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Sequence Number: 9-14-15
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 File Date: 9-10-14

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee 37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22 nd Floor
Address:	Nashville, Tennessee 37243
Phone:	(866) 253-5827 (toll free) or (615) 532-0200. Hearing impaired callers may use the Tennessee Relay Service ((800) 848-0298).
Email:	beverly.evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	3rd Floor, Conference Room N		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	11/02/15		
Hearing Time:	9:30 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

This rulemaking responds to a petition filed by the Tennessee Chamber of Commerce & Industry with the Tennessee Air Pollution Control Board seeking these amendments to the state rules. The petition related to the need for clarification of the state rules as to the nature of the obligations created by rules requiring sources of air contaminants to obtain a construction permit for a new or modified source and to require emissions limitations consistent to the use and operation of the Best Available Control Technology (BACT). The United States Court of Appeals for the Sixth Circuit has interpreted the language being amended to cause a new violation to arise each day a source operates no matter how many years have passed since the original date of construction or modification, hence creating a "continuing series of discrete violations". This effectively deprives Tennessee companies of the benefit of a defense based on the federal statute of limitations of five years from the construction or modification. The Statute of Limitations defense is supported by public policy, and Tennessee companies are being placed at a competitive disadvantage in contrast to most states with similar separate construction and operating permit schemes as explained in several other federal court decisions. This rule still

allows enforcement action by the State but would even the playing field for Tennessee companies having to defend state actions in federal courts.

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan pursuant to T.C.A. § 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-201 et Seq.

Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of their comments to be submitted to the hearing officer at the public hearing. Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on November 2, 2015, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, TN 37243.

If you have any questions about the origination of this rule change, you may contact Ms. Lacey Hardin at (615) 532-0545. Copies of documents concerning this matter are available for review at the office of the Technical Secretary and at certain public depositories. For information about reviewing these documents, please contact Mr. Malcolm Butler, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, TN 37243, telephone (615) 532-0600.

Revisions considered at this hearing may be adopted by the Tennessee Air Pollution Control Board under T.C.A. § 68-201-105, the Board general authority to promulgate rules. The changes proposed below may be revised based on comments received from the public, the regulated community, and any other affected entities. The Tennessee Air Pollution Control Board will consider all comments and set the fee appropriately.

Materials concerning the proposed actions will be available at <http://tn.gov/environment/topic/ppo-air> and also for public inspection during normal working hours starting on October 2, 2015, at the following locations:

Air Pollution Control Division
15th Floor, WR SnodgrassTN Twr
312 Rosa L. Parks Avenue
Nashville, TN 37243

Pollution Control Division
Metropolitan Health Dept.
2500 Charlotte Avenue
Nashville, TN 37209

Air Pollution Control Division
Cookeville EFO
1221 South Willow Avenue
Cookeville, TN 38506

Air Pollution Control Division
Knoxville EFO
3711 Middlebrook Pk., Suite 220
Knoxville, TN 37921

Air Pollution Control Division
Johnson City EFO
2305 Silverdale Road
Johnson City, TN 37601-2162

Air Pollution Control Division
Jackson EFO
1625 Hollywood Drive
Jackson, TN 38305

Air Pollution Control Division
Columbia EFO
1421 Hampshire Pike
Columbia, TN 38401

Knox County Department of
Air Quality Management
140 Dameron Avenue, Suite 242
Knoxville, TN 37917

Memphis/Shelby County Air Poll. Control
Shelby County Health Dept.
814 Jefferson Avenue
Memphis, TN 38105

Air Pollution Control Division
Chattanooga EFO
1301 Riverfront Parkway, Suite 206
Chattanooga, TN 37402

Air Pollution Control Division
Nashville EFO
711 R. S. Gass Boulevard
Nashville, TN 37243

Kingsport Public Library
400 Broad Street
Kingsport, TN 37660

Chattanooga-Hamilton County
Air Pollution Control Bureau
6125 Preservation Drive
Chattanooga, TN 37416

U.S. EPA, Region IV
APTMD - 12th Floor, Atlanta Federal Center
61 Forsyth Street S.W.
Atlanta, GA 30303
c/o Mr. Scott Davis, Chief

All persons interested in the air quality of the State of Tennessee are urged to attend and will be afforded the opportunity to present testimony to the hearing officer regarding the proposed additions and/or revisions to the State Implementation Plan.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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

(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

Subparagraph (e) of paragraph (1) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

- (e) No construction permit shall be issued by the Technical Secretary if the approval to construct or modify an air contaminant source would result in a violation of the ambient air quality standards specified in Chapter 1200-03-03, would cause a violation of any other regulatory requirement under this Division, 1200-03, would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of a national ambient air quality standard in a neighboring state. In the case where a source or modification was constructed without first obtaining a construction permit the appropriate enforcement action shall be pursued to insure that ambient air quality standards and other regulatory requirements will be met. All emission limits and requirements of the construction permit must be met prior to issuance of an operating permit for the source or modification.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Part 3 of subparagraph (j) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

- 3. At the time of construction permitting, a major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

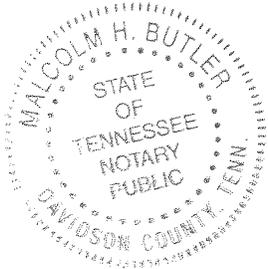
Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Item (II) of subpart (iii) of part 2 of subparagraph (b) of paragraph (5) of Rule 1200-03-09-.01 Construction Permits is amended by deleting it in its entirety and substituting instead the following:

- (II) At the time of construction permitting, a new major stationary source shall apply the lowest achievable emission rate for each contaminant for which the area is designated nonattainment that it would have the potential to emit in an amount sufficient to make the source or modification a major stationary source or modification. This provision applies to each new emissions unit at which emissions would occur.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: 9-9-2015

Signature: Barry R. Stephens

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

Title of Officer: Director, Tennessee Division of Air Pollution Control

Subscribed and sworn to before me on: 9-9-2015

Notary Public Signature: Malcolm H. Butler

My commission expires on: 1-11-2017

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Filed with the Department of State on: 9/10/15

Tre Hargett

Tre Hargett
Secretary of State

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