

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 09-19-15
Rule ID(s): 6025
File Date: 9/11/15
Effective Date: 12/10/15

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 th Floor Nashville, Tennessee
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits
1200-03-09-.02	Operating Permits
1200-03-09-.06	General Permits

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

Amendments

Chapter 1200-03-09 Construction and Operating Permits

Subparagraph (h) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subparagraph (h) and replacing it with a new subparagraph (h) so that, as amended, the new subparagraph shall read as follows:

- (h) The Department shall on a monthly basis notify the public, by advertisement in a newspaper of general circulation in each air quality control region in which the proposed source or modification would be constructed, of the applicants seeking to obtain a permit to construct or modify an air contaminant source. The notice shall specify the general vicinity or location of the proposed source or modification, the type of source or modification, and opportunity for public comment. Comments shall be in writing and delivered to the Technical Secretary within thirty (30) days after the publication of the public notice. The requirements of this subparagraph are considered to be met for notices of intent for general permits by monthly publication on the Department's website of a list of facilities requesting to be covered by a general permit.

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

Item (III) of subpart (i) of part 6 of subparagraph (d) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current item (III) and replacing it with a new item (III) so that, as amended, the new item shall read as follows:

- (III) Particulate matter:
10 $\mu\text{g}/\text{m}^3$ of TSP, 24-hour average
10 $\mu\text{g}/\text{m}^3$ of PM₁₀, 24-hour average;

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

Subitem II of item (III) of subpart (v) of part 3 of subparagraph (e) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by deleting the current subitem (II) and replacing it with a new subitem II so that, as amended, the new subitem shall read as follows:

- II. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under subpart 1200-03-09-.02(11)(e)1(iii). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Act (see subitem V), which prohibits knowingly making a false certification or omitting material information;

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

Subitem III of item (III) of subpart (v) of part 3 of subparagraph (e) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by deleting the current subitem III and replacing it with a new subitem III so that, as amended, the new subitem shall read as follows:

- III. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in subitem 1200-03-09-

.02(11)(e)3(v)(III)II. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subparagraph 1200-03-09-.02(11)(b) occurred; and

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

New Rule

Chapter 1200-03-09 Construction and Operating Permits

The Table of Contents for Chapter 1200-03-09 Construction and Operating Permits is amended by adding a new rule 1200-03-09-.06 with the title: General Permits.

A new rule is added to Chapter 1200-03-09 Construction and Operating Permits as Rule 1200-03-09-.06 General Permits to read as follows:

1200-03-09-.06 General Permits

- (1) Applicability
 - (a) This rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02.
 - (b) Sources located in a nonattainment area are not eligible for a general permit for construction of a new or modified air contaminant source if the source emits the pollutant and/or a precursor to the pollutant for which the area has been designated nonattainment by the United States Environmental Protection Agency or the Tennessee Air Pollution Control Board.
- (2) The Air Pollution Control Board may issue general permits for the purpose of covering numerous similar sources that are owned or operated by different persons at different facilities.
- (3) Notwithstanding the provisions of the preceding rules of this chapter, a general permit may serve as both a construction permit and an operating permit.
- (4) A general permit serving as a construction permit shall be subjected to public notice and an opportunity for public participation, as specified in subparagraph (1)(h) of Rule 1200-03-09-.01.
- (5) The permit shall specify the eligibility criteria by which sources may qualify for the general permit and shall state both the process by which a source notifies the Technical Secretary that it requests to be authorized under the general permit and the means by which the Technical Secretary confirms that the source is either covered by the general permit or requires an individual permit. The source constructing and/or operating under the provisions of a general permit shall be subject to enforcement action for construction and/or operation without a permit required by this chapter if the source requested coverage under a general permit by representing itself to be eligible for a general permit in the source's notice of intent and it is later determined that the source does not qualify for the eligibility terms and conditions of the general permit.
- (6) Sources subject to the provisions of this chapter that would qualify for a general permit shall submit a notice of intent to the Technical Secretary for coverage under the terms of the general permit. The Board may, in the general permit, provide for the requirements for the notice of intent which may deviate from the requirements of Rules 1200-03-09-.01 and 1200-03-09-.02, provided that they include all information necessary to determine qualifications for and to assure compliance with, the general permit.
- (7) If either a source covered by a general permit or the Division determines that the source no longer qualifies for such permit, the source shall submit a Notice of Termination within thirty (30) days of such determination by the source or notification by the Division.

