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Division of Publications**

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For Department of State Use Only

Sequence Number: 09-11-09
Rule ID(s): 4436
File Date: 09/09/2009
Effective Date: 12/08/2009

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Pollution Control
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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
1200-04-11	Environmental Protection Fund Fees
Rule Number	Rule Title
1200-04-11-.02	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 1200-04-11
Environmental Protection Fund Fees

Amendments

Part 1 of subparagraph (a) of paragraph (2) of Rule 1200-04-11-.02 Fees is amended by deleting "\$2,500" from the parenthetical and replacing it with "\$5,000" so that, as amended the part shall read, without changing its subparts:

1. 401 Certification of 404 permit or ARAP (Capped at \$5,000):

Subparagraph (b) of paragraph (2) of Rule 1200-04-11-.02 is amended by deleting the phrase "Construction Stormwater permits (Capped at \$7,500)" and replacing it with "Construction Stormwater permits" so that, as amended, it shall read as follows, without changing its parts:

- (b) Construction Stormwater permits:

Subparagraph (c) of paragraph (2) of Rule 1200-04-11-.02 Fees is amended by deleting it in its entirety and substituting the following so that, as amended, it shall read as follows:

- (c) Permit Annual Maintenance Fees shall be as follows for these categories of permitted activities (Capped at \$15,000):

1. Gravel Dredging \$140*
2. Gravel Dredging for Personal Residence or Family Farm \$0
3. Major Industrial Treatment Facility:
 - (i) Flow equal to or greater than 10 MGD \$10,380*
 - (ii) Flow equal to or greater than 1 MGD and less than 10 MGD \$8,650*
 - (iii) Flow equal to or greater than 0.5 MGD and less than 1 MG \$6,920*
 - (iv) Flow equal to or greater than 0.1 MGD and less than 0.5 MGD \$5,190*
 - (v) Flow less than 0.1 MGD \$3,460*
4. Minor Industrial Treatment Facility:
 - (i) Flow equal to or greater than 10 MGD \$6,920*
 - (ii) Flow equal to or greater than 1 MGD and less than 10 MGD \$5,190*
 - (iii) Flow equal to or greater than 0.5 MGD and less than 1 MGD \$3,460*
 - (iv) Flow equal to or greater than 0.1 MGD and less than 0.5 MGD \$1,380*
 - (v) Flow less than 0.1 MGD \$690*

5.	Treated Wastewater Dischargers with flows <0.001 MGD	\$140*
6.	Stormwater Discharge Permits associated with Industrial Activities:	
	(i) Facilities equal to or greater than 500 acre	\$970*
	(ii) Facilities equal to or greater than 400 acres and less than 500 acres	\$900*
	(iii) Facilities equal to or greater than 300 acres and less than 400 acres	\$830*
	(iv) Facilities equal to or greater than 200 acres and less than 300 acres	\$760*
	(v) Facilities equal to or greater than 100 acres and less than 200 acres	\$690*
	(vi) Facilities equal to or greater than 50 acres and less than 100 acres	\$620*
	(vii) Facilities equal to or greater than 25 acres and less than 50 acres	\$550*
	(viii) Facilities equal to or greater than 10 acres and less than 25 acres	\$480*
	(ix) Facilities equal to or greater than 5 acres and less than 10 acres	\$420*
	(x) Facilities equal to or greater than 1 acres and less than 5 acres	\$350*
	(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	\$10,380*
	(ii) Flow equal to or greater than 4.5 MGD and less than 5 MGD	\$10,030*
	(iii) Flow equal to or greater than 4 MGD and less than 4.5 MGD	\$9,690*
	(iv) Flow equal to or greater than 3.5 MGD and less than 4 MGD	\$9,340*
	(v) Flow equal to or greater than 3 MGD and less than 3.5 MGD	\$9,000*
	(vi) Flow equal to or greater than 2.5 MGD and less than 3 MGD	\$8,300*
	(vii) Flow equal to or greater than 2 MGD and less than 2.5 MGD	\$7,610*
	(viii) Flow equal to or greater than 1.5 MGD and less than 2 MGD	\$6,920*
	(ix) Flow equal to or greater than 1 MGD and less than 1.5 MGD	\$6,230*
	(x) Flow equal to or greater than 0.75 MGD and less than 1 MGD	\$5,540*

