

**AGENDA
STATE OF TENNESSEE
REGULAR MEETING
AIR POLLUTION CONTROL BOARD
Nashville Room, 3rd Floor Tennessee Tower
312 Rosa L. Parks Avenue
In Person and
Remote Access Via WebEx link**

<https://tn.webex.com/tn/j.php?MTID=me63abeccb811fbd59a75bfe34677a27f>

**Wednesday November 10, 2021
9:30 A.M.**

Note: There will be a Sign-In Sheet available for those who wish to speak for three minutes on a topic(s) shown here. Remote attendees may use the WebEx chat box to type their name and which topic(s) so that someone can call on them at the appropriate time to speak during the meeting.

	Item	Presenter	Page
1.	Roll Call		
2.	Approval of the August 11, 2021 Board Meeting Minutes		3
3.	Approval of the October 13, 2021 Board Meeting Minutes		6
4.	FY2023 Title V Workload Analysis	Jimmy Johnston	10
5.	Title V Fee Rule Revision	Jimmy Johnston	57
	General Business		
6.	20210-01110 APC Board Update – Landfill Rules	Travis Blake	107

The meeting will be held in compliance with Tennessee Code Annotated Section 8-44-108, as amended by Chapter 490 of the 1999 Public Acts of the Tennessee General Assembly. The meeting will be conducted permitting participation by electronic or other means of communication. Consequently, some members of the Tennessee Air Pollution Control Board are allowed to and may participate by electronic or other means of communication and may not be physically present at the announced location of the meeting.

Individuals with disabilities who require special accommodations or alternate communications formats should contact us at the Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, Division of Human Resources, 312 Rosa L. Parks Avenue 22nd Floor, Nashville, Tennessee 37243 at (615) 532-0200 (or TDD 1-800-848-0298 for hearing impaired callers) no less than five (5) days prior to the scheduled meeting so reasonable accommodations can be made.

Air Pollution Control Board
of the
State of Tennessee
Regular Meeting

On Wednesday August 11, 2021 at 9:30 A.M., the Air Pollution Control Board of the State of Tennessee, (hereinafter, referred to as the "Board"), began its meeting on the 3rd Floor of the Tennessee Tower in the Nashville Room. The following Board members were physically present.

Dr. Ronnè Adkins
Dr. John Benitez
Mr. Mike Haverstick
Dr. Shawn Hawkins
Mr. Richard Holland
Mayor Ken Moore
Ms. Caitlin Jennings
Ms. Amy Spann
Mayor Larry Waters
Mr. Jimmy West

The following Board member joined the meeting via WebEx

Dr. Joshua Fu

The following Board members did not attend the meeting

Dr. Chunrong Jia
Mr. Greer Tidwell

Ms. Michelle Owenby, Director of Air Pollution Control, welcomed Board members and those attending via WebEx.

The Vice-Chair asked for a Roll Call and the response was as follows:

Dr. Adkins	present	Dr. Benitez	present
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Dr. Fu	Remote	Mr. Haverstick	present
Dr. Hawkins	present	Mr. Holland	present
Dr, Jia	absent	Ms. Jennings	present
Mayor Moore	present	Ms. Spann	present
Mr. Tidwell	absent	Mayor Waters	present
Mr. West	present		

The next item on the agenda was the approval of the minutes from the June 9, 2021 Board meeting. The minutes were approved with one correction on page 5. Mr. Gossett and Mr. Holland's votes were reversed.

The Vice-Chair called for a roll call and the votes were as follows:

Dr. Adkins	yes	Dr. Benitez	yes
Mr. Haverstick	yes	Dr. Hawkins	yes
Mr. Holland	yes	Ms. Jennings	yes
Mayor Moore	yes	Spann	yes
Mayor Waters	yes	Mr. West	yes

The motion carried with ten (10) affirmative votes.

Mr. Travis Blake with the division presented the Board with a petition from Eastman Chemical for Alternative Monitoring, Board Order 21-078. After discussion Mr. Holland made a motion to approve and Ms. Spann seconded the motion.