- (8) Duration of Permits. General Permits shall be issued for a fixed term, not to exceed 10 years, which shall be stated in the permit.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
J. Ronald Bailey Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Thomas Beehan Working in Municipal Government				X	
John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Elaine Boyd Commissioner's Designee, Dept. of Environment and Conservation	X				
Karen Cisler Environmental Interests	X				
Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Helen Hennon Registered Professional Engineer				X	
Richard Holland Working for Industry with technical experience	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				
Alicia Wilson Working in management in Private Manufacturing	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/11/2013, 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: 10/09/13

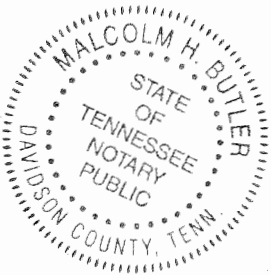
Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13

Date: June 22, 2015

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: June 22, 2015

Notary Public Signature: Malcolm H. Butler

My commission expires on: January 11, 2017

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

9/4/2015 Date

Department of State Use Only

Filed with the Department of State on: 9/11/15

Effective on: 12/10/15

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2015 SEP 11 AM 11:13
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

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

Comment: Please clarify that the new rule (1200-03-09-.06) is intended to apply only to minor sources.

Response: Subparagraph 1200-03-09-.06(1)(a) states that this rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02. Title V and conditional major sources are subject to the provisions in paragraph (11) of Rule 1200-03-09-.02, leaving only true minor sources eligible for general permits. This will be clearly stated in the cover letter when this rule is submitted for inclusion in the State Implementation Plan (SIP).

Comment: 40 CFR 51.160 discusses enforceability principles for establishing general permit programs. Please clarify that the new general permits rule complies with 40 CFR 51.160.

Response: This will be clearly stated in the cover letter when this rule is submitted for inclusion in the State Implementation Plan (SIP).

Comment: Please note that the U.S. Environmental Protection Agency has not previously acted on approving Significant Impact Levels (SILs) into Tennessee's SIP; therefore, the EPA views this change as comporting to Tennessee's rule with the litigation related to the SILs and thus does not require any action on the EPA's part.

Response: The Board acknowledges this fact.

Comment: These revisions are consistent with the Title V requirements in 40 CFR Part 70. Please note that these revisions should be submitted to the EPA in the future as an update to the State's Title V program.

Response: The Board acknowledges this and will submit it as an update to our Title V program.

Regulatory Flexibility Addendum

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

- (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.

Small businesses such as independent gas stations, dry cleaners, and auto body shops could potentially benefit from the issuance of general permits rather than individual permits. Small businesses will not be affected by the removal of the PM2.5 significant monitoring concentrations (SMC) or the change to the compliance certification requirements.

- (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.

There will be no additional administrative costs.

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

Small businesses for coverage under general permits will be able to receive their permits more quickly.

- (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.

The general permit process will be more efficient and less burdensome than the current individual permitting process.

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

The state of Florida authorizes the use of general permits for specified air contaminant sources and in Tennessee general permits are authorized for National Pollutant Discharge Elimination System permits (Tenn. Comp. R. and Reg. 0400-40-10).

The amendments that remove the PM2.5 SMC provision and amend the Title V certification requirements will make the state rules consistent with corresponding federal rules.

- (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.

Exempting small businesses from the general permit rule would prevent small businesses from taking advantage of a more efficient and less burdensome permit process. Small businesses are not affected by the proposed PM2.5 and Title V certification rule amendments.

