

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 02-09-12
Rule ID(s): 5144
File Date: 02/22/2012
Effective Date: 05/22/2012

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 & Conservation
Division: Air Pollution Control
Contact Person: Lacey J. Hardin
Address: 9th Floor L & C Annex
401 Church Street
Nashville, Tennessee
Zip: 37243-1531
Phone: (615) 532-0554
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>)

Amendments

Chapter 1200-03-26 Administrative Fees Schedule

Subparagraph (b) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (b) in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

- (b) Such costs shall include, but not be limited to, costs associated with review of applications and reports, issuance of required permits and associated inspections of sources, unit observation, review and evaluation of monitoring results (stack and/or ambient), modeling, and costs associated with any necessary enforcement actions (excluding penalties assessed).

Subparagraph (e) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (e) in its entirety and replacing it with the following so that, as amended, subparagraph (e) shall read as follows:

- (e) Any responsible official who disagrees with the calculation or the applicability of the fee may petition the Tennessee Air Pollution Control Board (Board) for a hearing. In order to perfect a hearing, a petition for a hearing together with the total amount of the fee due must be received by the Technical Secretary of the Board not later than fifteen (15) days after the due date. Such hearing shall be in accordance with contested case provisions set forth in Title 4, Chapter 5, T.C.A. If the annual emission fee paid was improperly assessed, the Technical Secretary shall return the amount determined to be improperly assessed plus interest on the excess accrued from the date the emission fee was paid.

Subparagraph (g) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (g) in its entirety and replacing it with the following so that, as amended, subparagraph (g) shall read as follows:

- (g) Any responsible official impacted by the decision in subparagraph (f) of this paragraph who disagrees with such decision may petition the Tennessee Air Pollution Control Board for a hearing. The hearing shall be in accordance with contested case provisions as set forth in Title 4, Chapter 5, T.C.A. 4-5-301 et seq.

Subparagraph (b) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (b) in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

- (b) With the exception of changes received during the initial construction permit evaluation period (i.e. prior to the certified letter denoting application completeness), all revisions under subparagraph (4)(e) of this rule which result in an increase in allowable emissions sought by the applicant or an increase in actual emissions declared in the original application for a permit shall be subject to a fee equal to one-half of the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Subparagraph (c) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (c) in its entirety and replacing it with the following so that, as amended, subparagraph (c) shall read as follows:

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

Subparagraph (k) of paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (k) in its entirety and replacing it with the following so that, as amended, subparagraph (k) shall read as follows:

- (k) Beginning one (1) month after the effective date of the rule amendment that added this subparagraph (k), conditional major sources must pay a permit review fee in accordance with the table below in addition to the minor source annual emission fees specified in subparagraph (6)(e) of this rule. This fee is due and payable to the Division according to Schedule 1 found in subparagraph (6)(c) of this rule. When determining the allowable tons per year, carbon monoxide emissions shall be included.

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

Subparagraph (d) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and replacing it with the following so that, as amended, subparagraph (d) shall read as follows:

- (d) The rate at which major source actual-based annual emission fees are assessed shall be \$39.00 per ton for the annual accounting period July 1, 2011 through June 30, 2012. The rate at which major source allowable-based annual emission fees are assessed shall be \$28.50 per ton for the annual accounting period July 1, 2011 through June 30, 2012. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$7,500 for the annual accounting period July 1, 2011 through June 30, 2012. An annual revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph (1)(c) of this rule. These annual rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board.

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)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Bailey
Elaine Boyd	✓				Elaine H Boyd
Dr. Brian Christman	✓				B. Christman
Dr. Wayne T. Davis	✓				Wayne T Davis
Dr. Mary English				✓	
Stephen R. Gossett	✓				Stephen R Gossett
Honorable Mayor Tommy Green, Jr.				✓	
Dr. Shawn A. Hawkins	✓				Shawn A Hawkins
Helen S. Hennon	✓				Helen S. Hennon
Richard M. Holland	✓				Richard M Holland
John R. Roberts, Sr.				✓	
Honorable Mayor Larry Waters	✓				Larry Waters
Alicia M. Wilson	✓				Alicia M Wilson

