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Sequence Number: 01-18-13
Rule ID(s): 5365
File Date: 1/24/13
Effective Date: 4/24/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0545
Email:	Lacey.Hardin@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**
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.01	Construction Permits

(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 1200-03-09
Construction and Operating Permits

Amendments

Part 14 of subparagraph (b) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current part 14 and replacing it with a new part 14 so that, as amended, the new part shall read as follows:

14. "Baseline area" means any intrastate area (and every part thereof) not designated as a nonattainment area in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: Equal to or greater than 1 $\mu g/m^3$ (annual average) for SO_2, NO_2, or PM_{10}; or equal to or greater than 0.3 $\mu g/m^3$ (annual average) for $PM_{2.5}$.

(i) Area redesignations under this Division, 1200-03, cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to the regulations in this paragraph.

Part 15 of subparagraph (b) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current part 15 and replacing it with a new part 15 so that, as amended, the new part shall read as follows:

15. "Baseline date":

(i) "Major source baseline date" means in the case of PM_{10} and sulfur dioxide, January 6, 1975; in the case of nitrogen dioxide, February 8, 1988; and in the case of $PM_{2.5}$, October 20, 2010.

(ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification submits a complete application to the Technical Secretary or to the EPA administrator. The trigger date is:

(I) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

(II) In the case of nitrogen dioxide, February 8, 1988; and

(III) In the case of $PM_{2.5}$, October 20, 2011.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(I) The area in which the proposed source or modification would construct is not designated as a nonattainment area for the pollutant on the date of its complete application.

(II) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Item (III) of subpart (i) of part 6 of subparagraph (d) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current item (III) and replacing it with a new item (III) so that, as amended, the new item shall read as follows:

(III) Particulate matter:

10 $\mu g/m^3$ of TSP, 24-hour average
10 $\mu g/m^3$ of PM10, 24-hour average
4 $\mu g/m^3$ of $PM_{2.5}$, 24-hour average;

Subparagraph (f) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subparagraph (f) and replacing it with a new subparagraph (f) so that, as amended, the new subparagraph shall read as follows:

(f) Ambient Air Increments. In areas designated as class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(Micrograms per cubic meter)

Class I

Pollutant	$\mu g/m^3$
$PM_{2.5}$:	
Annual arithmetic mean	1
24-hour maximum	2
PM_{10}:	
$PM\text{-}_{10}$, Annual arithmetic mean	4
$PM\text{-}_{10}$, 24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

Class II

$PM_{2.5}$:	
Annual arithmetic mean	4
24-hour maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hour maximum	30
Sulfur dioxide:	

Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

$PM_{2.5}$:	
Annual arithmetic mean	8
24-hour maximum	18
PM_{10}:	
Annual arithmetic mean	34
24-hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

Part 3 of subparagraph (n) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the current part 3 and replacing it with a new part 3 so that, as amended, the new part shall read as follows:

3. Class I Variances

The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Technical Secretary, provided that the applicable requirements of this paragraph are otherwise met, may issue the permit with such emission limitations as may be necessary as approved by the Tennessee Air Pollution Control Board to assure that emissions of sulfur dioxide, $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Pollutant	Maximum Allowable Increase $\mu g/m^3$
$PM_{2.5}$:	

Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

Subpart (xix) of part 1 of subparagraph (b) of paragraph (5) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subpart (xix) and replacing it with a new subpart (xix) so that, as amended, the new subpart shall read as follows:

(xix) "Significantly impact" means the contribution by a new stationary source or modification to the air quality in a nonattainment area in concentrations equal to or greater than the amount as follows:

Pollutant	Annual	Averaging Time (hours)			
		24	8	3	1
SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
$PM_{2.5}$	0.3 $\mu g/m^3$	1.2 $\mu g/m^3$			
NO_2	1.0 $\mu g/m^3$				
CO			0.5 mg/m^3		2 mg/m^3

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)
Dr. J. Ronald Bailey				✓	
Elaine Boyd	✓				
Dr. Brian W.Christman				✓	
Karen Cisler	✓				
Dr. Wayne T. Davis	✓				
Stephen R. Gossett	✓				
Mayor Tommy Green				✓	
Dr. Shawn A. Hawkins	✓				
Helen Hennon	✓				
Richard M. Holland	✓				
John Roberts	✓				
Mayor Larry Waters	✓				
Jimmy West	✓				
Alicia M. Wilson	✓				