The Vice-Chair called for a roll call and the votes were as follows:

Dr. Adkins	yes	Dr. Benitez	yes
Mr. Haverstick	yes	Dr. Hawkins	yes
Mr. Holland	yes	Ms. Jennings	yes

Mayor Moore	yes	Spann	yes
Mayor Waters	yes	Mr. West	yes

The motion carried with ten (10) affirmative votes.

Mr. Travis Blake with the division informed the Board of Pending Rulemaking , Revisions to TAPCR 1200-03-27-.12. Mr. Blake answered questions from the Board.

Mr. Jimmy Johnson with the division presented the Board with a power point presentation on the Draft Fiscal Year 2022-2023 Title V Workload Analysis. Dr. Adkin’s with the Small Business Program gave a brief description of what the Small Business Program does in response to Mr. Holland’s question. Mr. Johnston answered questions from the Board.

Mr. Jimmy Johnston with the division presented the Board with a power point presentation on the Notice of Pending Rulemaking, Revisions to TAPCR 1200-03-26. Mr. Johnston informed the Board they would be sent a copy of this presentation and answered questions from the Board.

Mr. Emily Urban with the Office of General Council presented the Board with a Legislative Update and answered questions from the Board.

There being no further business to discuss Dr. Hawkins made a motion to adjourn and Mr. Holland seconded the motion.

The meeting was adjourned at 11:36 a.m.

The meeting will be held in compliance with Tennessee Code Annotated Section 8-44-108, as amended by Chapter 490 of the 1999 Public Acts of the Tennessee General Assembly. The meeting will be conducted permitting participation by electronic or other means of communication. Consequently, some members of the Tennessee Air Pollution Control Board are allowed to and may participate by electronic or other means of communication and may not be physically present at the announced location of the meeting.

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Air Pollution Control Board
of the
State of Tennessee
Regular Meeting

On Wednesday October 13, 2021 at 9:30 A.M., the Air Pollution Control Board of the State of Tennessee, (hereinafter, referred to as the "Board"), began its meeting on the 3rd Floor of the Tennessee Tower in the Nashville Room. The following Board members were physically present.

Dr. Ronnè Adkins
Dr. Shawn Hawkins
Mr. Richard Holland
Mayor Ken Moore
Ms. Amy Spann
Mr. Greer Tidwell

The following Board members joined the meeting via WebEx

Dr. John Benitez
Dr. Joshua Fu
Dr. Chunrong Jia
Mayor Larry Waters

The following Board member did not attend the meeting

Mr. Michael Haverstick
Ms. Caitlin Jennings
Mr. Jimmy West

Ms. Michelle Owenby, Director of Air Pollution Control, welcomed Board members and those attending via WebEx.

The Vice-Chair asked for a Roll Call and the response was as follows:

Dr. Adkins	present	Dr. Benitez	WebEx
Dr. Fu	WebEx	Mr. Haverstick	absent
Dr. Hawkins	present	Mr. Holland	present

Ms. Jennings	absent	Dr. Jia	WebEx
Mayor Moore	present	Ms. Spann	present
Mr. Tidwell	present	Mayor Waters	WebEx
Mr. West	absent		

Mr. Travis Blake with the division presented the Board with NO_x SIP revisions. Mr. Blake notified the Board of a pending action to revise Tennessee’s State Implementation Plan (SIP). Domtar Paper Company in Kingsport requests approval of alternative monitoring to comply with the NO_x SIP Call, and the Division will propose approval of the alternative as part of a non-regulatory SIP submittal to U. S. EPA. Mr. Blake answered questions from the Board.

Mr. Mark Reynolds, Division of Air Pollution Control, briefed the Board members on the draft Regional Haze State Implementation Plan (SIP). Mr. Reynolds stated the definition of regional haze and the main sources of regional haze. The two federal Class I areas in Tennessee are the Great Smoky Mountains National Park and Joyce Kilmer-Slick Rock Wilderness Area. The Division has been coordinating with the other southeastern states through the VISTAS organization. The SIP for the second planning period was due on July 31, 2021. However, most states have not submitted their SIP’s yet. Mr. Reynolds stated several of the regional haze rule requirements including the long-term strategy, which includes enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals. Facilities were chosen for a reasonable progress analysis based on an Area of Influence (AoI) analysis and CAMx PSAT photochemical modeling analysis. A reasonable progress analysis was submitted for Eastman Chemical Company and TVA Cumberland. Recent data has shown a dramatic decrease in both sulfur dioxide and nitrogen oxides, which has resulted in monitoring data showing improvement in visibility. Mr. Reynolds concluded by showing a timeline for the completion of the SIP and answering a few questions from the Board members.

