of the vehicle emissions testing program. A portion of this shortfall is due to the loss of the inspection and maintenance program, but roughly 1.6 million dollars of the shortfall is due to the revenue in the non-Title v program not being adequate to cover the costs of the program. Therefore, should the Governor choose to include the Department's request in his budget and should the legislature adopt the budget as requested, there will be few if any funds available to

cover shifted Title V costs.² Furthermore, the Clean Air Act and federal Title V regulations require that Title V programs be funded entirely with Title V fees. The Board understands that the Division has determined that all of the projected Title V expenses indicated in the FY2021 Title V Workload Analysis are legitimate Title V expenses and have been legitimately allocated to Title V. As indicated elsewhere in this response to comments document, the Division has begun the process of evaluating the inspection frequency of Title V sources, with the goal of ensuring that any changes would not reduce the compliance rate of these facilities, and evaluating alternative methodologies for determining the percentage of ambient monitoring costs that should be charged to Title V. It would be imprudent for the Board and Division to implement either of these changes until these analyses have been completed.

Comment: One commenter asserted that the Board has proposed to add five new positions and has proposed a very significant increase in fees.

Response: The Board understands that the Division is not proposing to add any new positions. During the September 11, 2019, Board meeting the Division provided a table showing the number of filled positions (as of January of each year) going back to fiscal year 2010-2011. This information shows that between fiscal year 2010-2011 and fiscal year 2015-2016, the Division averaged between 110 and 114 positions. Starting in calendar year 2016, many positions that became vacant due to retirement or other reasons were not filled while the Division was undergoing reorganization and working to develop and implement fee rules that would adequately fund both the non-title V and Title V programs. That reorganization was completed in 2019 with several staff moving to positions with new responsibilities. During this period, workload was prioritized and staff worked excessive hours in order to meet regulatory deadlines and meet the needs of the businesses of Tennessee. A number of efficiency projects have been put on hold and permit backlogs are starting to build. Operation at the current level of staffing is not sustainable. This rule will simply allow the Division to restore its previous staffing levels. If all positions that the Division intends to staff are filled, the Division would have 114 filled positions.

The Board acknowledges that the proposed fee increase is significant compared to the current fee rule. However, the amount that would be collected as a result of the department's recommended fee rule (which is estimated to be approximately a 25% increase from the current rule) is roughly equivalent to the Title V collections that occurred prior to the significant reduction in emissions that has been seen in the past few years. The Division has been forthcoming and transparent with the Title V regulatory community and the Board about the significant impact reduced emissions would have on the financial adequacy of the Title V program since at least 2016. Additionally, this circumstance is not unique to Tennessee and various states throughout the region have needed to raise Title V fees to address the dramatic decline in emissions that has occurred. In February of 2016, the Division held a stakeholder meeting and presented a graph showing Title V Revenue and Expenses. That graph projected that Tennessee's Title V program would have about a 2.8 million dollar deficit in 2018. In May of 2016, the Division presented to the Board and showed the same graph, but with updated projections indicating that the 2018 deficit may be closer to three million dollars. The Division conducted significant stakeholder outreach in 2016 and again in 2017 to discuss rule changes that would address the deficit and the overwhelming recommendation from the regulatory community was to keep the structure of the program funding as it is and increase the dollar per ton rates. A rulemaking proceeded and was adopted by the Board in December 2017, became effective July 1, 2018 and actually applied to Title V fees that were due in 2019. These changes added an additional \$980,000 to Title V fee revenue, but did not address the full program deficit nor did they address inflationary costs like pay for performance, rent, or IT cost increases. Neither proposal presented to the Board would result in emission fees that are the highest in the region. For non-EGU sources, there are currently three other states with higher emission fees and some of those states have various other fees associated with work activities within their Title V programs that Tennessee does not have. Additionally, other states within the region are currently working to address the financial adequacy of their Title V programs. The proposed fee increase is necessary in order to ensure proper funding of Tennessee's Title V program as required by state and federal law.

² A similar version of this document was provided to Mr. Drew Goddard by Director Michelle Owenby on 8/8/2019 and was included in the September 11, 2019, Board package. That version still shows expenses and revenue of vehicle testing program. Removal of those revenues and expenses will show a \$3.4 million deficit.

As can be seen from the table of historical Title V collections and expenses below, the proposed fee for fiscal year 2020-2021 is lower than the Title V fee program collected a decade ago (fiscal years 2007-2008 through 2009-2010) and the Division's recommended fee schedule is about the same as it was in 2015. However, because of the large reduction in emissions that have occurred over this period (see table), it is necessary to significantly increase the dollar per ton rates in order to achieve a similar level of funding. Hence, the proposed increase in fee rates is necessary due to decreased emissions and not as the result of increased personnel.

Projected expenses for fiscal year 2020-2021 are consistent with the level of expenses that occurred in fiscal years 2010-2011 and 2011-2012, prior to the Division's shifting of expenses from Title V to non-Title V (see earlier response to comment), particularly when considering inflationary costs since that time period. Title V expenses have decreased almost every year since 2012, and the Division has undertaken significant efforts to ensure that Title V activities are properly charged to Title V funds and to develop streamlining and efficiency measures where possible. However, federal law requires that eligible Title V program costs be paid at least in part through fees. It is not reasonable to assume that expenses would continue to decrease but instead it is logical to conclude that expense increases are necessary to cover the cost of inflation, including salary increases, rent increases, and the state's share of the increased costs of health insurance, among other things. Since Tennessee's Title V fee rules do not include a provision to account for inflationary costs, such increases must be accomplished through rulemaking. If rulemakings are not undertaken or accomplished on an annual basis, as has been the case in Tennessee, annual inflationary costs build up and the resulting necessary increases are larger when done.

Fiscal Year	Fees	Billable Tons	Expenses
FY2004	\$5,780,573.30	287,382	\$5,299,426.96
FY2005	\$5,773,095.32	290,031	\$6,289,281.06
FY2006	\$6,806,903.33	259,420	\$6,604,384.65
FY2007	\$6,170,217.54	236,937	\$6,993,064.19
FY2008	\$7,116,004.10	234,615	\$7,254,796.79
FY2009	\$7,939,773.17	232,996	\$6,613,669.61
FY2010	\$7,587,853.93	211,345	\$6,415,182.16
FY2011	\$5,800,630.50	204,961	\$7,075,587.11
FY2012	\$6,336,163.20	190,232	\$7,442,955.03
FY2013	\$6,891,980.16	186,001	\$6,539,361.37
FY2014	\$6,844,856.89	170,198	\$6,355,428.77
FY2015	\$7,040,610.80	164,758	\$5,818,609.26
FY2016	\$5,321,521.83	141,624	\$6,094,831.92
FY2017	\$4,617,895.15	136,292	\$5,687,186.70
FY2018	\$6,294,657.17	113,364	\$6,818,383.34
FY2019	\$6,355,230.48	113,135	\$5,703,359.09

Collection and expense data are taken from Table 15 of the Title V workload analysis. Expenses have been revised to account for a transfer of non-Title V funds to the Title V EPF that occurred in FY2016 to correct previous misallocations of expenses.

Comment: A commenter asked to know why the Title V fee rule needs to be adopted in December 2019, although the increased fees will not be due until April 1, 2021. The commenter noted the budget request of 3.6 million dollars in funding for the Division discussed in the budget hearings and asserted that if the funding is enacted, it will significantly affect what money is necessary for the Division to run its programs. The commenter wanted to know if there was any way to defer the December board adoption until there is a better understanding of what becomes of the budget request.

Response: Effective July 1, 2013, Tennessee Code Annotated section 4-5-229 provides that any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following expiration of the ninety (90) days as provided in T.C.A. § 4-5-207. The majority of Title V fees are due April 1 of the state fiscal year for which the fees are being collected. This means that the fees for a specific fiscal year must be effective the first day of that fiscal year. (The state fiscal year is July 1 to June 30.) As an example, the currently effective fee rules were adopted by the Board in

December 2017. Although the portions of the rule that did not increase the fee or create the base fee were effective April 11, 2018, the actual fee rates did not change until July 1, 2018, the first day of state fiscal year 2018-2019. If the current rulemaking is approved by the Board December 11, the fee rate changes will be effective July 1, 2020, the first day of fiscal year 2021, and will be due between April 1, 2021 and September 28, 2021, depending on the permittee's choice of fee bases. Other changes in the current rulemaking will be effective prior to July 1, 2020. In addition, state rulemaking timelines and review by the Office of the Attorney General and Reporter are established in state statutes. Adoption in December is necessary in order to comply with state law, account for delays, and ensure that the effective date of the fee increases in this rulemaking is no later than June 30, 2020 (for an effective date pursuant to the statute cited above of July 1, 2020). Specifically waiting until the General Assembly passes and the Governor signs the budget for adoption of the rules (estimated to be April or May) would mean that the deadline would be missed.

The Department has requested 3.6 million dollars in recurring funding to support the non-Title V program. These funds cannot be applied to the Title V program due to federal law and are needed to administer the non-Title V program as described in an earlier response.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

DAVID W. SALYERS, P.E.
COMMISSIONER

BILL LEE
GOVERNOR

DATE: May 2, 2019
TO: Benny Romero, Controller for TDEC, Department of Finance and Administration
From: David W. Salyers, P.E., Commissioner
Subject: Administrative Services (32701) and Environmental Administration (32730) Funding Methodology

Each Environmental Division currently contributes funding to support the Administrative Services Division and Environmental Administration. The funding for 32701 and 32730 from the Environmental Divisions comes from three primary sources:

1. State Appropriations – Both Administrative Divisions receive general fund appropriations.
2. Federal Grants - Each Division contributes a portion of its federal grant funds to support the Administrative Groups based on TDEC's EPA approved federal indirect cost rate.
 - a. The Department negotiates an indirect cost rate each year with the federal government (the U.S. Environmental Protection Agency). Regardless of the Division that receives the grant, the same percentage of that grant's personnel and benefits expenditures is used to fund 32701.
3. Environmental Protection and Other Special Revenue Funds - Each Division that collects Environmental Protection Fund (EPF) fees and/or Other Special Revenue Fund (OSR) fees contributes a portion of those annual fees to 32701 and 32730.
 - a. The Methodology for funding 32701 will be based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services 32701. For example, Division A's budget is 25% of the total eligible divisions budgets, therefore Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative services 32701.
 - b. The methodology for funding 32730 Environmental Administration would be prorated based on the full-time position count at the environmental field offices. All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions.

Journals will be requested to be processed monthly to effectuate this funding methodology from the EPF and SRF divisions. This method will be in effect until further modification is made.

DWS/sg

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ³	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ⁴	\$7,278,833	-	\$7,278,833
Visible Emissions Control Fee	-	\$15,903	\$15,903
Construction Permit Fee	-	\$54,543	\$54,543
Annual Non-Title V Emission Fee	-	\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ⁵	-	-	-
EPA Air Quality Grant	-	\$1,191,101	\$1,191,101
EPA PM2.5 Grant	-	\$257,681	\$257,681
State Funds	-	\$1,200,000	\$1,200,000
TOTAL	\$7,278,833	\$4,433,389	\$11,712,222
SHORTFALL⁶	\$532,006	\$3,408,991	\$3,940,997

³ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

⁴ Revised based on data received August-September, 2019

⁵ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

⁶ Shortfall is expensed minus income and does not take into account available reserve funds.

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – TCCI Proposal

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ⁷	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ⁸	\$6,819,868		\$6,819,868
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ⁹			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
TOTAL	\$6,819,868	\$4,433,389	\$11,253,257
SHORTFALL¹⁰	\$990,971	\$3,408,991	\$4,399,962

⁷ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

⁸ Revised based on data received August-September, 2019

⁹ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

¹⁰ Shortfall is expensed minus income and does not take into account available reserve funds.

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-		
TDEC G&A Expenses	\$1,120,604	\$894,452 ¹¹	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ¹²	\$7,066,366		\$7,066,366
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ¹³			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
TOTAL	\$7,066,366	\$4,433,389	\$11,499,755
SHORTFALL¹⁴	\$744,473	\$3,408,991	\$4,153,464

¹¹ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

¹² Revised based on data received August-September, 2019

¹³ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

¹⁴ Shortfall is expensed minus income and does not take into account available reserve funds.

