

Rulemaking Hearing Rules
Department of Environment and Conservation
Division of Water Pollution Control

Chapter 1200-04-11
Environmental Protection Fund Fees

Amendments

Rule 1200-04-11-.02 Fees of Rule Chapter 1200-04-11 Environmental Protection Fund Fees is amended by deleting it in its entirety and substituting the following so that, as amended, it shall read as follows:

1200-04-11-.02 Fees

(1) Types of Fees

- (a) Application fees for permit issuance or renewal shall be paid in full upon submittal of an application. The Department will not process an application without having received the fee. No refunds of permit application fees may be made for any reason, other than as required by T.C.A. §68-203-101 et seq.
- (b) Fees for 401 Certification of permits issued by the U.S. Army Corps of Engineers shall be sent to the Department by the applicant with either a copy of or reference to the application filed with the Corps.
- (c) Permit annual maintenance fees shall be paid to the Department for every year the permit is in effect by the permittee. The annual maintenance fee shall be due within 45 days of issuance of an invoice.
- (d) Plan review fees must be submitted before the review will be conducted or approval granted.

(2) Schedule of Fees

- (a) The Application Fees for the processing of applications for 401 certifications and ARAP permits shall be as follows:
 - 1. 401 Certification of 404 permit or ARAP (Capped at \$2,500):
 - (i) Projects equal to or greater than 10 acres or equal to or greater than 1,000 feet linear \$2,500
 - (ii) Projects less than 10 acres or less than 1,000 feet linear \$1,000
 - (iii) Watershed District Projects \$ 750
 - (iv) Personal Residence or Family Farm \$ 50
 - (v) Projects that replace, restore or repair public infrastructure or remediate damages from flooding or storm events and qualify for federal disaster assistance are exempt from Rules 1200-04-11-.02(2)(a)1(i), (ii), (iii) and (iv).
- (b) Construction Stormwater permits (Capped at \$7,500):
 - 1. Projects equal to or greater than 150 acres \$7,500

2.	Projects equal to or greater than 50 acres and less than 150 acres	\$4,000
3.	Projects equal to or greater than 5 acres and less than 50 acres	\$1,000
4.	Projects equal to or greater than 1 acre and less than 5 acres	\$ 250
5.	Projects less than 1 acre	\$ 0

(c) Permit Annual Maintenance Fees shall be as follows for these categories of permitted activities (Capped at \$7,500):

1.	Gravel Dredging	\$ 100
2.	Gravel Dredging for Personal Residence or Family Farm	\$ 0
3.	Major Industrial Treatment Facility:	
	(i) Flow equal to or greater than 10 MGD	\$7,500
	(ii) Flow equal to or greater than 1 MGD and less than 10 MGD	\$6,250
	(iii) Flow equal to or greater than 0.5 MGD and less than 1 MGD	\$5,000
	(iv) Flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$3,750
	(v) Flow less than 0.1 MGD	\$2,500
4.	Minor Industrial Treatment Facility:	
	(i) Flow equal to or greater than 10 MGD	\$5,000
	(ii) Flow equal to or greater than 1 MGD and less than 10 MGD	\$3,750
	(iii) Flow equal to or greater than 0.5 MGD and less than 1 MGD	\$2,500
	(iv) Flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$1,000
	(v) Flow less than 0.1 MGD	\$ 500
5.	Treated Washwater Dischargers with flows <0.001 MGD	\$ 100
6.	Stormwater Discharge Permits associated with Industrial Activities:	
	(i) Facilities equal to or greater than 500 acres	\$ 700
	(ii) Facilities equal to or greater than 400 acres and less than 500 acres	\$ 650
	(iii) Facilities equal to or greater than 300 acres and less than 400 acres	\$ 600