	(xi)	Flow equal to or greater than 0.5 MGD and less than 0.75 MGD	\$4,840*
	(xii)	Flow equal to or greater than 0.25 MGD and less than 0.5 MGD	\$3,460*
	(xiii)	Flow equal to or greater than 0.1 MGD and less than 0.25 MGD	\$1,730*
	(xiv)	Flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$1,040*
8.		Small Mechanical Facility flow less than 0.075 MGD	\$690*
9.		Small Non-Mechanical Facility flow less than 0.075 MGD	\$350*
10.		Non-Discharging Facility:	
	(i)	Influent flow equal to or greater than 0.5 MGD	\$4,840*
	(ii)	Influent flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$2,770*
	(iii)	Influent flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$1,380*
	(iv)	Influent flow less than 0.075 MGD	\$350*
	(v)	Satellite collection systems	\$1,380*
	(vi)	Pump and haul	\$350*
11.		Other Waste or Wastewater Operations Requiring Permit	\$1,380*
12.		General Permits (sources other than stormwater or concentrated animal feeding operation)	\$350*
13.		Concentrated animal feeding operations covered by an individual permit	\$350*
14.		Municipal Pretreatment Programs as defined in Rule 1200-04-11-.01(2)(a):	
	(i)	Large Pretreatment Program	\$6,920*
	(ii)	Medium Pretreatment Program	\$4,150*
	(iii)	Small Pretreatment Program	\$1,380*
15.		Mining:	
	(i)	Area equal to or greater than 500 acres	\$6,920*
	(ii)	Area equal to or greater than 400 acres and less than 500 acres	\$6,230*
	(iii)	Area equal to or greater than 300 acres and less than 400 acres	\$5,540*
	(iv)	Area equal to or greater than 200 acres and less than 300 acres	\$4,840*
	(v)	Area equal to or greater than 100 acres and less than 200 acres	\$4,150*
	(vi)	Area equal to or greater than 75 acres and less than 100 acres	\$3,460*
	(vii)	Area equal to or greater than 50 acres and less than 75 acres	\$2,770*
	(viii)	Area equal to or greater than 25 acres and less than 50 acres	\$2,080*

(ix)	Area equal to or greater than 10 acres and less than 25 acres	\$1,380*
(x)	Area equal to or greater than 5 acres and less than 10 acres	\$1,040*
(xi)	Area less than 5 acres	\$690*

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

16.	Mining Reclamation	\$350*
17.	Stormwater Discharge Permits for Municipal Separate Storm Sewer Systems (MS4):	
(i)	Large MS4s	\$10,380*
(ii)	Medium MS4s	\$6,920*
(iii)	Small MS4s	\$3,460*

*This fee increase will be phased in as follows. Those permittees whose annual maintenance fee falls due from July 1, 2009 to December 31, 2009, will have to pay, at that due date, only the amount they would have paid under these rules prior to this increase and the payment for the difference between that amount and the total shown above will be due in January, 2010. For those permittees whose annual maintenance fee falls due in the second half of the fiscal year 09-10, payment of the entire amount shown above shall be due on the due date.

Authority: T.C.A §§ 69-3-105(b), 4-5-201 et seq., 68-203-101 et seq., and HB2389/SB2357, Sections 1 through 10.

* 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)
Elaine Boyd	X				
James Cameron		X			
Larry Clark	X				
Jill Davis	X				
Geneil Dillehay	X				
C. Monty Halcomb	X				
John McClurkan	X				
Frank McGinley	X				
D. Anthony Robinson	X				
Robert Taylor	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Water Pollution Control Board on 09/01/2009, 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: 06/29/09

Rulemaking Hearing(s) Conducted on: (add more dates). 08/17/09, 08/18/09, 08/20/09

Date: September 1, 2009

Signature: C. Monty Halcomb

Name of Officer: C. Monty Halcomb

Title of Officer: Chairman



Subscribed and sworn to before me on: September, 2009

Notary Public Signature: Wanda Powers

My commission expires on: 11/7/2012

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.