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.

The rule amendment to paragraph (2) of Rule 1200-03-26-.01 Construction and Annual Emission Fees relative to Visible Emission Evaluation Course ("Smoke School") fees may minimally impact small businesses. The rule amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to the amount of Title V source annual fees and emission fee rates is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tennessee Code Annotated section 4-5-404. Due to increased program expenses and diminishing revenues, the rule amendment proposes to increase Title V fee rates in order to generate sufficient revenue to administer the major source "Title V" permitting program as mandated by federal law. Small businesses that are Title V sources will experience increased fees. The number of small businesses that are Title V sources is not known as data relative to number of employees is not collected. If the Department fails to collect adequate revenue to fund this permitting program EPA may revoke its approval of the program and regulate Tennessee businesses directly. Other changes in this rulemaking improve clarity of the rule and will not have an impact on small businesses.

The review below addresses the following proposed rule amendments:

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Any small business with a Title V air pollution permit or that is required to conduct visible emission evaluations may be affected by these rule amendments. Very few small businesses are required to regularly conduct visible emission evaluations and thus would not be directly impacted by the proposed changes to the visible emission evaluation course fees because they hire consultants to conduct the evaluations instead of using their own employees. The changes to Title V fee rates ensure collection of adequate revenue to meet federal requirements so Tennessee sources will continue to be directly regulated by Tennessee and not by EPA.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

It is not anticipated that the proposed rule amendments will increase compliance costs relative to reporting, recordkeeping, or other administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed rule amendments will increase fees owed for small businesses required to have Title V operating permits. It is not anticipated that consumers will be measurably impacted.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Based on a comment received during the public comment period, the Department will conduct a review of the impact on revenues if affected sources that are small businesses are allowed to request an alternative minimum fee. If the impact is determined to be acceptable an alternative will be considered during the next Title V fee rulemaking. The Department does not have this data currently.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Each state's fee system is unique, so direct comparisons cannot be made. The federal presumptive fee rate (\$/ton) is the rate states must charge unless they provide proof to EPA that their program meets federal requirements with an alternative fee rate or structure. The federal presumptive fee rate effective for the 12-month period of September 1, 2019 through August 31, 2020 is \$52.03 per ton of actual emissions. Tennessee's current fees are more complex than the federal fees, with different fee rates for actual emissions and allowable emissions as well as different rates for electric utility generating units and non-electric utility generating units. Tennessee also has an existing minimum fee and an existing base

fee in these amendments. For these reasons, and because the Title V fee rates actually assessed by EPA for sources they permit are more complex than a single rate, a direct comparison to the federal fees cannot be made. The fee rates in this proposed rule for FY21 are: a base fee of \$5,000 and minimum fee of \$9,000; for fees based on actual emissions, \$64.20 per ton for non-EGU sources and \$90.00 per ton for EGU sources; and, for fees based on allowable emissions, \$40.20 per ton for non-EGU sources and \$57.00 per ton for EGU sources.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses could result in the collection of insufficient fees to operate the Title V operating permit program as required by federal law or, alternatively, increase the fees paid by businesses that do not meet the definition of a small business.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that these amended rules will have a financial impact on local governments with a Title V permit.

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;

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Air Pollution Control Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees. For Title V annual fees, the rulemaking increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to \$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules.

- (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 (CAA) 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 Air Pollution Control Board ("Board") adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees under the Tennessee Air Quality Act.

- (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 in the state required to have Title V operating permits. Most of these sources are major sources of air pollution. These persons recognize the necessity of fee collections and of increases to the currently effective fees; comments received from representatives of some of these sources included alternative fee increases to those originally proposed. This rule, as approved by the Board, contains lower fee increases than originally proposed by the Department in response to comments received during the public comment period. It also only establishes fee increases for state fiscal year 2021 and beyond rather than the proposed increases over fiscal years 2021 and 2022.

- (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 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;

This rulemaking will result in increased revenues of approximately \$1.16 million.

- (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
James.Johnston@tn.gov
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
Deputy 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.

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees.

Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees for the various services and functions the Department performs. Section 502(b)(3)(A) of the federal Clean Air Act (CAA) 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 Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. The Board is proposing the Title V annual 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 proposal increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to

\$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

Smoke School fee revisions: Tennessee is one of only a few states that offer this certification. The proposed rates will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest competitor (Aeromet). Because the Division's air inspectors are required to be certified every six months, it is significantly more cost effective for the Department to provide the school than to pay for the inspectors to be certified by a private entity. Allowing non-State employees to attend the training is a customer-friendly way to subsidize the cost of certifying Department staff.

T5 fees: Because the U.S. Clean Air Act requires that fee payers pay all costs, direct and indirect, to operate the Title V operating permit program, the Division prepares a detailed Workload Analysis each year that must be approved by the Board. This analysis must show that the fees assessed will be adequate to fund the program. The Board has determined that these amendments are necessary to support continuing operation of the Title V permitting program and are the least-costly method of achieving the purposes of these amendments.

- (3) A comparison of the cost-benefit relation of the action to non-action.

For Smoke School, not revising the fees as proposed will result in the Division paying more of the cost to train its inspectors. Not amending the Title V fee rules to ensure adequate collections to fund the Title V operating permit program would place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the U.S. EPA.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources. For Smoke School, offering the class to non-State employees provides a way to offset some of the costs to certify Department employees while offering an alternative for training to private sector participants.

- (5) A determination of the effect of the action on competition.

No impact on competition is expected.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on the cost of living.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on employment.

- (8) The source of revenue to be used for the action.

Existing revenues will be used to implement these revisions.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which

persons will benefit directly and indirectly from the action.

Changes to the Smoke School rates will have a minimal impact on attendees. For Title V fees, major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the magnitude of emissions from the source. Citizens of the state of Tennessee will benefit directly from this action through continued maintenance of the National Ambient Air Quality Standards assured by adequate regulation and oversight of major sources of air pollution by the Department.

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Effective Date: _____

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: Tennessee Air Pollution Control Board
Division: Air Pollution Control
Contact Person: Lacey J. Hardin
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Revision Type (check all that apply):

- 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 Fee Schedule
Rule Number	Rule Title
1200-03-26-.01	Tennessee Visible Emission Evaluation Course Fees
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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-03-26
Administrative Fee Schedule

Amendments

Paragraph (1) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (1) The effective date of ~~this the~~ fee schedule in subparagraph (2)(b) of this rule shall be ~~July 16, 1990~~ July 1, 2020. The fee schedule in subparagraph (2)(a) of this rule continues to apply until June 30, 2020.

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

Paragraph (2) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (2) Fee Schedule schedules.

(a) Until June 30, 2020, the following course fees apply:

Initial Certification Tennessee Applicant \$125.00
Recertification Tennessee Applicant \$95.00
Initial Certification Out-of-State Applicant \$175.00
Recertification Out-of-State Applicant \$125.00

(b) Beginning July 1, 2020, the following course fees apply:

Initial Certification \$180.00
Recertification \$150.00

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

Subparagraph (a) 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:

- (a) It is the purpose of this rule to establish ~~construction fees, annual emission fees, and permit review~~ fees for sources subject to permitting pursuant to Division 1200-03 sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.

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

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the language "subjected" and substituting instead the language "subject" so that as amended the subpart shall read:

- (iii) Any pollutant that is ~~subjected~~ subject to any standard promulgated under section 111 of the Federal Act; provided, however, that any such pollutant shall not be a regulated pollutant solely because the pollutant is a constituent of greenhouse gases;

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

Part 12 of subparagraph (i) 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:

12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a source subject to paragraph (11) of Rule 1200-03-09-.02.

<u>CAS No.</u>	<u>Chemical name</u>
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans

96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine

74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)

95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds ¹
0	Glycol ethers, ^{2 6}
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds ³
0	Fine mineral fibers
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

¹ X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

² Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n- OR'.

Where:

n = 1, 2, or 3:

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA).

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than ~~or equal to 100°C~~ one benzene ring, and which have a boiling point greater than or equal to 100°C

⁵ A type of atom which spontaneously undergoes radioactive decay.

⁶ The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. § 7412(b)(1).

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

Subparagraph (b) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) ~~On or after December 1, 1991, all All annual emission fees must be paid in full by the due date dates specified in paragraph subparagraph (6)(c) and paragraph (9) of this rule. Major sources subject to the provisions of paragraph 1200-03-26-.02(9) shall continue to pay annual emission fees under the provisions of paragraph 1200-03-26-.02(6) until July 1, 1994. In the year of their transition from the provisions of the aforementioned paragraph to the provisions of paragraph 1200-03-26-.02(9), the major source must pay the fractional balance of their schedule I fee calculation period (number of months from the due date to July 1, 1994 divided by 12, that quotient being multiplied against the appropriate annual emission fee from Schedule III). Thereafter, the provisions of paragraph 1200-03-26-.02(9) shall apply.~~

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

Subparagraph (i) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (i) Where more than one ~~(4)~~ allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.
1. Major sources subject to the provisions of paragraph ~~1200-03-26-.02~~(9) of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.
- (i) Sources that are subject to federally promulgated hazardous air pollutant standards that can be imposed under Chapter 1200-03-11, ~~or~~ Chapter 1200-03-31, ~~or Chapter 0400-30-38~~ will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category.
- (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part ~~1200-03-26-.02~~(2)(i) 12 of this rule that do not have an allowable emission standard under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates.
- (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000 ton cap provisions of subparagraph ~~1200-03-26-.02~~(2)(i) of this rule.
- (iv) Major sources that wish to pay annual ~~emission~~ fees for PM10 on an allowable emission basis may do so if they have a specific PM10 allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual ~~emission~~ fees on an actual ~~PM-10~~ PM10 emission basis, it may do so if the PM10 actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM10 emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM10 emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000 ton cap provisions of subparagraph ~~1200-03-26-.02~~(2)(i) of this rule shall also apply to PM10 emissions.

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

Subparagraph (c) of paragraph (4) 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) The Division shall denote the date that all applications for construction permits are received in its Nashville Central office. Applications received after 4:30 p.m. local time will be ~~stamped~~ considered as being received the next working day.

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

Subparagraph (d) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (d) Upon receipt of a construction permit application, the Division must examine it to ~~insure~~ ensure that it is complete ~~and within 30 days. If the application is found to be incomplete, advise the applicant in writing of its findings via certified mail parts 1 through 4 of this subparagraph apply. Thirty (30) days will be allowed for the review.~~ The ~~thirty (30)~~ ninety (90) days completeness evaluation time period is extended to ninety (90) days for minor and conditional major sources of the nonattainment pollutant or its precursor pollutants as identified in part (4)(b)47 of Rule 1200-03-09-.01 located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency. ~~[Note: For ozone nonattainment the pollutant is Volatile Organic Compounds (VOC) and/or oxides of nitrogen.]~~

1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.
2. After receiving notice from the Division that the application was incomplete, the applicant shall have ~~one hundred eighty (180)~~ calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with ~~Division Rules this chapter and Chapter 1200-03-09~~. If the deficiencies are not corrected within the ~~one hundred eighty (180)~~ 180-day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.
3. It is the express intent of the Board that the ~~one hundred eighty (180)~~ 180-day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by ~~Division Rules Chapter 1200-03-09~~.
4. Upon receipt of a corrected application revised pursuant to part ~~1, 2, or 3~~ 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the ~~source applicant~~ has the remainder of the initial ~~one hundred eighty (180)~~ 180-day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within ~~thirty (30)~~ days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.

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

Subparagraph (a) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) On and after October 24, 1991, a responsible official applying for the construction permit [i.e. construction as defined in ~~subparagraph rule 1200-03-26-.02(2)(j) of this rule~~] required by ~~rule Rule 1200-03-09-.01~~ must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g), Schedule A, of this rule unless ~~they are~~ exempted from construction permit fees pursuant to subparagraph ~~1200-03-26-.02(9)(a) of this rule~~. The fee determined from ~~subparagraph (5)(g), Schedule A of this rule~~ shall be calculated based on increases in emissions of regulated pollutants.

