

**Department of State  
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Sequence Number: 06-01-09  
Rule ID(s): 4213  
File Date: 06/01/09  
Effective Date: 08/15/2009

## 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>	Jeff S. Cales
<b>Address:</b>	Cookeville EFO 1221 South Willow Ave. Cookeville, TN
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**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
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.04	Exemptions

(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 1200-03-09  
Construction and Operating Permits

Amendment

Subparagraph (d) of paragraph (4) of rule 1200-03-09-.04 Exemptions is amended by adding a new part number 25 so that, as amended, the new part 25 shall read:

25. Temporary-use air curtain destructors or temporary-use air curtain incinerators used in disaster recovery solely for disposal of materials resulting from a natural disaster, and when conducted in conformity with the following conditions:
- (i) Fires disposing of structural and household materials and vegetation are allowed only when those structures or materials are destroyed or severely damaged by natural disaster. The air curtain destructor or air curtain incinerator shall only be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area. Input from Emergency Management personnel may be requested in determining qualification with this criterion.
  - (ii) The maximum rated capacity for each temporary-use air curtain destructor or temporary-use air curtain incinerator shall not exceed 35 tons per day per unit.
  - (iii) The persons using temporary-use air curtain destructors or temporary-use air curtain incinerators under this provision must make a reasonable effort to remove all tires and other rubber products, vinyl shingles and siding, vinyl flooring, carpet, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials from the materials to be burned before ignition. The Technical Secretary reserves the right to inspect the proposed materials to be burned before ignition. The alternative use of chippers and grinders, landfilling, or on-site burial of waste in lieu of burning, if lawful, is encouraged.
  - (iv) The person responsible for such burning must notify the Division of Air Pollution Control of the proposed location. The notification must be delivered to the Division of Air Pollution Control at the appropriate regional Environmental Field Office at least three (3) days prior to commencing the burn. The Division may request that alternate sites be identified to minimize impact to air quality. The alternative use of chippers and grinders in lieu of burning is encouraged.
  - (v) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn.
  - (vi) The air curtain destructor or air curtain incinerator shall only be used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area.
  - (vii) Disposal via temporary-use air curtain destructors or temporary-use air curtain incinerators conducted under this exception is only allowed where no other safe and/or practical means of disposal is available.

- (viii) The Technical Secretary reserves the right to require a person to cease or limit burning if emissions from the air curtain destructor or air curtain incinerator are deemed by the Technical Secretary or his designee to jeopardize public health or welfare, create a public nuisance or safety hazard, create a potential safety hazard, or interfere with the attainment or maintenance of the air quality standards.

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

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 04/08/2009 (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: (01/15/09)

Notice published in the Tennessee Administrative Register on: (02/13/09)

Rulemaking Hearing(s) Conducted on: (add more dates). (03/19/09)



Date: April 17, 2009

Signature: Barry R. Stephens

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

Title of Officer: Tennessee Division of Air Pollution Control

Subscribed and sworn to before me on: April 17, 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  
5-31-09  
Date

**Department of State Use Only**

Filed with the Department of State on: 6/1/09

Effective on: 8/15/09

Tre Hargett  
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.

There were no verbal or written comments received at the public hearing or during the comment period.

### **Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> 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)

- (1) The 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, or directly benefit from the proposed rule:

None.

- (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:

Insignificant.

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

None.

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

None.

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

The proposed rule revision compliments provisions of Federal Rule 40 CFR Part 60, Subpart EEEE, so that state Air Pollution Control permit(s) will not be required for certain temporary-use air curtain destructors or temporary-use air curtain incinerators used in disaster recovery, with appropriate requirements stated in the proposed exemption.

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

Not Applicable.

**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;

The proposed revision to Chapter 1200-03-09-.04(4)(d) consists of a new permit exemption for small temporary-use air curtain destructors or small temporary-use air curtain incinerators used in disaster recovery, with appropriate requirements stated in the exemption. This change is necessary to effectively regulate occasional disaster recovery efforts statewide, where no other safe and/or practical means of disposal is available.

- (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;

The Department is not aware of any.

- (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;

A limited number of local officials and their contractors involved in occasional disaster recovery efforts are potentially affected. Under the proposal, the Division of Air Pollution Control would no longer require the person responsible for such use of small temporary-use air curtain destructors or small temporary-use air curtain incinerators to first obtain an Air Pollution Control permit. No adverse comments from the general public or affected sources were registered in rulemaking.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department 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 would not be any significant increase or decrease in any state or local government revenues and expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jeff S. Cales  
Cookeville EFO  
1221 South Willow Ave.  
Cookeville, TN 38506

- (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 and telephone number 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  
615-532-0131

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Division is not aware of any.