

Department of State
Division of Publications
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For Department of State Use Only

Sequence Number: 08-44-11
 Rule ID(s): 5008
 File Date: 08/29/2011
 Effective Date: 11/27/2011

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

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9 th Floor L & C Annex 401 Church Street Nashville, Tennessee 37243-1531
Phone:	(615) 532-0545
Email:	Lacey.Hardin@gov.tn

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
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits
1200-03-09-.02	Operating Permits

(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

Amendments

Subpart (i) of part 46 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding two new items (I) and (II) as follows:

- (I) In the event that the U.S. Court of Appeals for the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the Federal Register notice of vacatur.
- (II) In the event that there is a change to Federal law that supersedes regulation of GHGs under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the change in Federal law.

Part 32 of subparagraph (b) of paragraph (11) of rule 1200-03-09-.02 Operating Permits is amended by adding two new subparts (iii) and (iv) as follows:

- (iii) In the event that the U.S. Court of Appeals for the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the Federal Register notice of vacatur.
- (iv) In the event that there is a change to Federal law that supersedes regulation of GHGs under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the change in Federal law.

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:

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

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 07/13/2011, 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: 02/11/11

Rulemaking Hearing(s) Conducted on: (add more dates). 04/04/11

Date: July 13, 2011

Signature: [Handwritten Signature]

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

Title of Officer: Director, Division of Air Pollution Control



Subscribed and sworn to before me on: July 13, 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.

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter
8-24-11

Date

Department of State Use Only

Filed with the Department of State on: 8/29/11

Effective on: 11/27/11

[Handwritten Signature]

Tre Hargett
Secretary of State

RECEIVED
2011 AUG 29 PM 3:14
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.

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

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.

- (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:

No impact.

- (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:

No impact.

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

No impact.

- (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:

Not applicable.

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

The federal regulations do not include the provisions in the proposed rule because it is not necessary. However, as a state, any vacatur or stay of federal rules at the federal level will not have an impact on Tennessee rules without these proposed provisions. Without these proposed revisions, if a vacatur or stay of the federal rules occur Tennessee could be stricter than the federal requirements and stricter than some other states.

- (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.

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 these amended rules will have a positive 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;

These proposed revisions revise the requirements for major New Source Review and for major source operating permits in order to provide a method by which the Chapter 1200-03-09 provisions adopted in accordance with the federal Greenhouse Gas Tailoring Rule and which were effective February 8, 2011, will no longer apply in the event that the U.S. Court of Appeals for the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Prevention of Significant Deterioration, New Source Review provisions or the Title V operating permit program of the Federal Act; or there is a change to Federal law that supersedes regulation of GHGs under the Prevention of Significant Deterioration, New Source Review provisions or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the change in Federal law.

- (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;

40 CFR 51 contains the requirements for states that operate their own air pollution control programs. Specifically, 40 CFR 51.166 and 40 CFR 70 contain the requirements for Title V permits and Prevention of Significant Deterioration permits for major sources of air pollution. In establishing the initial greenhouse gas permitting requirements, Tennessee met the above requirement. These proposed revisions, while not mandated by EPA, will provide a level playing field for Tennessee Industries with the surrounding states. We are required to revise our State Implementation Plan (SIP) revisions to EPA, and once the SIP provisions are approved cannot make the SIP less stringent without a lengthy process. By including these provisions in our initial submittal, this process will not have to be followed.

- (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;

Tennessee's industrial community will be most directly affected by these proposed rule revisions, and the revisions were proposed at the request of some members of the industrial community.

- (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;

Cannot be determined at this time.

- (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
Department 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
Department of Environment and conservation
20th Floor L & C Tower
Nashville, Tennessee 37243-1548
(615) 532-0131
Alan.Leiserson@tn.gov

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

The Department is not aware of any.

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Division:	Air Pollution Control
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Phone:	(615) 532-0545
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Revision Type (check all that apply):

- Amendment
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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
1200-03-09	Construction and Operating Permits
Rule Number	Rule Title
1200-03-09-.01	Construction Permits
1200-03-09-.02	Operating Permits

(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

Amendments

Subpart (i) of part 46 of subparagraph (b) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by adding two new items (I) and (II) as follows:

- (I) In the event that the U.S. Court of Appeals for the D.C. Circuit or the U.S. Supreme Court issues an order which would render GHG emissions not subject to regulation under the Prevention of Significant Deterioration, New Source Review provisions and/or the Title V operating permit program of the Federal Act, then GHGs shall not be subject to regulation, nor shall GHG emissions be required to be included in any construction or operating permit under this regulation 1200-03, as of the effective date of the Federal Register notice of vacatur.
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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:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison				X	
Dr. J. Ronald Bailey	X				
Elaine Boyd	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				
Honorable Mayor Larry Waters	X				
Alicia M. Wilson	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 07/13/2011, 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: 02/11/11

Rulemaking Hearing(s) Conducted on: (add more dates). 04/04/11

Date: _____

Signature: _____

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

Title of Officer: Director, Division of Air Pollution Control

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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- (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:

No impact.

- (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:

No impact.

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

No impact.

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Not applicable.

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The federal regulations do not include the provisions in the proposed rule because it is not necessary. However, as a state, any vacatur or stay of federal rules at the federal level will not have an impact on Tennessee rules without these proposed provisions. Without these proposed revisions, if a vacatur or stay of the federal rules occur Tennessee could be stricter than the federal requirements and stricter than some other states.

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Not applicable.

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Tennessee's industrial community will be most directly affected by these proposed rule revisions, and the revisions were proposed at the request of some members of the industrial community.

- (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;

Cannot be determined at this time.

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

Lacey J. Hardin
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Legal Services Director
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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.