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

Subparagraph (c) of paragraph (5) 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) ~~On and after October 24, 1991, a~~ A responsible official applying to make a change to a source ~~or permit~~ such that a new construction permit is required, must pay a permit ~~filing/processing~~ fee equal to one-half the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

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

Subparagraph (f) of paragraph (5) 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) In the event that the Division fails to process the construction permit application within the time lines established in subparagraph (e) of this paragraph, the Division will refund the permit filing/processing fee to the applicant in full. The refund will be made within ~~thirty~~(30) days following the date that the deadline for a decision on that particular permit application was established. For refunds in excess of \$1,000, additional time to ~~permit allow~~ review and approval of the refund by the ~~Tennessee Attorney General's Office~~ Office of the Attorney General shall be allowed.

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

Paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (6) ~~ANNUAL EMISSION FEES FOR MINOR AND CONDITIONAL MAJOR SOURCES AND PERMIT REVIEW FEES FOR CONDITIONAL MAJOR SOURCES~~ Annual Fees for Minor and Conditional Major Sources.
- (a) A responsible official of a minor source and/or a conditional major source must pay an annual ~~emission~~ fee to the Division State of Tennessee. The annual ~~emission~~ fee shall be based on the source's allowable emissions as defined in subparagraph ~~1200-03-26-.02(2)(d)~~ of this rule.
- (b) 1. The minor source and conditional major source annual emission fee must be calculated ~~as using~~ the sum of the allowable emissions of all regulated pollutants at a source. 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 requirement must be specified ~~on in~~ the permit, and must include the method(s) used to determine compliance with the limitation(s). The documentation procedure to be followed by the source owner or operator must also be included to ~~insure~~ ensure that the limit is not exceeded. Exceedances of the mutual agreement limit will be considered by the Board as circumvention of the required annual emissions fee and a matter in which enforcement action must be pursued.
2. To reduce the amount of the fee as provided in part 1 of this subparagraph, the responsible official must submit a letter to the Technical Secretary requesting reduced allowable emissions and providing the method or methods that will be used to ensure compliance with the requested limit or limits. This request must be received at least ~~ninety~~(90) days prior to the applicable due date of the annual ~~emission~~ fee. Any request received after that deadline may only apply to the fee for the following year and not for the year being invoiced.
- (c) ~~Beginning December 1, 1991 all~~ All minor and conditional major source annual ~~emission~~ fees are due and payable to the Division State of Tennessee in full according to Schedule I of this subparagraph. The county that in which a source is located ~~in~~ determines when the ~~minor source source's~~ annual ~~emission~~ fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual ~~emission~~ fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the Division State of Tennessee in full by the first ~~(1st)~~ day of the month that the fee is due. The Technical Secretary may extend this due date an additional ~~ninety~~(90) days where ~~he finds that~~ the ~~minor~~ source owner or operator's fee notice was mailed by the Division Department to an incorrect mailing address.

SCHEDULE I

Month the Annual ~~Emissions~~ Fee is Due (Accounting Period)

Counties in the Monthly Grouping

January	Anderson, Bedford, Benton, Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Coker
March	Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and Shelby
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

- (d) A newly constructed minor ~~and or~~ conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual ~~emission~~ fee for the remainder of the annual accounting period. A minor ~~or conditional major~~ source ~~company~~ ceasing operations during the annual accounting period will not receive a refund for annual ~~emission~~ fees paid.
- (e) The appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 ~~(ten)~~ tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.
- (f) Deleted.
- (g) Deleted.
- (h) Deleted.
- (i) ~~The responsible official must pay an annual emission fee as per subparagraph (e) of this paragraph.~~ The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (j) Deleted.
- (k) ~~Beginning one (1) month after the effective date of the rule amendment that added this subparagraph (k),~~ conditional Conditional major sources must pay a an annual permit review fee

in accordance with the table below in addition to the ~~minor source~~ annual emission fees specified in subparagraph ~~(6)~~(e) of this ~~rule paragraph~~. This fee is due and payable to the ~~Division State of Tennessee~~ according to Schedule ~~4 I~~ found in subparagraph ~~(6)~~(c) of this ~~rule paragraph~~. When determining the permit review fee, the allowable tons per year shall be calculated in accordance with subparagraph (b) of this paragraph except that ~~When determining the allowable tons per year,~~ carbon monoxide emissions shall be included.

Allowable Tons Per Year	Review Fee
0-50	\$250
50.1-100 TPY	\$500
100.1-250 TPY	\$1,000
250.1 and up	\$2,000

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

Paragraph (7) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(7) **PAYMENT OF FEES: Payment of Fees.**

- (a) All fees regulated by this chapter shall be payable to the ~~Division of Air Pollution Control State of Tennessee.~~
- (b) Fees not paid, late fees, and returned checks are subject to the provisions of paragraph ~~1200-03-26-.02(8)~~ of this rule.
- (c) Returned checks for any reason (i.e. insufficient funds, account closed, etc.) are considered failure to pay until such time collected funds are forwarded to the ~~Division State of Tennessee.~~ Returned checks are subjected to ~~an~~ additional ~~\$20.00~~ handling charges.
- (d) Annual ~~emission~~ fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" or "Facility ID" specified in the source's permit(s) and the invoice number, if available, or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.
- (e) When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within ~~One one~~ year from the date on which the ~~Division of Air Pollution Control State of Tennessee~~ received payment of the fee.
- (f) Online payment can be made to the State of Tennessee for annual fees by following the established State of Tennessee online payment process. Online payments require the inclusion of the customer identification number and the invoice number, if available, to ensure proper crediting of payment.

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

The title for paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it and replacing with a title that reads as follows:

(8) **LATE FEES – FAILURE TO PAY Late Fees – Failure to Pay**

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

Subparagraph (b) of paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) If any part of any fee imposed under this ~~Rule 1200-03-26-.02 rule is~~ not paid within ~~fifteen (15)~~ days of the due date, a late payment penalty of ~~five percent (5%)~~ of the amount due shall at once

accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of ~~five percent (5%)~~ of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within ~~fifteen (15)~~ days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly. The Division will consult with the State of Tennessee's Department of Finance and Administration to determine the appropriate rate of interest.

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 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~~ Annual 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 State of Tennessee. 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 as long as the source remains a major source or Paragraph 11 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. (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. (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)~~ 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~~ \$5,000 for fees due on and after January 1, 2021. This base ~~emission~~ fee shall be paid in addition to the annual emission fee established by ~~part 2 subpart 2(iii)~~ of this subparagraph, but shall be counted toward the applicable minimum fee set forth in subpart ~~2-(ii)~~ 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)(b)14 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~~ \$9,000 for all other sources subject to this paragraph (9) for fees due on and after January 1, 2021.
 - (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~~ \$64.20 per ton for non-EGU sources and ~~\$75.00~~ \$90.00 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: ~~\$33.50~~ \$40.20 per ton for non-EGU sources and ~~\$47.00~~ \$57.00 per ton for EGU sources.
 - (iv) The **emission fees and** fee rates enumerated in ~~subpart (iii) of this part this subparagraph (d)~~ must be supported by the Division's annual workload analysis that is approved by the Board.
3. The **emission fees and** fee rates specified in this subparagraph (d) shall remain in effect until the effective date of an amendment to ~~part 2 of~~ this subparagraph (d). Any revision to the **emission fees and** 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 shut down, 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. However, in no case shall the annual fee be less than the minimum annual fee established in subpart (d)2(ii) of this paragraph. 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 major source subject to paragraph (11) of Rule 1200-03-09-.02 or Paragraph 11 source 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: T.C.A. §§ 4-5-201 et seq. and 68-201-101 et seq.

The title of Rule 1200-03-26-.02 is amended by changing the title from "Construction and Annual Emission Fees" to "Construction and Annual Fees."

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

The table of contents to Chapter 1200-03-26 Administrative Fee Schedule is amended by changing the title of Rule 1200-03-26-.02 from "Construction and Annual Emission Fees" to "Construction and Annual Fees," so that as amended the table of contents shall read:

1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees
1200-03-26-.02 Construction and Annual ~~Emission~~ Fees
1200-03-26-.03 Repealed

Authority: T.C.A. §§ 4-5-201 et seq. and 68-201-101 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				
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	
Mike Haverstick Working in management in Private Manufacturing	X				
Amy Spann, PE Registered Professional Engineer	X				
Greer Tidwell, Jr. Conservation Interests	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 Air Pollution Control Board on 12/11/2019, 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: (10/04/19)

Rulemaking Hearing(s) Conducted on: (add more dates). (11/25/19)

Date: December 12, 2019

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: _____

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

Comment: A commenter requested information regarding four specific items pertaining to Visible Emissions Evaluation Course ("Smoke School") Fees.

1. How the proposed increased costs compare to offerings in the private sector.
2. Why the Board has chosen to move away from a dual fee structure (in which out-of-state applicants pay a higher fee than Tennessee applicants) to a uniform fee structure.
3. Why the Division, unlike previous years, has decided not to provide training in East Tennessee in 2020.
4. The number of individuals the Division has trained, certified or recertified in the past years and where the people are from in the state of Tennessee.

Response:

1. The proposed rates for Smoke School will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest provider (Aeromet).
2. Due to the increase of private company offerings of Smoke Schools in surrounding states, the Division does not receive the amount of out-of-state participants that it has in the past. Tennessee is the only state that the Division is aware of that still uses the dual fee structure. Eliminating the dual fee structure will reduce confusion and tracking costs and align Tennessee's structure with other providers in this area.
3. The Division does have schools at Roane State Community College in East Tennessee currently scheduled through the 2021 season and has no plans to discontinue these schools in the future.
4. The Division certifies approximately 150 people, which includes approximately 30 Division staff, every six months at six Smoke Schools per year. Individuals attend from every part of the state at each school.

Comment: A commenter noted that the language of subparagraph 1200-03-26-.02(1)(a), which contains the description of the purpose of 1200-03-26-.02, is changed from "to establish construction fees, annual emission fees, and permit review fees" to simply "to establish fees". The commenter claimed that this change grants the Division the broad authority to create new fees beyond these categories.

Response: The existing minimum and base fees are not technically emission fees, although the minimum fees are related to emissions. This change merely aligns the wording of the rule to the existing contents and streamlines the wording. The Board, not the Division, has the sole authority to promulgate rules, and any changes must always go through public participation procedures before being taken to the Board for approval or denial.

Comment: Throughout the proposal, the term "annual emissions fee" is replaced with the term "annual fee". A commenter asserted that changing this term in a wholesale manner is too broad and that moving away from this terminology will cause confusion. The commenter stated that "until such time that the department proposes a fee collection method that does not rely on the amount of allowable or actual emissions, the term 'annual emissions fee' should be retained."

Response: The existing Title V minimum and base fees are not technically emission fees. This change merely aligns the wording of the rule to agree with the existing structure to increase transparency and cause less confusion.

Comment: A commenter requested an explanation of the variation in the fee payment schedule for Cotton Gin Operations. In particular, the commenter inquired as to why they pay at the end of the year while other entities have a rotating schedule based on county location.

Response: Cotton gins are seasonal operations and many are not staffed year-round. Because of this, the Division found it difficult to ensure delivery of fee invoices, and many companies failed to pay fees in a timely manner, resulting in the assessment of penalties and interest pursuant to 1200-03-26-

.02(8) as provided below. The State of Tennessee's Department of Finance and Administration reports the current rate of interest is 10% annually.

If any part of any fee imposed under this Rule 1200-03-26-.02 not paid within fifteen (15) days of the due date, a late payment penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly.

The change being proposed improves customer service to these facilities that may not be in operation during the month in which their invoice would arrive.

