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# 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.

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

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:

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

**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:**

Section 502(b)(3)(A) of the Clean Air Act requires Tennessee, as a state approved by the Environmental Protection Agency ("EPA") to administer a Title V major source operating permit program ("Title V program"), 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." The proposed rulemaking amends Tenn. Comp. R. & Regs. 1200-03-26-02, to impose on major sources a minimum annual fee, instead of a base fee, of \$7,500. The rule is amended to increase the per ton fee for non-EGU major sources by \$4.00 and decrease the per ton fee for EGU major sources by \$6.50, based upon either actual emissions, permitted allowable emissions, or a combination of actual and allowable emissions. The rule is also amended to authorize major sources to choose either a calendar year or state fiscal year annual accounting period and to choose the annual accounting period and the emissions basis of the fee annually. Pollutants that are constituents of the pollutant greenhouse gases that would be regulated pollutants solely based on that status are exempted from annual emission fees. The language addressing the process to request an allowable emissions limit is

updated to require that a letter must be submitted by minor and conditional major sources to request an allowable emissions limit.

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board for the promulgation of amendments to the Tennessee Air Pollution Control Regulations under the authority of Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be distributed to the members of the Tennessee Air Pollution Control Board for their review in regard to the proposed rule amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-201 et seq. and will take place in Conference Room N of the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 3<sup>rd</sup> Floor, Nashville, Tennessee 37243.

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 following address: Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten days prior to November 2, 2015 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 22nd Floor, Nashville, Tennessee 37243, (615) 532-0200. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of these rule changes, you may contact Lacey J. Hardin at (615) 532-0545. For information about reviewing these documents, please contact Malcolm Butler, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 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.

Materials concerning the proposed actions will be available at [www.tn.gov/environment/topic/ppo-air](http://www.tn.gov/environment/topic/ppo-air) and also for public inspection during normal working hours starting on October 2, 2015, at the office of the Technical Secretary and the public depositories listed below:

Air Pollution Control Division 9th Floor, L & C Annex 401 Church Street Nashville, TN 37243-1531	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	Air Pollution Control Program Memphis /Shelby County Health Dept. 814 Jefferson Avenue Memphis, TN 38105
Air Pollution Control Division Chattanooga EFO 540 McCallie Avenue, Suite 550 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, c/o Mr. Scott Davis, Chief APTMD - 12th Floor, Atlanta Federal Center 61 Forsyth Street S.W. Atlanta, GA 30303	

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 promulgation of amendments to the Tennessee Air Pollution Control Regulations. Any person desiring to present lengthy comments should be prepared at the hearing to offer a written statement to be incorporated into the record. Written statements not presented at the hearings will only be considered part of the records if received by 4:30 p.m. CDT 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, 15<sup>th</sup> Floor, Nashville, Tennessee 37243.

**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.)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-03-26	
<b>Rule Number</b>	<b>Rule Title</b>
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>)

Subparagraph (c) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) "Annual Accounting Period" is a twelve (12) consecutive month period. For major sources subject to paragraph (9) of this rule, the annual accounting period shall be either of the following: the calendar year (January 1 to December 31) or the state fiscal year (July 1 to June 30).

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (iii) Any pollutant that is subjected to any standard promulgated under section 111 of the Federal Act; provided, however, that any such pollutant shall not be a regulated pollutant solely because the pollutant is a constituent of greenhouse gases;

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding a new subparagraph (s) to read as follows:

- (s) "Greenhouse gases" means the air pollutant defined in part 86.1818–12(a) of Chapter I of Title 40 of the Code of Federal Regulations as the aggregate group of the following six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subparagraph (d) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting in its entirety and substituting instead the following:

- (d) Reserved.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subparagraph (b) of paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting in its entirety and substituting instead the following:

- (b) 1. The minor source and conditional major source annual emission fee must be calculated as the sum of allowable emissions of all regulated pollutants at a source. Upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive requirement must be specified on the permit, and must include the method used to determine compliance with the limitation. The documentation procedure to be followed by the source owner or operator must also be included to insure that the limit is not exceeded. Exceedances of the mutual agreement limit will be considered by the Board as circumvention of the required annual emissions fee and a matter in which enforcement action must be pursued.
- 2. To reduce the amount of the fee as provided in part 1 of this subparagraph, the responsible official must submit a letter to the Technical Secretary requesting reduced allowable emissions and providing the method or methods that will be used to ensure compliance with the requested limit or limits. This request must be received at least ninety (90) days prior to the applicable due date of the annual emission fee. Any request

received after that deadline may only apply to the fee for the following year and not for the year being invoiced.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Subparagraph (i) of paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting in its entirety and substituting instead the following:

- (i) The responsible official must pay an annual emission fee as per subparagraph (e) of this paragraph. The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 et seq.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) Annual Emission Fees for Major Sources.

