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Sequence Number: 01-05-16
Rule ID(s): 6101
File Date: 1/6/16
Effective Date: 4/5/16

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

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

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

Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Subparagraph (c) 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:

- (c) "Annual Accounting Period" is a twelve (12) consecutive month period. For major sources subject to paragraph (9) of this rule, the annual accounting period shall be either of the following: the calendar year (January 1 to December 31) or the state fiscal year (July 1 to June 30).

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 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 it in its entirety and substituting instead the following:

- (iii) Any pollutant that is subjected 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. §§ 68-201-105 et seq. and 4-5-202 et seq.

Paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding a new subparagraph (s) to read as follows:

- (s) "Greenhouse gases" means the air pollutant defined in part 86.1818–12(a) of Chapter I of Title 40 of the Code of Federal Regulations as the aggregate group of the following six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subparagraph (d) 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:

- (d) Reserved.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subparagraph (b) of 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:

- (b) 1. The minor source and conditional major source annual emission fee must be calculated as the sum of 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 the permit, and must include the method used to determine compliance with the limitation. 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 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.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

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

- (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.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 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.

- (a) A responsible official of a major source must pay an annual emission fee to the Division. A major source is not subject to the minor source annual emission fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source begins to pay major source annual emission fees, it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source.
- (b)
 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:
 - (i) Either a calendar year or state fiscal year; and
 - (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.
 2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the antecedent annual accounting period and annual fee basis (actual emissions, allowable emissions, or a mixture) specified in the source's current major source operating permit.
 3. If the responsible official wishes to restructure a major source's allowable emissions for the purpose of lowering the major source's 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 or a minor source modifying its operation such that the source becomes a major source shall pay an initial annual emission fee based on the state fiscal year and allowable emissions for the fractional remainder of the state fiscal year annual accounting period 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 annual emission fee rates established by part 2 of this subparagraph, the annual emission fee required to be paid by a responsible official relative to a major source pursuant to subparagraph (a) of this paragraph shall be no less than \$7,500.
 - 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) The annual emission fee rates applied to calculate the annual emission fee assessed pursuant to paragraph (a) of this paragraph shall be as follows:
 - (I) Fee based on actual emissions: \$43.00 per ton for non-EGU sources and \$49.50 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: \$32.50 per ton for non-EGU sources and \$39.00 per ton for EGU sources.
 - (iii) The annual emission fee rates enumerated in subpart (ii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.
 - 3. The annual emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the annual emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e)
 - 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
 - 2. No major source annual emission fee 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 that is shutdown, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.
- (g) Responsible officials required to pay the major source 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 a major source's allowable emissions for the purpose of lowering the major source's 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 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 the annual emission fee and 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 July 1 immediately following the annual accounting period. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major 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 major source's emissions to the satisfaction of the Technical Secretary. The procedure for quantifying actual emission rates shall be specified in the major source operating permit.
3. (i) Responsible officials choosing to pay the major source 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. The request for extension must be received by the Division no later than 4:30 p.m. on July 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 eighty percent (80%) of the fee due July 1 must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. A 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 a calendar year annual accounting period or 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. §§ 68-201-105 et seq. and 4-5-202 et seq.

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

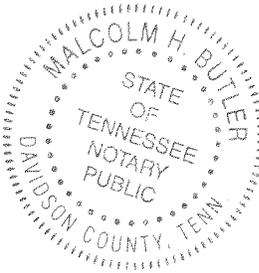
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience	X				
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
David Owenby Commissioner's Designee, Dept. of Environment and Conservation	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 the Air Pollution Control Board on 11/12/2015, 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: 09/10/15

Rulemaking Hearing(s) Conducted on: (add more dates). 11/02/15



Date: 11-16-2015

Signature: [Handwritten Signature]

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: 11-16-2015

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1-11-2017

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.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

1/5/2016

Date

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Filed with the Department of State on: 1/6/16

Effective on: 4/5/16

[Handwritten Signature]

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: Thank you for working with the Tennessee Chamber of Commerce and Industry (TCC&I) in developing the revised fees.