Mr. Mark Reynolds, Division of Air Pollution Control, briefed the Board members on the draft National Emission Standards for Hazardous Air Pollutants (NESHAP) rule revision. Mr. Reynolds stated that the Division proposes to incorporate the federal NESHAP rules by reference into the state rules. This would include all of the NESHAP rules in 40 CFR Part 61 and 40 CFR Part 63, except the Gasoline Dispensing Facility (GDF) rule. The U.S. Environmental Protection Agency (EPA) delegated authority to the Division for the Title V program and NESHAP rules in the 1990’s, and it is considered “automatic delegation”. Currently, most NESHAP rules are placed in the state rules on a word-for-word basis, which makes it difficult to keep up-to-date if a federal rule is amended. Currently, the requirements of a NESHAP that are not reproduced through the current regulations must be placed in a permit before they can be enforced. By adopting federal NESHAP rules by

reference, the Board will be able to keep the state regulations in line with the federal regulations and will be able to enforce the federal regulations directly. As part of the rule revision, the Division proposed to repeal the current NESHAP rules that are in the state rules, except the GDF rule. The Division proposes to incorporate by reference the July 1, 2020 CFR version of the NESHAP rules into the state rules. Mr. Reynolds concluded by showing a timeline for the completion of the rule revision and answering questions from the Board members.

Mr. Donovan Grimwood of TDEC's Small Business Environmental Assistance Program (SBEAP), located in the Office of External Affairs, provided an overview of the SBEAP to the Air Board. He introduced John LeCroy, Regional Director for External Affairs in the Knoxville EFO, as the supervisor of the SBEAP and Crystal Warren as the Education and Outreach specialist for the SBEAP. The SBEAP is a program that was established under the Clean Air Act Amended 1990 to be funded by Title V fees. The program is designed to provide free, confidential, technical assistance to small businesses (100 employees or less and not a major source of air emissions). Due to many businesses having more than just air issues, the TN SBEAP is a multi-media program, meaning they assist with environmental questions concerning air, land, and water.

By assisting small businesses, the SBEAP also helps the regulatory divisions by helping the businesses have more complete applications, greater understanding of the rules that affect them, better understanding of the recordkeeping requirements, all with the goal of greater compliance with the rules. This helps the business avoid a revolving door of enforcement by helping them understand the steps needed to be in compliance with the rules. In addition, the SBEAP acts as advocates for small businesses in working with APC on new rules that will impact the small businesses or developing new tools for small businesses. Examples have been working with APC on Permit-by-Rule, General Permits (most recently the Ready-Mix Concrete General Permit which is still in development), research on whether human crematories can be considered a generally insignificant source of air emissions and providing comments on rules at both a state and Federal level.

Small businesses are important in that they are everywhere. TN has over 600,000 small businesses, representing 53.3% of the working population. Of this number, 261,029 have potential environmental issues, with the majority having from 1 to 4 employees. The SBEAP on average assists 221 businesses directly with environmental questions and application assistance, covering a large number of industry categories (96 in 2020). The majority of these assistances were air related. Based on direct comments or survey responses, the SBEAP clients find them a valuable service to the business community.

In addition to direct assistance, the SBEAP provides educational opportunities when possible. Either by speaking at conferences or via direct invite by industry for workshops, the SBEAP is open for opportunities to help businesses learn more about environmental regulations and how to comply with them. The SBEAP also seeks to collaborate with other State departments such as ECD and Agriculture as well as associations and industry groups. Mr. Grimwood answered questions from the Board.

There being no further business to discuss Mr. Tidwell made a motion to adjourn and Mayor Moore seconded the motion. The meeting was adjourned at 11:08.

