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Sequence Number: 11-01-10
Rule ID(s): 4855
File Date: 11/01/2010
Effective Date: 01/30/2011

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 & Conservation
Division:	Air Pollution Control
Contact Person:	Malcolm H. Butler
Address:	9th Floor L & C Annex 401 Church Street Nashville, TN
Zip:	37243-1531
Phone:	615-532-0600
Email:	Malcolm.Butler@tn.gov

Revision Type (check all that apply):
X 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**
1200-03-26	Administrative Fees Schedule
Rule Number	**Rule Title**
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)

Chapter 1200-03-26
Administrative Fees Schedule

Amendments

The title of rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised such that the new title is "Permit-Related Fees".

Subparagraph (a) of paragraph (1) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the word "fees" between the words "construction" and "annual," and adding the words "and permit review fees" between the words "fees" and "sufficient" so that, as amended, the subparagraph shall read:

(a) It is the purpose of this rule to establish construction fees, annual emission fees, and permit review fees sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.

Part 8 of subparagraph (c) of paragraph (1) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the words "Stationary Source Technical and" between the words "Business" and "Environmental" and the word "Compliance" from between the words "Environmental" and "Assistance" so that, as amended, the part shall read:

8. Providing direct and indirect support to sources under the Small Business Environmental Assistance Program.

Subparagraph (h) of paragraph (2) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "or conditional major" between the words "not a major" and "source for the purposes of this rule" so that, as amended, the new subparagraph shall read:

(h) "Minor Source" means any source or group of sources located within a contiguous area, and under common control which is not a major or conditional major source for the purposes of this rule. However, for the sole purpose of emission fee calculation, affected sources subject to the acidic precipitation requirements of Title IV of the Federal Clean Air Act embodied at 42 U.S.C. 7401 et seq. shall be considered minor sources subject to the provisions of paragraph 1200-03-26-.02(6) until the year 2000. At that time, the affected sources will become major sources subject to paragraph 1200-03-26-.02(9).

Paragraph (2) of rule 1200-03-26-.02 is amended by adding a new subparagraph (r) after subparagraph (q) so that the new subparagraph shall read:

(r) "Permit review fee" is a fee charged to conditional major sources to cover the costs associated with insuring the source is operating below the major source emission thresholds. These costs include, but are not limited to, inspections of the source, and review of annual reports for this facility.

Subparagraph (d) of paragraph (4) of rule 1200-03-26-.02 is amended by adding the words "and conditional major" between the words "for minor" and "sources of the nonattainment pollutant" so that, as amended, the new subparagraph shall read:

(d) Upon receipt of a construction permit application, the Division must examine it to insure that it is complete and advise the applicant in writing of its findings via certified mail. Thirty (30) days will be allowed for the review. The thirty (30) days completeness evaluation time period is extended to ninety (90) days for minor and conditional major sources of the nonattainment pollutant

located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency. [Note: For ozone nonattainment the pollutant is Volatile Organic Compounds (VOC) and/or oxides of nitrogen.]

1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.

2. After receiving notice from the Division that the application was incomplete, the applicant shall have one hundred eighty (180) calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with Division Rules. If the deficiencies are not corrected within the one hundred eighty (180) day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.

3. It is the express intent of the Board that the one hundred eighty (180) day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by Division Rules.

4. Upon receipt of a corrected application revised pursuant to part 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the source has the remainder of the initial one hundred eighty (180) day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within thirty (30) days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.

Part 2 of subparagraph (e) of paragraph (5) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and Conditional Major" between the words "Minor" and "Source" so that, as amended, the new part shall read:

2. Minor and Conditional Major Source reviews must be completed within one hundred fifteen (115) days from receipt of a complete application.

The title of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised such that the new title is "Annual Emission Fees for Minor and Conditional Major Sources and Permit Review Fees for Conditional Major Sources".