Response: No response needed.

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.

The rule amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to the amount of emission fees and emission fee rates is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tenn. Code Ann. § 4-5-404. Due to increased program expenses, the rule amendment proposes to increase emission 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, although some of these small businesses will pay the minimum fee and so will not experience a fee increase. The number of small businesses that are Title V sources is not known as data relative to number of employees is not collected.

The review below addresses the following proposed rule amendments:

- Allowing Title V sources more flexibility in fee calculation and payment by authorizing emission fee payment based on a calendar year as well as the state fiscal year; the voluntary restructuring of emissions for fee reduction on an annual basis; and the choice of actual or allowable emissions or a mix of emissions for purposes of fee calculation on an annual basis;
- Excluding greenhouse gases from fees if they are only subject to fees because they are greenhouse gases;
- Updating the procedure for requesting a reduction in fees to submitting a written request instead of requiring an informal meeting for certain sources; and
- Improving rule structure through minor reorganization.

- (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 an air pollution permit would be affected by these rule amendments. These amendments clarify the law for all air pollution sources and offer more flexibility for small businesses that pay Title V emission fees.

- (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.

These rule amendments should benefit small businesses by increasing the choices available for reporting and fee calculation (if the small business owns or operates a Title V source), clarifying that certain pollutants are not subject to fees, and authorizing a less cumbersome method of requesting fee reduction.

- (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.

No alternatives are known.

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

A number of states (including Florida, Texas, and West Virginia) exclude constituents of greenhouse gases from fees and at least one state (Oregon) expressly makes such pollutants subject to fees.

- (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 would prevent small businesses from experiencing the intended benefits of the proposed 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 Department anticipates that this amended rule will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule amendments make the following changes:

- Section 502(b)(3)(A) of the federal Clean Air Act requires Tennessee, in order to remain an EPA approved program, to collect sufficient revenue to administer the major source "Title V" permitting program. As a result of increased expenses, the Air Pollution Control Board proposes to amend its rules to 1) increase the annual fee by \$4.00/ton for non-electric utility generating unit (non-EGU) sources; 2) decrease the annual fee by \$6.50/ton for EGU sources; and 3) require a source to pay the greater of \$7,500 or the amount calculated using the per ton fee instead of a \$7,500 base fee and an additional per ton fee on emissions of 250 tons or greater;
- Responsible officials of Title V permitted sources may choose annually whether to pay based on a calendar year or the state fiscal year; whether to request a reduction in allowable emissions for fee reduction through permit modification or permit submission; and whether to pay based on actual emissions, allowable emissions, or both;
- The procedure for requesting voluntary emission limits for fee reduction requests is updated to submission of a written request instead of requiring an informal meeting for certain sources; and
- Greenhouse gases are excluded from fees if they are only subject to fees because they are greenhouse gases.

- (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 requires Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title" in order to retain delegation of the Title V permitting program.

- (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 or operators of sources of air pollution in this state required to pay fees are most directly affected by this rule. The proposed rule amendments regarding Title V fees affect owners or operators of major Title V sources. The Tennessee Chamber of Commerce & Industry expressed appreciation for outreach during the rule revision process.

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

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

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is estimated that the proposed amendments will result in decreased state revenues of approximately \$255,361. The decrease will not negatively impact the Division's ability to run the program because a fund balance of approximately \$1,465,098 existed on June 30, 2015. Expenditures are predicted to increase by approximately \$786,000 for the 2015-2016 fiscal year, leaving a fund balance of approximately \$770,348. A fund balance is prudent because emission fees and emission fee rates are established based on estimated expenses.