RE Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
9-7-09
 Date

Department of State Use Only

Filed with the Department of State on: 9-9-09

Effective on: 12-8-09

Tre Hargett

Tre Hargett
Secretary of State

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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: A commenter acknowledged the receipt of the "Workload and Staffing Analysis Report" and the "Spread Sheet" prepared by the department as a part of this public notice process. After reviewing the information, the commenter asked a series of questions.

Question: What are/were the program reductions associated with the \$1,912,300 reduction of Federal funds between FY 07-08 and FY 08-09?

Response: The reduction of federal funds was due to reduced activities in the Land Reclamation Program. Funds availability is based on reimbursement for activities completed. As the number of reclamation activities fluctuates from year to year, so does the federal reimbursement.

Question: What are the allocated state and EPF dollars associated with the 38 vacant positions?

Response: Prior to FY 09-10, State and EPF ratios were set at 52% state to 48% EPF. In the most recent legislative session, the ratios were set at 50%/50%.

The 38 vacant positions were budgeted for \$1,836,752. Since the positions were not filled in FY 08-09, the unspent salary dollars were available to be used to balance out the division's program expenditures at close-out of the fiscal year. Even with these salary savings realized by holding the positions vacant, it is anticipated that the division's expenditures will exceed available revenue by approximately \$200,000.

Question: What was the fund balance of EPF dollars for Division of Water Pollution Control effective July 1, 2008?

Response: The EPF operational fund balance at the beginning of FY 08-09 on July 1, 2008 was \$0.00.

Question: What was the fund balance of EPF dollars for Division of Water Pollution Control effective June 30, 2009?

Response: It is anticipated the EPF fund balance at the end of FY 08-09 on June 30, 2009 will be \$0.00. This is based on the second preliminary report that shows a negative fund balance that will need to be covered by the state.

Question: What were the EPF revenues collected in FY 08-09?

Response: EPF revenues collected in FY 08-09, as reported in the second preliminary close-out report was \$6,108,759.77. This total amount was derived from the following sources:

(a)	Application/Licensing fees	\$1,426,900.00
(b)	Modification Permit fee	\$50.00
(c)	Annual Maintenance fee	\$3,877,359.95
(d)	Plans Review fee	\$196,986.20
(e)	Interest	\$2,902.66
(f)	Late Payment Penalties	\$20,277.79
(g)	Civil Penalties	\$584,283.17

Question: What are the allocated state and EPF dollars associated with the 30-35 filled positions which would need to be abolished, if necessary to reduce expenditures by \$1.4 million?

Response: The Division of Water Pollution Control had its FY 09-10 State Budget reduced \$1.4 million in state funds, as a result of the current economic downturn. The EPF revenue estimate was increased by \$1.4 million to off-set the reduction in state funds.

Comment: A commenter stated:

In 1991, the original Public Necessity Fee Rules that were adopted for Water Pollution Control had the fee for a major industrial facility with flow greater than 5 million gallons at \$6,000. And, that has been \$7,500 now for several years.

So, the statement that has been made many times that there has been no fee increase since 1991 is just not correct.

Response: The department reviewed the files pertaining to the materials the commenter quoted. As the commenter stated, there were Public Necessity Fee Rules promulgated by the Board on June 19, 1991. The Public Necessity Rules remained in effect through October 24, 1991.

Public Necessity Rules are temporary rules by law that can be put in place while formal Rule Making Hearing Rules are being promulgated.

On July 17, 1991, the Water Quality Control Board adopted permanent Rulemaking Hearing Rules on fees which were subsequently filed with the Secretary of State's Office on September 23, 1991.

In response to comments received, the Rulemaking Hearing Rules adopted by the Board on July 17, 1991 contained considerably more fee categories than what was submitted in the Public Necessity Rules referred to by the commenter. The Board decided to add more categories of fees in order to meet the requirements of the EPF Act which stated, "(h) For the following categories, the fees shall not exceed the following maximum amounts; however, the promulgating authorities are encouraged to use graduated fees to reflect the volume of waste, population served, or other factors determined necessary to fairly apportion the fees."