Subparagraph (a) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and/or a conditional major source" between the words "minor source" and "must pay" so that, as amended, the subparagraph shall read:

(a) A responsible official of a minor source and/or a conditional major source must pay an annual emission fee to the Division. The annual emission fee shall be based on the source's allowable emissions as defined in subparagraph 1200-03-26-.02(2)(d).

Subparagraph (b) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major source" between the words "minor source" and "annual emission fee" so that, as amended, the subparagraph shall read:

(b) 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.

Subparagraph (c) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major" between the words "minor" and "source annual emission fees" so that, as amended, the subparagraph shall read:

(c) Beginning December 1, 1991 all minor and conditional major source annual emission fees are due and payable to the Division in full according to Schedule I of this subparagraph. The county that a source is located in determines when the minor source annual emission fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual emission fee. The fee must be paid to the Division in full by the first (1st) day of the month that the fee is due. The Technical Secretary may extend this due date an additional ninety (90) days where he finds that the minor source owner or operator's fee notice was mailed by the Division to an incorrect mailing address.

SCHEDULE I

Month the Annual Emissions Fee is Due (Accounting Period)
Counties in the Monthly Grouping

January	Anderson, Bedford, Benton Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie and Sevier
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

Subparagraph (d) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major" between the words "minor" and "source beginning operation" so that, as amended, the subparagraph shall read:

(d) A newly constructed minor and conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual emission fee for the remainder of the annual accounting period. A minor source company ceasing operations during the annual accounting period will not receive a refund for annual emission fees paid.

Subparagraph (e) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major" between the words "minor" and " sources in operation" and deleting the numbers "12.50" after the dollar sign and replacing it with the numbers "18.75" so that, as amended, the subparagraph shall read:

(e) The appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of $18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 (Ten) tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.

Paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding a new subparagraph (k) after subparagraph (j) so that the new subparagraph shall read:

(k) Beginning April 1, 2010, conditional major sources must pay a permit review fee in accordance with the table below in addition to the minor source annual emission fees specified in subparagraph 1200-03-26-.02(6)(e). This fee is due and payable to the Division according to Schedule 1 found in subparagraph 1200-03-26-.02(6)(c).

Allowable Tons Per Year	Review Fee
0-50	$250
50.1-100 TPY	$500
100.1-250 TPY	$1,000
250.1 and up	$2,000

Subparagraph (d) of paragraph (7) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and permit review fee payments" between the words "Annual emission fee payments" and "shall be clearly identified" so that, as amended, the subparagraph shall read:

(d) Annual emission fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" specified in the source's permit(s) or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.

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				X	
Dr. J. Ronald Bailey	X				
Tracy R. Carter				X	
Dr. Brian Christman	X				
Dr. Wayne T. Davis				X	
Dr. Mary English				X	
Stephen R. Gossett	X				
Mayor Tommy Green	X				
Dr. Shawn A Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
Dale Swafford				X	
Greer Tidwell, Jr.	X				
Mayor Larry Waters	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 02/10/2010, 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: 08/14/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/08/09

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: March 15, 2010

Signature: Barry R. Stephens

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

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: March 15, 2010

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 4, 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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

10-29-10
Date

Department of State Use Only

Filed with the Department of State on: 11-01-2010

Effective on: 01/30/2011

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2010 NOV -1 AM 11:56
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.

Comment: A commenter requested an extension of the comment period in a letter dated October 7, 2009. He did not attend the hearing.

Response: The comment period was extended to close November 3, 2009.

Comment: A commenter's company is a conditional major source, and under the proposed rule their fee would increase from $821 to $7,500. He would like to see the increase done in increments. The commenter also requested an extension of the comment period.

Response: The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. The comment period was extended to close November 3, 2009. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter requested that the fee increase be implemented in phases rather than all at once. Any increase in their fee would have to be passed on to their customers.