(iv)	Facilities equal to or greater than 200 acres and less than 300 acres	\$ 550
(v)	Facilities equal to or greater than 100 acres and less than 200 acres	\$ 500
(vi)	Facilities equal to or greater than 50 acres and less than 100 acres	\$ 450
(vii)	Facilities equal to or greater than 25 acres and less than 50 acres	\$ 400
(viii)	Facilities equal to or greater than 10 acres and less than 25 acres	\$ 350
(ix)	Facilities equal to or greater than 5 acres and less than 10 acres	\$ 300
(x)	Facilities equal to or greater than 1 acres and less than 5 acres	\$ 250
(xi)	Facilities equal to or greater than 0 acres and less than 1 acre	\$ 0
7.	Sewage Treatment Facility Flow:	
(i)	Flow equal to or greater than 5 MGD	\$7,500
(ii)	Flow equal to or greater than 4.5 MGD and less than 5 MGD	\$7,250
(iii)	Flow equal to or greater than 4 MGD and less than 4.5 MGD	\$7,000
(iv)	Flow equal to or greater than 3.5 MGD and less than 4 MGD	\$6,750
(v)	Flow equal to or greater than 3 MGD and less than 3.5 MGD	\$6,500
(vi)	Flow equal to or greater than 2.5 MGD and less than 3 MGD	\$6,000
(vii)	Flow equal to or greater than 2 MGD and less than 2.5 MGD	\$5,500
(viii)	Flow equal to or greater than 1.5 MGD and less than 2 MGD	\$5,000
(ix)	Flow equal to or greater than 1 MGD and less than 1.5 MGD	\$4,500
(x)	Flow equal to or greater than 0.75 MGD and less than 1 MGD	\$4,000
(xi)	Flow equal to or greater than 0.5 MGD and less than	

	0.75 MGD	\$3,500
(xii)	Flow equal to or greater than 0.25 MGD and less than 0.5 MGD	\$2,500
(xiii)	Flow equal to or greater than 0.1 MGD and less than 0.25 MGD	\$1,250
(xiv)	Flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$ 750
8.	Small Mechanical Facility flow less than 0.075 MGD	\$ 500
9.	Small Non-Mechanical Facility flow less than 0.075 MGD	\$ 250
10.	Non-Discharging Facility:	
(i)	Influent flow equal to or greater than 0.5 MGD	\$3,500
(ii)	Influent flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$2,000
(iii)	Influent flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$1,000
(iv)	Influent flow less than 0.075 MGD	\$ 250
(v)	Satellite collection systems	\$1,000
(vi)	Pump and haul	\$ 250
11.	Other Waste or Wastewater Operations Requiring Permit	\$1,000
12.	General Permits (sources other than stormwater or concentrated animal feeding operation)	\$ 250
13.	Concentrated animal feeding operations covered by an individual permit	\$ 250
14.	Municipal Pretreatment Programs as defined in Rule 1200-04-11-.01 (2)(a):	
(i)	Large Pretreatment Program	\$5,000
(ii)	Medium Pretreatment Program	\$3,000
(iii)	Small Pretreatment Program	\$1,000
15.	Mining:	
(i)	Area equal to or greater than 500 acres	\$5,000
(ii)	Area equal to or greater than 400 acres and less than 500 acres	\$4,500
(iii)	Area equal to or greater than 300 acres and less than 400 acres	\$4,000
(iv)	Area equal to or greater than 200 acres and less than 300 acres	\$3,500
(v)	Area equal to or greater than 100 acres and less than 200 acres	\$3,000

(vi)	Area equal to or greater than 75 acres and less than 100 acres	\$2,500
(vii)	Area equal to or greater than 50 acres and less than 75 acres	\$2,000
(viii)	Area equal to or greater than 25 acres and less than 50 acres	\$1,500
(ix)	Area equal to or greater than 10 acres and less than 25 acres	\$1,000
(x)	Area equal to or greater than 5 acres and less than 10 acres	\$ 750
(xi)	Area less than 5 acres	\$ 500

(Note: Fees are based on area being mined or area not yet reclaimed.)