- (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;

Jenny Howard
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) 532-8685
Jenny.Howard@tn.gov

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

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

Redline

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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:	Environment and Conservation
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Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
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1200-03-26-.02	Construction and Annual Emission Fees

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Chapter 1200-03-26
Administrative Fees Schedule

Amendments

Subparagraph (c) 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:

- (c) "Annual Accounting Period" is a twelve (12) consecutive month period. For major sources subject to paragraph ~~1200-03-26-.02 (9) of this rule~~, the annual accounting period ~~is July 1st to June 30th of the following year shall be either of the following: the calendar year (January 1 to December 31) or the state fiscal year (July 1 to June 30).~~

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 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 it in its entirety and substituting instead the following:

- (iii) Any pollutant that is subjected 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. §§ 68-201-105 et seq. and 4-5-202 et seq.

Paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding a new subparagraph (s) to read as follows:

- (s) "Greenhouse gases" means the air pollutant defined in part 86.1818-12(a) of Chapter I of Title 40 of the Code of Federal Regulations as the aggregate group of the following six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

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

- (d) ~~Reserved. If a responsible official wishes to reduce the amount of the fee by utilizing the provisions of subparagraph 1200-03-26-.02(6)(b), the official may request a meeting with the Division to discuss the annual emission fee assessment. This meeting will be an informal review meeting and must be requested in writing at least 90 days prior to the 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. The informal review meeting will be for the purpose of explaining to the responsible official the computation methods used to determine the annual emission fee. The responsible official for a major source may restructure their fee liability through a reduction in allowable emission rates only during the periods of restructuring eligibility that are declared at part 1200-03-26-.02(9)(b)1.~~

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subparagraph (b) of 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:

- (b) 1. The minor source and conditional major source annual emission fee must be calculated as the sum of 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 the permit, and must include the method used to determine compliance with the limitation. 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 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.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

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

- (i) The responsible official must pay an annual emission fee as per subparagraph ~~1200-03-26-.02(6)~~ (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 carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 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.
 - (a) A responsible official of a major source must pay an annual emission fee to the Division. A major source is not subject to the minor source annual emission fees of paragraph ~~1200-03-26-.02 (6)~~ of this rule on or after July 1, 1994. Once a major stationary source begins to pay major source annual emission fees, it will not be subject to the construction permit fees of paragraph ~~1200-03-26-.02 (5)~~ of this rule for any additional construction occurring at the source.
 - (b) ~~The annual major source emission fee shall be based upon the responsible official's choice of actual emissions or allowable emissions. If the responsible official chooses actual emissions, the magnitude of the source's emissions must be proven to the satisfaction of the Technical Secretary. The procedure for quantifying actual emission rates shall be specified in the major source operating permit. The costs of proving the actual emission rates on an annualized basis shall be born by the source above and beyond the cost of the annual emission fee actual emission basis.~~
 1. ~~Major source operating permit applicants shall make a binding fee payment choice to the Technical Secretary upon submission of their initial major source operating permit application. The fee choices are allowable based emission fees, actual based emission fees, or mixed actual and allowable based emission fees. Applicants who fail to declare their fee payment choice in their initial permit application shall be subject to paying their annual emission fees on an allowable emission basis. This default choice can be altered at reopening of the major source operating permit and renewal of the permit. Mixed approaches of actual and allowable based fees at a facility will be permitted only if the parts of the facility that will have actual emission based fees are monitored by a continuous emission monitoring system for the pollutant(s) being monitored that has been approved by the Technical Secretary as being capable of quantifying and recording the emission levels present at that part of the facility. The system may directly monitor the~~