Additionally, the Rulemaking Hearing Rules contained two separate Schedules of Fees. One was effective for the first year the rules were in effect and a second was effective for the second and all subsequent years. The first year fees were: 1200-04-11-.04(2) Permit Annual Maintenance Fees for permits whose anniversary of issuance falls in the period July 1, 1991 to June 30, 1992 shall be as follows:

Major Industrial Facility w/flow equal to or greater than 5MGD	\$6,000
----------------------------------------------------------------	---------

The second section that followed states: 1200-04-11-.04(3) Permit Annual Maintenance Fees due on or after July 1, 1992 shall be as follows:

Major Industrial Facility w/flow equal to or greater than 5 MGD	\$7,500
-----------------------------------------------------------------	---------

Comment: When we talk about the current 38 vacant positions, there's no reflection of exactly how many EPF dollars are associated with funding these positions. If you are not filling those positions, then technically those EPF dollars aren't needed. As a cost saving mechanism, if you eliminated the 38 vacant positions, couldn't you use the funds associated with those positions elsewhere and solve your budget problem?

Response: For the past two years, the actual EPF revenue collections for the Division of Water Pollution Control have been significantly less than the revenue estimate upon which the budget, including

direct and indirect costs, is based. That EPF revenue estimate was increased in the current year by \$1.4 million to offset the loss of state funds mentioned earlier. If actual collections increase by \$1.4 million this year (the amount of the proposed fee increase), then the budget would still be under funded. Therefore, the division will need to continue to keep positions vacant to ensure expenditures are less than the budget.

Comment: At least two commenters requested that fees be raised more on larger systems rather than the same percentage on all.

Response: The difference the commenters point to between the fees for large and small systems when considered on a per customer basis is also applicable to the fee structure that has been in place since 1991. The primary reason for that is that the time our staff must spend in inspecting and permitting a facility is not proportionate to the number of customers. The time spent on the largest systems is somewhat more than, but not greatly larger than that required for small systems.

Comment: Just like the Internal Revenue Service charges higher rates to the \$400,000 wage earner as compared to the taxes paid by a \$25,000 wage earner, I believe the increased costs should be taken back to the associated fee structure for the categories you already have. The large facilities should pay more and the smaller facilities should pay less.

Response: As was stated several times during the Public Rulemaking Hearings, the fee structure proposal of an across-the-board fee increase of 38.4% that was taken out for public consideration is subject to change. This seemed to the division to be the fairest way to do it.

Comment: A commenter strongly disagrees in the increase in fees and the fee structure for Non-Discharging Facility: Satellite Collection Systems, and Non-Discharging Facility: Influent Flow Systems. The Non-Discharging Facility: Satellite Collection System Fee is not an equal fee. The fee should be structured like the Non-Discharging Facility: Influent Flow Structure i.e.:

0.5 MGD	\$2,000
0.1 to 0.5 MGD	\$1,000
0.075 to 0.1 MGD	\$500
0.0 to 0.075 MGD	\$100

Response: Non-Discharging facilities currently have the following fee categories:

Influent flow equal to or greater that 0.5 MGD	\$3,500
Influent flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$2,000
Influent flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$1,000
Influent flow less than 0.075 MGD	\$ 250
Satellite collection systems	\$1,000
Pump and Haul	\$ 250

Satellite collection systems are municipalities that collect wastewater from their customers and then transmit the waste water to an adjoining municipality who treats the waste water for discharge to waters of the state. Satellite systems do not have waste water treatment facilities of their own.

Comment: The UIC application fee for the (decentralized) wastewater systems should be eliminated since the SOP process should be sufficient for eliminating dual permitting and associated costs.

Response: This issue is not within the scope of the fees proposed to be changed in this rulemaking. However, the two divisions are currently addressing the concerns that have been raised about these two programs.

Comment: A commenter takes exception to receiving zero notice from the division before this action taken by the legislature especially in light of the division's acknowledgement that they were aware last fall that this was most likely coming.

Response: The division had to wait until mid-June, 2009, before the general assembly acted on legislation, prior to notifying the regulated community of what has actually been done. The division addressed the Water Quality Control Board within hours of learning what action the legislature had taken on the bills requiring increases to the EPF. Public Necessity Rules and Public Hearing Rules were filed with the Secretary of State's Office on June 29, 2009 and July 1, 2009, respectively.

Public notification was made in the notice section of the Secretary of State's administrative register website in July. Notification was also placed on the Department of Environment and Conservation home page in July, 2009. The Division of Water Pollution Control sent notices to several hundred interested entities who asked to be on our public notice web list. Additionally, notification was made via e-mail to over 3,500 permit holders who currently pay annual maintenance fees to notify them of what the division was proposing via rule making hearings.