Impact on Local Governments

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

The Board does not anticipate that the proposed and amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule:

- Authorizes the Air Pollution Control Board to issue general permits for broad categories of similar air contaminant sources that are subject to state or federal regulatory provisions but are not subject to federal Title V of the Clean Air Act permitting requirements. An eligible source would only have to demonstrate eligibility for coverage under a general permit issued for a particular source category rather than receiving an individual permit specifically tailored for an applicant's emission source. Availability of general permits for smaller sources should make permitting more efficient and allow resources to be focused on larger and more complex sources that have higher emissions and require a more individualized approach;
- Repeals PM2.5 significant monitoring concentration (SMC) provision because the federal regulation on which the provision is based has been vacated as beyond the E.P.A.'s authority by a final federal court decision; and
- Amends provisions relating to continuous or intermittent compliance in accordance with amendment of the corresponding federal regulation as a result of a final federal court decision holding that reporting whether data on which compliance is based is continuous or intermittent, instead of whether compliance itself is continuous or intermittent, is insufficient under the Clean Air Act.

- (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;

The rules authorizing general permits for specified air contaminant sources are in compliance with the requirements of 40 C.F.R. Subpart I.

A federal appellate court vacated the regulation codified at 40 C.F.R. § 51.166(i)(5)(i)(c) relative to the SMC for PM2.5.

The proposed amendment relative to Title V certification requirements reflects the language of the federal regulation codified at 40 C.F.R. § 70.6(c)(5)(iii)(B).

- (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;

No comments were received from any regulated entities relative to the proposed rules. The Tennessee Chamber of Commerce and Industry has previously indicated support for general permits. The use of general permits will primarily benefit small businesses. The amendment regarding the PM2.5 SMC affects the largest air pollution sources in the state and the amendment regarding Title V certification affects major sources of air pollution.

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

The PM2.5 SMC amendment is required by *Sierra Club v. E.P.A.*, 705 F.3d 458 (D.C. Cir. 2013).

The Title V certification amendments are required by *Natural Resources Defense Council v. E.P.A.*, 194 F.3d 130 (D.C. Cir. 1999).

- (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;

The fiscal impact of these proposed revisions is minimal.

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

Lacey J. Hardin
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243

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

Emily Urban
Assistant General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0125
Emily.Urban@tn.gov

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

The Board is not aware of a request for any additional relevant information.

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Agency/Board/Commission:	Environment and Conservation
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Zip:	37243
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Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits
1200-03-09-.02	Operating Permits
1200-03-09-.06	General Permits

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

Amendments

Chapter 1200-03-09 Construction and Operating Permits

Subparagraph (h) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subparagraph (h) and replacing it with a new subparagraph (h) so that, as amended, the new subparagraph shall read as follows:

- (h) The Department shall on a monthly basis notify the public, by advertisement in a newspaper of general circulation in each air quality control region in which the proposed source or modification would be constructed, of the applicants seeking to obtain a permit to construct or modify an air contaminant source. ~~This~~ The notice shall specify the general vicinity or location of the proposed source or modification, the type of source or modification, and opportunity for public comment. Comments shall be in writing and delivered to the Technical Secretary within thirty (30) days after the publication of the public notice. The requirements of this subparagraph are considered to be met for notices of intent for general permits by monthly publication on the Department's website of a list of facilities requesting to be covered by a general permit.

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

Item (III) of subpart (i) of part 6 of subparagraph (d) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current item (III) and replacing it with a new item (III) so that, as amended, the new item shall read as follows:

- (III) Particulate matter:
- 10 $\mu\text{g}/\text{m}^3$ of TSP, 24-hour average
 - 10 $\mu\text{g}/\text{m}^3$ of PM₁₀, 24-hour average
 - 4 $\mu\text{g}/\text{m}^3$ of PM_{2.5}, 24-hour average;

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

Subitem II of item (III) of subpart (v) of part 3 of subparagraph (e) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by deleting the current subitem (II) and replacing it with a new subitem II so that, as amended, the new subitem shall read as follows:

- II. The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, ~~and whether such methods or other means provide continuous or intermittent data.~~ Such methods and other means shall include, at a minimum, the methods and means required under subpart 1200-03-09-.02(11)(e)1(iii). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Act (see subitem V), which prohibits knowingly making a false certification or omitting material information;