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 12/12/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/03/12

Rulemaking Hearing(s) Conducted on: (add more dates). 12/04/12

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Date: Dec. 13, 2012

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: December 13, 2012

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. att

Robert E. Cooper, Jr.
Attorney General and Reporter

1-18-13
Date

Department of State Use Only

Filed with the Department of State on: 1/24/13

Effective on: 4/24/13

Tre Hargett
Tre Hargett
Secretary of State

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2012 NOV 27 AM 10:37
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RULES

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 official comments received during the public comment period, but Twunjala Bradley with EPA Region 4 made some verbal comments. We received a letter from Scott Davis, Chief of the Air Planning Branch at EPA Region 4, containing those comments formally after the close of the comment period, although it was postmarked the last day of the comment period. Because the comments were relevant, the proposed rule was revised prior to the hearing and the changes were read into the official record. The comments are summarized below.

Comment 1: The Class I variance provision at Rule 1200-03-09-.01(4)(n)3 does not include the $PM_{2.5}$ increments pursuant to the provisions at 51.166(p)(4) regarding Class I variances. The EPA recommends that Tennessee revise the Class I variance regulations to include the $PM_{2.5}$ maximum allowable increases to be consistent with the federal regulations. In addition, the Term "particulate matter" should be revised to read "$PM_{2.5}$, PM_{10}."

Response: These changes were made.

Comment 2: Regarding the definition of *baseline date* at Rule 1200-03-09-.01(4)(b)15(i) and (ii)(I), the EPA recommends that Tennessee revise the phrase "...in the case of particulate matter..." to "...in the case of PM_{10}..."

Response: These changes were made.

Comment 3: Regarding the revision at Rule 1200-03-09-.01(4)(d)6(i)(III) to adopt the SMC of 4 micrograms per cubic meter into the Tennessee SIP, TDEC explains that they are deleting the current item (III) and replacing it with a new item (III); however, the new item is incorrectly labeled as item (I).

Response: This correction has been made.

Comment 4: Regarding the proposed state implementation plan (SIP) revision at Rule 1200-03-09-.01(5)(b)1(xix) – *Significantly Impact* to adopt $PM_{2.5}$ SILs, the EPA's authority to implement the $PM_{2.5}$ SILS and SMC for PSD purposes as promulgated in the October 20, 2010 (*Federal Register*, sic), has been challenged by the Sierra Club, *Sierra Club v. EPA*, Case No 10-1413 United States Court of Appeals for the District of Columbia. Due to the litigation, the EPA is not taking action to approve the $PM_{2.5}$ SILs into the SIP at this time.

Response: The Division has withdrawn this proposed change.

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.

The foregoing amendments to Rule 1200-03-09-.01 are to comply with § 110 and 172(c) of the federal Clean Air Act. These amendments relate to the New Source Review Program, which is a mandatory element of the required State Implementation Plan under the Clean Air Act, therefore, this rulemaking is exempt from the requirements of T.C.A. § 4-5-401 et seq.

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)

These proposed rule revisions will not have a projected 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 T.C.A. § 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;

These revisions add fine particulate matter ($PM_{2.5}$) increments to the requirements for New Source Review. They also add maximum allowable increases of $PM_{2.5}$ over baseline concentrations for Class I variances and revise the current baseline dates for particulate matter to those for PM_{10}. These changes are being made to make Tennessee's New Source Review regulations consistent with the federal and other state regulations.

(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;

Changes to Rule 1200-3-9-.01 Construction Permits are mandated by 40 CFR Part 51.165(a)(2)(i) and (ii) and 40 CFR Part 51.166(a)(7)(iv).

(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;

Owners and operators of major sources of air pollution are affected by changes to Rule 1200-03-09-.01 Construction Permits.

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

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

(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 20th Floor, L & C Tower Nashville, TN 37243-1548

(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

Legal Services Director, Office of General Counsel

Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
(615) 532-0131
Alan.Leiserson@tn.gov

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

The Board is not aware of any.

