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Division of Publications**

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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.

Agency/Board/Commission:	Tennessee Air Pollution Control Board
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee 37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@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:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or 615-532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Jennifer.Katzenmiller@tn.gov

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

Address 1:	Conference Room D, 3 rd Floor		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	11/25/19		
Hearing Time:	9:30 A.M.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact (Lida Warden) at (615-532-0554) for more information.

Smoke opacity is an indicator of pollution in certain circumstances, and some regulated entities are required to read smoke as part of proving compliance with the limitations in their permits. Smoke School is offered to industry representatives, environmental consultants, and the general public, and certifies qualifying attendees in "reading" the density of smoke (opacity). The Division has historically offered this course at a much lower cost than found in the private sector, and the cost will still be lower after this change. The Department is proposing a revised initial certification fee of \$180.00 and a revised recertification fee of \$150.00 for all attendees. Currently, the Department charges a lower fee to attendees located within the state than is charged to attendees from outside the state.

Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the

Environmental Protection Agency (“EPA”) to administer a Title V major source operating permit program (“Title V program”), to collect “an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements[.]” To comply with this requirement, the Department is proposing rule amendments that revise the magnitude of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit (“EGU”) and non-EGU sources.

The Department is proposing that the increases take place over a two-year period, state fiscal years 2020-2021 and 2021-2022, to minimize the effects of the significant increases needed to continue funding the program as required by the CAA. The Department is proposing the fee structure that it has determined to be adequate for funding needs and the most responsive to comments received from stakeholders during the development process. At the end of the two-year period the proposal increases the existing base fee of \$4,000 to \$6,000, the existing minimum fee of \$7,500 to \$9,000, the dollar per ton for non-EGU sources from \$33.50/ton allowable to \$50.00 and from \$53.50/ton actual to \$80.00, and the dollar per ton for EGU sources from \$47.00/ton allowable to \$70.00 and from \$75.00/ton actual to \$112.00. In addition to the changes described above, the Division is clarifying certain other provisions in Chapter 1200-03-26 that apply to all sources, including, but not limited to:

- Revising the payee for fee payments from “Division” to “State of Tennessee” throughout the chapter
- Correction of grammatical and typographical errors
- Revising current language to clarify application of the rules

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board for the promulgation of amendments to the rule 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 rule amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated title 4, chapter 5, and will take place in Conference Room D of the William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 3rd Floor, Nashville, Tennessee 37243 on November 25, 2019.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on November 25, 2019, at the following address: Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

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 days prior to November 25, 2019 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, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 22nd Floor, Nashville, Tennessee 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, you may contact Lacey J. Hardin at (615) 532-0545. For information about reviewing these documents, please contact Paul LaRock, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243, telephone (615) 532-0093.

Revisions considered at this hearing may be adopted by the Tennessee Air Pollution Control Board under Tennessee Code Annotated section 68-201-105, which gives the Board general authority to promulgate rules.

Materials concerning the proposed actions will be available at www.tn.gov/environment/topic/ppo-air and also for public inspection during normal working hours starting on October 3, 2019, at the office of the Technical Secretary and the public depositories listed below:

Air Pollution Control Division
15th Floor, WR Snodgrass TN Twr
312 Rosa L. Parks Avenue
Nashville, TN 37243

Pollution Control Division
Metropolitan Health Dept.
2500 Charlotte Avenue
Nashville, TN 37209

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

Air Pollution Control Division
Knoxville EFO

Air Pollution Control Division
Johnson City EFO

Air Pollution Control Division
Jackson EFO

3711 Middlebrook Pk., Suite 220 Knoxville, TN 37921	2305 Silverdale Road Johnson City, TN 37601-2162	1625 Hollywood Drive Jackson, TN 38305
Air Pollution Control Division Columbia EFO 1421 Hampshire Pike Columbia, TN 38401	Knox County Department of Air Quality Management 140 Dameron Avenue, Suite 242 Knoxville, TN 37917	Air Pollution Control Program Memphis /Shelby County Health Dept. 814 Jefferson Avenue Memphis, TN 38105
Air Pollution Control Division Chattanooga EFO 1301 Riverfront Parkway, Suite 206 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, c/o Mr. Scott Davis, Chief APTMD - 12th Floor, Atlanta Federal Center 61 Forsyth Street S.W. Atlanta, GA 30303	

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 promulgation of amendments to the rules. 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 November 25, 2019, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 15th Floor, Nashville, Tennessee 37243.

