

Department of State
Division of Publications
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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 11-24-10
Rule ID(s): 4874
File Date: 11/30/2010
Effective Date: ~~02/28/2011~~

04/30/2011

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1200-03-26	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

Amendment

Subparagraph (k) of paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the date "April 1, 2010" between the words "Beginning" and "conditional" and inserting the words "one (1) month after the rule is state effective" in its place, so that, as amended, subparagraph (k) shall read:

- (k) Beginning one (1) month after the effective date of the rule amendment that added this subparagraph (k), 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

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

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control (board/commission/ other authority) on 11/10/2010 (mm/dd/yyyy), 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: 07/16/10

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

Date: Nov. 12, 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: November 12, 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.
Robert E. Cooper, Jr.
Attorney General and Reporter
11-30-10
Date

Department of State Use Only

Filed with the Department of State on: 11/30/10

Effective on: 03/31/2011 ~~2/28/11~~

Tre Hargett
Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

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

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(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.

As the only effect of this rule is to correct the date the fee is due, the only impact is to avoid small businesses being in the position of being subject to a fee that is due retroactively.

- (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.

None.

- (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.

Exempting any businesses from this rule would have the effect of making them subject to a fee that is due retroactively.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule to 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 not 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;

Recently, the Air Pollution Control Board adopted a new source review fee for conditional-major sources by amending paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees by adding a new subparagraph (k). The language of that new subparagraph gave an effective date of April 1, 2010 for the payment of the fees from these sources. That rule has now been filed and will become effective January 30, 2011. The sole purpose of this amendment is to amend this due date to be one (1) month after that previous amendment is effective, so that the new fee is not due prior to the rule's effective date.

- (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;

None.

- (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. This rule only corrects the date the fee is due.

- (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;

This amendment only corrects the date the fee is due.

- (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

- (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
Alan.Leiserson@tn.gov

(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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Sequence Number: PEDLWE
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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				
Honorable Mayor Tommy Green, Jr.	X				
Dr. Shawn A. Hawkins	X				
Helen S. Hennon				X	
Richard M. Holland	X				
John R. Roberts, Sr.	X				
Alicia M. Wilson	X				
Honorable 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 11/10/2010, 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: 07/16/10

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

Date: November 12, 2010

Signature: _____

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

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

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Secretary of State

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

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Phone: 615-532-0131
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