Response: The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter indicated that they are a conditional major source actually emitting less than one ton per year but paying on 7.1 tons per year, $88.75. They are a small business, and the proposed fee of $7,500 was a shock. They are struggling financially and may not be able to continue operating if the fee is raised. The commenter was told verbally that the fee would more likely be in the range of $3,500 to $5,500. The commenter subsequently requested that companies be allowed to pay on actual emissions rather than allowable emissions, and the lower range would be just as unfair to small businesses. The boat business has been hit particularly hard by the current economic conditions.

Response: Conditional major companies, even those with low actual emissions, require significantly more staff time and Division resources to regulate than true minor companies, in some cases almost as much as companies subject to the requirements of Title V. Because of this, the Division feels that these companies should pay a higher fee than true minor companies. The Division was not able to meet its budget in fiscal year 2009, and it is necessary to generate additional funds. The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter indicated their original fee was based on 93.2 tons at $12.50 per ton for a total of

$1,165. With the proposed change the commenter's annual fee would be $7,500 a change of $6,335 or 644% increase. The commenter started operating in February 2008 and has managed to keep the facility open throughout the tough economic times. To increase the fee by over 600% is excessive and the commenter wanted to go on record disagreeing to such a sharp increase.

Response: Conditional major companies, even those with low actual emissions, require significantly more staff time and Division resources to regulate than true minor companies, in some cases almost as much as companies subject to the requirements of Title V. Because of this, the Division feels that these companies should pay a higher fee than true minor companies. The Division was not able to meet its budget in fiscal year 2009, and it is necessary to generate additional funds. The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter stated that their emission fee would increase from $113.75 to $7,500.00 annually, effective for 2010. The commenter has already paid the $113.75 for 2010 per the billing in August. The commenter was unable to send a representative to the public hearing on October 8, so they lacked whatever background information was provided to justify the urgency of such a significant fee increase, and did not have the opportunity to provide feedback at that time. This commenter asked for implementation to be delayed until 2011 to allow for further deliberation. While the use of some chemicals is vital to their business, they are a small facility and actually consume only about 2 tons of the 10 tons allowed under their permit. The commenter asked about the new fee structure and wanted to know if the $7,500 proposed annual fee independent of the size of the permit.

Response: The company would not be required to pay the minimum fee until their next bill due date. The Division will not go back and ask companies whose bills were due before the fee increase is approved to pay additional fees. The Division was not able to meet its budget in fiscal year 2009, and it is necessary to generate additional funds. The Division must generate additional funds as soon as possible to meet its financial obligations for the current fiscal year. Delaying until 2011 is not an option. The proposed $7,500 annual fee is for conditional major sources. A conditional major source is one that took voluntary limits to avoid being subject to the requirements of Title V. Please note that the minimum Title V fee is $7,500. The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $250 to $2,000 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

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[1] New fee proposal:

In accordance with subparagraph (6)(c) of Rule 1200-03-26-.02, the appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of $18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 (Ten) tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.

In accordance with subparagraph (6)(k) of Rule 1200-03-26-.02, beginning April 1, 2010, conditional major sources must pay a permit review fee in accordance with the table below in addition to the minor source annual emission fees specified in subparagraph 1200-03-26-.02(6)(e). This fee is due and payable to the Division according to Schedule 1 found in subparagraph 1200-03-26-.02(6)(c).

On February 10, 2010 the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Allowable Tons Per Year	Review Fee
0-50	$250
50.1-100 TPY	$500
100.1-250 TPY	$1,000
250.1 and up	$2,000

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.

(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:

An estimated number of true minor companies paying a fee is 580.

An estimated number of conditional major companies paying a fee is 361.

(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:

There are no projected administrative costs as a result of these amendments.

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

This rule will increase the annual fees paid by industry. This increase may ultimately result in higher costs for consumer goods.

(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 is necessary for the Department to continue to meet its state and federal requirements for non-major sources of air pollution. South Carolina currently assesses a fee of $43.75 per ton of emissions from sources of this type. This proposal assesses a fee of $18.75 per ton of emissions for most permitted non-major sources of air pollution, plus an additional review fee for sources that "opted out" of the federal major source operating permit program because of the additional burden required to regulate these sources.