- Comment: A commenter proposed that the Division survey those facilities that pay only the minimum fee to determine if they would qualify as a "small business stationary source" under Section 507(c) of the Clean Air Act (using only subparts (A) and (B) of that definition). The commenter suggested that if there are a meaningful number of facilities that are truly small businesses then it would be reasonable to retain their minimum fee level at \$7,500 for those sources. Another commenter also proposed that a special rate could be established for a small business if small business could be defined.
- Response: The Division currently does not require facilities to identify themselves as small businesses and does not have the means to identify small businesses on its own. Therefore, the Board does not currently have the information necessary to implement the proposals or to investigate any potential revenue impact that would occur from such a provision. This proposal was not brought up or developed during any of the previous Title V fee stakeholder or listening sessions; therefore, the Board will evaluate this proposal in future rulemakings.
- Comment: A commenter supported retaining the current alternative minimum fee of \$5500 for "once in always in sources".
- Response: The Board appreciates the commenter's support for retaining the current alternative minimum fee of \$5500 for "once in always in sources". However, this alternative minimum fee may soon become obsolete as the result of US EPA's January 25, 2018, guidance memorandum withdrawing the "once in always in" policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act and EPA's July 26, 2019, proposed rule "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act".
- Comment: A number of commenters supported increasing the base fee from \$4000 to \$5000. Two of these commenters also supported increasing the minimum fee from the current rate of \$7500 to \$9000.
- Response: The Board appreciates the support of the proposed base fee and minimum fee.
- Comment: A commenter stated that it would be appropriate for the Board to provide a justification for the \$9000 minimum fee.
- Response: During the 2016 stakeholder process, TDEC's Policy Office conducted an analysis of the estimated cost of implementing the Title V program for several facilities of different levels of emissions. The average annual cost of implementing the Title V program for the two lowest emitting sources ranged from \$5,189.37 to \$29,065.87 depending largely on how certain costs (e.g., administrative, Small Business Environmental Assistance Program, regulatory and guidance development, ambient monitoring, and training) were allocated among Title V facilities. The proposed \$9000 minimum fee falls within that range.
- Comment: A commenter objected to the proposed budget for multiple years (2020-2022) without annual evaluation after a fee increase. In addition, a number of commenters requested that the proposed rule should be modified to reflect adjustments to the Title V emission fees for FY2021 only. In support of this request, a commenter stated that annual discussions of the of the Division's

budgetary needs, including production of the annual Title V Workload Analysis, are an effective and appropriate part of the Board's oversight of the Division. This commenter noted that the significant reduction in emissions in recent years has proved challenging to the Title V fee revision process and that the commenter does not foresee this trend of emission reductions reversing course, requiring continued examination of the Division's expenses to keep costs growing beyond reasonable funding levels. This comment was supported by another commenter. A third commenter noted that the Department recently presented a budget request for fiscal year 2020-2021 before Governor Lee and the Title V fee rule, therefore, should only establish a fee for one year. Another commenter asserted that the current board should establish a fee rate for fiscal year 2020-2021 and future boards should set the rates for future years.

Response: Based on these comments, the Board will remove the proposed fee increase for fiscal year 2021-2022 from the rule. The Board agrees that the significant reduction in emissions in recent years and the challenge that this reduction has created regarding Title V fees will require continued examination of the revenue and expenses necessary to maintain a properly funded Title V program. However, the Board understands that the Division has no reason to expect the same level of dramatic reductions that have occurred in the last 5-10 years to continue into the future at comparable levels. The Board expects that the Division will evaluate the need for a fee increase and will present that evaluation to the Board each year, in accordance with provisions of 1200-03-26-.02(9)(d). At a minimum, this evaluation will examine the impact of inflationary costs, such as increased costs of rent, employee benefits, and pay for performance salary increases as required under the TEAM Act. Based on the reduced fiscal year 2020-2021 fees discussed elsewhere in this response to comments document, the analysis for fiscal year 2021-2022 will also need to include an evaluation of any fee increase necessary to ensure that the Title V program is fully funded and maintains an adequate Title V fee reserve.

Comment: A commenter encouraged TDEC to reconsider its proposal and see if a more reasonable increase could sustain the Title V program in Tennessee. Several commenters asserted that an increase in fees exceeding 20% (or 20.6%) annually could not be supported. One commenter provided the following table comparing the proposed fee increase for fiscal year 2020-2021 and a 20% (20.6%) increase.

Fee Rates	Status quo	Proposed in Rule		Chamber's upper limit	
	2019 current	FY2021 proposal	% increase	if 20% increase	% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$40.20	20%
NEGU Actual	\$53.50	\$69.50	29.9%	\$64.20	20%
EGU Allowable	\$47.00	\$61.00	29.8%	\$57.00	20%
EGU Actual	\$75.00	\$97.50	30.0%	\$90.00	20%
with current base & min fee	\$5,656,986	\$7,050,443	24.6%	\$6,590,389	16.5%
& adjust Base & Min. Fee	n/a	\$7,278,333	28.7%	\$6,819,868	20.6%
new funds collected		\$1,621,347		\$1,162,882	

Response: Based on comments received, the Division recommended two separate proposals for the Board to consider, both of which were lower than the noticed proposal. One proposal was the 20.6% fee increase recommended by the commenters. The second proposal was an approximate 25% increase illustrated in the table below that was recommended by the department. However, it is important to note that both proposals would result in Title V fee revenue below the estimates of the Title V fee program expenses and would result in a significant reduction or complete depletion of the Title V fee reserve. The Board adopted the 20.6% proposal. As a result, the Board expects that the Division will evaluate the need for a fee increase each year in the future and the analysis for fiscal year 2021-2022 will also include an evaluation of any fee increase necessary to fully fund the Title V program and rebuild a reserve.

The commenters' proposal results in estimated Title V fee collections of \$6,819,868. This is \$990,971 less than the projected Title V expenses for fiscal year 2020-2021 and would likely deplete the Title V reserve (estimated to be \$1,000,000 at the beginning of fiscal year 2020-2021). While not significant, the commenters' proposal also deviates from the Division's historical practice that dollar per ton rates are rounded to the nearest 50 cents and deviates slightly from the actual-to-allowable ratio of 1.6 to 1 and EGU to non-EGU ratio of 1.4 to 1, which has consistently received approval from both stakeholders and the Board.

The department recommended option is an approximate 25% increase as indicated below.

	Status quo	Proposed in Rule		Division's Recommended Option	
Fee Rates	2019 current	FY2021 proposal	% increase		% increase
NEGU Allowable	\$33.50	\$43.50	29.9%	\$42.00	25.4%
NEGU Actual	\$53.50	\$69.50	29.9%	\$67.00	25.2%
EGU Allowable	\$47.00	\$61.00	29.8%	\$59.00	25.5%
EGU Actual	\$75.00	\$97.50	30.0%	\$94.00	25.3%
with adjust Base & Min.	n/a	\$7,278,333	28.7%	\$7,066,366	24.9%
new funds collected		\$1,621,347		\$1,409,398	

Comment: Several commenters noted that the staffing size of the Division could be reduced in order to reduce the amount of revenue needed to administer the Title V program. One commenter pointed to the significant reduction in emissions since enactment of the Clean Air Act amendments of 1990 resulting from substantial capital improvements and cleaner fuel sources. The commenter predicted continued improvements will occur in industry's efforts to reduce emissions, placing additional downward pressures on revenue in the years ahead and, quoting Commissioner Salyers regarding the air quality in Tennessee, suggested that the Division be redesigned to focus on maintenance of standards rather than a regulatory regime.

Another commenter suggested that that the level of effort required by TDEC to provide governance and oversight to the Title V program, while not directly proportional, should at least mirror the direction of the state emissions profile.

Response: The Board agrees that air quality in Tennessee has significantly improved since 1990, as evidenced in the Commissioner's statement. However, an equally important aspect of the Clean Air Act is that the positive improvements in air quality must be maintained through a responsible regulatory program. The status of attainment under the Clean Air Act, in and of itself, does not provide opportunity for the Board or the Division to relax implementation of regulatory requirements. Nor does the status of attainment, in and of itself, remove critical regulatory program elements such as the issuance of permits, performing full compliance evaluations, conducting ambient air quality monitoring and responding to citizen complaints. In fact, it is because of the Board's and the Division's efforts to ensure compliance with applicable regulatory requirements, with the support of our Title V industry partners, that the state of Tennessee is able to enjoy the cleanest air since the dawn of the industrial era today and hopefully well into the future.

The regulatory requirements that make up the Title V program are mandated by federal regulation and statute. The requirements for facilities to obtain Title V permits, what those permits must contain, and the process for issuing and amending those permits are all specified in federal Part 70 regulations. Even though there have been significant emission reductions from Title V facilities (billable tons have dropped from 287,382 in 2004 to 113,135 tons in 2019), the number of Title V facilities is basically the same as it was ten years ago (221 in fiscal year 2009-2010 and 220 in the current fiscal year 2019-2020). Many Title V facilities are subject to federal NESHAP, NSPS, section 111(d), and section 129 standards and federal regulations require the Division to incorporate these standards and appropriate compliance methods into Title V permits. The

Division is also required to enforce provisions of its federally approved State Implementation Plan and incorporate those requirements into Title V permits. Major new source review requirements, which require both permitting and modeling staff, are required by federal PSD and Nonattainment NSR regulations. The requirements for enforcing Title V permits, including inspections, report reviews, source testing, enforcement actions, and reporting when violations are discovered, are all established by federal regulations or guidelines. Engaging the public through public process requirements and responding to complaints is also a critical aspect of Title V program requirements. Emission inventory and Title V regulatory and SIP development are all required by or driven by federal regulations. The requirement to operate and maintain an ambient monitoring program is done in accordance with Part 58 regulations and a large compendium of federal guidance documents. Part 70 regulations require the Department's Small Business Environmental Assistance Program to be funded by Title V fees. Federal Part 70 regulations require that these costs, as well as the general administrative costs of running the Title V permit program, be funded using Title V fees. Many of these activities can easily be attributed to individual Title V facilities and must be charged to Title V funds. A few of these activities, such as ambient monitoring, may or may not be specifically linked to specific Title V sources, but are collectively measuring the level of air pollution in the ambient air from all sources of air pollution within specific distances from the monitors, including air emission from Title V sources. The Division has begun the process of evaluating various approaches for determining what portion of the ambient monitoring should be funded by Title V fees. The Division has also begun an evaluation of the Title V inspection frequency to see if changes can be made while still ensuring that the current compliance rate for Title V facilities is not eroded. In summary, each of the activities that comprise Tennessee's Title V program today are required by federal regulations and cannot be simply eliminated or diminished in a way that would impact the adequacy of Tennessee's operation of the Title V program.

While some Title V facilities have not had to deal with changing air quality requirements for a significant amount of time and may be able to move towards a "maintenance of standards" mindset, that is not the case with all Title V facilities in the state and is not the case for the Board or the Division. Recent work in transition from a geographic-based permitting organization to a sector-based organization identified 73 separate industry categories (sectors) in Tennessee subject to 109 different federal regulations. The Division's staff is responsible for having a working knowledge of and staying up to date with the state and federal regulations that apply to each sector. Based on information contained on EPA's Residual Risk/Technology Rules website, EPA has promulgated 40 new or revised standards in the past 10 years, 20 more have been signed but not yet published in the Federal Register, and 35 more are scheduled to be reviewed and potentially revised within the next two years. This trend is expected to continue as EPA proposes and promulgates residual risk standards as required under the federal Clean Air Act. In addition, the Board and Division are tasked by federal regulation to develop several new air quality plans and revisions over the next few years including Regional Haze (due June 2021), the Affordable Clean Energy rule (due July 2022), and a 111(d) plan for existing Municipal Waste Landfills that was due in August 2019. Additionally, the Division is responsible for addressing the one remaining nonattainment area in Kingsport, Tennessee.

In addition to these specific regulatory changes, the Clean Air Act requires U.S. EPA to review federal ambient air quality standards every five years and revise them if necessary. Revision of federal air quality standards often leads to additional regulatory and permitting burdens for Title V facilities and additional responsibilities for the Division. Changes to federal air quality standards may also change or increase ambient air monitoring requirements for the Division. In September 2019, EPA issued a Policy Assessment for review of the PM standard and in October 2019, EPA issued a similar document for the ozone standard. Either or both of these could lead to tighter standards in the near future that may impact the workload of the Division. The Division and the Department have also spent a considerable amount of time addressing ozone transport challenges from other states by responding to EPA petitions or participating in matters as they proceed through the court system. Much of this work is specific to Title V facilities in the state and, while not mandated by federal law, is beneficial to Tennessee and the facilities at issue.