~~emissions or indirectly monitor the emissions through correlation of the instrument's readout with the emission levels that are indirectly monitored. (An example of direct instrumental monitoring would be an in-stack sulfur dioxide monitor. An example of an indirect instrumental method of monitoring would be a temperature recorder at an incinerator. The collected temperature data would be correlated with a graph curve plotting emission levels as a function of temperature.) Once the choice has been declared, it may be altered only during the following periods of eligibility. These periods occur upon expiration of the initial major source operating permit, renewal of an expired major source operating permit or reissuance of a major source operating permit. Major sources who have filed a timely, complete operating permit application in accordance with the title V provisions of the Federal Act, the implementing Federal regulations at 40 CFR Part 70 or any Division Rules promulgated thereunder, shall pay allowable emission based fees until the beginning of the next annual accounting period following receipt of their major source operating permit. At that time, they may begin paying their annual emission fee based upon their choice of actual or allowable based fees, or mixed actual and allowable based fees as approved by the Technical Secretary. Once permitted, altering the existing choice shall be accomplished by a written request of the major source, filed in the office of the Technical Secretary at least one hundred eighty (180) days prior to the expiration or reissuance of the major source operating permit. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:~~

~~(i) Either a calendar year or state fiscal year; and~~

~~(ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.~~

~~2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the antecedent annual accounting period and annual fee basis (actual emissions, allowable emissions, or a mixture) specified in the source's current major source operating permit.~~

~~3. If the responsible official wishes to restructure a major source's allowable emissions for the purpose of lowering the major source's 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 or a minor source modifying its operation such that the source becomes a major source shall pay an initial annual emission fee based on the state fiscal year and allowable emissions for the fractional remainder of the state fiscal year annual accounting period 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) Deleted Reserved.~~

~~(d) 1. Every source subject to this paragraph shall pay an annual fee of Notwithstanding the annual emission fee rates established by part 2 of this subparagraph, the annual emission fee required to be paid by a responsible official relative to a major source pursuant to subparagraph (a) of this paragraph shall be no less than \$7,500.~~

2. ~~In addition to the annual fee of part 1 of this subparagraph, all sources with allowable emission rates greater than 250 ton per year (excluding carbon monoxide) shall pay the following:~~
- ~~(i) The rate at which major source actual based annual emission fees are assessed for non-EGU sources shall be \$39.00 per ton and the rate at which major source allowable based annual emission fees are assessed for non-EGU sources shall be \$28.50 per ton. 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) The rate at which major source actual based annual emission fees are assessed for EGU sources shall be \$56.00 per ton and the rate at which major source allowable based annual emission fees are assessed for EGU sources shall be \$45.50 per ton. The annual emission fee rates applied to calculate the annual emission fee assessed pursuant to paragraph (a) of this paragraph shall be as follows:~~
 - ~~(I) Fee based on actual emissions: \$43.00 per ton for non-EGU sources and \$49.50 per ton for EGU sources; and~~
 - ~~(II) Fee based on allowable emissions: \$32.50 per ton for non-EGU sources and \$39.00 per ton for EGU sources.~~
 - ~~(iii) The annual emission fee rates enumerated in subpart (ii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.~~
3. ~~The annual emission fee rates required by part 2 of this subparagraph remain in effect until the effective date of an amendment to this subparagraph. Any revision to these rates must result in the collection of sufficient fees to fund the activities identified in subparagraph (1)(c) of this rule. These fee rates shall be supported by the Division's annual workload analysis that is approved by the Board. The annual emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the annual emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.~~
4. ~~For purposes of this subparagraph, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.~~
- (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 major source annual emission fee 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. ~~A~~ The responsible official of a major source that is shutdown, but wishes to retain their its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had they chosen the responsible official determined to base the annual emission fee on allowable emission based annual emission fee emissions. ~~If the sourcee responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The sourcee responsible official shall notify the Division no later than January December 31 prior to the end of the annual accounting year (June 30) to provide of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.~~
- (g) ~~Major sourcee~~ Responsible officials required to pay the major 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 a major source's allowable emissions for the purpose of lowering the major source's 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 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. major source choosing an allowable-based annual emission fee wishes to restructure its allowable emissions for the purposes of lowering its annual emission fees, a mutually agreed upon, 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 the permit, and must include the method used to determine compliance with the limitation. The documentation procedure to be followed by the major source must also be included to insure that the limit is not exceeded. Restructuring the allowable emissions is permissible only in the annual accounting periods of eligibility specified in Part 1200-03-26-.02(9)(b)1 and only, if the written request for restructuring is filed with the Technical Secretary at least 120 days prior to the beginning of the annual accounting period of eligibility.~~
(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. ~~Beginning with the annual accounting period beginning July 1, 1997 to June 30, 1998, major sourcee paying on allowable based emission fees will be billed by the Division no later than April 1 prior to the end of the accounting period. The major source annual emission fee is due July 1 following the end of the accounting period. The responsible official shall file the annual emission fee and 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 July 1 immediately following the annual accounting period. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major 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 major source's emissions to the satisfaction of the Technical Secretary. The procedure for quantifying actual emission rates shall be specified in the major source operating permit.
3. (i) Responsible officials choosing to pay the major source 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. The request for extension must be received by the Division no later than 4:30 p.m. on July 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 eighty percent (80%) of the fee due July 1 must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. A 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. Beginning with the annual accounting period beginning July 1, 1997 to June 30, 1998, major sources choosing an actual based annual emission fee shall file an actual emissions analysis with the Technical Secretary which summarizes the actual emissions of all regulated pollutants at the air contaminant sources of their facility. Based upon the actual emissions analysis, the source shall calculate the fee due and submit the payment and the analysis each July 1st following the end of the annual accounting period.
- (ii) A responsible official choosing to pay the annual emission fee based on a calendar year annual accounting period or 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.
4. ~~Beginning with the annual accounting period beginning July 1, 1997 to June 30, 1998, major sources choosing a mixture of allowable and actual based emission fees shall file an actual emissions and allowable emissions analysis with the Technical Secretary which summarizes the actual and allowable emissions of all regulated pollutants at the air contaminant sources of their facility. Based upon the analysis, the source shall calculate the fee due and submit the payment and the analysis each July 1st following the end of the annual accounting period.~~
- (i) ~~The mixed based fee shall be calculated utilizing the 4,000 ton cap specified in subparagraph 1200-03-26-.02 (2) (i). In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed based fee, the source 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 for the sources that were not included~~

