This hearing was canceled on September 20, 2018. See page 11.

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Sequence Number: 09-16-18
Notice ID(s): 2912
File Date: 9/13/18

# Notice of Rulemaking Hearing

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

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

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

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

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

| | | | |
|---|---|---|---|
| Address 1: | Conference Room A, 3rd Floor | | |
| Address 2: | William R. Snodgrass Tennessee Tower<br>312 Rosa L. Parks Avenue | | |
| City: | Nashville, Tennessee | | |
| Zip: | 37243 | | |
| Hearing Date : | 11/05/18 | | |
| Hearing Time: | 9:30 AM | _X_ CST/CDT ___ EST/EDT | |

**Additional Hearing Information:**

*If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Lida Warden at 615-532-0554 for more information.*

The Division of Air Pollution Control is charged with maintaining the purity of the air resources of the state consistent with the protection of normal health, general welfare and physical property of the people, maximum employment, and the full industrial development of the state. To accomplish these objectives, it is necessary to collect fees from regulated entities sufficient to fund the work of the Division. The rule revisions proposed in this rulemaking include the creation of an annual base fee to be paid by true minor and conditional major sources, increases to the fees paid for construction and modification of sources that emit air contaminants, increases to the permit review fees paid by conditional major sources, and the creation of fees to be assessed when permittees apply for amendments to their existing permits. In addition, the Division is clarifying certain other provisions in Chapter 1200-03-26 that apply to minor and/or conditional major 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

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

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on November 5, 2018, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten days prior to November 5, 2018 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 22nd Floor, Nashville, Tennessee 37243, (615) 532-0200. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of these rule changes, you may contact Lacey J. Hardin at (615) 532-0545. For information about reviewing these documents, please contact Paul LaRock, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243, telephone (615) 532-0093.

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

Materials concerning the proposed actions will be available at www.tn.gov/environment/topic/ppo-air and also for public inspection during normal working hours starting on November 5, 2018, at the office of the Technical Secretary and the public depositories listed below:

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

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

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

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

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

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

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

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

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

Air Pollution Control Division
Chattanooga EFO
1301 Riverfront Parkway, Suite 206
Chattanooga, TN 37402

Air Pollution Control Division
Nashville EFO
711 R. S. Gass Boulevard
Nashville, TN 37243

Kingsport Public Library
400 Broad Street
Kingsport, TN 37660

Chattanooga-Hamilton County
Air Pollution Control Bureau
6125 Preservation Drive

U.S. EPA, Region IV, c/o Mr. Scott Davis, Chief
APTMD - 12th Floor, Atlanta Federal Center
61 Forsyth Street S.W.

Chattanooga, TN 37416 Atlanta, GA 30303

All persons interested in the air quality of the state of Tennessee are urged to attend and will be afforded the opportunity to present testimony to the hearing officer regarding the promulgation of amendments to the Tennessee Air Pollution Control Regulations. Any person desiring to present lengthy comments should be prepared at the hearing to offer a written statement to be incorporated into the record. Written statements not presented at the hearings will only be considered part of the records if received by 4:30 p.m. CDT on November 5, 2018, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

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

_X_ Amendment
____ New
____ Repeal

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

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

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 1200-03-26
Administrative Fee Schedule

Amendments

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 is amended by deleting it in its entirety and substituting instead the following:

(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.; 4-5-202, et seq.; 68-201-101, et seq.; and 68-201-105, et seq.

Subparagraph (j) 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:

(j) No construction fee, annual emission fee, or permit review fee under paragraph (1) of this rule shall be imposed for review of notices of intent for authorization under a permit-by-rule~~,~~ or issuance of a notice of authorization.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Subparagraph (b) 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:

(b) On and after July 1, 2019, a responsible official applying for a construction permit amendment must file a revised permit application with the amendment request. Unless exempt from paying construction permit fees pursuant to subparagraph 1200-03-26-.02(9)(a), the responsible official must pay a construction permit amendment application filing/processing fee of $125. The applicant will not be charged for permit amendments resulting from errors made by the Division. The Division must make a decision to issue or deny a request for a permit amendment and notify the applicant of that decision within 120 days from receipt of the request. The fee rates in this subparagraph in effect on July 1, 2017, continue to apply until July 1, 2019.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

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 July 1, 2019, 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 as set forth in subparagraph (g), Schedule A of this paragraph unless exempted from construction permit fees pursuant to subparagraph 1200-03-26-.02(9)(a). Sources applying for construction or modification of an air contaminant source through coverage under a general permit shall pay a permit filing/processing fee equal to one-half the subparagraph (g), Schedule A fee corresponding to the applicant's anticipated maximum emission rate unless an alternate construction permit application fee is stipulated in the table below. 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. The fee rates in this subparagraph in effect on July 1, 2017, continue to apply until July 1, 2019.

| General Permit Category | Construction and Modification Permit Application Fee |
|---|---|
| Perchloroethylene and | $125 |

| | |
|---|---|
| Petroleum Solvent Dry Cleaners | |
| Concrete batch plants | $125 |

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

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 allow review and approval of the refund by the Tennessee Attorney General's Office shall be allowed.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Subparagraph (g) 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:

(g) The appropriate permit filing/processing fee shall be determined by the applicant from the following schedule:

**SCHEDULE A - CONSTRUCTION AND MODIFICATION PERMIT FEES**

| Anticipated Maximum Emission Rate or Maximum Increase in Emissions | (Filing/Processing) Permit Fee for New Sources | (Filing/Processing) Permit Fee for Existing Source/Permit Modifications |
|---|---|---|
| 0 < 10 tons/year | $250 | $125 |
| 10 < 25 tons/year | $1,000 | $500 |
| 25 < 50 tons/year | $1,500 | $750 |
| 50 < 100 tons/year | $2,000 | $1,000 |
| 100 < 150 tons/year | $2,500 | $1,250 |
| 150 < 250 tons/year | $3,000 | $1,500 |
| 250 < 500 tons/year | $3,500 | $1,750 |
| 500 < 1000 tons/year | $4,000 | $2,000 |
| 1000 < 5000 tons/year | $4,500 | $2,250 |
| >= 5000 tons/year | $5,000 | $2,500 |

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

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 AND PERMIT REVIEW FEES FOR CONDITIONAL MAJOR SOURCES.

(a) On and after July 1, 2019, a responsible official of a minor source with emissions of 10 tons per year or greater of regulated pollutants and/or a conditional major source must pay an annual fee to the State of Tennessee. The annual emission fee and the conditional major permit review fee shall be based on the source's allowable emissions as defined in subparagraph 1200-03-26-.02(2)(d). The fee rates in this paragraph in effect on July 1, 2017, continue to apply until July 1, 2019.

(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 insure 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 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) All minor and conditional major source annual emission 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 ~~in~~ determines when the minor source 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 emission 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 minor source owner or operator's fee notice was mailed by the 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 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 |

(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 source company ceasing operations during the annual accounting period will not receive a refund for annual emission fees paid.

(e) 1. On and after July 1, 2019 and notwithstanding the emission fee rates established by part 2 of this subparagraph, a responsible official of a minor or conditional major source not excluded by subparagraph (a) of this paragraph, not excluded by subparagraph (3)(j) of this rule, and not covered by part 3 of this subparagraph shall pay an annual base fee of $650 by the due date established in subparagraph (c) of this paragraph. This base fee shall be paid in addition to the annual emission fee established by part 2 of this subparagraph and, for conditional major sources, the annual permit review fee.

2. 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 source.

3. General permits: a responsible official of a source operating under a general permit shall pay an annual base fee as stipulated in part 1 of this subparagraph and an annual emission fee based on the allowable emissions specified in the general permit as stipulated in part 2 of this subparagraph unless different fee rates are stipulated in the following table. These fees are due and payable by the date established in subparagraph (c) of this paragraph:

| General Permit Category | Combined Annual Emission Fee and Base Fee | Permit Review Fee |
|---|---|---|
| Perchloroethylene and Petroleum Solvent Dry Cleaners | $0 | $0 |
| Concrete batch plants | $800 | $0 |

(f) Deleted.

(g) Deleted.

(h) Deleted.

(i) The responsible official must pay an annual 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) On and after July 1, 2019, conditional major sources must pay an annual permit review fee in accordance with the table below in addition to the minor source annual base and emission fees specified in subparagraph (6)(e) of this rule. This fee is due and payable to the State of Tennessee according to Schedule I found in subparagraph (6)(c) of this rule. When determining the allowable tons per year, carbon monoxide emissions shall be included. The fee rates in this subparagraph in effect on July 1, 2017, continue to apply until July 1, 2019.

| Allowable Tons Per Year | Permit Review Fee |
|---|---|
| 0 to < 25 tons per year | $1,000 |
| 25 < 50 tons per year | $1,500 |
| 50 < 100 tons per year | $2,000 |
| 100 < 250 tons per year | $3,000 |
| 250 < 1000 tons per year | $4,000 |
| 1000 < 5000 tons per year | $4,500 |
| >= 5000 tons per year | $5,000 |

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

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 1200-03-26-.02(8).

(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 charge(s).

(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.; 68-1-1301; and 68-25-105.

Subparagraph (a) 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:

(a) The Technical Secretary will not issue any certificate, permit or other official document to an applicant until all fees required by this chapter have been paid in full to the State of Tennessee.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

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 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.; 68-1-1301; and 68-25-105.

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

Date: September 13, 2018

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

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

Subscribed and sworn to before me on: September 13, 2018

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

**Department of State Use Only**

Filed with the Department of State on: 9/13/18

Tre Hargett
Secretary of State

Department of Environment & Conservation

September 20, 2018

Mr. Robert A. Greene
Assistant Director of Publications
Publications Division
Office of the Secretary of State
312 Rosa L. Parks Ave
8th Floor, William R. Snodgrass Tennessee Tower
Nashville, TN 37243

Dear Mr. Greene

The Tennessee Department of Environment and Conservation is cancelling the rulemaking hearings and withdrawing of the follow rulemaking packages:

1. Sequence number: 09-16-18 Notice ID: 2912
2. Sequence number: 09-17-18 Notice ID: 2913

Sincerely,

Michelle W. Owenby
Director, Division of Air Pollution Control

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312 Rosa L. Parks Avenue • Nashville, TN 37243
Tel: 615-532-0554 • Fax: 615-532-0614