(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.

Some small businesses are automatically exempt from this proposed rule because Department regulations do not require them to obtain a permit from the Division of Air Pollution Control. Other small businesses are exempt from this proposed rule because of the low level of air pollutant emissions from their facilities (sources that are allowed to emit less than 10 tons per year of all air pollutants are not assessed a fee unless they "opted out" of the federal major source operating permit program). Exemption of additional facilities may result in an inability to effectively regulate these sources of air pollution due to inadequate resources. Failure to meet our obligations to the U.S. Environmental Protection Agency could result in federal sanctions against Tennessee, including the loss of transportation funding.

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 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;

The Air Pollution Control Division fee revenues have been decreasing for several years, causing the Division to pay operating expenses from its reserve funds. Those reserve funds are being depleted. Using the authority given by the General Assembly in 2007, this rule increases the annual fees for sources considered to be true minor and conditional major in order to meet the Division's operating expenses for providing the needed services to these sources. The annual emissions fee is increased from $12.50 per ton of allowable emissions to $18.75 per ton of allowable emissions for both source types. It also establishes an annual review fee for conditional major sources ranging from $250 to $2,000 based on the source's allowable emissions. The review fee was needed because certain types of permits for conditional-major sources required a greater expenditure of time due to complexity in processing permit conditions for hazardous air pollutant requirements.

(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 § 68-201-103 instructs the Air Pollution Control Board and the Department of Environment and Conservation to maintain purity of the air resources of the state consistent with the protection of normal health, general welfare and physical property of the people, maximum employment and the full industrial development of the state. They are also instructed to qualify for receipt of federal funds available for state air pollution control programs and to give the authority to so qualify and maintain such qualification. U.S. 40 CFR Part 51 establishes the requirements for air quality State Implementation Plans (SIPs). These plans are required to demonstrate how each state will implement the requirements of the federal Clean Air Act, found at United States Code Title 42, Chapter 85. States receive federal grants to assist in implementing these requirements, but additional funding is required. The Department did not collect sufficient revenues to fund the activities of the Division of Air Pollution Control for fiscal year 2009. Fees for these source categories have not been increased since July 1, 2000.

(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;

Industrial and institutional sources of air pollution considered to be true minor and conditional major sources are affected by this rule revision. Since this revision involves a fee increase, these entities are primarily opposed to adoption of this revision.

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

The Tennessee Air Pollution Control Board 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;

The estimated revenue increase from this revision is $827,344 annually. The estimated increase in expenditures as a result of this rule is minimal.

(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, Office of General Counsel
Tennessee Department of Environment and Conservation
E-mail: Alan.Leiserson@tn.gov

(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
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
Nashville, Tennessee 37243-1548
Phone: 615-532-0131

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

The Tennessee Air Pollution Control Board is not aware of any.

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For Department of State Use Only

Sequence Number: 11-01-10
Rule ID(s): REDLINE
File Date: _____
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Division:	Air Pollution Control
Contact Person:	Malcolm H. Butler
Address:	9th Floor L & C Annex 401 Church Street Nashville, TN
Zip:	37243-1531
Phone:	615-532-0600
Email:	Malcolm.Butler@tn.gov

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Chapter 1200-03-26
Administrative Fees Schedule

Amendments in redline form

The title of rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised such that the new title is "Permit-Related Fees".

Subparagraph (a) of paragraph (1) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the word "fees" between the words "construction" and "annual," and adding the words "and permit review fees" between the words "fees" and "sufficient" so that, as amended, the subparagraph shall read:

(a) It is the purpose of this rule to establish construction fees, annual emission fees, and permit review fees sufficient to supplement existing state and federal funding that covers reasonable costs (direct and indirect) associated with the development, processing, and administration of the air pollution control program. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.