in the actual emission based fee calculations. Once the 4,000-ton cap has been reached for a regulated pollutant, no additional fee shall be required.

5. ~~Major sources choosing to pay their major source annual emission fee based on actual based emissions or a mixture of allowable and actual based emissions may request an extension of time to file their emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary up to ninety (90) days. The request for extension must be received by the Division no later than 4:30 p.m. on July 1 or the request for extension shall be denied. The request for extension to file must state the reason and give an adequate explanation. An estimated annual emission fee payment of no less than eighty percent (80%) of the fee due July 1 must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. A remaining balance due must accompany the emission analysis. If there has been an overpayment, a refund may be requested in writing to the Division or be applied as a credit toward next year's major source annual emission fee. The request for extension of time is not available to major sources choosing to pay their major source annual emission fee based on allowable emissions.~~
- (h) ~~Reserved. Newly constructed major sources or minor existing sources modifying their operations such that they become a major source in the midst of the standard July 1st to June 30th annual accounting period, shall pay allowable based annual emission fees for the fractional remainder of the annual accounting period commencing upon their start-up. At the beginning of the next annual accounting period, the "responsible official" of the source may choose to pay annual emission fees based on actual or allowable emissions or a mixture of the two as provided for in this rule 1200-03-26-.02.~~
- (i) ~~Reserved.~~

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 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. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation 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				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control	X				
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests	X				
Amy Spann Registered Professional Engineer	X				
David Owenby Commissioner's Designee, Dept. of Environment and Conservation	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 the Air Pollution Control Board on 11/12/2015, 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: 09/10/15

Rulemaking Hearing(s) Conducted on: (add more dates). 11/02/15

Date: November 16, 2015

Signature: _____

Name of Officer: Barry R. Stephens, P.E.