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.)

Chapter Number	Chapter Title
1200-03-26	Administrative Fee Schedule
Rule Number	Rule Title
1200-03-26-.01	Tennessee Visible Emission Evaluation Course Fees
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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 1200-03-26
Administrative Fee Schedule

Amendments

Paragraph (1) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (1) The effective date of the fee schedule in subparagraph (2)(b) of this rule shall be July 1, 2020. The fee schedule in subparagraph (2)(a) of this rule continues to apply until June 30, 2020.

Authority: T.C.A. §§ 4-5-202, et seq. and 68-201-105.

Paragraph (2) of Rule 1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees is amended by deleting it in its entirety and substituting instead the following:

- (2) Fee schedules.
 - (a) Until June 30, 2020, the following course fees apply:

Initial Certification Tennessee Applicant \$125.00
Recertification Tennessee Applicant \$95.00
Initial Certification Out-of-State Applicant \$175.00
Recertification Out-of-State Applicant \$125.00
 - (b) Beginning July 1, 2020, the following course fees apply:

Initial Certification \$180.00
Recertification \$150.00

Authority: T.C.A. §§ 4-5-202, et seq. and 68-201-105.

Subparagraph (a) of paragraph (1) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) It is the purpose of this rule to establish fees for sources subject to permitting pursuant to Division 1200-03 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.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subpart (iii) of part 5 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting the language "subjected" and substituting instead the language "subject" so that as amended the subpart shall read:

- (iii) Any pollutant that is subject to any standard promulgated under section 111 of the Federal Act; provided, however, that any such pollutant shall not be a regulated pollutant solely because the pollutant is a constituent of greenhouse gases;

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Part 12 of subparagraph (i) of paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

12. Each hazardous air pollutant listed below actually emitted or allowed to be emitted from a source subject to paragraph (11) of Rule 1200-03-09-.02.

CAS No.	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene

111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether

101144	4,4-Methylene bis(2-chloroniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds

0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions ¹
0	Cyanide compounds ^{2 6}
0	Glycol ethers ,
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds ³
0	Fine mineral fibers
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

¹ X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

² Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n- OR'.
Where:

n = 1, 2, or 3:

R = alkyl C7 or less; or

R = phenyl or alkyl substituted phenyl;

R' = H or alkyl C7 or less; or

OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

This action deletes each individual compound in a group called the surfactant alcohol ethoxylates and their derivatives (SAED) from the glycol ethers category in the list of hazardous air pollutants (HAP) established by section 112(b)(1) of the Clean Air Act (CAA).

³ Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴ Includes organic compounds with more than or equal to 100°C which have a boiling point greater than or equal to 100°C

⁵ A type of atom which spontaneously undergoes radioactive decay.

⁶ The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 111-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. § 7412(b)(1).

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subparagraph (b) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) All annual fees must be paid in full by the due dates specified in subparagraph (6)(c) and paragraph (9) of this rule.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subparagraph (i) of paragraph (3) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (i) Where more than one allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.

1. Major sources subject to the provisions of paragraph (9) of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.

- (i) Sources that are subject to federally promulgated hazardous air pollutant standards that can be imposed under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38 will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category.