While the Board and the Division cannot change the requirements of the Title V program, they can and have undertaken efforts to streamline processes and increase the efficiency of the Title V program. Tennessee's Title V industry partners have been a driver to improve the Division's work

product. As good stewards, the Division has pursued workforce modernization. The Title V program in Tennessee has undergone many changes since inception. It is the intention of the Division to continue to evolve and modernize the Title V program to meet the evolving needs of the public and regulated community. As with any workforce, modernization can create efficiencies, promote effectiveness, and reduce overhead. However, providing staff the tools to do the best job they can does come at a cost.

Some examples are:

- Development of an on-line system (known as SLEIS) for facilities to submit emissions inventory reports, permit fee AEAR reports, and compliance reports;
- Recent changes to air quality rules that will allow sources that are subject to federal standards to be considered insignificant activities for Title V purposes once those federal rules have been adopted into Tennessee's rules;
- Changes to Tennessee's construction permitting process (which were identified and developed through a LEAN process that included industry stakeholders) that should benefit Title V as well as non-Title V facilities;
- Reorganization to sector-based permitting that will provide for consistency and improve efficiency across industry sectors;
- Automation of non-Title V and semi-automation of Title V invoicing; and
- Modernization of the ambient monitoring network to reduce required staff travel time and make critical ambient data available anywhere in the state.

Many of these changes have already or will soon be implemented, while others will take longer to come to fruition.

The Division's Field Services Program has recently implemented and will continue to develop changes to improve the efficiency of its operations. Each Field Office has its own region with its own assigned counties. In the past, each Field Office was responsible only for its region. The Division has shifted workload between the Field Offices in order to use its resources more efficiently and effectively. This has allowed the Division to shift work, such as Title V inspections and report reviews, from one Field Office to another when needed, thereby spreading the workload more evenly and maximizing use of our resources. Previously, the program combined periodic Field Services meetings with the Smoke School training. The Division has reevaluated how it accomplished this training to ensure that we are using its resources effectively. The Division added an East Tennessee VEE school, which required only day travel for staff. All Field Services meetings and ambient monitor training are now conducted by WebEx, and the Division is currently developing self-instructional training courses. As a result of these adjustments, the program has eliminated almost all overnight travel, resulting in substantial savings of both time and money.

The department is currently reviewing the Alternate Workplace Solutions (AWS), a program which allows staff members to work from home in lieu of traditional offices. Programs within the Division have participated in AWS since 2017 and more will implement AWS in 2020. When fully implemented, AWS will allow the Division to substantially reduce office space needs, while increasing efficiency and maintaining workload productivity. The Division will continue to work with the department on the implementation of AWS.

As expectations for ready access to information and transparency have increased with the advent of mobile technology, the Division has met those expectations through its publicly available dataviewer and by maintaining its website pages. The Division has also improved response times for requests for information by digitizing all paper files across the state. The database (known as Smog Log) that maintains that information is now the backbone for the Division and is used daily in our permitting, inspection, and administrative work, and also for federally mandated reporting, invoicing, reports to the Board and the Tennessee General Assembly. The support and maintenance of this system is critical to the daily functionality of the Division.

In order to meet the requirements of a 100 percent digital work space, the Division had to transition from a historical clerical based administration group to a professional administrative services group. Becoming more sophisticated has required reclassification of clerical positions to

professional administrative services positions. A large portion of this group operate as data entry and administration specialists by receiving and entering applications, reports, and modifications; updating official information; and reviewing and uploading other documents to the database. Others continue to provide a face and voice to the citizens and regulated community by staffing a front desk and providing phone coverage for the Division, but now also spend considerable time using its website and the Internet to provide information to the public. In this regard, they work to ensure the Division's website and the Board's website are updated and include accurate information. Finally, they continue to manage Division personnel activities, time and activity, training, assistance with travel and expense reimbursements, required public participation processes for the Division, facilities and supplies support, procurement support, and Board administrative support. EPA requires Title V reporting semiannually that is conducted by the administrative staff by running queries of the database. In modernizing and moving to a digital work environment, the Division has eliminated seven administrative positions since 1993. As a whole, the Division has less staff than it has had since the very early days of the Title V program. The Board understands that the Division is committed to operating a program that is right sized for the needs of Tennessee and will continue to evaluate and implement opportunities for further efficiency gains in 2020.

Comment: Two commenters provided two specific suggestions of efficiencies that should be utilized by the Division. An additional commenter supported these suggestions generally but for future budgets. Another commenter mentioned the first suggestion in its comments.

1. One commenter noted that the Title V Workload Analysis is based on annual Title V inspection frequencies when EPA guidance allows for bi-annual inspections. The commenter asserted that Title V is a self-reporting and compliance certification based program and that sources should not be paying for inspections beyond the EPA recommendation. Another commenter requested the Division examine whether annual inspections are necessary or whether a less frequent and more focused approach would be more effective. One commenter estimated that cutting the number of inspections in half would move 3.19 FTEs from Title V to non-Title V. This commenter estimated that this change would also move 1.49 FTEs related to the Field Services program's program management and meetings to non-Title V, resulting in a total of 4.7 FTEs being moved from Title V to non-Title V activities. Another commenter also suggested shifting certain positions. Two of these commenters also asserted that it appears that the Title V program has been charged for Conditional Major source inspections.
2. Commenters questioned ambient monitoring expenditures. One commenter questioned the assumption in the Workload Analysis that 42% of the ambient air program should be borne by Title V and 38% by non-Title V (the remainder is funded by an EPA grant). This commenter pointed out that TDEC's ambient air monitoring network plan shows only four source oriented monitors versus about 20 population-oriented monitors. Another commenter proposed that the five source-oriented monitors be assigned to Title V and the remaining 19 be assigned to non-Title V. This commenter estimated that this would shift 3.4 FTEs from Title V to non-Title V funding. Another commenter requested the Division determine more accurately the relative burden of ambient monitoring expenditures that should be borne by Title V Sources.

Response:

1. The Division follows the Federal Fiscal year (October 1st to September 30th) for its inspection cycle. The Division's current inspection frequency began on October 1, 2019, and each Field Office manager developed his or her annual Field Office workload plan. The Division has operated the Title V program in Tennessee for over twenty years and has had a fairly consistent approach to conducting inspections during that operation. The suggestion for a change to the Title V inspection frequency was made during the second listening session held with stakeholders, but had not been previously discussed or suggested by stakeholders in the previous three years of stakeholder engagement regarding Title V fees. Following the September listening session, the Division began evaluating data related to compliance for Title V facilities in Tennessee and what impact a revision of the inspection frequency for Title V facilities may have on compliance. The Board understands that the Division is committed to conducting a full evaluation that assesses whether and how a program change involving a less frequent on-site facility inspection could be designed and implemented to accomplish

some level of Title V workload relief, but would also ensure compliance levels within the Title V program are not unnecessarily diminished. Once completed, this evaluation and any associated recommendations will be presented to the Board for feedback and direction before any changes to inspection frequency are implemented. Based on the data and information assessed to date, the Board understands that the Division anticipates that there may be an increase in High Priority Violations (HPVs) should inspection frequencies be reduced. (HPVs are a subset of violations that receive additional scrutiny by U.S. EPA to ensure that enforcement agencies respond to them in a timely and appropriate manner.) Reduced inspection frequencies may also result in a longer duration of non-compliance at a facility. The Board understands that the Division does agree that Title V regulations and permits do require self-reporting (generally semi-annually) and annual compliance certifications. However, the Division states that these requirements have not necessarily resulted in lower compliance rates when compared to facilities that are not subject to Title V requirements. The Division has compiled data regarding Title V, conditional major (CM), and true minor (TM) source inspections from 2008 through 2019. This data shows that Title V sources have a higher rate of non-compliance than non-Title V sources.

Inspection Period*	Title V	Title V Non-Compliance Rate	CM	CM Non-Compliance Rate	TM	TM Non-Compliance Rate
2008-2009	258	9%	385	10%	209	8%
2009-2010	247	9%	373	9%	234	14%
2010-2011	245	18%	370	11%	308	17%
2011-2012	230	20%	369	12%	254	15%
2012-2013	209	15%	358	12%	325	18%
2013-2014	206	24%	349	18%	501	19%
2014-2015	213	17%	339	15%	324	23%
2015-2016	237	17%	324	12%	226	25%
2016-2017	234	19%	329	10%	216	18%
2017-2018	231	26%	327	12%	438	6%
2018-2019	227	13%	343	8%	321	3%
Total	2537	427- 17%	3866	410 - 11%	3356	497 - 15%

*Inspection period is October 1 through September 30.

The Board also understands that the Division anticipates that an adjustment to the Title V facility's inspection frequency would not result in a 50% decrease in workload hours worked to determine compliance associated with Title V sources as the commenter suggests. According to the EPA's October 4, 2016 memo, a Full Compliance Evaluation (FCE) should be conducted at a minimum of once every two Federal fiscal years at all Title V major sources, except those classified as mega-sites. An on-site inspection is only one part of a FCE; it also includes the review of all required reports¹, visible emission observation (as needed), a review of facility records and operating logs, an assessment of process parameters, an assessment of control equipment performance parameters, and (if applicable or deemed appropriate) a stack test. The Division currently has eight facilities that are classified as mega-sites. Seven of these facilities are inspected on a three year cycle, and one is currently inspected on a two year cycle. A three year cycle is one in which the inspectors will inspect one-third of the emission sources at these facilities each year until a FCE is completed within the three year cycle.

Each Title V facility is required to submit semi-annual reports and annual compliance certifications to the Division. The Division is required to review these reports in a timely manner and to enter the data into EPA's database (ICIS-Air) within sixty days of receipt. Inspectors must review the reports and enter the data in a timely manner in order to meet

¹ Reports include- continuous emission monitoring, continuous parameter monitoring, malfunction, excess emission, semi-annual, annual compliance certification, periodic monitoring reports, and any other reports required by the permit.

federal requirements; therefore, workload associated with a facility's full compliance evaluation will occur on an annual basis regardless of the frequency of the facility inspection.

The Division receives complaints regarding Title V facilities. When the Division receives a complaint about a permitted facility, the inspectors conduct an on-site inspection to ensure that the facility is complying with its permit conditions. If a complaint is received regarding a Title V facility, the Division will complete an on-site inspection in order to verify compliance with the permit conditions and be responsive to the complainant regardless of the frequency of the facility inspections.

Inspection Period	Title V complaints
2008-2009	47
2009-2010	75
2010-2011	34
2011-2012	13
2012-2013	13
2013-2014	18
2014-2015	18
2015-2016	24
2016-2017	27
2017-2018	26
2018-2019	32

Since the Field Services Program's program management and meetings workload is due to a variety of activities, the Board understands that the Division cannot at this time determine how many, if any FTEs associated with these tasks would be moved from Title V to non-Title V, but the Division will include this in its assessment.

The Board understands that the Division has confirmed that all time associated with conditional major facilities is charged as non-Title V time. A facility may initially be classified as a Title V source until it is issued a permit that includes conditions that limit its emissions to below major source thresholds (i.e., a conditional major permit). While the facility is still classified as a Title V source, activities related to that facility will be charged to Title V. There are currently three facilities in Tennessee that fit into this category. Once a conditional major permit is issued, the facility will be reclassified as a conditional major source and activity will be charged to non-Title V.

2. The Division currently operates 28 ambient air quality monitors within the state located at 24 different monitoring sites. The various monitoring sites are classified as maximum concentration, background, population weighted emission index (PWEI), transport, population oriented, and source oriented in accordance with federal regulations. The cost of operating and maintaining an ambient monitoring network is an eligible Title V cost under both state (1200-03-06-.02(1)(c)5) and federal regulations (40 CFR 70.9(b)(iv)(v)). Five of Tennessee's sites are classified as source oriented or maximum concentration. The cost of operating these source oriented and maximum concentration monitors are charged to Title V or non-Title V, based on the type of source they are located near (four are near a single Title V source and the fifth near a now-closed non-Title V facility).