Department of State
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Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	9th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0545
Email:	Lacey.Hardin@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**
1200-03-09	Construction and Operating Permits
Rule Number	**Rule Title**
1200-03-09-.01	Construction Permits

(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 1200-03-09
Construction and Operating Permits

Amendments

Part 14 of subparagraph (b) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current part 14 and replacing it with a new part 14 so that, as amended, the new part shall read as follows:

14. "Baseline area" means any intrastate area (and every part thereof) not designated as a nonattainment area in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: ~~equal~~ Equal to or greater than 1 μg/m^3 (annual average) ~~of the pollutant for which the minor source baseline date is established~~ for SO_2, NO_2, or PM_{10}; or equal to or greater than 0.3 μg/m^3 (annual average) for $PM_{2.5}$.

    (i) Area redesignations under this Division, 1200-03, cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to the regulations in this paragraph.

Part 15 of subparagraph (b) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current part 15 and replacing it with a new part 15 so that, as amended, the new part shall read as follows:

15. "Baseline date":

    (i) "Major source baseline date" means in the case of ~~particulate matter~~ PM_{10} and sulfur dioxide, January 6, 1975; ~~and~~ in the case of nitrogen dioxide, February 8, 1988; and in the case of $PM_{2.5}$, October 20, 2010.

    (ii) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification submits a complete application to the Technical Secretary or to the EPA administrator. The trigger date is:

        (I) In the case of ~~particulate matter~~ PM_{10} and sulfur dioxide, August 7, 1977; ~~and~~

        (II) In the case of nitrogen dioxide, February 8, 1988; and

        (III) In the case of $PM_{2.5}$, October 20, 2011.

    (iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

        (I) The area in which the proposed source or modification would construct is not designated as a nonattainment area for the pollutant on the date of its complete application.

        (II) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Item (III) of subpart (i) of part 6 of subparagraph (d) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current item (III) and replacing it with a new item (III) so that, as amended, the new item shall read as follows:

(III) Particulate matter:

10 $\mu g/m^3$ of TSP, 24-hour average
10 $\mu g/m^3$ of PM10, 24-hour average
4 $\mu g/m^3$ of $PM_{2.5}$, 24-hour average;

Subparagraph (f) of paragraph (4) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subparagraph (f) and replacing it with a new subparagraph (f) so that, as amended, the new subparagraph shall read as follows:

(f) Ambient Air Increments. In areas designated as class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(Micrograms per cubic meter)

Class I

Pollutant	$\mu g/m^3$
$PM_{2.5}$:	
Annual arithmetic mean	1
24-hour maximum	2
PM_{10}:	
PM-$_{10}$, Annual arithmetic mean	4
PM-$_{10}$, 24-hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

Class II

$PM_{2.5}$:	
Annual arithmetic mean	4
24-hour maximum	9
PM_{10}:	
Annual arithmetic mean	17

24-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

$PM_{2.5}$:	
Annual arithmetic mean	8
24-hour maximum	18
PM_{10}:	
Annual arithmetic mean	34
24-hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

Part 3 of subparagraph (n) of paragraph (4) of rule 1200-03-09-.01 Construction Permits is amended by deleting the current part 3 and replacing it with a new part 3 so that, as amended, the new part shall read as follows:

3. Class I Variances

The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the Federal Land Manager concurs with such demonstration and he so certifies, the Technical Secretary, provided that the applicable requirements of this paragraph are otherwise met, may issue the permit with such emission limitations as may be necessary as approved by the Tennessee Air Pollution Control Board to assure that emissions of sulfur dioxide, ~~particulate matter~~ $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over baseline concentration for such pollutants:

Pollutant	Maximum Allowable Increase ~~μ~~μg/m^3
$PM_{2.5}$:	
Annual arithmetic mean	4
24-hr maximum	9
PM_{10}:	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

Subpart (xix) of part 1 of subparagraph (b) of paragraph (5) of Rule 1200-03-09-.01 Construction Permits is amended by deleting the current subpart (xix) and replacing it with a new subpart (xix) so that, as amended, the new subpart shall read as follows:

(xix) "Significantly impact" means the contribution by a new stationary source or modification to the air quality in a nonattainment area in concentrations equal to or greater than the amount as follows:

Pollutant	Annual	Averaging Time (hours)			
		24	8	3	1
SO_2	1.0 μg/m^3	5 μg/m^3		25 μg/m^3	
PM_{10}	1.0 μg/m^3	5 μg/m^3			
$PM_{2.5}$	0.3 μg/m^3	1.2 μg/m^3			
NO_2	1.0 μg/m^3				
CO			~~500 μg/m^3~~ 0.5 mg/m^3		~~2000 μg/m^3~~ 2 mg/m^3