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 01/11/2012 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: (11/10/11)

Rulemaking Hearing(s) Conducted on: (add more dates). (01/04/12)

Date: Jan. 17, 2012

Signature: Barry R. Stephens

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

Title of Officer: Director, Division of Air Pollution Control

Subscribed and sworn to before me on: January 17, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013



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.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
2-16-12
Date

Department of State Use Only

Filed with the Department of State on: 02/22/2012

Effective on: 05/22/2012

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2012 FEB 22 AM 9:22
SECRETARY OF STATE
PUBLICATIONS

Dc/rm26c20

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: The Tennessee Chamber of Commerce & Industry, on behalf of member industries, appreciates this opportunity to present comments on the proposed fee increases. As a threshold matter, TCCI and its members very much appreciate the Department's efforts to look at ways to run the Title V program at cost well below EPA's presumptive fee level. We realize that your efforts to minimize program costs require you to conduct the workload analysis to justify lower fee levels to EPA. As it is very difficult for us to assess appropriateness of level of permit fees without prior expenditure information and the Workload Analysis, the Chamber appreciates very much you, Quincy Styke, and Lacey Hardin meeting with us and sharing updated information and additional background data to allow for a better understanding of the Workload Analysis and the new proposed level of Title V fees for 2011-2012. The Chamber supports a fee level that is predicated on a tonnage fee and a base charge for minimum fees of no greater than necessary to fund the projected/authorized expenditures for Fiscal Year 2011-2012.

The Chamber recognizes the Title V program to be mandated and is to be self-supporting. We also understand that predicting the exact tonnages that will be "generated" by Title V sources is an art and not a science and those numbers have trended down in recent years. Likewise, we do understand that the fees to be imposed by regulation of the Board must be sufficient to fund a required program; however, in these difficult economic times, we do not desire to generate and accumulate excess fund reserves, which may become the target for some other administrative use by government. Likewise, in the funding needs analysis, we remain concerned about the growth of administrative overhead costs charged to the Title V program as it continues to increase and we do desire that the administrative overhead areas should be reviewed thoroughly and not be increasing simply because the program expenditures may be increasing.

Based on the above comments, the Chamber supports the proposed Title V fee increases included in today's Public Hearing on Rule 1200-03-26-.02. We appreciate the opportunity to present these comments and we appreciate your consideration.

The Chamber reserves an opportunity to present oral comments, pursuant to T.C.A. 4-5-204(c), to the Board prior to their consideration and adoption of new fee rules for Fiscal Year 2011-2012.

Response: The Tennessee Division of Air Pollution Control thanks the Chamber for their comments and acknowledges that the Division will continue to operate the agency in the most efficient method and justify it by use of our Workload Analysis.

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.

This rulemaking amendment to subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is federally mandated and, hence, exempt from the provisions of the Regulatory Flexibility Act of 2007, Acts 2007, § 6 of Public Chapter 464. The rule subject to this amendment is part of the requirements of § 502(b)(3)(A) of the Federal Clean Air Act which is the source of the requirement for 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".

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;

Rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised by increasing the Title V annual emission fees and changing the dates for which Title V fees are due. These fees were decreased last year (fiscal year 2010-2011) due to an excessive fund balance, and this proposed rule raises them to the previous (fiscal year 2009-2010) levels. Without this increase, the program is at risk of not meeting its budget for 2011-2012. This could result in the state's loss of the Title V (part 70) program and/or the application of the federal presumptive minimum fee, currently \$45.55/per ton of emissions.

- (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 is the source of the requirement for 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".

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Owners and operators of major sources in the state. These sources recognize the necessity of the rule. However, some support the increase in annual fee and some do not. The Tennessee Chamber of Commerce and Industry supports this increase.

- (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;

State revenues are expected to increase by approximately \$765,000 from fiscal year 2010-2011. However, expected revenues are approximately \$837,854 less than fiscal year 2009-2010 revenues. New, more stringent federal regulations have resulted in emissions reductions upon which fees are based. These new regulations require increased manpower from the Division to regulate and enforce, so Division expenditures are expected to increase. No significant financial impact is expected on local governments.