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
 BUREAU OF ENVIRONMENT
 DIVISION OF AIR POLLUTION CONTROL

IN THE MATTER OF)	
)	
)	
2023 Title V Workload Analysis)	Order Number: 21-134
)	
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)	

BOARD ORDER

The 2022-2023 Workload Analysis, as prepared by the Division of Air Pollution Control, was approved by the following Board Members on November 10, 2021. The Workload Analysis is the mechanism used by the Division of Air Pollution Control to determine the Title V annual fees needed to operate the Title V operating permit program in compliance with federal law for recommendation to the Air Pollution Control Board. This Workload Analysis provides an estimate of the manpower and funding needed to support the Title V program in state fiscal year 2022-2023 to ensure compliance with federal law.

This Workload Analysis projects that 51.7 full-time employee hours and \$7,500,000 will be needed to conduct Title V-related work in fiscal year 2022-2023.

Category	Projected FY23 Title V Expenses
Regular Salaries, Longevity, and Bonuses	\$3,900,000
Benefits	\$1,700,000
Air Pollution Control General and Administrative Expenses	\$900,000
<u>TDEC General and Administrative Expenses</u>	<u>\$1,000,000</u>
Total	\$7,500,000

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation					
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants					
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control					
Mike Haverstick Working in management in Private Manufacturing					
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation					
Richard Holland Working for Industry with technical experience					
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests					
Dr. Chunrong Jia Environmental Interests					
Ken Moore Working in Municipal Government					
Amy Spann, PE Registered Professional Engineer					
Greer Tidwell Conservation Interests					
Larry Waters County Mayor					
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development					



Title V Workload Analysis

November 10, 2021

Overview

- 1200-03-09-.02(9)(d)(iv): “The emission fee rates enumerated in subpart (iii) [dollar per ton rates] of this part must be supported by the Division’s annual workload analysis that is approved by the Board.”
- Not subject to rulemaking requirements of Uniform Administrative Procedures Act
 - Intend to make draft workload analysis available during public participation process for Title V fee rule, but workload analysis not subject to public comment or hearing requirements.
- Fiscal Year FY2023 (July 1, 2022 to June 30, 2023)

Workload Estimates (FTEs)

- Overall Workload Based on Actual Activity from FY2021 and Planned Activity for FY2022
- Title V Portion of Work Based on:
 - Actual Title V/Non-Title V Ratio from Edison, or
 - Title V Specific Activity Information (e.g., number of Title V inspections, number of Title V permits and modifications)
- One FTE = 1609 hours per year
 - Considers Holidays, Sick Leave, and Annual Leave

FY2023 Workload Estimates (FTEs)

Functional Unit	FY2020 Title V FTEs
Administrative Services	4.0
Director's Office	3.4
Small Business Environmental Assistance Program	2.0
Compliance Validation Program	3.9
Enforcement Program	2.4
Field Services Program	12.1
Permitting Program	13.7
Regulatory Development Program	3.0
Emissions Inventory and Special Projects Program	2.6
Technical Services Program	2.5
Quality Assurance Program	2.1
Total	51.7

Actual and Projected Title V Expenses

Category	Projected FY2023 Expenses	
	Draft Workload Analysis	Final Workload Analysis
Regular Salaries, Longevity, & Bonuses	\$3,913,177	\$3,900,000
Benefits	\$1,693,201	\$1,700,000
Air Pollution Control General & Administrative Expenses	\$790,369	\$900,000
TDEC General & Administrative Expenses	\$1,028,566	\$1,000,000
Total	\$7,425,313	\$7,500,000

- Preliminary FY2021 Expenses Replaced with Final FY2021 Expenses (\$6,321,925)
- Projected FY2022 Expenses Revised Similarly to Projected FY2023 Expenses
 - Draft = \$7,253,155
 - Final = \$7,200,000

Other Updates

- Added FY2022 Part 70 Presumptive Minimum Fee & 2022 Part 71 Fee
 - EPA Memorandums Issued 9/11/2021 & 9/16/2021
 - Executive Summary and Table 17
- Updated Table 15 to add FY2021 Title V Fee Collections, Expenses, and Title V Environmental Protection Fund Balance (reserve balance)
- Updated Table 16 to reflect final 2021 tons, number of minimum fee payers, amount billed, and amount collected
 - Two facilities in collections