- (a) A responsible official of a major source must pay an annual emission fee to the Division. A major source is not subject to the minor source annual emission fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source begins to pay major source annual emission fees, it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source.

- (b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual emission fee based on:

- (i) Either a calendar year or state fiscal year; and

- (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.

- 2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the antecedent annual accounting period and annual fee basis (actual emissions, allowable emissions, or a mixture) specified in the source's current major source operating permit.

- 3. If the responsible official wishes to restructure a major source's allowable emissions for the purpose of lowering the major source's annual emission fee, then an application must be filed at least ninety (90) days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.

- 4. The responsible official of a newly constructed major source or a minor source modifying its operation such that the source becomes a major source shall pay an initial annual emission fee based on the state fiscal year and allowable emissions for the fractional remainder of the state fiscal year annual accounting period commencing upon the source's start-up.

- 5. For purposes of the payment of annual emission fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual emission fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual emission fee based on the state fiscal year and allowable emissions.

- (c) Reserved.

- (d) 1. Notwithstanding the annual emission fee rates established by part 2 of this subparagraph, the annual emission fee required to be paid by a responsible official relative to a major source pursuant to subparagraph (a) of this paragraph shall be no less than \$7,500.
2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.
- (ii) The annual emission fee rates applied to calculate the annual emission fee assessed pursuant to paragraph (a) of this paragraph shall be as follows:
- (I) Fee based on actual emissions: \$43.00 per ton for non-EGU sources and \$49.50 per ton for EGU sources; and
- (II) Fee based on allowable emissions: \$32.50 per ton for non-EGU sources and \$39.00 per ton for EGU sources.
- (iii) The annual emission fee rates enumerated in subpart (ii) of this part must be supported by the Division's annual workload analysis that is approved by the Board.
3. The annual emission fee rates shall remain in effect until the effective date of an amendment to part 2 of this subparagraph. Any revision to the annual emission fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e) 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
2. No major source annual emission fee will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source that is shutdown, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual emission fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. The responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.
- (g) Responsible officials required to pay the major source annual emission fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:
1. (i) If a responsible official paying the annual emission fee based on allowable emissions wishes to restructure a major source's allowable emissions for the purpose of lowering the major source's annual emission fee, then upon mutual agreement of the responsible official and the Technical Secretary, a more

restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation procedure to be followed by the major source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual emission fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.

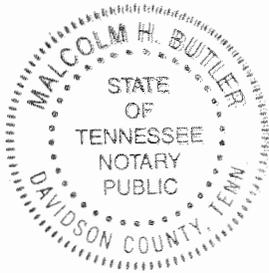
- (ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least ninety (90) days prior to December 31 of the annual accounting period.
2. The responsible official shall file the annual emission fee and an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual emission fee payment, with the Technical Secretary on or before the July 1 immediately following the annual accounting period. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source facility and shall be used to calculate the amount of the annual emission fee owed pursuant to subparagraph (a) of this paragraph.
- (i) An annual emission fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.
  - (ii) If the responsible official chooses to base the annual emission fee on actual emissions, then the responsible official must prove the magnitude of the major source's emissions to the satisfaction of the Technical Secretary. The procedure for quantifying actual emission rates shall be specified in the major source operating permit.
3. (i) Responsible officials choosing to pay the major source annual emission fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to ninety (90) days. The request for extension must be received by the Division no later than 4:30 p.m. on July 1, or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual emission fee payment of no less than eighty percent (80%) of the fee due July 1 must accompany the request for extension to avoid penalties and interest on the underpayment of the annual emission fee. A remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual emission fee.
- (ii) A responsible official choosing to pay the annual emission fee based on a calendar year annual accounting period or choosing to pay the annual emission fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.

(h) Reserved.

(i) Reserved.

Authority: T.C.A. §§ 68-201-105 et seq. and 4-5-202 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: September 10, 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: September 10, 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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