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

# Notice of Rulemaking Hearing

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

## Title V Workload Analysis for fiscal year 2011-2012

<b>Agency/Board/Commission:</b>	Environment & Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Lacey J. Hardin
<b>Address:</b>	9 <sup>th</sup> Floor L & C Annex 401 Church Street Nashville, Tennessee 37243-1531
<b>Phone:</b>	(615) 532-0554
<b>Email:</b>	<a href="mailto:Lacey.Hardin@tn.gov">Lacey.Hardin@tn.gov</a>

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

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	12 <sup>th</sup> Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
<b>Phone:</b>	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
<b>Email:</b>	<a href="mailto:Beverly.Evans@tn.gov">Beverly.Evans@tn.gov</a>

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

Address 1:	9 <sup>th</sup> Floor L & C Annex		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243-1531		
Hearing Date :	01/4/12		
Hearing Time:	9:30 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

### Additional Hearing Information:

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the Title V Workload Analysis for fiscal year 2011-2012 and the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the State Implementation Plan under the authority of Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be distributed to the members of the Tennessee Air Pollution Control Board for their review in regard to the proposed Workload Analysis and rule amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-201 et seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville TN 37243-1531, at 9:30 a.m. on January 4, 2012.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on January 4, 2012, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to January 4, 2012, or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor, L & C Annex, 401 Church Street, Nashville TN 37243, (615) 532-0200. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of these rule changes or the Workload Analysis, you may contact Ms. Lacey Hardin or Mr. Malcolm Butler at (615) 532-0554. For information about reviewing these documents, please contact Ms. Lacey Hardin or Mr. Malcolm Butler, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0554.

#### Summary of Proposed Changes

The Division of Air Pollution Control is proposing the FY 2011-2012 Workload Analysis. The Workload Analysis documents the basis for establishing the FY 2011-2012 fee rates.

Rule 1200-03-26-.02 Construction and Annual Emission Fees is being revised by revising major source annual emission fees for fiscal year 2011-2012, clarifying how fees are determined for permit modifications at existing sources, clarifying that carbon monoxide emissions are to be included in determining the conditional major permit review fee, and correcting grammatical and typographical errors.

Revisions considered at this hearing may be adopted by the Tennessee Air Pollution Control Board under T.C.A. 68-201-105, the Board general authority to promulgate rules.

Materials concerning the proposed actions will be available at [www.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 December 1, 2011 at the office of the Technical Secretary and the public depositories listed below:

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

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

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

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

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

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

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

Knox County Department of  
Air Pollution Control  
140 Dameron Avenue  
Knoxville, TN 37917-6413

Air Pollution Control Division  
Memphis EFO  
8383 Wolf Lake Drive  
Bartlett, TN 38133-4119

Air Pollution Control Division  
Chattanooga EFO  
Suite 550  
540 McCallie Ave.  
Chattanooga, TN 37402 - 2013

Pollution Control Division  
Metropolitan Health Department  
311 23rd Ave. North  
Nashville, TN 37203

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

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

Kingsport Public Library  
400 Broad Street  
Kingsport, TN 37660

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 Title V Workload Analysis for fiscal year 2011-2012 and the promulgation of amendments to the Tennessee Air Pollution Control Regulations and the

State Implementation Plan. Any person desiring to present lengthy comments should be prepared at the hearing to offer a written statement to be incorporated into the record. Written statements not presented at the hearings will only be considered part of the records if received by 4:30 p.m. CDT on Wednesday, January 4, 2012, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee, 37243-1531.

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

- Amendment  
 New  
 Repeal

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

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-03-26	Administrative Fees Schedule
<b>Rule Number</b>	<b>Rule Title</b>
1200-03-26-.02	Construction and Annual Emission Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

### Chapter 1200-03-26 Administrative Fees Schedule

Subparagraph (b) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (b) in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

- (b) Such costs shall include, but not be limited to, costs associated, with review of applications and reports, issuance of required permits and associated inspections of sources, unit observation, review and evaluation of monitoring results (stack and/or ambient), modeling, and costs associated with any necessary enforcement actions (excluding penalties assessed).

Subparagraph (e) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (e) in its entirety and replacing it with the following so that, as amended, subparagraph (e) shall read as follows:

- (e) Any responsible official, who disagrees with the calculation or the applicability of the fee may petition the Tennessee Air Pollution Control Board (Board) for a hearing. In order to perfect a hearing, a petition for a hearing together with the total amount of the fee due must be received by the Technical Secretary of the Board not later than fifteen (15) days after the due date. Such hearing shall be in accordance with contested case provisions set forth in Title 4, Chapter 5, T.C.A. If the annual emission fee paid was improperly assessed, the Technical Secretary shall return the amount determined to be improperly assessed plus interest on the excess accrued from the date the emission fee was paid.

Subparagraph (g) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (g) in its entirety and replacing it with the following so that, as amended, subparagraph (g) shall read as follows:

- (g) Any responsible official impacted by the decision in subparagraph (f) above of this paragraph who disagrees with such decision may petition the Tennessee Air Pollution Control Board for a hearing. The hearing shall be in accordance with contested case provisions as set forth in Title 4, Chapter 5, T.C.A. 4-5-301 et seq.

Subparagraph (b) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (b) in its entirety and replacing it with the following so that, as amended, subparagraph (b) shall read as follows:

- (b) With the exception of changes received during the initial construction permit evaluation period (i.e. prior to the certified letter denoting application completeness), all revisions under subparagraph ~~1200-03-26-.02(4)(e)~~ of this rule which result in an increase in allowable emissions sought by the applicant or an increase in actual emissions declared in the original application for a permit shall be subject to a fee equal to one-half of the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Subparagraph (c) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (c) in its entirety and replacing it with the following so that, as amended, subparagraph (c) shall read as follows:

- (c) On and after October 24, 1991 a responsible official applying to make a change to a source such that a new construction permit is required, must pay a permit processing fee equal to one-half the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500. This fee is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Subparagraph (k) of paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (k) in its entirety and replacing it with the following so that, as amended, subparagraph (k) shall read as follows:

- (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) of this rule. This fee is due and payable to the Division according to Schedule 1 found in subparagraph ~~1200-03-26-.02~~(6)(c) of this rule. When determining the allowable tons per year, carbon monoxide emissions shall be included.

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 (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and replacing it with the following so that, as amended, subparagraph (d) shall read as follows:

- (d) The rate at which major source actual-based annual emission fees are assessed shall be ~~\$35.00~~ \$39.00 per ton for the annual accounting period July 1, ~~2010~~ 2011 through June 30, ~~2011~~ 2012. The rate at which major source allowable-based annual emission fees are assessed shall be ~~\$24.50~~ \$28.50 per ton for the annual accounting period July 1, ~~2010~~ 2011 through June 30, ~~2011~~ 2012. Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than ~~\$6,500~~ \$7,500 for the annual accounting period July 1, ~~2010~~ 2011 through June 30, ~~2011~~ 2012. An annual revision to these rates and the minimum fee must result in the collection of sufficient fees to fund the activities identified in subparagraph ~~1200-03-26-.02~~(1)(c) of this rule. These annual rates and the minimum fee shall be supported by the Division's annual workload analysis that is approved by the Board.

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

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

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

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