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Sequence Number: 02-17-09
Rule ID(s): 4125
File Date: 02/25/09
Effective Date: 05/11/09

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 & Conservation
Division:	Air Pollution Control
Contact Person:	Malcolm Butler
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (for additional chapters, copy and paste table)

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

Amendment

Subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by striking "\$37.00" in the first sentence and inserting "\$39.00" in its place; by striking "\$26.50" in the second sentence and inserting "\$28.50" in its place; by striking the three citations to the period "July 01, 2007 through June 30, 2008" and inserting in their places "July 01, 2008 through June 30, 2009;" so that, as amended, the subparagraph shall read:

- (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 01, 2008 through June 30, 2009. 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 01, 2008 through June 30, 2009. 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 01, 2008 through June 30, 2009. 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). 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. §68-201-105

* 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				✓	
Tracy R. Carter	✓				<i>Tracy R. Carter</i>
J. Ronald Bailey	✓				<i>J. Ronald Bailey</i>
Wayne T. Davis	✓				<i>Wayne Davis</i>
Mary English				✓	
Stephen Gossett	✓				<i>Stephen Gossett</i>
Shawn A. Hawkins	✓				<i>Shawn Hawkins</i>
Helen Hennon	✓				<i>Helen S. Hennon</i>
Richard Holland	✓				<i>Richard Holland</i>
Donald Mull	✓				<i>Donald Mull</i>
Dale Swafford				✓	
Greer Tidwell, Jr.	✓				<i>Greer Tidwell, Jr.</i>
Larry Waters	✓				<i>Larry Waters</i>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Air Pollution Control Board (board/commission/ other authority) on 12/10/2008 (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: 09/ 30/ 08

Notice published in the Tennessee Administrative Register on: 10/ 15/ 08

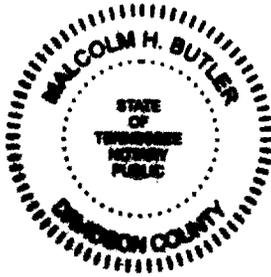
Rulemaking Hearing(s) Conducted on: (add more dates. 11/ 20/ 08

Date: January 21, 2009

Signature: Barry R. Stephens

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

Title of Officer: Tennessee Air Pollution Control Board



Subscribed and sworn to before me on: January 21, 2009

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.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

2-23-09

Date

Department of State Use Only

Filed with the Department of State on: 2/25/09

Effective on: 5/11/09

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The Hargett
Secretary of State

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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.

Comment: The comment that was received concerning the fee rule was in support of the proposed Title V fee increases.

Response: The Board agrees.

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.

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".

Additional Information Required

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

Regulation Number 1200-03-26-.02(9)(d)

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

The subparagraph is amended to establish the annual fee rate and minimum annual fee for operation of the state's Title V program for the period July 1, 2008, through June 30, 2009.

- (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 minimum annual fee and some do not.

- (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;

Likely slight decrease in revenue. Despite the \$2 increase in rates effected by this rule amendment the actual end result will probably be a minor decrease. This situation can occur because the projected revenue sufficient to run this program (in which planned expenditures are being reduced slightly from the previous year) is determined based on the expenditures for the previous year and changes in personnel due to the Voluntary Buyout Program. For FY 2008 the tonnage on which fees were paid totaled 234,615.4. However, based on the declining trend for the past several years in this tonnage (which is divided into some payments based on allowable emissions; some payment of the mandatory minimum fee; and some payment based on actual emissions during the annual period), the total collected is expected to decline. Compare \$7,317,445.36 with \$7,272,072. There's a \$45,373.30 difference for a revenue decrease. The planned expenditures are also somewhat smaller as the previous year. Federal law requires this fee to fully pay for the Title V program.

- (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 who will explain the rule at a scheduled meeting of the Committee:

Alan M. Leiserson
Legal Services Director
Tennessee Dept. of Environment and Conservation

- (H) Office address and telephone number of the agency representative who will explain the rule at a scheduled meeting of the Committee:

Office of General Counsel
Tennessee Dept. of Environment and Conservation
401 Church Street
20th Floor L & C Tower
Nashville, Tennessee 37243-1531
615-532-0131

- (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.