- (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part (2)(i)12 of this rule that do not have an allowable emission standard under Chapter 1200-03-11, Chapter 1200-03-31, or Chapter 0400-30-38. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates.
- (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000 ton cap provisions of subparagraph (2)(i) of this rule.
- (iv) Major sources that wish to pay annual fees for PM10 on an allowable emission basis may do so if they have a specific PM10 allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual fees on an actual PM10 emission basis, it may do so if the PM10 actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM10 emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM10 emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000 ton cap provisions of subparagraph (2)(i) of this rule shall also apply to PM10 emissions.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subparagraph (c) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) The Division shall denote the date that all applications for construction permits are received in its Nashville office. Applications received after 4:30 p.m. local time will be considered as being received the next working day.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subparagraph (d) of paragraph (4) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (d) Upon receipt of a construction permit application, the Division must examine it to ensure that it is complete within 30 days. If the application is found to be incomplete, parts 1 through 4 of this subparagraph apply. The 30 days completeness evaluation time period is extended to 90 days for minor and conditional major sources of the nonattainment pollutant or its precursor pollutants as identified in part (4)(b)47 of Rule 1200-03-09-.01 located within the boundary of a nonattainment area so designated by the Board and/or the United States Environmental Protection Agency.
 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 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 this chapter and Rule Chapter 1200-03-09. If the deficiencies are not corrected within the 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 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 Chapter 1200-03-09.
 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 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 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.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subparagraph (a) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (a) On and after October 24, 1991, a responsible official applying for the construction permit [i.e. construction as defined in subparagraph (2)(j) of this rule] required by Rule 1200-03-09-.01 must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g), Schedule A of this rule unless exempted from construction permit fees pursuant to subparagraph (9)(a) of this rule. The fee determined from subparagraph (5)(g), Schedule A of this rule shall be calculated based on increases in emissions of regulated pollutants.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

Subparagraph (c) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (c) A responsible official applying to make a change to a source or permit such that a new construction permit is required must pay a permit filing/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.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Subparagraph (f) of paragraph (5) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (f) In the event that the Division fails to process the construction permit application within the time lines established in subparagraph (e) of this paragraph, the Division will refund the permit filing/processing fee to the applicant in full. The refund will be made within 30 days following the date that the deadline for a decision on that particular permit application was established. For refunds in excess of \$1,000, additional time to allow review and approval of the refund by the Office of the Attorney General and Reporter shall be allowed.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Paragraph (6) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (6) Annual Fees for Minor and Conditional Major Sources.
 - (a) A responsible official of a minor source and/or a conditional major source must pay an annual fee to the State of Tennessee. The annual fee shall be based on the source's allowable emissions as defined in subparagraph (2)(d) of this rule.
 - (b) 1. The minor source and conditional major source annual emission fee must be calculated using the sum of the 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 in the permit, and must include the method(s) used to determine compliance with the limitation(s). The documentation procedure to be followed by the source owner or operator must also be included to ensure 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.

2. To reduce the amount of the fee as provided in part 1 of this subparagraph, the responsible official must submit a letter to the Technical Secretary requesting reduced allowable emissions and providing the method or methods that will be used to ensure compliance with the requested limit or limits. This request must be received at least 90 days prior to the applicable due date of the annual fee. Any request received after that deadline may only apply to the fee for the following year and not for the year being invoiced.
- (c) All minor and conditional major source annual fees are due and payable to the State of Tennessee in full according to Schedule I of this subparagraph. The county in which a source is located determines when the source's annual 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 fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the State of Tennessee in full by the first day of the month that the fee is due. The Technical Secretary may extend this due date an additional 90 days where the source owner or operator's fee notice was mailed by the Department 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, Davidson, Decatur, DeKalb, Dickson, Dyer and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene and Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood and Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, 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, Sevier, and Shelby
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson and Wilson

- (d) A newly constructed minor or 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 fee for the remainder of the annual accounting period. A minor or conditional major source ceasing operations during the annual accounting period will not receive a refund for annual fees paid.
- (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 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.
- (f) Deleted.
- (g) Deleted.
- (h) Deleted.
- (i) The annual emission fee will be calculated on no more than 4,000 tons per year of each regulated pollutant. An annual emission fee will not be charged for carbon monoxide or for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
- (j) Deleted.
- (k) Conditional major sources must pay an annual permit review fee in accordance with the table below in addition to the annual emission fees specified in subparagraph (e) of this paragraph. This fee is due and payable to the State of Tennessee according to Schedule I found in subparagraph (c) of this paragraph. When determining the permit review fee, the allowable tons per year shall be calculated in accordance with subparagraph (b) of this paragraph except that 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