Comment: Removing the restriction on fee increases in the same year as reductions in state allocations in the same year that fee increases are requested merely renders this previous rule pointless and useless in protecting fee payers which was the original intent of the rule.

Response: This is not a comment on the rule but on the amendment to the statute. At the request of the administration, the revision to the statute was considered and approved by the Tennessee General Assembly during the 2009 session. By the terms of the new law, that restriction will go back into effect in 2012.

Comment: A commenter strongly supports the staff at TDEC and does not wish to see any of them lose their jobs. However, the responsibility to properly fund TDEC and its staff is not the responsibility of the commenter's membership or the other permit holders affected by this rule change. The commenter respectfully request that the proposed fee increases be delayed until the 2010/2011 FY in order for MS4s to properly budget for the increase.

Response: The EPF act requires adequate funding of the division's environmental programs by permit holders and entities who receive services from the division. The amount of funding between state and EPF is now set at a 50/50 ratio. State funds currently exceed EPF funding by \$3 million. Even with the increase of \$1.4 million, as requested by this increase proposal, EPF fees will still lag behind state funding by approximately \$1.6 million.

Comment: Thirty-eight percent fee increases are drastic to the local municipality. While some larger cities may be able to better absorb this rate increase, smaller municipalities are not. It would have been a better avenue of solution for TDEC to increase fees in step increments over a 2-3 year period rather than in an immediate "lump" sum.

Response: We acknowledge that it is a significant increase. We do not see any acceptable alternative at this time. Perhaps fees should have increased several years ago, in order to make EPF fee collections more closely approximate state funding levels. However, we attempted to keep EPF fees as low and as stable as possible by requesting increases to state appropriations instead.

Comment: According to a commenter, the current economic conditions have adversely affected their members with our only solution being to reduce spending. The Water Quality Control Board should consider the same option. The Water Pollution Control Division must implement cost reductions and implement measures to reduce its expenses. When we are shown the department has done this, the commenter will support reasonable fee increases for the division, as we have done in the past.

Response: The division has implemented cost reductions and has implemented measures to reduce its expenses. In the last fiscal year, the division eliminated 12 positions and allowed 8 staff members to take the state offered buy-out. Their positions were eliminated from the division role immediately following their acceptance into the buy-out program. Maintaining the vacant positions as discussed above is a way to reduce expenditures.

Comment: A commenter urges the department to make any increase temporary in nature. Since the fee increase is being sought "due to current economic conditions" we interpret this statement to mean the current reduction in revenue is only temporary, and as the economy improves, so will the revenue that was once generated during better economic times. We believe it would be appropriate for the Division to consider implementing any annual maintenance fee increase on only a temporary basis.

Response: All budget cuts and reductions in state funding, as directed by the Appropriations Bill enacted by the General Assembly, become permanent cuts to any program identified in the Bill. Budgets remain at the reduced funding level, even when the economy rebounds.

State programs are required to request budget improvements in subsequent years, as circumstances and funding availability may allow. However, this is an uncertain process that requires the Governor's acceptance of the improvement request and approval by the General Assembly.

Comment: A commenter is concerned about the department's lack of options for more cost-cutting measures. Although it is reasonable to assume that fees must be increased at some point, the documents and analysis from the department lack viable cost-cutting options and seem reliant on an additional tax to users as the only way to raise funds.

Response: The Workload and Staffing Analysis Report that was distributed during each of our 3 public hearings contains a section on page 5 entitled, Which Positions and Services Will be Lost Without Replacement of the \$1,400,000 in State Appropriations? The division indicated that it would have to eliminate 30-35 currently filled positions within a relatively short time period, if the reduced state funding is not replaced by the proposed fee increase. This cost-cutting measure is explained in the report.

Comment: Rule 1200-04-11-.02(2)(c)15 contains a note which reads (Note: Fees are based on area being mined or area not yet reclaimed). The fee regulation already specifies that mining permit annual maintenance fees are based on acreage. The phrase only serves to confuse since the fee amount is based on an acreage amount supplied by the permit applicant prior to issuance. Please remove the phrase, since it is not needed.