Part 8 of subparagraph (c) of paragraph (1) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the words "Stationary Source Technical and" between the words "Business" and "Environmental" and the word "Compliance" from between the words "Environmental" and "Assistance" so that, as amended, the part shall read:

8. Providing direct and indirect support to sources under the Small Business ~~Stationary Source Technical and~~ Environmental ~~Compliance~~ Assistance Program.

Subparagraph (h) of paragraph (2) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "or conditional major" between the words "not a major" and "source for the purposes of this rule" so that, as amended, the new subparagraph shall read:

(h) "Minor Source" means any source or group of sources located within a contiguous area, and under common control which is not a major or conditional major source for the purposes of this rule. However, for the sole purpose of emission fee calculation, affected sources subject to the acidic precipitation requirements of Title IV of the Federal Clean Air Act embodied at 42 U.S.C. 7401 et seq. shall be considered minor sources subject to the provisions of paragraph 1200-03-26-.02(6) until the year 2000. At that time, the affected sources will become major sources subject to paragraph 1200-03-26-.02(9).

Paragraph (2) of rule 1200-03-26-.02 is amended by adding a new subparagraph (r) after subparagraph (q) so that the new subparagraph shall read:

(r) "Permit review fee" is a fee charged to conditional major sources to cover the costs associated with insuring the source is operating below the major source emission thresholds. These costs include, but are not limited to, inspections of the source, and review of annual reports for this facility.

Subparagraph (d) of paragraph (4) of rule 1200-03-26-.02 is amended by adding the words "and conditional major" between the words "for minor" and "sources of the nonattainment pollutant" so that, as amended, the new subparagraph shall read:

(d) Upon receipt of a construction permit application, the Division must examine it to insure that it is complete and advise the applicant in writing of its findings via certified mail. Thirty (30) days will be allowed for the review. The thirty (30) days completeness evaluation time period is extended to ninety (90) days for minor and conditional major sources of the nonattainment pollutant

located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency. [Note: For ozone nonattainment the pollutant is Volatile Organic Compounds (VOC) and/or oxides of nitrogen.]

1. If an application for a construction permit is determined to be incomplete, the Division must notify the applicant in writing via certified mail of the finding with a brief explanation of the deficiencies. The application filing/processing fee shall be retained by the Division.

2. After receiving notice from the Division that the application was incomplete, the applicant shall have one hundred eighty (180) calendar days to correct the deficiencies. If properly corrected, the application will be processed and no additional fee is required. The permit will then be granted or denied in accordance with Division Rules. If the deficiencies are not corrected within the one hundred eighty (180) day correction period, the fee will be forfeited in its entirety to the Division and the Division will officially deny the permit based on the incomplete permit application. If the applicant re-applies, a new application/processing fee must be paid in full along with the re-application.

3. It is the express intent of the Board that the one hundred eighty (180) day permit application correction period is not to be construed by an applicant as permission to construct or modify a source without the permit required by Division Rules.

4. Upon receipt of a corrected application revised pursuant to part 1, 2, or 3 of this subparagraph, the Division shall re-evaluate the application and notify the applicant of its finding as to whether or not the application is considered to be complete. If the application is still deemed incomplete the source has the remainder of the initial one hundred eighty (180) day period to correct the deficiencies or forfeit the fee in its entirety. Unless a determination that a corrected application is not complete is made by the Division and communicated to the applicant via certified mail within thirty (30) days of receipt, the corrected application shall be deemed to be complete for the purpose of starting the Division's permit processing deadline schedule. However, if additional information is still needed to process the permit, the applicant has a duty to furnish said information or face denial of the permit.

Part 2 of subparagraph (e) of paragraph (5) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and Conditional Major" between the words "Minor" and "Source" so that, as amended, the new part shall read:

2. Minor and Conditional Major Source reviews must be completed within one hundred fifteen (115) days from receipt of a complete application.

The title of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised such that the new title is "Annual Emission Fees for Minor and Conditional Major Sources and Permit Review Fees for Conditional Major Sources".