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Paragraph (7) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (7) Payment of Fees.
 - (a) All fees regulated by this chapter shall be payable to the State of Tennessee.
 - (b) Fees not paid, late fees, and returned checks are subject to the provisions of paragraph 1200-03-26-.02(8).
 - (c) Returned checks for any reason (i.e. insufficient funds, account closed, etc.) are considered failure to pay until such time collected funds are forwarded to the State of Tennessee. Returned checks are subjected to additional handling charges.
 - (d) Annual fee payments and permit review fee payments shall be clearly identified with the "Emission Source Reference Number" or "Facility ID" specified in the source's permit(s) and the invoice number, if available, 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.

- (e) When a fee overpayment has been made as a result of an error by the source, an owner or operator may seek a credit or refund for such fee overpayment within one year from the date on which the State of Tennessee received payment of the fee.
- (f) Online payment can be made to the State of Tennessee for annual fees by following the established State of Tennessee online payment process. Online payments require the inclusion of the customer identification number and the invoice number, if available, to ensure proper crediting of payment.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Subparagraph (b) of paragraph (8) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

- (b) If any part of any fee imposed under this Rule 1200-03-26-.02 is not paid within 15 days of the due date, a late payment penalty of 5% of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of 5% of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within 15 days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly. The Division will consult with the State of Tennessee's Department of Finance and Administration to determine the appropriate rate of interest.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-1-1301; and 68-25-105.

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting it in its entirety and substituting instead the following:

(9) Annual Fees for Major Sources and Sources Subject to Paragraph (11) of Rule 1200-03-09-.02.

- (a) 1. A responsible official of a major source or a source subject to paragraph (11) of Rule 1200-03-09-.02 (hereinafter, "Paragraph 11 source") must pay an annual fee to the State of Tennessee. A major source or Paragraph 11 source is not subject to the minor and conditional major source annual fees of paragraph (6) of this rule on or after July 1, 1994. Once a major stationary source or Paragraph 11 source begins to pay major source annual fees pursuant to this paragraph (9), it will not be subject to the construction permit fees of paragraph (5) of this rule for any additional construction occurring at the source as long as the source remains a major source or Paragraph 11 source.
- 2. Effective January 1, 2018, the following shall apply:
 - (i) Sources choosing to pay annual fees on an allowable emissions basis pursuant to subparagraph (b) of this paragraph shall pay 100% of the fee due pursuant to subparagraph (d) of this paragraph:
 - (I) No later than April 1 of the year immediately following the annual accounting period for which the fee is due for sources paying on a calendar year basis pursuant to subparagraph (b) of this paragraph; or
 - (II) No later than April 1 of the current fiscal year for sources paying on a fiscal year basis pursuant to subparagraph (b) of this paragraph.
 - (ii) Sources choosing to pay annual fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a calendar year basis pursuant to subparagraph (b) of this paragraph shall pay 100% of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the year immediately following the annual accounting period for which the fee is due, except as allowed by part (g)3 of this paragraph.
 - (iii) Sources choosing to pay annual fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis

pursuant to subparagraph (b) of this paragraph shall pay an estimated 65% of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual fee is due July 1 of each year, except as allowed by part (g)3 of this paragraph.