16.	Mining Reclamation	\$ 250
17.	Stormwater Discharge Permits for Municipal Separate Storm Sewer Systems (MS4):	
	(i) Large MS4s	\$7,500
	(ii) Medium MS4s	\$5,000
	(iii) Small MS4s	\$2,500

(d) Plan Review Fees shall apply to new facilities as well as the expansion or modification of existing facilities. If the submittal includes more than one listed category, the fee will be the sum of the fees listed for each individual category. Review of plans documents will not commence until all fees required by these rules are paid in full. Plan Review Fees shall be as follows (Capped at \$1,500):

1.	Major Industrial Wastewater Treatment Facility:	
	(i) Flow equal to or greater than 5 MGD	\$1,500
	(ii) Flow less than 5 MGD	\$1,000
2.	Minor Industrial Wastewater Treatment Facility:	
	(i) Flow equal to or greater than 0.1 MGD	\$ 500
	(ii) Flow less than 0.1 MGD	\$ 250
3.	Sewage Treatment Facility:	
	(i) Flow equal to or greater than 5 MGD	\$1,500
	(ii) Flow equal to or greater than 1MGD and less than 5 MGD	\$1,000
	(iii) Flow equal to or greater than 0 .075 MGD and less than 1 MGD	\$ 500
	(iv) Flow less than 0.075 MGD	\$ 250
4.	Collection Systems:	
	(i) Collection Lines — \$25.00 per 250 feet or portion thereof of sewage collection line excluding service laterals. Total fee not to exceed \$1,500.	

- 5. Equalization Basins:
 - (i) Holding capacity equal to or greater than 5 million gallons (MG) \$ 300
 - (ii) Holding capacity equal to or greater than 1 MG and less than 5 MG \$ 200
 - (iii) Holding capacity equal to or greater than 0.075 MG and less than 1 MG \$ 100
 - (iv) Holding capacity less than 0.075 MG \$ 50
- 6. Pumping Stations:
 - (i) Design capacity equal to or greater than 5 MGD \$ 300
 - (ii) Design capacity equal to or greater than 1 MGD and less than 5 MGD \$ 200
 - (iii) Design capacity equal to or greater than 0.075 MGD and less than 1 MGD \$ 100
 - (iv) Design capacity less than 0.075 MGD (Does not include grinder pumps for septic tanks and septic tank effluent pumps) \$ 50
- 7. Mining Operations:
 - (i) Coal \$ 250
 - (ii) Non-Coal — \$25.00 per acre, not to exceed \$1,500
 - (iii) Reclamation \$ 250
 - (iv) Quarries \$ 250
- 8. Wastewater Plant and/or Collection System Modification:

The plans review fee for modifications to wastewater plants and/or collection systems shall be 20% of the full review fee based on the category and size of the resulting facility.

(e) Delegated Plans Review Authority:

Units of local government, which have been granted plans review authority, shall pay an annual fee of \$1,000. Failure of local government to pay this fee will be cause for the revocation of plans review authority.

(3) Collection of Fees

- (a) Fees resulting from application for a permit, maintenance of a permit or plans review, shall be made Payable and Mailed to the Department of Environment and Conservation; Attention: Environmental Protection Fees — Water Pollution Control.
- (b) Payments shall be clearly identified as to the permit, application, or plans to which they apply.
- (c) Fees are to be paid in full by the due date or, if required, at time of application.

(4) Penalties

- (a) Any unpaid fee or portion thereof is subject to penalty.

- (b) For any part of any fee imposed but not paid within the specified period of fifteen (15) days of the due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within fifteen (15) days after the due date shall bear interest at the maximum lawful rate from the due date to the date paid. However, the total of the penalties and interest that accrue pursuant to this paragraph shall not exceed three (3) times the amount of the original fee.
 - (c) The Commissioner of Environment and Conservation may file an action in the Chancery Court of Davidson County or any Court of competent jurisdiction for a judgment in the amount owed the State under the Water Quality Control Act, Tennessee Code Annotated, Section 69-3-101 et seq.
- (5) Hearings
- (a) Any person required to pay any fee specified in this rule, who disagrees with the calculation or applicability of the fee, may petition the Water Quality Control Board for a hearing. In order to perfect a hearing, the objecting party must present to the Technical Secretary of the Board, not later than fifteen (15) days after the fee due date:
 1. a petition for hearing, and
 2. the total amount of the fee.
 - (b) Such hearing shall be in accordance with contested case provisions set forth in Title 4, Chapter 5, Tennessee Code Annotated.
 - (c) If the fee 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 fee was presented to the Technical Secretary.