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: Thank you for working with the Tennessee Chamber of Commerce and Industry (TCC&I) in developing the revised fees.

Response: No response needed.

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.

The rule amendment to paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees relative to the amount of emission fees and emission fee rates is federally mandated and exempt from the provisions of the Regulatory Flexibility Act pursuant to Tenn. Code Ann. § 4-5-404. Due to increased program expenses, the rule amendment proposes to increase emission 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, although some of these small businesses will pay the minimum fee and so will not experience a fee increase. The number of small businesses that are Title V sources is not known as data relative to number of employees is not collected.

The review below addresses the following proposed rule amendments:

- Allowing Title V sources more flexibility in fee calculation and payment by authorizing emission fee payment based on a calendar year as well as the state fiscal year; the voluntary restructuring of emissions for fee reduction on an annual basis; and the choice of actual or allowable emissions or a mix of emissions for purposes of fee calculation on an annual basis;
- Excluding greenhouse gases from fees if they are only subject to fees because they are greenhouse gases;
- Updating the procedure for requesting a reduction in fees to submitting a written request instead of requiring an informal meeting for certain sources; and
- Improving rule structure through minor reorganization.

- (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 an air pollution permit would be affected by these rule amendments. These amendments clarify the law for all air pollution sources and offer more flexibility for small businesses that pay Title V emission fees.

- (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.

These rule amendments should benefit small businesses by increasing the choices available for reporting and fee calculation (if the small business owns or operates a Title V source), clarifying that certain pollutants are not subject to fees, and authorizing a less cumbersome method of requesting fee reduction.

- (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.

No alternatives are known.

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

A number of states (including Florida, Texas, and West Virginia) exclude constituents of greenhouse gases from fees and at least one state (Oregon) expressly makes such pollutants subject to fees.

- (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 would prevent small businesses from experiencing the intended benefits of the proposed 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 Department anticipates that this amended rule will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rule amendments make the following changes:

- Section 502(b)(3)(A) of the federal Clean Air Act requires Tennessee, in order to remain an EPA approved program, to collect sufficient revenue to administer the major source "Title V" permitting program. As a result of increased expenses, the Air Pollution Control Board proposes to amend its rules to 1) increase the annual fee by \$4.00/ton for non-electric utility generating unit (non-EGU) sources; 2) decrease the annual fee by \$6.50/ton for EGU sources; and 3) require a source to pay the greater of \$7,500 or the amount calculated using the per ton fee instead of a \$7,500 base fee and an additional per ton fee on emissions of 250 tons or greater;
- Responsible officials of Title V permitted sources may choose annually whether to pay based on a calendar year or the state fiscal year; whether to request a reduction in allowable emissions for fee reduction through permit modification or permit submission; and whether to pay based on actual emissions, allowable emissions, or both;
- The procedure for requesting voluntary emission limits for fee reduction requests is updated to submission of a written request instead of requiring an informal meeting for certain sources; and
- Greenhouse gases are excluded from fees if they are only subject to fees because they are greenhouse gases.

- (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 requires Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title" in order to retain delegation of the Title V permitting program.

- (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 or operators of sources of air pollution in this state required to pay fees are most directly affected by this rule. The proposed rule amendments regarding Title V fees affect owners or operators of major Title V sources. The Tennessee Chamber of Commerce & Industry expressed appreciation for outreach during the rule revision process.

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

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

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is estimated that the proposed amendments will result in decreased state revenues of approximately \$255,361. The decrease will not negatively impact the Division's ability to run the program because a fund balance of approximately \$1,465,098 existed on June 30, 2015. Expenditures are predicted to increase by approximately \$786,000 for the 2015-2016 fiscal year, leaving a fund balance of approximately \$770,348. A fund balance is prudent because emission fees and emission fee rates are established based on estimated expenses.

- (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;

Jenny Howard
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) 532-8685
Jenny.Howard@tn.gov

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

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