- (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
9th Floor, L & C Annex
401 Church Street
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
Tennessee Dept. of Environment and Conservation

- (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 Dept. of Environment and Conservation
401 Church Street
20th Floor L & C Tower
Nashville, Tennessee 37243-1531
Phone 615-532-0131
Alan.Leiserson@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.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: REDLWE
 Rule ID(s): _____
 File Date: _____
 Effective Date: _____

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 & Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9 th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0554
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

RECEIVED
 2012 FEB 22 AM 9:23
 SECRETARY OF STATE
 PUBLICATIONS

(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 1200-03-26 Administrative Fees Schedule

Subparagraph (b) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (b) in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

- (b) Such costs shall include, but not be limited to, costs associated with review of applications and reports, issuance of required permits and associated inspections of sources, unit observation, review and evaluation of monitoring results (stack and/or ambient), modeling, and costs associated with any necessary enforcement actions (excluding penalties assessed).

Subparagraph (e) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (e) in its entirety and replacing it with the following so that, as amended, subparagraph (e) shall read as follows:

- (e) Any responsible official who disagrees with the calculation or the applicability of the fee may petition the Tennessee Air Pollution Control Board (Board) for a hearing. In order to perfect a hearing, a petition for a hearing together with the total amount of the fee due must be received by the Technical Secretary of the Board not later than fifteen (15) days after the due date. Such hearing shall be in accordance with contested case provisions set forth in Title 4, Chapter 5, T.C.A. If the annual emission fee paid was improperly assessed, the Technical Secretary shall return the amount determined to be improperly assessed plus interest on the excess accrued from the date the emission fee was paid.

Subparagraph (g) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (g) in its entirety and replacing it with the following so that, as amended, subparagraph (g) shall read as follows:

- (g) Any responsible official impacted by the decision in subparagraph (f) above of this paragraph who disagrees with such decision may petition the Tennessee Air Pollution Control Board for a hearing. The hearing shall be in accordance with contested case provisions as set forth in Title 4, Chapter 5, T.C.A. 4-5-301 et seq.

Subparagraph (b) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (b) in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

- (b) With the exception of changes received during the initial construction permit evaluation period (i.e. prior to the certified letter denoting application completeness), all revisions under subparagraph ~~1200-03-26-.02(4)(e)~~ of this rule which result in an increase in allowable emissions sought by the applicant or an increase in actual emissions declared in the original application for a permit shall be subject to a fee equal to one-half of the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Subparagraph (c) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (c) in its entirety and replacing it with the following so that, as amended, subparagraph (c) shall read as follows:

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

Subparagraph (k) of paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (k) in its entirety and replacing it with the following so that, as amended, subparagraph (k) shall read as follows:

- (k) Beginning one (1) month after the effective date of the rule amendment that added this subparagraph (k), conditional major sources must pay a permit review fee in accordance with the table below in addition to the minor source annual emission fees specified in subparagraph ~~1200-03-26-.02(6)(e)~~ of this rule. This fee is due and payable to the Division according to Schedule 1 found in subparagraph ~~1200-03-26-.02(6)(c)~~ of this rule. When determining the allowable tons per year, carbon monoxide emissions shall be included.

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

Subparagraph (d) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and replacing it with the following so that, as amended, subparagraph (d) shall read as follows:

- (d) The rate at which major source actual-based annual emission fees are assessed shall be ~~\$35.00~~ \$39.00 per ton for the annual accounting period July 1, ~~2010~~ 2011 through June 30, ~~2011~~ 2012. The rate at which major source allowable-based annual emission fees are assessed shall be ~~\$24.50~~ \$28.50 per ton for the annual accounting period July 1, ~~2010~~ 2011 through June 30, ~~2011~~ 2012. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than ~~\$6,500~~ \$7,500 for the annual accounting period July 1, ~~2010~~ 2011 through June 30, ~~2011~~ 2012. An annual revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph ~~1200-03-26-.02(1)(c)~~ of this rule. These annual rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board.

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