Authority: T.C.A. §§69-3-105(b) and 4-5-201 et seq. and 68-203-101 et seq.

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 31st day of March, 2008, and will become effective on the 14th day of June, 2008. (FS 03-24-09; DBID 2853)

Economic Impact Statement

- (1) 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, and/or directly benefit from the proposed rule:
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| Type or types of small business: | Construction operations that disturb 1 or more acres of land. This may include, but not be limited to: <ol style="list-style-type: none"> 1. Land developers 2. Construction contractors 3. Home builders |
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Estimate
of the number
of small
businesses:

The following information was obtained from the Tennessee Department of Labor on October 19, 2007. These data are taken from the first quarter 2007 Quarterly Census of Employment and Wages (QCEW). The categories supplied include (1) Residential Building Construction 3,926 of which 3,835 have fewer than 50 employees, (2) New Single Family Housing Construction 2,138 of which 2,114 have fewer than 50 employees, (3) Heavy and Civil Engineering Construction 1,087 of which 1,009 have fewer than 50 employees, and (4) Land Subdivision of which 238 have fewer than 50 employees.

As such, there are 7,396 licensed operations in Tennessee, with 7,196 operations that meet the definition of small land disturbing facilities.

- (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:

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments to Rules 1200-04-11-.02(2)(a) or (b), (c)(9), (d)(6) (iii), or 1200-04-11-.02(4)(d).

- (3) A statement of the probable effect on impacted small businesses and consumers:

The amendment to Rule 1200-04-11-.02(2)(a) and (b) redefines the "Schedule of Fees" for Construction Stormwater permit application fees. This action reduces the number of fee categories from 13 to 5, based on the number of acres disturbed during construction. The category of "Projects equal to or greater than 1 acre and less than 5 acres = \$250" remains the same as in the previous rule. The other 3 larger categories increase the amount of the permit application fee.

The amendment to Rule 1200-04-11-.02(2)(c)(9) will increase the number of categories for Non-Discharging Facilities from 2 to 6. Two (2) new categories were added to include large facilities that did not exist when the rules were first implemented in 1991. The new categories are "Non-Discharging Facility with Influent flow equal to or greater than 0.1 MGD and less than 0.5 MGD; and Influent flow equal to or greater than 0.5 MGD,

Additionally, two(2) categories were added to include "Satellite collection systems" and "Pump and haul" facilities. Satellite collection systems are cities that collect wastewater but do not provide treatment for discharge to waters of the State. Rather, they transfer the wastewater to an adjoining city that provides treatment prior to discharge. This new category reduces the annual maintenance fee for this category. The new "Pump and haul" category was added to cover the cost of investigating problems associated with municipal wastewater systems that receive septic tank waste at their locations.

The amendment to Rule 1200-04-11-.02(2)(d)(6)(iv) inserts language to clarify that Pumping Stations with a "Design capacity less than 0.075 MGD (Does not include grinder pumps for septic tanks and septic tank effluent pumps).

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The amendments to Rules 1200-04-11-.02(2)(a) and (b) and 1200-04-11-.02(2)(c)(9) relate to changes in Construction Stormwater permit application fees. The rule changes do not alter reporting requirements, recordkeeping or other administrative costs required for compliance with the proposed rule.

The amendment to Rule 1200-04-11-.02(2)(d)(6) is included to clarify that grinder pumps for septic tanks and septic tank effluent pumps are not subject to the fee requirements of this rule.

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

The amendments to Rules 1200-04-11-.02(2)(a) and (b), 1200-04-11-.02(2)(c)(9), and 1200-04-11-.02(2)(d)(6) have no counterparts in federal rules. These rules are specific to the Environmental Protection Fund Act TCA 68-203-101 et. seq.

- (6) Analysis of the effect of the possible exemption of small business from all or any part of the requirements contained in the proposed rule:

Exemption of small business from the effects of the proposed rule changes would eliminate the payment of additional fees for service required by TCA 68-203-101 et. seq. This would result in the loss of an anticipated \$1,173,150 to the Division of Water Pollution Control and the loss of 14 positions authorized by the Tennessee Legislature for oversight of the Construction Stormwater Program.