The monitors that are not source oriented or maximum concentration measure air pollution emitted from or formed from emissions from a wide variety of sources, including Title V facilities. Since it is impossible to determine where the air pollution measured at the non-source oriented monitors originated, permitting authorities have the discretion to determine what portion of ambient monitoring costs should be charged to Title V fees.

The Board does not agree with the comments suggesting the costs associated with all non-source oriented monitors should be charged to non-Title V. The commenters provide no basis for this suggestion, but the suggestion assumes that emissions from Title V facilities

have nothing to do with the requirements or necessity for those monitors. The population associated monitors that measure ozone and particulate matter are sited following federal requirements and guidance. The monitor siting objective is to place the monitor where there is likely to be the most amount of people exposed to air pollution coming from any source, including Title V facilities. For ozone, EPA regulations and guidance advise to locate monitors within about 30 miles from where the ozone precursor emissions of NOx and VOCs may originate, although it is readily acknowledged that the area of influence for ozone is likely much larger. Within Tennessee, there are about 99 Title V facilities located within a 30 miles radius of the ozone monitors. Additionally, mechanisms under the Clean Air Act like the Good Neighbor Provision and EPA's historic NOx SIP call rule that was aimed at reducing impacts to ozone levels in neighboring states provide ready evidence that large Title V facilities can have an impact on air quality a large distance from the actual facility. The reach of particulate matter pollution is longer and can occur within up to 400 miles from the source; therefore, Tennessee's Title V sources with particulate matter and particulate matter precursor emissions may impact many of Tennessee's particulate monitors as may sources from other states. Finally, the calculations made by the commenter suggesting shifting cost from Title V to non-Title V included some incorrect assumptions regarding the monitoring program. First, one of the five source-oriented monitors is a lead monitor in Bristol which is near a now-closed non-Title V site and is therefore charged to non-Title V not Title V. Second, the commenter included a vacant position in the calculations that the Division has no current plans to fill.

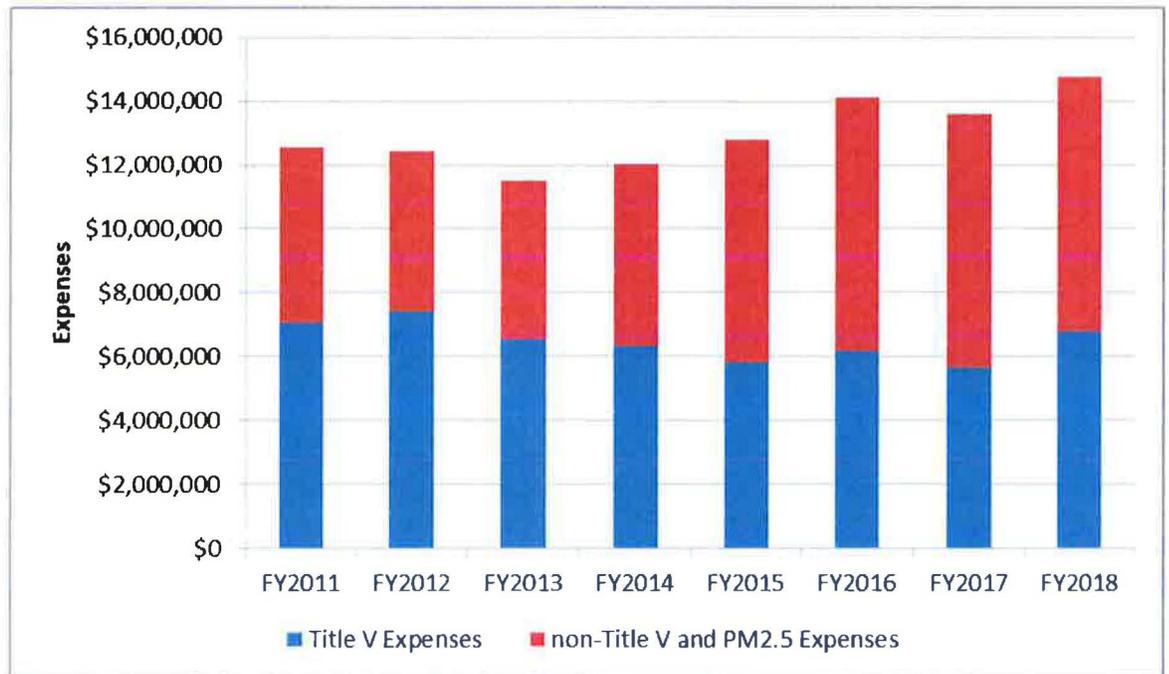
Since fiscal year 2017-2018, the Division has charged the costs of operating and maintaining its ambient monitoring network (excluding source oriented and maximum concentration monitors) using a "default ratio" of 52% Title V/48% non-Title V. The Division also receives approximately \$210,000 per year from an EPA section 103 PM_{2.5} grant that is used to fund a portion of the fine particulate monitoring network. When considering the amounts charged to Title V and non-Title V for source-oriented monitors, the amount charged to the PM_{2.5} grant, and the amount charged to the default ratio, the portion of the total ambient monitoring cost covered by Title V fees is approximately 42%. Since initiating this approach in 2017, the approach has been discussed and has received general support during stakeholder meetings and from the Board. The Division agrees that there are likely other evidence based approaches for charging ambient monitoring costs, but until such alternatives have been fully developed and vetted with stakeholders and the Board, the Board believes it is appropriate to retain the current approach. The Board understands that the Division is committed to conducting an analysis and providing the Board a proposed allocation between Title V and non-Title V for the costs of the monitoring program that has some connection to the state's relative emissions profile or other factors that influence the need for the monitors.

Comment: A commenter encouraged department leadership to examine expenses currently assigned as Title V activities that may not serve the purpose of the Title V program. The commenter presented data indicating that the average Title V expenses from fiscal year 2009-2010 through fiscal year 2017-2018 averaged \$6.7 million dollars per year compared to the projected fiscal year 2020-2021 Title V expenses of \$7,810,839. The commenter also referred to the Division's September 11, 2019, presentation to the Board that projects Title V expenses reaching \$9,784,927 in fiscal year 2025-2026.

Response: The Board understands that the Division reviews expenses charged to all funding sources, including Title V, on at least a monthly basis. Those reviews are conducted on a routine basis by the Division's Business Administrator and the managers of each program within the Division to ensure that they are legitimate Division expenses and have been charged to the proper funding source. When an incorrect charge is found, the Business Administrator corrects the error and, when necessary, initiates process changes to prevent similar errors in the future. This process allows the department and the Division to ensure that activities charged to Title V are eligible costs for the program under federal and state law.

As indicated in the draft fiscal year 2020-2021 Title V Workload Analysis, previous workload analyses, and during numerous stakeholder and Board meetings, the Division made changes to how employee time and other expenses are entered into the Department's time and expense management system to ensure that expenses are charged to the proper funding sources.

Therefore, the levels of Title V expenses prior to fiscal year 2017-2018 are not representative of the actual cost of running Tennessee's Title V program. As can be seen from the following graph, the Division's total expenses have increased steadily since fiscal year 2012-2013 (FY2013). (Expenses in FY2016 were somewhat elevated due to increased equipment purchases that were funded by a significantly higher EPA grant that year and expenses in FY2017 were slightly reduced due to a large number of positions held vacant pending a reorganization of the Division and the completion of fee rules that would adequately fund both the non-Title V and Title V programs. There was also a significant reduction between FY2012 and FY2013 due to a reduction in the amount of indirect expenses for the Department and the Bureau of Environment that were charged to the Division.) However, even though total Division expenses increased from FY2013 through FY2017, Title V expenses dropped. This is due to the fact that expenses were intentionally shifted from Title V to non-Title V because of 1) an anticipated decline in Title V fees due to reduced emissions, and 2) a misperception that the Division had surplus funds available in its non-Title V fee reserve. (It was later discovered that a significant amount of non-Title V expenses were being charged to Title V. This was corrected and the expenses were reallocated in 2016. These expenses are properly allocated in the figure below as well as in Table 15 of the Title V Workload Analysis.) Projected FY2021 expenses were developed using best available information as explained in the draft FY2021 Title V workload analysis. If the actual FY2021 Title V expenses were to be estimated by simply increasing FY2018 Title V expenses by the actual rate of increase for the past several years of 4.6%, one would arrive at an estimate very close to projected FY2021 Title V expense amount specified in the draft FY2021 Title V Workload Analysis of \$7,810,839



Comment: General and Administrative Expenses

One commenter described its comments as being with respect to a portion of the Title V expenses labeled "TDEC General & Administrative Expenses" in the Workload Analysis prepared by the Division of Air Pollution Control (the "Division"), which the commenter described as the basis for the proposed increase in Title V fees in these proposed rules. The commenter stated that the workload analysis lists a series of expenses, without amounts, and then states that "G&A (General & Administrative) expenses are charged to the Division according to formulae based on the percentage of the Division's budget in proportion to that of other BOE division budgets and special reserve funds and the Division's headcount. The Division's G&A expenses are charged to Title V funds, non-Title V funds, and federal grant revenue."

The commenter had concerns that the amount of G&A charged to the Title V program may be greater than is reasonable. The commenter stated that it has repeatedly in this budgeting process, and in prior years, asked for the specific formulae used to allocate G&A expenses among the various divisions in the Department, and further allocate the Division's allocated portions to the Title V and non-Title V programs. The commenter further stated that while the commenter had been advised as described in this quoted language that it is based on the percentages of budgets, reserve funds and headcount, the Chamber has not been provided any specifics on this. The commenter requested that it be provided with these formulae, and also requested that the specifics of how these formulae are applied in the allocations among the divisions and within the Division between Title V and non-Title V programs, including the dollar amounts of these allocations.

A commenter noted that in the department's comments during its budget hearing with the Governor's office the week of November 4, the Commissioner stated that approximately \$24 million, or about 6% of the Department's budget, was for department-wide support services. The G&A expenses allocated to the Title V program have consistently been over twice this percentage of the Title V program budget, other than the two years when the G&A expense was not allocated to the Title V program. The commenter stated that it presumed that there are some expenses included in this Title V G&A expense number that were not included in the 6% figure for department-wide support services, but the commenter did not know what those are. The commenter requested that the department provide a description of the department-wide support services that are included in the G&A expenses in the Title V workload analysis and the total costs thereof to provide an apples-to-apples comparison with the 6% department budget figure, or otherwise provide information that would explain the difference in the percentage of the G&A expenses in the Title V workload analysis and the 6% department-wide support services.

A commenter made an oral comment during the hearing that the Chamber had not been informed of what constitutes "special reserve funds" that are referred to in the general verbiage included in the Title V workload analysis. This commenter stated that he had not seen the formulae and the numbers of how they are allocated: the number of people in each division, the dollars in each division, and how decisions are made with respect to how allocations are made from reserve funds. He stated that it is difficult for the Chamber and its members to determine whether these allocations are fair are appropriate and comment accordingly. He commented that the Chamber believes this is a flaw in this process and that excess amounts may be allocated to Title V. He stated that the Chamber has had specific discussions regarding costs that they believe should be allocated to non-Title V, and the Chamber has been rebuffed on every suggestion so far to move those costs. His concern is that this is driven more by the inability to fund them with non-Title V than the fairness or accuracy of those suggestions. He stated that these are his assumptions and that the Chamber hasn't seen these numbers yet. His stated that his personal concern is further magnified by the fact that when the Chamber pressed on this approximately 10 years ago and had a sit down with the head economic person at the Department, there were changes in allocations that were made and there were things that they agreed were not fair. He stated that the Chamber is concerned that we may be there again. He said that this is a statement of ignorance because the Chamber has not seen the numbers and not because he knows that this is the case.