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)
Dr. J. Ronald Bailey				X	
Elaine Boyd	X				
Dr. Brian W.Christman				X	
Karen Cisler	X				
Dr. Wayne T. Davis	X				
Stephen R. Gossett	X				
Mayor Tommy Green				X	
Dr. Shawn A. Hawkins	X				
Helen Hennon	X				
Richard M. Holland	X				
John Roberts	X				
Mayor Larry Waters	X				
Jimmy West	X				
Alicia M. Wilson	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 12/12/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/03/12

Rulemaking Hearing(s) Conducted on: (add more dates). 12/04/12

Date: December 12, 2012

Signature: _____

Name of Officer: Barry R. Stephens

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: _____

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.

There were no official comments received during the public comment period, but Twunjala Bradley with EPA Region 4 made some verbal comments. We received a letter from Scott Davis, Chief of the Air Planning Branch at EPA Region 4, containing those comments formally after the close of the comment period, although it was postmarked the last day of the comment period. Because the comments were relevant, the proposed rule was revised prior to the hearing and the changes were read into the official record. The comments are summarized below.

Comment 1: The Class I variance provision at Rule 1200-03-09-.01(4)(n)3 does not include the $PM_{2.5}$ increments pursuant to the provisions at 51.166(p)(4) regarding Class I variances. The EPA recommends that Tennessee revise the Class I variance regulations to include the $PM_{2.5}$ maximum allowable increases to be consistent with the federal regulations. In addition, the Term "particulate matter" should be revised to read "$PM_{2.5}$, PM_{10}."

Response: These changes were made.

Comment 2: Regarding the definition of *baseline date* at Rule 1200-03-09-.01(4)(b)15(i) and (ii)(I), the EPA recommends that Tennessee revise the phrase "...in the case of particulate matter..." to "...in the case of PM_{10}..."

Response: These changes were made.

Comment 3: Regarding the revision at Rule 1200-03-09-.01(4)(d)6(i)(III) to adopt the SMC of 4 micrograms per cubic meter into the Tennessee SIP, TDEC explains that they are deleting the current item (III) and replacing it with a new item (III); however, the new item is incorrectly labeled as item (I).

Response: This correction has been made.

Comment 4: Regarding the proposed state implementation plan (SIP) revision at Rule 1200-03-09-.01(5)(b)1(xix) – *Significantly Impact* to adopt $PM_{2.5}$ SILs, the EPA's authority to implement the $PM_{2.5}$ SILS and SMC for PSD purposes as promulgated in the October 20, 2010 (*Federal Register*, sic), has been challenged by the Sierra Club, *Sierra Club v. EPA*, Case No 10-1413 United States Court of Appeals for the District of Columbia. Due to the litigation, the EPA is not taking action to approve the $PM_{2.5}$ SILs into the SIP at this time.

Response: The Division has withdrawn this proposed change.

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.

The foregoing amendments to Rule 1200-03-09-.01 are to comply with § 110 and 172(c) of the federal Clean Air Act. These amendments relate to the New Source Review Program, which is a mandatory element of the required State Implementation Plan under the Clean Air Act, therefore, this rulemaking is exempt from the requirements of T.C.A. § 4-5-401 et seq.

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)

These proposed rule revisions will not have a projected 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 T.C.A. § 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;

These revisions add fine particulate matter ($PM_{2.5}$) increments to the requirements for New Source Review. They also add maximum allowable increases of $PM_{2.5}$ over baseline concentrations for Class I variances and revise the current baseline dates for particulate matter to those for PM_{10}. These changes are being made to make Tennessee's New Source Review regulations consistent with the federal and other state regulations.

(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;

Changes to Rule 1200-3-9-.01 Construction Permits are mandated by 40 CFR Part 51.165(a)(2)(i) and (ii) and 40 CFR Part 51.166(a)(7)(iv).

(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;

Owners and operators of major sources of air pollution are affected by changes to Rule 1200-03-09-.01 Construction Permits.

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

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

(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 20th Floor, L & C Tower Nashville, TN 37243-1548

(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

Legal Services Director, Office of General Counsel

Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Board is not aware of any.