

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 01-17-09
Rule ID(s): 3961
File Date: 1/15/09
Effective Date: 3/31/09

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
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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.)

Chapter Number	Chapter Title
1200-03-06	Non-Process Emission Standards
Rule Number	Rule Title
1200-03-06-.02	Non-Process Particulate Emission Standards

(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 1200-03-06
Non-Process Emission Standards

Amendment

Paragraph (3) of rule 1200-03-06-.02 Non-Process Particulate Emission Standards Incinerators is amended by adding a new subparagraph (c) containing the following language: (The particulate emission standards of this paragraph are not applicable to wigwam burners, air curtain destructors, and air curtain incinerators.) So that, as amended, subparagraph (c) shall read:

- (c) The particulate emission standards of this paragraph are not applicable to wigwam burners, air curtain destructors, and air curtain incinerators.

Authority: T.C.A. § 68-201-105.

* 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)
Michael Atchison	X				
Tracy R. Carter	X				
Ngee-Sing Chong				X	
Wayne T. Davis	X				
Mary English				X	
Stephen R. Gossett	X				
Helen Hennon				X	
Richard M. Holland	X				
Joe C. McKinnon	X				
Donald Mull	X				
Dale Swafford	X				
Greer Tidwell, Jr.				X	
Larry Waters	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 (board/commission/ other authority) on 07/11/2007 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/30/07

Notice published in the Tennessee Administrative Register on: 05/15/07

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/07

Date: Nov. 14, 2008

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: November 14, 2008

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 23, 2009

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.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

1-9-09

Date

Department of State Use Only

Filed with the Department of State on: _____

1/15/09

Effective on: _____

3/31/09

Tre Hargett

Tre Hargett
Secretary of State

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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 shall 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.

There were no verbal or written comments received at the public hearing or during the comment period.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The administrative record for this rule shows that there is no basis to perform a Regulatory Flexibility Analysis or to provide an Economic Impact Statement under requirements of T.C.A. §§ 4-5-401 et seq. This rule was promulgated solely to correct an unintended oversight that occurred during previous rulemaking. Therefore, it is exempt under § 4-5-404 as it serves to substantially codify the existing state regulations.

Additional Information Required by Joint Government Operations Committee

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

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

This rule revision serves to clarify that as originally written this regulation was never intended to be applicable to wigwam burners, air curtain destructors, and air curtain incinerators. This action was overlooked during recent revisions to Chapter 1200-3-4 (Open Burning) and Chapter 1200-3-2 (Definitions).

- (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 establishment of state air pollution control regulations is a mandate of the various Federal clean air acts and the rule being amended was established pursuant to that Federal requirement.

- (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;

The rule revision will affect any facility having a wigwam burner, air curtain destructor, or air curtain incinerator. There were no comments on the rule revision.

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

The Department 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;

None.

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

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Division of Air Pollution Control
9th Floor L&C Annex
Nashville, Tennessee 37243-1531

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

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

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

Office of General Counsel
Department of Environment and Conservation
20th Floor L & C Tower
Nashville, Tennessee 37243-1548

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

The Department is not aware of any.