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

Subitem III of item (III) of subpart (v) of part 3 of subparagraph (e) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by deleting the current subitem III and replacing it with a new subitem III so that, as amended, the new subitem shall read as follows:

- III. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in subitem 1200-03-09-.02(11)(e)3(v)(III)II. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance

any periods during which compliance is required and in which an excursion or exceedance as defined under subparagraph 1200-03-09-.02(11)(b) occurred; and

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

New Rule

Chapter 1200-03-09 Construction and Operating Permits

The Table of Contents for Chapter 1200-03-09 Construction and Operating Permits is amended by adding a new rule 1200-03-09-.06 with the title: General Permits.

A new rule is added to Chapter 1200-03-09 Construction and Operating Permits as Rule 1200-03-09-.06 General Permits to read as follows:

1200-03-09-.06 General Permits

(1) Applicability

(a) This rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02.

(b) Sources located in a nonattainment area are not eligible for a general permit for construction of a new or modified air contaminant source if the source emits the pollutant and/or a precursor to the pollutant for which the area has been designated nonattainment by the United States Environmental Protection Agency or the Tennessee Air Pollution Control Board.

(2) The Air Pollution Control Board may issue general permits for the purpose of covering numerous similar sources that are owned or operated by different persons at different facilities.

(3) Notwithstanding the provisions of the preceding rules of this chapter, a general permit may serve as both a construction permit and an operating permit.

(4) A general permit serving as a construction permit shall be subjected to public notice and an opportunity for public participation, as specified in subparagraph (1)(h) of Rule 1200-03-09-.01.

(5) The permit shall specify the eligibility criteria by which sources may qualify for the general permit and shall state both the process by which a source notifies the Technical Secretary that it requests to be authorized under the general permit and the means by which the Technical Secretary confirms that the source is either covered by the general permit or requires an individual permit. The source constructing and/or operating under the provisions of a general permit shall be subject to enforcement action for construction and/or operation without a permit required by this chapter if the source requested coverage under a general permit by representing itself to be eligible for a general permit in the source's notice of intent and it is later determined that the source does not qualify for the eligibility terms and conditions of the general permit.

(6) Sources subject to the provisions of this chapter that would qualify for a general permit shall submit a notice of intent to the Technical Secretary for coverage under the terms of the general permit. The Board may, in the general permit, provide for the requirements for the notice of intent which may deviate from the requirements of Rules 1200-03-09-.01 and 1200-03-09-.02, provided that they include all information necessary to determine qualifications for and to assure compliance with, the general permit.

(7) If either a source covered by a general permit or the Division determines that the source no longer qualifies for such permit, the source shall submit a Notice of Termination within thirty (30) days of such determination or notification by the Division.

(8) Duration of Permits. General Permits shall be issued for a fixed term, not to exceed 10 years, which shall be stated in the permit.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
J. Ronald Bailey Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Thomas Beehan Working in Municipal Government				X	
John Benitez Licensed Physician with experience in health effects of air pollutants	X				
Elaine Boyd Commissioner's Designee, Dept. of Environment and Conservation	X				
Karen Cisler Environmental Interests	X				
Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Shawn A. Hawkins Working in field related to Agriculture or Conservation				X	
Helen Hennon Registered Professional Engineer				X	
Richard Holland Working for Industry with technical experience	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				
Alicia Wilson Working in management in Private Manufacturing	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/11/2013, 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: 10/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13

Date: June 22, 2015

Signature: _____

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

Comment: Please clarify that the new rule (1200-03-09-.06) is intended to apply only to minor sources.

Response: Subparagraph 1200-03-09-.06(1)(a) states that this rule does not apply to sources that are subject to the provisions of paragraph (11) of Rule 1200-03-09-.02. Title V and conditional major sources are subject to the provisions in paragraph (11) of Rule 1200-03-09-.02, leaving only true minor sources eligible for general permits. This will be clearly stated in the cover letter when this rule is submitted for inclusion in the State Implementation Plan (SIP).

Comment: 40 CFR 51.160 discusses enforceability principles for establishing general permit programs. Please clarify that the new general permits rule complies with 40 CFR 51.160.

