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 File Date: \_\_\_\_\_

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 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>	Malcolm H. Butler
<b>Address:</b>	9 <sup>th</sup> Floor L & C Annex 401 Church Street Nashville, Tennessee 37243-1531
<b>Phone:</b>	(615) 532-0600
<b>Email:</b>	Malcolm.Butler@tn.gov

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

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	TDEC ADA Coordinator 12 <sup>th</sup> Floor 401 Church Street Nashville, Tennessee 37243
<b>Phone:</b>	(615) 532-0207 or for hearing impaired, TN Relay Service 1-800-848-0298
<b>Email:</b>	Beverly.Evans@tn.gov

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

Address 1:	9 <sup>th</sup> Floor L & C Annex		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243-1531		
Hearing Date :	10/08/09		
Hearing Time:	9:30 AM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

**Additional Hearing Information:**

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of an amendment to the Tennessee Air Pollution Control Regulations pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendment. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. Seq.

Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of their comments to be submitted to the hearing officer at the public hearing. Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Thursday, October 08, 2009, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9<sup>th</sup> Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

If you have any questions about the origination of this rule change, you may contact Ms. Lacey Hardin at (615) 532-0554. Copies of documents concerning this matter are available for review at the office of the Technical Secretary and at certain public depositories. For information about reviewing these documents, please contact Mr. Malcolm Butler, 9<sup>th</sup> Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0600.

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

Materials concerning the proposed actions will be available at [www.state.tn.us/environment/apc/ppo/](http://www.state.tn.us/environment/apc/ppo/) and also for public inspection during normal working hours starting on September 04, 2009, at the following locations:

Air Pollution Control Division  
9th Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1531

Pollution Control Division  
Metropolitan Health Dept.  
311 23rd Avenue, North  
Nashville, TN 37203

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  
362 Carriage House Drive  
Jackson, TN 38305

Air Pollution Control Division  
Columbia EFO  
2484 Park Plus Drive  
Columbia, TN 38401

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

Division of Air Pollution Control  
Memphis-Shelby Co. 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  
APTMD - 12th Floor, Atlanta Federal Center  
61 Forsyth Street S.W.  
Atlanta, GA 30303  
c/o Mr. Richard Schutt, Chief

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

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. 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>)

## Summary of Proposed Change

Rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised by changing the rule title to "Permit-Related Fees," changing the amount of annual fees being charged to minor sources for allowable emissions, provide clarification, and correct typographical errors.

### 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 is amended by adding the word "fees" between the words "construction" and "and," 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 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 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, issuance and renewals of the conditional major permit, inspections of the source facility, and review of annual reports for this facility. This fee is collected in lieu of an annual emission fee unless the annual emission fee determined by subparagraph 1200-03-26-.02(6)(e) is greater than permit review fee.

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 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 "ANNUAL EMISSION FEES FOR MINOR SOURCES" is being revised such that the new title is "ANNUAL EMISSION FEES FOR MINOR SOURCES AND PERMIT REVIEW FEES FOR CONDITIONAL MAJOR SOURCES".

Subparagraph (e) of paragraph (6) of rule 1200-03-26-.02 is amended by 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 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 is amended by adding a new subparagraph (k) after subparagraph (j) so that the new subparagraph shall read:

- (k) Beginning March 1, 2010, conditional major sources must pay a permit review fee of \$7,500 in lieu of the minor source annual emission fees specified in paragraph 1200-03-26-.02(6). This

fee is due and payable to the Division according to Schedule 1 found in subparagraph 1200-03-26-.02(6)(c).

Authority: T.C.A. §§68-201-105

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: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title of Officer: Tennessee Division of Air Pollution Control

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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Filed with the Department of State on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State