- (b) 1. On or before December 31 of the annual accounting period, the responsible official must submit to the Division in writing the responsible official's determination to pay the annual fee based on:
 - (i) Either a calendar year or state fiscal year; and
 - (ii) Actual emissions, allowable emissions, or a mixture of actual and allowable emissions of regulated pollutants.
 - 2. If the responsible official does not declare a fee payment choice as provided in subparts 1(i) or (ii) of this subparagraph, then the basis of the annual fee payment shall be the same as the responsible official's most recent choice of fee payment, or, if no such previous choice was made, the basis of the annual fee payment shall be that specified in the source's current major source operating permit.
 - 3. If the responsible official wishes to restructure allowable emissions for a major source or Paragraph 11 source for the purpose of lowering the annual fee, then an application must be filed at least 90 days prior to December 31 of the annual accounting period as provided in subparagraph (g) of this paragraph.
 - 4. The responsible official of a newly constructed major source, Paragraph 11 source, or minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up.
 - 5. For purposes of the payment of annual fees due July 1, 2016, parts 1 and 2 of this subparagraph shall not apply. Annual fees due July 1, 2016, shall be based on the state fiscal year and the annual fee basis (actual emissions, allowable emissions, or a mixture) specified in a source's current major source operating permit. If a source does not have an effective major source operating permit on July 1, 2016, then the source's responsible official shall pay the annual fee based on the state fiscal year and allowable emissions.
- (c) Reserved.
- (d) 1. Notwithstanding the fee rates established by part 2 of this subparagraph, a responsible official of any source subject to this paragraph (9) shall pay an annual base fee of \$5,000 for fees due in calendar year 2021 and an annual base fee of \$6,000 for fees due on or after January 1, 2022. This base fee shall be paid in addition to the annual emission fee established by subpart 2(iii) of this subparagraph, but shall be counted toward the applicable minimum fee set forth in subpart 2(ii) of this subparagraph.
 - 2. (i) For purposes of this part, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.
 - (ii) Notwithstanding the annual emission fee rates established by subpart (iii) of this part, the annual fee required to be paid by a responsible official of any source subject to this paragraph (9) shall be no less than:

- (I) \$5,500 for sources (once in always in or OIAI sources) subject to this paragraph (9) solely due to the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors, provided that the source has permitted allowable emissions below the major source thresholds found in part (11)(b)14 of Rule 1200-03-09-.02. If the source's permitted allowable emissions are not below those major source thresholds as of October 31 of the annual accounting period for which fees are due under this part, then item (II) of this subpart applies; and
 - (II) \$9,000 for all other sources subject to this paragraph (9) for fees due on and after January 1, 2021.
- (iii) The emission fee rates applied to calculate the annual fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:
- (I) For fees due in calendar year 2021:
 - I. Fee based on actual emissions: \$69.50 per ton for non-EGU sources and \$97.50 per ton for EGU sources; and
 - II. Fee based on allowable emissions: \$43.50 per ton for non-EGU sources and \$61.00 per ton for EGU sources.
 - (II) For fees due on and after January 1, 2022:
 - I. Fee based on actual emissions: \$80.00 per ton for non-EGU sources and \$112.00 per ton for EGU sources; and
 - II. Fee based on allowable emissions: \$50.00 per ton for non-EGU sources and \$70.00 per ton for EGU sources.
- (iv) The fees and fee rates enumerated in this subparagraph (d) must be supported by the Division's annual workload analysis that is approved by the Board.
3. The fees and fee rates specified in this subparagraph (d) shall remain in effect until the effective date of an amendment to this subparagraph (d). Any revision to the fees and fee rates must result in the collection of sufficient fee revenue to fund the activities identified in subparagraph (1)(c) of this rule and must be supported by the Division's annual workload analysis that is approved by the Board.
- (e)
 - 1. An emission cap of 4,000 tons per year per regulated pollutant per major source SIC code shall apply to actual or allowable based emission fees. A major source annual emission fee will not be charged for emissions in excess of the cap(s) or for carbon monoxide.
 - 2. No annual fee under this paragraph (9) will be charged for emissions of a pollutant solely because the pollutant is a constituent of greenhouse gases.
 - (f) In the case where a source is shut down such that it has operated only during a portion of the annual accounting period and the source's permits are forfeited to the Technical Secretary, the appropriate fee shall be calculated on a prorated basis over the period of time that the source was operated in the annual accounting period. The responsible official of a major source or Paragraph 11 source that is shut down, but wishes to retain its permits, shall pay a maintenance fee equivalent to 40% of the fee that would be charged had the responsible official determined to base the annual fee on allowable emissions. If the responsible official chooses this option in the midst of an annual accounting period, then the fee will be prorated according to the number of months that the source was in the maintenance fee status. However, in no case shall the annual fee be less than the minimum annual fee established in subpart (d)2(ii) of this paragraph. The

responsible official shall notify the Division no later than December 31 of the annual accounting period so that the Division will have sufficient time to adjust billing records for the maintenance fee status.