Subparagraph (a) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and/or a conditional major source" between the words "minor source" and "must pay" so that, as amended, the subparagraph shall read:

(a) A responsible official of a minor source and/or a conditional major source must pay an annual emission fee to the Division. The annual emission fee shall be based on the source's allowable emissions as defined in subparagraph 1200-03-26-.02(2)(d).

Subparagraph (b) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major source" between the words "minor source" and "annual emission fee" so that, as amended, the subparagraph shall read:

(b) 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.

Subparagraph (c) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major" between the words "minor" and "source annual emission fees" so that, as amended, the subparagraph shall read:

(c) Beginning December 1, 1991 all minor and conditional major source annual emission fees are due and payable to the Division in full according to Schedule I of this subparagraph. The county that a source is located in determines when the minor source annual emission fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual emission fee. The fee must be paid to the Division in full by the first (1st) day of the month that the fee is due. The Technical Secretary may extend this due date an additional ninety (90) days where he finds that the minor source owner or operator's fee notice was mailed by the Division to an incorrect mailing address.

SCHEDULE I

Month the Annual Emissions Fee is Due (Accounting Period)
Counties in the Monthly Grouping

January	Anderson, Bedford, Benton Bledsoe, Blount, Bradley and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay and Cocke
March	Coffee, Crockett, Cumberland, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Lake, Lauderdale, Lawrence and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie and Sevier
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

Subparagraph (d) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major" between the words "minor" and "source beginning operation" so that, as amended, the subparagraph shall read:

(d) A newly constructed minor and conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual emission fee for the remainder of the annual accounting period. A minor source company ceasing operations during the annual accounting period will not receive a refund for annual emission fees paid.

Subparagraph (e) of paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and conditional major" between the words "minor" and " sources in operation" and deleting the numbers "12.50" after the dollar sign and replacing it with the numbers "18.75" so that, as amended, the subparagraph shall read:

(e) The appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of ~~$12.50~~ $18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 (Ten) tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.

Paragraph (6) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding a new subparagraph (k) after subparagraph (j) so that the new subparagraph shall read:

(k) Beginning April 1, 2010, conditional major sources must pay a permit review fee in accordance with the table below in addition to the minor source annual emission fees specified in subparagraph 1200-03-26-.02(6)(e). This fee is due and payable to the Division according to Schedule 1 found in subparagraph 1200-03-26-.02(6)(c).

Allowable Tons Per Year	Review Fee
0-50	$250
50.1-100 TPY	$500
100.1-250 TPY	$1,000
250.1 and up	$2,000

Subparagraph (d) of paragraph (7) of rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding the words "and permit review fee payments" between the words "Annual emission fee payments" and "shall be clearly identified" so that, as amended, the subparagraph shall read:

(d) Annual emission fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" specified in the source's permit(s) or by an alternative method proposed by the source and agreed to by the Technical Secretary. Major sources paying fees on more than one SIC code at their facility shall denote the SIC code on their check for the account upon which they are paying. Delivery of the payment shall be to the location prescribed by the Technical Secretary.

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				X	
Dr. J. Ronald Bailey	X				
Tracy R. Carter				X	
Dr. Brian Christman	X				
Dr. Wayne T. Davis				X	
Dr. Mary English				X	
Stephen R. Gossett	X				
Mayor Tommy Green	X				
Dr. Shawn A Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
Dale Swafford				X	
Greer Tidwell, Jr.	X				
Mayor Larry Waters	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 02/10/2010, 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: 08/14/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/08/09

Date: March 15, 2010

Signature: (Original Signed by)

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

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: March 15, 2010

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.

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

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 requested an extension of the comment period in a letter dated October 7, 2009. He did not attend the hearing.

Response: The comment period was extended to close November 3, 2009.

Comment: A commenter's company is a conditional major source, and under the proposed rule their fee would increase from $821 to $7,500. He would like to see the increase done in increments. The commenter also requested an extension of the comment period.