Response: Each Division that collects Environmental Protection Fund (EPF) fees and or Other Special Revenue Fund (OSR) fees contributes a portion of those annual fees to 32701, which is characterized as department wide administrative support services, and 32730, which is characterized as environmental administrative support (collectively TDEC General and Administrative Expenses or TDEC G&A).

The methodology for funding department administrative support services is based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services (32701). For example, if Division A's budget is 25% of the total eligible divisions' budgets, then Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative Services (32701).

The methodology for funding 32730, Environmental Administration, would be prorated based on the full time position count at the environmental field offices (EFOs). All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions. For example, if Division A had 25% of the positions in the EFOs, then Division A would be responsible for 25% of the Environmental Divisions' funding required for Environmental Administration, 32730.

As the TDEC budget changes each year, this calculation is performed at the beginning of each fiscal year using the new budget numbers for both administrative support service divisions and eligible Bureau of Environment divisions. A new memo is sent to the Department of Finance and Administration (F&A) each year which approves it. Attached is a copy of the May 2, 2019, memo from the department to F&A.

TDEC G&A is shared among two Air Pollution Control programs, Title V and non-Title V. A portion of non-Title V TDEC G&A is covered by federal grants. The TDEC G&A expenses are calculated based on the percentage of the Division's total employees to perform the respective services. The Division's Title V workload analysis is prepared annually which outlines the number of employees necessary to perform the services for the Title V program.

The Department's proposed FY2021 budget includes funding for both the Bureau of Environment (BOE) and Parks and Conservation. While the \$24,000,000 referenced in the Governor's hearing is 6% of the overall Department budget of \$416,000,000, this amount is inclusive of only department-wide administrative services, of which \$11.3 million is supported by various divisions of the BOE based on the funding formulae described herein. These administrative support services are provided by the Office of General Counsel, Commissioner's Office, Internal Audit, Procurement, Communications, Human Resources, Talent Management, shared services for technology and accounting, and other administrative functions. It is important to note that this figure does not include support services from the eight Environmental Field Offices (EFOs). These services are inclusive of EFO facility rent, utilities, maintenance, BOE leadership, and administrative staff.

The legislature can designate any fund a special reserve fund when it is created. Special reserve funds are statutory reserves that are held for a specific, "special" purpose. There are a variety of special reserve funds throughout the BOE. For example, the UST fund is a special reserve fund, specifically for UST fees. The funds in the UST account are used for the operation of the division, including personnel, and their related work such as cleanups. Another example is the Hazardous Waste Remedial Action Fund, which is also used for their operations and related cleanup or other work.

Comment: A commenter stated that it was the commenter's understanding that that the budget request is two million dollars more than the loss that will occur with the loss of revenue from elimination of the vehicle emissions inspection program and that all of these funds are going to the non-Title V program. The commenter's position is that if additional monies granted by the legislature go to the Air Pollution Control Division that some of these should go to the help with Title V fees either directly to fund some of the costs that the commenter has suggested are currently charged to Title V but should be funded with non-Title V fees.

Response: The Department of Environment and Conservation has submitted a request to the Governor's office for 3.6 million dollars in additional recurring funds for the Division of Air Pollution Control. As shown in the table titled "SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule" and the end of this response to comments document, the Division has projected a 3.4 million dollar shortfall in non-Title V revenue following elimination of the vehicle emissions testing program. A portion of this shortfall is due to the loss of the inspection and maintenance program, but roughly 1.6 million dollars of the shortfall is due to the revenue in the non-Title v program not being adequate to cover the costs of the program. Therefore, should the Governor choose to include the Department's request in his budget and should the legislature adopt the budget as requested, there will be few if any funds available to

cover shifted Title V costs.² Furthermore, the Clean Air Act and federal Title V regulations require that Title V programs be funded entirely with Title V fees. The Board understands that the Division has determined that all of the projected Title V expenses indicated in the FY2021 Title V Workload Analysis are legitimate Title V expenses and have been legitimately allocated to Title V. As indicated elsewhere in this response to comments document, the Division has begun the process of evaluating the inspection frequency of Title V sources, with the goal of ensuring that any changes would not reduce the compliance rate of these facilities, and evaluating alternative methodologies for determining the percentage of ambient monitoring costs that should be charged to Title V. It would be imprudent for the Board and Division to implement either of these changes until these analyses have been completed.

Comment: One commenter asserted that the Board has proposed to add five new positions and has proposed a very significant increase in fees.

Response: The Board understands that the Division is not proposing to add any new positions. During the September 11, 2019, Board meeting the Division provided a table showing the number of filled positions (as of January of each year) going back to fiscal year 2010-2011. This information shows that between fiscal year 2010-2011 and fiscal year 2015-2016, the Division averaged between 110 and 114 positions. Starting in calendar year 2016, many positions that became vacant due to retirement or other reasons were not filled while the Division was undergoing reorganization and working to develop and implement fee rules that would adequately fund both the non-title V and Title V programs. That reorganization was completed in 2019 with several staff moving to positions with new responsibilities. During this period, workload was prioritized and staff worked excessive hours in order to meet regulatory deadlines and meet the needs of the businesses of Tennessee. A number of efficiency projects have been put on hold and permit backlogs are starting to build. Operation at the current level of staffing is not sustainable. This rule will simply allow the Division to restore its previous staffing levels. If all positions that the Division intends to staff are filled, the Division would have 114 filled positions.

The Board acknowledges that the proposed fee increase is significant compared to the current fee rule. However, the amount that would be collected as a result of the department's recommended fee rule (which is estimated to be approximately a 25% increase from the current rule) is roughly equivalent to the Title V collections that occurred prior to the significant reduction in emissions that has been seen in the past few years. The Division has been forthcoming and transparent with the Title V regulatory community and the Board about the significant impact reduced emissions would have on the financial adequacy of the Title V program since at least 2016. Additionally, this circumstance is not unique to Tennessee and various states throughout the region have needed to raise Title V fees to address the dramatic decline in emissions that has occurred. In February of 2016, the Division held a stakeholder meeting and presented a graph showing Title V Revenue and Expenses. That graph projected that Tennessee's Title V program would have about a 2.8 million dollar deficit in 2018. In May of 2016, the Division presented to the Board and showed the same graph, but with updated projections indicating that the 2018 deficit may be closer to three million dollars. The Division conducted significant stakeholder outreach in 2016 and again in 2017 to discuss rule changes that would address the deficit and the overwhelming recommendation from the regulatory community was to keep the structure of the program funding as it is and increase the dollar per ton rates. A rulemaking proceeded and was adopted by the Board in December 2017, became effective July 1, 2018 and actually applied to Title V fees that were due in 2019. These changes added an additional \$980,000 to Title V fee revenue, but did not address the full program deficit nor did they address inflationary costs like pay for performance, rent, or IT cost increases. Neither proposal presented to the Board would result in emission fees that are the highest in the region. For non-EGU sources, there are currently three other states with higher emission fees and some of those states have various other fees associated with work activities within their Title V programs that Tennessee does not have. Additionally, other states within the region are currently working to address the financial adequacy of their Title V programs. The proposed fee increase is necessary in order to ensure proper funding of Tennessee's Title V program as required by state and federal law.

² A similar version of this document was provided to Mr. Drew Goddard by Director Michelle Owenby on 8/8/2019 and was included in the September 11, 2019, Board package. That version still shows expenses and revenue of vehicle testing program. Removal of those revenues and expenses will show a \$3.4 million deficit.

As can be seen from the table of historical Title V collections and expenses below, the proposed fee for fiscal year 2020-2021 is lower than the Title V fee program collected a decade ago (fiscal years 2007-2008 through 2009-2010) and the Division's recommended fee schedule is about the same as it was in 2015. However, because of the large reduction in emissions that have occurred over this period (see table), it is necessary to significantly increase the dollar per ton rates in order to achieve a similar level of funding. Hence, the proposed increase in fee rates is necessary due to decreased emissions and not as the result of increased personnel.

Projected expenses for fiscal year 2020-2021 are consistent with the level of expenses that occurred in fiscal years 2010-2011 and 2011-2012, prior to the Division's shifting of expenses from Title V to non-Title V (see earlier response to comment), particularly when considering inflationary costs since that time period. Title V expenses have decreased almost every year since 2012, and the Division has undertaken significant efforts to ensure that Title V activities are properly charged to Title V funds and to develop streamlining and efficiency measures where possible. However, federal law requires that eligible Title V program costs be paid at least in part through fees. It is not reasonable to assume that expenses would continue to decrease but instead it is logical to conclude that expense increases are necessary to cover the cost of inflation, including salary increases, rent increases, and the state's share of the increased costs of health insurance, among other things. Since Tennessee's Title V fee rules do not include a provision to account for inflationary costs, such increases must be accomplished through rulemaking. If rulemakings are not undertaken or accomplished on an annual basis, as has been the case in Tennessee, annual inflationary costs build up and the resulting necessary increases are larger when done.

Fiscal Year	Fees	Billable Tons	Expenses
FY2004	\$5,780,573.30	287,382	\$5,299,426.96
FY2005	\$5,773,095.32	290,031	\$6,289,281.06
FY2006	\$6,806,903.33	259,420	\$6,604,384.65
FY2007	\$6,170,217.54	236,937	\$6,993,064.19
FY2008	\$7,116,004.10	234,615	\$7,254,796.79
FY2009	\$7,939,773.17	232,996	\$6,613,669.61
FY2010	\$7,587,853.93	211,345	\$6,415,182.16
FY2011	\$5,800,630.50	204,961	\$7,075,587.11
FY2012	\$6,336,163.20	190,232	\$7,442,955.03
FY2013	\$6,891,980.16	186,001	\$6,539,361.37
FY2014	\$6,844,856.89	170,198	\$6,355,428.77
FY2015	\$7,040,610.80	164,758	\$5,818,609.26
FY2016	\$5,321,521.83	141,624	\$6,094,831.92
FY2017	\$4,617,895.15	136,292	\$5,687,186.70
FY2018	\$6,294,657.17	113,364	\$6,818,383.34
FY2019	\$6,355,230.48	113,135	\$5,703,359.09

Collection and expense data are taken from Table 15 of the Title V workload analysis. Expenses have been revised to account for a transfer of non-Title V funds to the Title V EPF that occurred in FY2016 to correct previous misallocations of expenses.

Comment: A commenter asked to know why the Title V fee rule needs to be adopted in December 2019, although the increased fees will not be due until April 1, 2021. The commenter noted the budget request of 3.6 million dollars in funding for the Division discussed in the budget hearings and asserted that if the funding is enacted, it will significantly affect what money is necessary for the Division to run its programs. The commenter wanted to know if there was any way to defer the December board adoption until there is a better understanding of what becomes of the budget request.

Response: Effective July 1, 2013, Tennessee Code Annotated section 4-5-229 provides that any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following expiration of the ninety (90) days as provided in T.C.A. § 4-5-207. The majority of Title V fees are due April 1 of the state fiscal year for which the fees are being collected. This means that the fees for a specific fiscal year must be effective the first day of that fiscal year. (The state fiscal year is July 1 to June 30.) As an example, the currently effective fee rules were adopted by the Board in

December 2017. Although the portions of the rule that did not increase the fee or create the base fee were effective April 11, 2018, the actual fee rates did not change until July 1, 2018, the first day of state fiscal year 2018-2019. If the current rulemaking is approved by the Board December 11, the fee rate changes will be effective July 1, 2020, the first day of fiscal year 2021, and will be due between April 1, 2021 and September 28, 2021, depending on the permittee's choice of fee bases. Other changes in the current rulemaking will be effective prior to July 1, 2020. In addition, state rulemaking timelines and review by the Office of the Attorney General and Reporter are established in state statutes. Adoption in December is necessary in order to comply with state law, account for delays, and ensure that the effective date of the fee increases in this rulemaking is no later than June 30, 2020 (for an effective date pursuant to the statute cited above of July 1, 2020). Specifically waiting until the General Assembly passes and the Governor signs the budget for adoption of the rules (estimated to be April or May) would mean that the deadline would be missed.