- (g) Responsible officials required to pay the major source or Paragraph 11 source annual fee pursuant to subparagraph (a) of this paragraph must conform to the following requirements with respect to fee payments:
1. (i) If a responsible official paying the annual fee based on allowable emissions wishes to restructure the allowable emissions of a major source or Paragraph 11 source for the purpose of lowering the annual fee, then 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 fee. The more restrictive regulatory requirement, the method used to determine compliance with the limitation, and the documentation procedure to be followed by the major source or Paragraph 11 source to ensure that the limit is not exceeded must be included in the application and specified in a permit through either the permit modification processes of paragraph (11) of Rule 1200-03-09-.02, or the construction permit processes of Rule 1200-03-09-.01, or both. The more restrictive requirement shall be effective for purposes of lowering the annual fee upon agreement by both the responsible official and the Technical Secretary and for all other purposes shall be effective upon issuance of the permit, modification, or both.
 - (ii) To reduce the amount of the fee as provided in subpart (i) of this part, the responsible official must file a complete permit modification or construction permit application with the Division at least 90 days prior to December 31 of the annual accounting period.
 2. The responsible official shall file an analysis of actual emissions, allowable emissions, or both actual and allowable emissions, whichever is appropriate due to the basis of the annual fee payment, with the Technical Secretary on or before the date the fee is due pursuant to subparagraph (a) of this paragraph. The analysis shall summarize the emissions of all regulated pollutants at the air contaminant sources of the major source or Paragraph 11 source facility and shall be used to calculate the amount of the annual fee owed pursuant to subparagraph (a) of this paragraph.
 - (i) An annual fee based on both actual emissions and allowable emissions shall be calculated utilizing the 4,000 ton per year cap specified in subparagraph (2)(i) of this rule. In determining the tonnages to be applied toward the regulated pollutant 4,000 ton cap in a mixed base fee, the responsible official shall first calculate the actual emission-based fees for a regulated pollutant and apply that tonnage toward the regulated pollutant's cap. The remaining tonnage available in the 4,000 ton category of a regulated pollutant shall be subject to allowable emission based fee calculations. Once the 4,000 ton per year cap has been reached for a regulated pollutant, no additional fee for that pollutant shall be required.
 - (ii) If the responsible official chooses to base the annual fee on actual emissions, then the responsible official must prove the magnitude of the source's emissions to the satisfaction of the Technical Secretary.
 3. (i) Responsible officials choosing to pay the annual fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may be granted by the Technical Secretary for up to 90 days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1 or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual fee payment of no less than 65% of the annual fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual fee.

The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual fee.

- (ii) A responsible official choosing to pay the annual fee based on allowable emissions is not eligible for the extension of time authorized by subpart (i) of this part.

(h) Reserved.

(i) Reserved.

Authority: T.C.A. §§ 4-5-201, et seq.; 4-5-202, et seq.; and 68-201-101, et seq.

The title of Rule 1200-03-26-.02 is amended by changing the title from "Construction and Annual Emission Fees" to "Construction and Annual Fees."

Authority: T.C.A. §§ 4-5-202, et seq. and 68-201-105.

The table of contents to Chapter 1200-03-26 Administrative Fee Schedule is amended by changing the title of Rule 1200-03-26-.02 from "Construction and Annual Emission Fees" to "Construction and Annual Fees," so that as amended the table of contents shall read:

1200-03-26-.01 Tennessee Visible Emissions Evaluation Course Fees
1200-03-26-.02 Construction and Annual Fees
1200-03-26-.03 Repealed

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: October 4, 2019

Signature: _____

Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Director, Tennessee Division of Air Pollution Control

Subscribed and sworn to before me on: _____

October 4, 2019

Notary Public Signature: _____

Kati Hicks

My commission expires on: _____

9/6/22

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State