Response: The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. The comment period was extended to close November 3, 2009. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter requested that the fee increase be implemented in phases rather than all at once. Any increase in their fee would have to be passed on to their customers.

Response: The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter indicated that they are a conditional major source actually emitting less than one ton per year but paying on 7.1 tons per year, $88.75. They are a small business, and the proposed fee of $7,500 was a shock. They are struggling financially and may not be able to continue operating if the fee is raised. The commenter was told verbally that the fee would more likely be in the range of $3,500 to $5,500. The commenter subsequently requested that companies be allowed to pay on actual emissions rather than allowable emissions, and the lower range would be just as unfair to small businesses. The boat business has been hit particularly hard by the current economic conditions.

Response: Conditional major companies, even those with low actual emissions, require significantly more staff time and Division resources to regulate than true minor companies, in some cases almost as much as companies subject to the requirements of Title V. Because of this, the Division feels that these companies should pay a higher fee than true minor companies. The Division was not able to meet its budget in fiscal year 2009, and it is necessary to generate additional funds. The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter indicated their original fee was based on 93.2 tons at $12.50 per ton for a total of

$1,165. With the proposed change the commenter's annual fee would be $7,500 a change of $6,335 or 644% increase. The commenter started operating in February 2008 and has managed to keep the facility open throughout the tough economic times. To increase the fee by over 600% is excessive and the commenter wanted to go on record disagreeing to such a sharp increase.

Response: Conditional major companies, even those with low actual emissions, require significantly more staff time and Division resources to regulate than true minor companies, in some cases almost as much as companies subject to the requirements of Title V. Because of this, the Division feels that these companies should pay a higher fee than true minor companies. The Division was not able to meet its budget in fiscal year 2009, and it is necessary to generate additional funds. The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $500 to $3,500 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Comment: A commenter stated that their emission fee would increase from $113.75 to $7,500.00 annually, effective for 2010. The commenter has already paid the $113.75 for 2010 per the billing in August. The commenter was unable to send a representative to the public hearing on October 8, so they lacked whatever background information was provided to justify the urgency of such a significant fee increase, and did not have the opportunity to provide feedback at that time. This commenter asked for implementation to be delayed until 2011 to allow for further deliberation. While the use of some chemicals is vital to their business, they are a small facility and actually consume only about 2 tons of the 10 tons allowed under their permit. The commenter asked about the new fee structure and wanted to know if the $7,500 proposed annual fee independent of the size of the permit.

Response: The company would not be required to pay the minimum fee until their next bill due date. The Division will not go back and ask companies whose bills were due before the fee increase is approved to pay additional fees. The Division was not able to meet its budget in fiscal year 2009, and it is necessary to generate additional funds. The Division must generate additional funds as soon as possible to meet its financial obligations for the current fiscal year. Delaying until 2011 is not an option. The proposed $7,500 annual fee is for conditional major sources. A conditional major source is one that took voluntary limits to avoid being subject to the requirements of Title V. Please note that the minimum Title V fee is $7,500. The Division proposed a scaled method of payment that takes into account the allowable emissions from conditional major sources to the Air Pollution Control Board at its January 2010 meeting. The revised proposal requires conditional major sources to pay $18.75 per ton of allowable emissions, with an additional review fee ranging from $250 to $2,000 based on allowable emissions. See the table below[1]. On February 10, 2010, the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

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[1] New fee proposal:

In accordance with subparagraph (6)(c) of Rule 1200-03-26-.02, the appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of $18.75 per ton of allowable emissions of regulated pollutants. Sources with allowable emissions less than 10 (Ten) tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major or synthetic minor source.

In accordance with subparagraph (6)(k) of Rule 1200-03-26-.02, beginning April 1, 2010, conditional major sources must pay a permit review fee in accordance with the table below in addition to the minor source annual emission fees specified in subparagraph 1200-03-26-.02(6)(e). This fee is due and payable to the Division according to Schedule 1 found in subparagraph 1200-03-26-.02(6)(c).

