

Department of State
Division of Publications
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Sequence Number: 03-47-10
 Rule ID(s): 4697
 File Date: 03/30/2010
 Effective Date: 06/28/2010

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 H. Butler
Address:	9 th Floor L & C Annex 401 Church Street Nashville, TN
Zip:	37243-1531
Phone:	615-532-0600
Email:	Malcolm.Butler@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. Please enter only **ONE** Rule Number/RuleTitle 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 the three citations to the period "July 1, 2008 through June 30, 2009" and inserting in their places "July 1, 2009 through June 30, 2010" 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 1, 2009 through June 30, 2010. 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, 2009 through June 30, 2010. 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, 2009 through June 30, 2010. 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	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				
Mayor Tommy Green	X				
Dr. Shawn A. Hawkins	X				
Helen Hennon	X				
Richard M. Holland	X				
Dale Swafford				X	
Greer Tidwell, Jr.	X				
Mayor 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 on 01/13/2010, 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: 10/28/2009

Rulemaking Hearing(s) Conducted on: (add more dates). 12/21/2009

Date: February 17, 2010

Signature: [Handwritten Signature]

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

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: February 17, 2010

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.

[Handwritten Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter
3-29-10
Date

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Filed with the Department of State on: 3/30/10

Effective on: 6/28/10

SECRETARY OF STATE
PUBLICATIONS

2010 MAR 30 AM 10:10

RECEIVED

[Handwritten Signature]
Tre Hargett
Secretary of State

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 Commenter appreciates very much the 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 2009 – 2010. Based upon the reported fund balance remaining following the increase for FY 2008 – 2009 being near \$2.4 million, the Commenter does not support a fee level for Fiscal Year 2009 – 2010.

The Commenter recognizes the Title V program to be mandated and is to be self-supporting. 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 has nearly doubled in recent years although we recognize that is beyond the direct control of the Air Division.

Response: There will be no change in the fee rate for the 2009 through 2010 fiscal year. The permit fees will remain at the same amounts as they were in the 2008 through 2009 fiscal year.

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)

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 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) 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 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 owners and operators recognize the necessity of the rule. However, they do not support the fee rate for this year.

- (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;

There will be no change in the 2009 through 2010 fiscal year fee structure. It will remain at the same amounts as the previous 2008 thru 2009 fiscal year.

- (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
E-mail: Alan.Leiserson@tn.gov

- (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

- (l) 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 form

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Dr. Mary English	X				
Stephen R. Gossett	X				
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Dr. Shawn A. Hawkins	X				
Helen Hennon	X				
Richard M. Holland	X				
Dale Swafford				X	
Greer Tidwell, Jr.	X				
Mayor Larry Waters				X	

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Rulemaking Hearing(s) Conducted on: (add more dates). 12/21/2009

Date: _____

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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Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

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Secretary of State

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