Additional Work Not Reflected in Workload Analysis

6/3/2021

Tennessee new businesses surge in biggest in state history

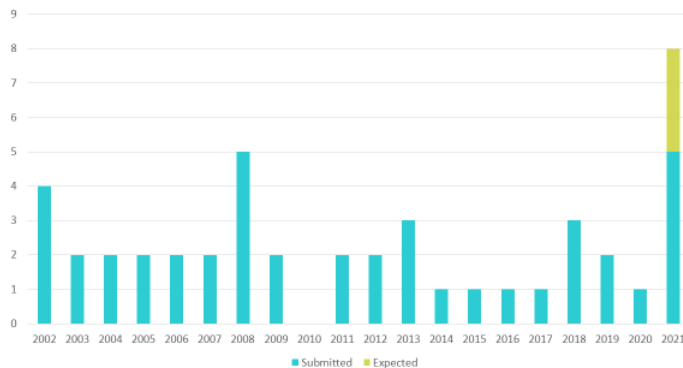
Tennessean.

MONEY

Why Tennessee is seeing its biggest surge ever in new businesses launching

- Increase in Construction Permits from New and Existing Title V Sources

PSD Applications by Calendar Year



- Initial Permitting – At Least Two Major Sources
 - Initial PSD Application received 10/28/2021
- Dozens of Suppliers – Many of Which will be Title V Major Sources
 - 2022 through Plant Startup in 2025
 - Possible Future Expansion beyond 2025

Questions



Title V

Workload Analysis

Fiscal Year 2022-2023



Division of Air Pollution Control
November 10, 2021

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Executive Summary

Title V Workload Analysis
By the
State of Tennessee
Department of Environment and Conservation
Division of Air Pollution Control

Title V of the Clean Air Act (CAA) and its implementing regulations in 40 CFR Part 70 require the Division of Air Pollution Control to operate a Title V Operating Permit Program. Paragraph 502(b)(3) of the CAA and 40 CFR 70.9 require the collection of fees sufficient to fully fund the program. The proposed methods for implementation and the evidence of financial adequacy to implement and operate a federally approved CAA Title V Operating Permit Program (Title V Program) are described herein.

The CAA Amendments of 1990 included many changes and substantive differences in the body of regulations that comprise the CAA. None are as far reaching in effect as the regulations that detail the procedures for an operating permit program for air contaminant sources and for assessment and collection of fees to allow the regulated sources to pay for the permitting related activities. Each permitting authority identifies, inventories, assesses, and issues permits to all affected sources. Title V fee collection must provide the means for each state air pollution program or permitting authority to fully fund Title V work efforts.

The Division of Air Pollution Control (the Division or APC) within the Tennessee Department of Environment and Conservation (TDEC or the Department) is responsible for permitting air contaminant sources in Tennessee. Upon review and acceptance of the Title V permitting program by the United States Environmental Protection Agency (EPA) on August 28, 1996, the Division became the State's major source Title V permitting authority in 91 of 95 counties in Tennessee. Davidson, Hamilton, Knox and Shelby counties have local air pollution control programs that operate under Certificates of Exemption from the Tennessee Air Pollution Control Board. These agencies regulate the Title V sources within their jurisdictions that are not owned by the State of Tennessee. Local air program activities are not addressed in this plan. TDEC retains the permitting authority for state-owned sources in these counties.

Title V related activities are projected to require 51.6 full-time equivalent (FTE) positions in fiscal year 2022-2023 (FY2023).

This Implementation Plan consists of eleven (11) separate functional units within the Division, plus the Small Business Environmental Assistance Program¹, which has various responsibilities and functions related to Title V. Briefly, these units are:

- Administrative Services
- Director's Office
- Small Business Environmental Assistance
- Compliance Validation
- Enforcement
- Field Services
- Permitting
- Regulatory Development
- Emissions Inventory and Special Projects
- Ambient Monitoring Quality Control
- Ambient Monitoring Quality Assurance

The activities of each of these units are described in this Workload Analysis. Each functional unit has identified the portion of total workload that can be attributed to Title V activities. In addition to the activities described in this plan, support services are provided to the Division by other bureaus, divisions, and offices within TDEC and the Bureau of Environment (BOE). Each of the divisions and offices within TDEC are charged for these services in accordance with formulae established by TDEC and BOE. A portion of these TDEC General and Administrative (G&A) expenses are charged to Title V fees. Further descriptions of these support services are described in the section of this plan entitled "TDEC General and Administrative Expenses".