The Department has requested 3.6 million dollars in recurring funding to support the non-Title V program. These funds cannot be applied to the Title V program due to federal law and are needed to administer the non-Title V program as described in an earlier response.



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

DAVID W. SALYERS, P.E.
COMMISSIONER

BILL LEE
GOVERNOR

DATE: May 2, 2019
TO: Benny Romero, Controller for TDEC, Department of Finance and Administration
From: David W. Salyers, P.E., Commissioner
Subject: Administrative Services (32701) and Environmental Administration (32730) Funding Methodology

Each Environmental Division currently contributes funding to support the Administrative Services Division and Environmental Administration. The funding for 32701 and 32730 from the Environmental Divisions comes from three primary sources:

1. State Appropriations -- Both Administrative Divisions receive general fund appropriations.
2. Federal Grants - Each Division contributes a portion of its federal grant funds to support the Administrative Groups based on TDEC's EPA approved federal indirect cost rate.
 - a. The Department negotiates an indirect cost rate each year with the federal government (the U.S. Environmental Protection Agency). Regardless of the Division that receives the grant, the same percentage of that grant's personnel and benefits expenditures is used to fund 32701.
3. Environmental Protection and Other Special Revenue Funds - Each Division that collects Environmental Protection Fund (EPF) fees and/or Other Special Revenue Fund (OSR) fees contributes a portion of those annual fees to 32701 and 32730.
 - a. The Methodology for funding 32701 will be based on prorating all of the eligible Environmental Divisions budgets to determine the percentage share of liability to fund Administrative Services 32701. For example, Division A's budget is 25% of the total eligible divisions budgets, therefore Division A would be responsible for 25% of the Environmental Divisions funding required for Administrative services 32701.
 - b. The methodology for funding 32730 Environmental Administration would be prorated based on the full-time position count at the environmental field offices. All divisions with a presence in a field office would be included in the funding pool and be required to fund their percentage based on positions.

Journals will be requested to be processed monthly to effectuate this funding methodology from the EPF and OSR divisions. This method will be in effect until further modification is made.

DWS/sg

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – Proposed Rule

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTES	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ³	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ⁴	\$7,278,833		\$7,278,833
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ⁵			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
TOTAL	\$7,278,833	\$4,433,389	\$11,712,222
SHORTFALL⁶	\$532,006	\$3,408,991	\$3,940,997

³ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

⁴ Revised based on data received August-September, 2019

⁵ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

⁶ Shortfall is expensed minus income and does not take into account available reserve funds.

SUMMARY OF FY2021 DIVISION OF AIR POLLUTION CONTROL REQUIREMENTS – TCCI Proposal

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ⁷	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ⁸	\$6,819,868		\$6,819,868
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ⁹			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
TOTAL	\$6,819,868	\$4,433,389	\$11,253,257
SHORTFALL¹⁰	\$990,971	\$3,408,991	\$4,399,962

⁷ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

⁸ Revised based on data received August-September, 2019

⁹ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

¹⁰ Shortfall is expensed minus income and does not take into account available reserve funds.

TITLE V, NON-TITLE V, AND PM2.5 GRANT FTES BY FUNCTIONAL UNIT			
FUNCTIONAL UNIT	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Administrative Services	4.7	5.5	10.2
Director's Office	3.1	2.9	6.0
SBEAP	2.0	-	2.0
Compliance Validation Activities	4.1	2.8	6.9
Enforcement Activities	2.6	3.0	5.6
Field Services	15.3	17.7	33.0
Permitting	13.8	13.9	27.7
Regulatory Development	1.9	5.1	7.0
Emissions Inventory	2.6	1.8	4.4
Technical Services	2.5	3.5	6.0
Quality Assurance	2.3	3.1	5.4
Total FTEs	54.9	59.3	114.2
PROJECTED EXPENSES AND FILLED POSITIONS			
EXPENSE DESCRIPTION	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Regular Salaries, Longevity, and Bonus	\$3,903,332	\$4,126,106	\$8,029,438
Benefits	\$1,676,903	\$1,801,822	\$3,478,725
APC G&A Expenses	\$1,110,000	\$1,020,000	\$2,130,000
County I/M Payments	-	-	-
TDEC G&A Expenses	\$1,120,604	\$894,452 ¹¹	\$2,015,056
Total	\$7,810,839	\$7,842,380	\$15,653,219
PROJECTED INCOME			
INCOME TYPE	TITLE V	NON-TITLE V AND PM2.5	TOTAL
Title V Fees ¹²	\$7,066,366		\$7,066,366
Visible Emissions Control Fee		\$15,903	\$15,903
Construction Permit Fee		\$54,543	\$54,543
Annual Non-Title V Emission Fee		\$1,714,161	\$1,714,161
Vehicle Emission Inspection Fee ¹³			
EPA Air Quality Grant		\$1,191,101	\$1,191,101
EPA PM2.5 Grant		\$257,681	\$257,681
State Funds		\$1,200,000	\$1,200,000
TOTAL	\$7,066,366	\$4,433,389	\$11,499,755
SHORTFALL¹⁴	\$744,473	\$3,408,991	\$4,153,464

¹¹ A total of \$305,206 in federal grant funds are taken off of the Division's Air Quality and PM2.5 Grant awards to pay for Non-Title V TDEC G&A Expenses. The amount taken off is not included in the projected grant income.

¹² Revised based on data received August-September, 2019

¹³ The Motor Vehicle Inspection Program is expected to be eliminated during or prior to FY2021. This will result in a loss of all or a portion of the Vehicle Emission Inspection Fee income and County I/M Payment expenses.

¹⁴ Shortfall is expensed minus income and does not take into account available reserve funds.

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.

The rule amendment to paragraph (2) of Rule 1200-03-26-.01 Construction and Annual Emission Fees relative to Visible Emission Evaluation Course ("Smoke School") fees may minimally impact small businesses. The rule amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to the amount of Title V source annual fees and emission fee rates is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tennessee Code Annotated section 4-5-404. Due to increased program expenses and diminishing revenues, the rule amendment proposes to increase Title V fee rates in order to generate sufficient revenue to administer the major source "Title V" permitting program as mandated by federal law. Small businesses that are Title V sources will experience increased fees. The number of small businesses that are Title V sources is not known as data relative to number of employees is not collected. If the Department fails to collect adequate revenue to fund this permitting program EPA may revoke its approval of the program and regulate Tennessee businesses directly. Other changes in this rulemaking improve clarity of the rule and will not have an impact on small businesses.

The review below addresses the following proposed rule amendments:

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Any small business with a Title V air pollution permit or that is required to conduct visible emission evaluations may be affected by these rule amendments. Very few small businesses are required to regularly conduct visible emission evaluations and thus would not be directly impacted by the proposed changes to the visible emission evaluation course fees because they hire consultants to conduct the evaluations instead of using their own employees. The changes to Title V fee rates ensure collection of adequate revenue to meet federal requirements so Tennessee sources will continue to be directly regulated by Tennessee and not by EPA.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

It is not anticipated that the proposed rule amendments will increase compliance costs relative to reporting, recordkeeping, or other administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed rule amendments will increase fees owed for small businesses required to have Title V operating permits. It is not anticipated that consumers will be measurably impacted.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

Based on a comment received during the public comment period, the Department will conduct a review of the impact on revenues if affected sources that are small businesses are allowed to request an alternative minimum fee. If the impact is determined to be acceptable an alternative will be considered during the next Title V fee rulemaking. The Department does not have this data currently.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Each state's fee system is unique, so direct comparisons cannot be made. The federal presumptive fee rate (\$/ton) is the rate states must charge unless they provide proof to EPA that their program meets federal requirements with an alternative fee rate or structure. The federal presumptive fee rate effective for the 12-month period of September 1, 2019 through August 31, 2020 is \$52.03 per ton of actual emissions. Tennessee's current fees are more complex than the federal fees, with different fee rates for actual emissions and allowable emissions as well as different rates for electric utility generating units and non-electric utility generating units. Tennessee also has an existing minimum fee and an existing base

fee in these amendments. For these reasons, and because the Title V fee rates actually assessed by EPA for sources they permit are more complex than a single rate, a direct comparison to the federal fees cannot be made. The fee rates in this proposed rule for FY21 are: a base fee of \$5,000 and minimum fee of \$9,000; for fees based on actual emissions, \$64.20 per ton for non-EGU sources and \$90.00 per ton for EGU sources; and, for fees based on allowable emissions, \$40.20 per ton for non-EGU sources and \$57.00 per ton for EGU sources.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses could result in the collection of insufficient fees to operate the Title V operating permit program as required by federal law or, alternatively, increase the fees paid by businesses that do not meet the definition of a small business.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that these amended rules will have a financial impact on local governments with a Title V permit.

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;

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Air Pollution Control Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees. For Title V annual fees, the rulemaking increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to \$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules.

- (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 (CAA) 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 Air Pollution Control Board ("Board") adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees under the Tennessee Air Quality Act.

- (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 in the state required to have Title V operating permits. Most of these sources are major sources of air pollution. These persons recognize the necessity of fee collections and of increases to the currently effective fees; comments received from representatives of some of these sources included alternative fee increases to those originally proposed. This rule, as approved by the Board, contains lower fee increases than originally proposed by the Department in response to comments received during the public comment period. It also only establishes fee increases for state fiscal year 2021 and beyond rather than the proposed increases over fiscal years 2021 and 2022.

- (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 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;

This rulemaking will result in increased revenues of approximately \$1.16 million.

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

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Division of Air Pollution Control
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312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
James.Johnston@tn.gov
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
Deputy 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.

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The rule amendments revise the fees charged for visible emission evaluation courses ("Smoke School"). Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Department has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. Currently, the Board's rules establish a lower fee to attendees located within the state than is charged to attendees from outside the state. This revision increases the rates and establishes the same rates for all attendees.

Tennessee Code Annotated section 68-203-103 authorizes the Board to establish fees for the various services and functions the Department performs. Section 502(b)(3)(A) of the federal Clean Air Act (CAA) 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 Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. The Board is proposing the Title V annual 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 proposal increases the existing base fee of \$4,000 to \$5,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$40.20 and from \$53.50/ton actual to

\$64.20, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$57.00 and from \$75.00/ton actual to \$90.00. In addition to the changes described above, the Board is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from "Division" to "State of Tennessee" throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

Smoke School fee revisions: Tennessee is one of only a few states that offer this certification. The proposed rates will be very competitive with privately offered schools. The recertification fee of \$180 is at least \$20 below the current published rate of the lowest competitor (Aeromet). Because the Division's air inspectors are required to be certified every six months, it is significantly more cost effective for the Department to provide the school than to pay for the inspectors to be certified by a private entity. Allowing non-State employees to attend the training is a customer-friendly way to subsidize the cost of certifying Department staff.

T5 fees: Because the U.S. Clean Air Act requires that fee payers pay all costs, direct and indirect, to operate the Title V operating permit program, the Division prepares a detailed Workload Analysis each year that must be approved by the Board. This analysis must show that the fees assessed will be adequate to fund the program. The Board has determined that these amendments are necessary to support continuing operation of the Title V permitting program and are the least-costly method of achieving the purposes of these amendments.

- (3) A comparison of the cost-benefit relation of the action to non-action.

For Smoke School, not revising the fees as proposed will result in the Division paying more of the cost to train its inspectors. Not amending the Title V fee rules to ensure adequate collections to fund the Title V operating permit program would place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the U.S. EPA.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources. For Smoke School, offering the class to non-State employees provides a way to offset some of the costs to certify Department employees while offering an alternative for training to private sector participants.

- (5) A determination of the effect of the action on competition.

No impact on competition is expected.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on the cost of living.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on employment.

- (8) The source of revenue to be used for the action.

Existing revenues will be used to implement these revisions.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which

persons will benefit directly and indirectly from the action.

Changes to the Smoke School rates will have a minimal impact on attendees. For Title V fees, major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the magnitude of emissions from the source. Citizens of the state of Tennessee will benefit directly from this action through continued maintenance of the National Ambient Air Quality Standards assured by adequate regulation and oversight of major sources of air pollution by the Department.