Response: This recommendation will be included in the list of comments received. The Board may remove this note, if TDEC agrees that the language should change.

Comment: A commenter is requesting a change in policy to allow for a pro-rated fee based on months instead of the fee being based on the entire year.

Response: The department's EPF fee rules found at 1200-04-11-.02(1)(c) state, "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.

Paragraph (1) was not included for consideration in the Rulemaking Hearing Rules under consideration. As such, making a change to this provision would be outside the scope of this Rulemaking process.

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)

- (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:

Any small business that is required to pay an annual maintenance fee as a condition of a water quality permit issued by the Tennessee Division of Water Pollution Control is included in the proposed rules for fee increases.

The estimated number of small businesses included under these rules is approximately 1,700.

- (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 additional reporting, recordkeeping of other administrative costs will be required by the rule changes. The rule changes propose an increase in annual maintenance fees, but do not impose additional reporting or recordkeeping requirements.

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

Small businesses will be charged an increased fee amount for the annual maintenance fee required by their water quality permit for each year the permit remains in effect. The increased fee amount is 38.4% higher than the existing annual maintenance fee. For most small businesses, this rule will increase the annual fee amount by \$40 to \$480, depending on the size category of wastewater treated.

- (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:

Rather than charging all annual maintenance fee payers a flat-rate of 38.4% increase to their existing fee amount, a portion of the financial burden could be shifted to larger industries and businesses.

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

We are unaware of any federal fees for services related to this program. Other states do have fees, but they are structured differently and thus it is difficult to compare which are higher or lower.

- (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:

If small businesses were to be exempted from the provisions of these fee rules, the division would realize a reduction in annual maintenance fees of approximately \$225,000.

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;

Under the appropriations bill the General Assembly passed in June, 2009 for FY 09-10 (SB 2355 / HB 2392 /), the state general fund appropriation to the Division of Water Pollution Control was reduced by \$1,400,000 and fee revenues were increased by the same amount. In the Omnibus Budget bill (HB 2389 / SB 2357) that passed as part of the budget package, changes were made in the Environmental Protection Fund Act to allow fees to be raised to effectuate this shift, specifically, the caps on WPC fees were raised, the limit on the ratio between fee dollars and state appropriations was changed, and the prohibition on raising fees in a year in which the appropriation was decreased was suspended for three years. These rules effectuate those budgetary changes.

- (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;

T.C.A. 68-203-101 Established the Environmental Protection Fund Fee program in the Tennessee Department of Environment and Conservation. Chapter 1200-4-11 establishes the rules for management of the EPF fee program in the Division of Water Pollution Control.

- (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;

All entities in Tennessee who treat waste water in accordance with the terms and conditions of a multi-year permit issued by the Division of Water Pollution Control, and who are required to pay an annual maintenance fee to the division are included in this rule making process. Such entities include industrial facilities, municipalities, commercial operations, concentrated animal feeding operations, municipal pretreatment programs, mining operations, and municipal separate storm sewer systems. The organizations that represent the interests of these operations were aware of the necessity for fee increases. They met with the Department of Environment and Conservation of several occasions during the current legislative session and expressed their opinions to the general assembly members.

- (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 attorney general opinions or judicial rulings related to these amendments.

- (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;

Implementation of the proposed rules is expected to produce additional revenue in the amount of \$1,400,000 to the Division of Water Pollution Control. These revenues are needed to offset a reduction in state appropriations of \$1,400,000 to the division, as a result of the current national and state economic downturn and reduction of state tax collections. The fee increase is directed to the annual maintenance fee categories. These are entities that receive permits for periods not greater than five (5) years. The division proposed a 38.4% increase to the facilities in this category, as the means for replacing the lost state revenues.

Annual maintenance fees have remained at the same fee level since inception of the EPF program in 1991. When the EPF program was implemented, the division agreed not to increase fees for a minimum of four (4) years, and then only when such increases were absolutely necessary. This action represents the first increase in annual maintenance fees in 18 years.

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

Alan Leiserson, Legal Services Director (532-0131);
Garland Wiggins, Division of Water Pollution Control (615) 532-0633;

- (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
Alan.Leiserson@tn.gov
Tennessee Department 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

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Tennessee Department of Environment and Conservation
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(615) 532-0131

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

The Department is not aware of any.