

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 03-12-11  
Rule ID(s): 4929  
File Date: 03/16/2011  
Effective Date: 06/14/2011

## 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*

<b>Agency/Board/Commission:</b>	Environment & Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Malcolm H. Butler
<b>Address:</b>	9 <sup>th</sup> Floor L & C Annex 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243-1531
<b>Phone:</b>	(615) 532-0600
<b>Email:</b>	<a href="mailto:Malcolm.Butler@tn.gov">Malcolm.Butler@tn.gov</a>

**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

Amendment

Subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by striking "\$39.00" in the first sentence and inserting "\$35.00" in its place; by striking "\$28.50" in the second sentence and inserting "\$24.50" in its place; by striking the three citations to the period "July 1, 2009 through June 30, 2010" and inserting in their places "July 1, 2010 through June 30, 2011;" and in the third sentence by striking "\$7,500" and inserting "\$6,500" in its place, so that, as amended, the subparagraph shall read:

- (d) The rate at which major source actual-based annual emission fees are assessed shall be \$35.00 per ton for the annual accounting period July 1, 2010 through June 30, 2011. The rate at which major source allowable-based annual emission fees are assessed shall be \$24.50 per ton for the annual accounting period July 1, 2010 through June 30, 2011. 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 for the annual accounting period July 1, 2010 through June 30, 2011. 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. §§68-201-101 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:

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Ronald Bailey
Tracy R. Carter					
Dr. Brian Christman					
Dr. Wayne T. Davis	✓				Wayne T. Davis
Dr. Mary English					
Stephen R. Gossett	✓				Stephen R. Gossett
Honorable Mayor Tommy Green, Jr.	✓				Tommy Green
Dr. Shawn A. Hawkins	✓				Shawn Hawkins
Helen S. Hennon	✓				Helen S. Hennon
Richard M. Holland	✓				Richard M. Holland
John R. Roberts, Sr.					
Alicia M. Wilson	✓				Alicia M. Wilson
Honorable Mayor Larry Waters					

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 03/09/2011, 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: (09/22/10)

Rulemaking Hearing(s) Conducted on: (add more dates). (11/17/10)



Date: March 9, 2011

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: March 9, 2011

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

3-15-11

Date

**Department of State Use Only**

Filed with the Department of State on: 3/16/11

Effective on: 6/14/11

Tre Hargett

Tre Hargett  
Secretary of State

RECEIVED  
2011 MAR 16 AM 10:07  
SECRETARY OF STATE  
PUBLICATIONS

## Public Hearing Comments

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

Comment: The final decision and promulgation by the board should be considered following the public release and review of a final workload analysis which is (presently awaiting state revenue closed out numbers).

Response: The Board agrees.

**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 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;

Rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised by reducing the Title V annual emission fees and changing the dates for which Title V fees are due.

- (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;

This revision will decrease Title V revenues by approximately \$1.5 million from collections for the previous year. The fee is being temporarily reduced because of an excess fund balance estimated for the end of fiscal year 2009-2010. There will be no increase or decrease in expenditures by the Department of Environment and Conservation for the fiscal year as a result of this change.

- (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  
20<sup>th</sup> Floor L & C Tower  
Nashville, Tennessee 37243-1531  
Phone 615-532-0131  
[Alan.Leiserson@tn.gov](mailto: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.

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Chapter 1200-03-26  
Administrative Fees Schedule

Amendment In Redline

Subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by striking "~~\$39.00~~" in the first sentence and inserting "\$35.00" in its place; by striking "~~\$28.50~~" in the second sentence and inserting "\$24.50" in its place; by striking the three citations to the period "~~July 1, 2009 through June 30, 2010~~" and inserting in their places "July 1, 2010 through June 30, 2011;" and in the third sentence by striking "~~\$7,500~~" and inserting "\$6,500" in its place, so that, as amended, the subparagraph shall read:

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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:

<b>Board Member</b>	<b>Aye</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Signature (if required)</b>
Michael Atchison	X				
Dr. J. Ronald Bailey	X				
Tracy R. Carter				X	
Dr. Brian Christman				X	
Dr. Wayne T. Davis	X				
Dr. Mary English				X	
Stephen R. Gossett	X				
Honorable Mayor Tommy Green, Jr.	X				
Dr. Shawn A. Hawkins	X				
Helen S. Hennon	X				
Richard M. Holland	X				
John R. Roberts, Sr.				X	
Alicia M. Wilson	X				
Honorable Mayor Larry Waters				X	

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Rulemaking Hearing(s) Conducted on: (add more dates). 11/17/10

Date: March 9, 2011

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: \_\_\_\_\_

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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.  
Attorney General and Reporter

\_\_\_\_\_  
Date

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Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State

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