On February 10, 2010 the Air Pollution Control Board approved the $18.75 ton of allowable emissions and a revised review fee ranging from $250 to $2,000.

Allowable Tons Per Year	Review Fee
0-50	$250
50.1-100 TPY	$500
100.1-250 TPY	$1,000
250.1 and up	$2,000

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.

(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:

An estimated number of true minor companies paying a fee is 580.

An estimated number of conditional major companies paying a fee is 361.

(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:

There are no projected administrative costs as a result of these amendments.

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

This rule will increase the annual fees paid by industry. This increase may ultimately result in higher costs for consumer goods.

(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 is necessary for the Department to continue to meet its state and federal requirements for non-major sources of air pollution. South Carolina currently assesses a fee of $43.75 per ton of emissions from sources of this type. This proposal assesses a fee of $18.75 per ton of emissions for most permitted non-major sources of air pollution, plus an additional review fee for sources that "opted out" of the federal major source operating permit program because of the additional burden required to regulate these sources.

(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.

Some small businesses are automatically exempt from this proposed rule because Department regulations do not require them to obtain a permit from the Division of Air Pollution Control. Other small businesses are exempt from this proposed rule because of the low level of air pollutant emissions from their facilities (sources that are allowed to emit less than 10 tons per year of all air pollutants are not assessed a fee unless they "opted out" of the federal major source operating permit program). Exemption of additional facilities may result in an inability to effectively regulate these sources of air pollution due to inadequate resources. Failure to meet our obligations to the U.S. Environmental Protection Agency could result in federal sanctions against Tennessee, including the loss of transportation funding.

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 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;

The Air Pollution Control Division fee revenues have been decreasing for several years, causing the Division to pay operating expenses from its reserve funds. Those reserve funds are being depleted. Using the authority given by the General Assembly in 2007, this rule increases the annual fees for sources considered to be true minor and conditional major in order to meet the Division's operating expenses for providing the needed services to these sources. The annual emissions fee is increased from $12.50 per ton of allowable emissions to $18.75 per ton of allowable emissions for both source types. It also establishes an annual review fee for conditional major sources ranging from $250 to $2,000 based on the source's allowable emissions. The review fee was needed because certain types of permits for conditional-major sources required a greater expenditure of time due to complexity in processing permit conditions for hazardous air pollutant requirements.

(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 § 68-201-103 instructs the Air Pollution Control Board and the Department of Environment and Conservation to maintain purity of the air resources of the state consistent with the protection of normal health, general welfare and physical property of the people, maximum employment and the full industrial development of the state. They are also instructed to qualify for receipt of federal funds available for state air pollution control programs and to give the authority to so qualify and maintain such qualification. U.S. 40 CFR Part 51 establishes the requirements for air quality State Implementation Plans (SIPs). These plans are required to demonstrate how each state will implement the requirements of the federal Clean Air Act, found at United States Code Title 42, Chapter 85. States receive federal grants to assist in implementing these requirements, but additional funding is required. The Department did not collect sufficient revenues to fund the activities of the Division of Air Pollution Control for fiscal year 2009. Fees for these source categories have not been increased since July 1, 2000.

(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;

Industrial and institutional sources of air pollution considered to be true minor and conditional major sources are affected by this rule revision. Since this revision involves a fee increase, these entities are primarily opposed to adoption of this revision.

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

The Tennessee Air Pollution Control Board 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;

The estimated revenue increase from this revision is $827,344 annually. The estimated increase in expenditures as a result of this rule is minimal.

(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, Office of General Counsel
Tennessee Department of Environment and Conservation
E-mail: Alan.Leiserson@tn.gov

(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
Tennessee Department of Environment and Conservation
20th Floor, L&C Tower
Nashville, Tennessee 37243-1548
Phone: 615-532-0131

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

The Tennessee Air Pollution Control Board is not aware of any.