Response: This will be clearly stated in the cover letter when this rule is submitted for inclusion in the State Implementation Plan (SIP).

Comment: Please note that the U.S. Environmental Protection Agency has not previously acted on approving Significant Impact Levels (SILs) into Tennessee's SIP; therefore, the EPA views this change as comporting to Tennessee's rule with the litigation related to the SILs and thus does not require any action on the EPA's part.

Response: The Board acknowledges this fact.

Comment: These revisions are consistent with the Title V requirements in 40 CFR Part 70. Please note that these revisions should be submitted to the EPA in the future as an update to the State's Title V program.

Response: The Board acknowledges this and will submit it as an update to our Title V program.

Regulatory Flexibility Addendum

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

- (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.

Small businesses such as independent gas stations, dry cleaners, and auto body shops could potentially benefit from the issuance of general permits rather than individual permits. Small businesses will not be affected by the removal of the PM2.5 significant monitoring concentrations (SMC) or the change to the compliance certification requirements.

- (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.

There will be no additional administrative costs.

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

Small businesses eligible for coverage under general permits will be able to receive their permits more quickly.

- (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.

The general permit process will be more efficient and less burdensome than the current individual permitting process.

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

The state of Florida authorizes the use of general permits for specified air contaminant sources and in Tennessee general permits are authorized for National Pollutant Discharge Elimination System permits (Tenn. Comp. R. and Reg. 0400-40-10).

The amendments that remove the PM2.5 SMC provision and amend the Title V certification requirements will make the state rules consistent with corresponding federal rules.

- (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.

Exempting small businesses from the general permit rule would prevent small businesses from taking advantage of a more efficient and less burdensome permit process. Small businesses are not affected by the proposed PM2.5 and Title V certification rule amendments.

Impact on Local Governments

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

The Board does not anticipate that the proposed and amended rules will have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule:

- Authorizes the Air Pollution Control Board to issue general permits for broad categories of similar air contaminant sources that are subject to state or federal regulatory provisions but are not subject to federal Title V of the Clean Air Act permitting requirements. An eligible source would only have to demonstrate eligibility for coverage under a general permit issued for a particular source category rather than receiving an individual permit specifically tailored for an applicant's emission source. Availability of general permits for smaller sources should make permitting more efficient and allow resources to be focused on larger and more complex sources that have higher emissions and require a more individualized approach;
- Repeals PM2.5 significant monitoring concentration (SMC) provision because the federal regulation on which the provision is based has been vacated as beyond the E.P.A.'s authority by a final federal court decision; and
- Amends provisions relating to continuous or intermittent compliance in accordance with amendment of the corresponding federal regulation as a result of a final federal court decision holding that reporting whether data on which compliance is based is continuous or intermittent, instead of whether compliance itself is continuous or intermittent, is insufficient under the Clean Air Act.

- (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;

The rules authorizing general permits for specified air contaminant sources are in compliance with the requirements of 40 C.F.R. Subpart I.

A federal appellate court vacated the regulation codified at 40 C.F.R. § 51.166(i)(5)(i)(c) relative to the SMC for PM2.5.

The proposed amendment relative to Title V certification requirements reflects the language of the federal regulation codified at 40 C.F.R. § 70.6(c)(5)(iii)(B).

- (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;

No comments were received from any regulated entities relative to the proposed rules. The Tennessee Chamber of Commerce and Industry has previously indicated support for general permits. The use of general permits will primarily benefit small businesses. The amendment regarding the PM2.5 SMC affects the largest air pollution sources in the state and the amendment regarding Title V certification affects major sources of air pollution.

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

The PM2.5 SMC amendment is required by *Sierra Club v. E.P.A.*, 705 F.3d 458 (D.C. Cir. 2013).

The Title V certification amendments are required by *Natural Resources Defense Council v. E.P.A.*, 194 F.3d 130 (D.C. Cir. 1999).

- (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;

The fiscal impact of these proposed revisions is minimal.

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

Lacey J. Hardin
Division of Air Pollution Control
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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Board is not aware of a request for any additional relevant information.