The part 70 presumptive fee rate (\$/ton) effective for the 12-month period of September 1, 2021 through August 31, 2022 is \$54.37. This fee rate represents an increase of 2.99772% (or \$1.58) from the fee rate in effect for the prior 12-month period (\$52.79). This increase is based on a calculation of the average monthly change in the Consumer Price Index (All Urban Consumers) for the 12-month period of September 2020 through August 2021 as reported by the U.S. Bureau of Labor Statistics. This information is included for reference purposes only, since Tennessee's Title V fees are not currently based on the federal presumptive minimum fee rate.

¹ Subparagraph 502(b)(3)(A) of the CAA requires that the costs of programs established to fulfill the requirements of section 507 of the CAA (i.e., small business stationary source technical and environmental compliance assistance programs) be funded by Title V fees.

INTRODUCTION

Title V of the CAA mandates that states develop a major source operating permit program, commonly called the Title V Operating Permit Program. The CAA further mandates that the program be funded solely through fees collected from affected sources. Additionally, the CAA requires that the activities of a Small Business Assistance Program must be paid through these fee collections. Subparagraph 502(b)(3)(A) of the CAA requires that a state must establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. Subparagraph 502(b)(3)(B) of the CAA states that a fee program shall be deemed adequate if the amount of fees collected is no less than \$25 per ton of actual emission, as adjusted by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989 (i.e., the “presumptive minimum” fee). Should a state elect to establish a fee schedule that would result in the collection and retention of an amount less than the amount that would be presumed to be adequate using the presumptive minimum fee approach, the state must provide a detailed accounting that its fee schedule meets the requirements of 502(b)(3)(A). The Tennessee Air Pollution Control Board has historically elected to prepare an annual workload analysis and set the fees for the current and upcoming year(s) instead of using the presumptive minimum approach.

EPA regulations promulgated to implement and more thoroughly describe Title V may be found at 40 CFR Part 70. Section 70.9 of the federal regulations describes the requirements for the fees in detail.

The workload analysis is prepared in accordance with Tennessee Air Pollution Control Regulation (TAPCR) 1200-03-26-.02(9)(d) to provide justification of fees to the public, the regulated community and the EPA. Additionally, disclosure of this information leads to the development of informed consent and, therefore, acceptance of the program by stakeholders.

On February 10, 2021, the Division issued a Title V workload analysis that covered fiscal year 2021-2022 (FY2022). This workload analysis reflects projected workload for fiscal year 2022-2023 (FY2023).

Many complex requirements are mandated in the CAA and the Part 70 regulations that serve to demonstrate that the state permitting agency will be able to carry out its responsibilities. Section 70.4(b)(8) calls for a description of the program, a demonstration of fiscal soundness of the planned program based on fee projections, and planning for adequate personnel to administer the program.

Several things could happen to require that the workload analysis be revised and subsequently modified. These possibilities include but are not limited to:

- Changes in the air contaminant source population will alter the workload. Many sources have obtained “conditional major” status wherein they opt out of Title V by limiting their potential to emit via a federally enforceable limitation. The Division views the work effort to make a Title V source a conditional major source as Title V work. These sources require more frequent inspections and record reviews to verify that they are operating below the Title V thresholds; and
- Changes in applicable requirements mandated by EPA will also alter the workload.

The workload analysis is provided for each functional unit of the Division. The work of each unit plus the Title V work from the Small Business Environmental Assistance Program is described as it relates to the requirements of Title V. Estimated hours necessary to accomplish the task and, for some functional units, the numbers of tasks to be completed per year are projected.

Combining the hours projected to complete the Title V work and dividing it by 1,609 hours per employee available work time yields the total number of full-time equivalents (FTEs) needed to conduct Title V work.

The 1,609 hours of work time per employee was derived as follows:

Scheduled Payroll Hours per Year	=	1950
Less: Holiday, Vacation & Sick Leave Hours (12.5 Days + 21 Days + 12 Days) X 7.5 hrs./day	=	<u>- 341</u>
Total Work Hours per Employee	=	<u>1609</u>

For many of the work units described in the following sections, the Title V eligible work associated with members of each work unit are estimated as a percentage of total time. All employees are required to enter work time into the Department's personnel management system known as Edison for payroll purposes. Starting with FY2018, the Division made changes to the Edison system that tied all time and other expenses, such as travel expenses, directly to the appropriate funding source. For the Division of Air Pollution Control, available funding types include Title V, non-Title V², and EPA's fine particulate matter grant. This system also allows the Division to track time and expenses on a program and location level. For all work activities that could not be directly related to a funding type, such as training, administrative functions, and leave, time is charged to a pre-set Title V/non-Title V "split" ratio. The split ratio was initially set based on a historical ratio of 52% Title V/48% non-Title V. For most of the work units described in this workload analysis, Title V and non-Title V workload estimates for FY2023 are based on actual data obtained during FY2021 as specified in following sections of this analysis. These changes to Edison have resulted in a significant improvement in assessing the percentage of each work unit's time, Title V work, and, as a result, a better estimate of future Title V expenses.

In addition to Edison, most of these work units track Title V and non-Title V time on a daily basis using the Division's database known as Smog Log. Smog Log allows some work units to track time spent on specific projects, such as a permit or inspection.

² Non-Title V funding includes annual emissions fees paid by non-Title V facilities, construction permit application fees, modification permit application fees, motor vehicle emissions inspection and maintenance (I&M) fees, visible emissions certification fees, section 105 air quality grant funds received from EPA, state appropriations, and civil penalties. The Division has requested elimination of the I/M program from EPA. Thus, it is anticipated that this program and the I/M fees will be eliminated prior to FY2023.

ADMINISTRATIVE SERVICES

Administration involves activities both directly and indirectly associated with support of the Title V Program. These activities include permit and report tracking, issuance of Notices of Authorization to construct and operate under permits-by-rule, training coordination, processing travel claims, website management, APC board support, fee support, procurement, database management and support, and customer inquiries. The Administrative Services section also provides general administrative support for the entire Division including personnel activities, grants support, management of supplies, reception desk, etc.

Workload supports 3.95 FTEs of Title V work for Administrative Services.

CALCULATION BASIS

Except for work that is directly related to the Permit-by-Rule program (which encompasses only non-Title V sources)³, Title V administrative activities are based on billing data compiled from FY2019 through FY2021 for the Administrative Services and the procurement staff member. The workload for this work unit includes the head of the Administrative Services team and her staff and the procurement staff member who reports to a different member of the Division’s leadership team.

ASSUMPTIONS

The percentage of work that is Title V is assumed to be the same as historical workload.

Table 1 – Administrative Services Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
APC Data Management – Smog Log	2281	1.42
Administrative Support & Management	2747	1.71
Product Procurement	797	0.50
Office Supply Management	199	0.12
Record Maintenance	294	0.18
Training	34	0.02
TOTAL	6352	3.95

³ The Administrative Services team also handles several activities related to the I&M program. It is assumed that this program will be eliminated by FY2023. I&M activities are not Title V activities and would not be reflected in this Title V workload analysis regardless of elimination of the program.

DIRECTOR'S OFFICE

The office of the Director is responsible for overseeing the operation of the functions necessary for the development and performance of the Division, including the Title V Program. The Director serves as the Technical Secretary of the Air Pollution Control Board and carries out all the statutory and regulatory responsibilities of the Technical Secretary. The Director's Office is also responsible for coordinating and providing technical support to the Air Pollution Control Board, as well as providing support to the Tennessee Emergency Management Agency during emergency events, both natural and manmade, that impact ambient air quality. The Director's office provides program direction and oversight, coordinating Departmental goals with Division programs and providing reporting, support documents and informational documents for the Department and legislature concerning the operation of the Division. The Director's Office is also responsible for the financial performance of the Division and all associated grant management and support. Included in the Director's Office are individuals who provide management and technical support for multiple programs within the Division. For the purpose of this workload analysis, the Director's Office includes the Director, the Deputy Director of Permitting and Regulatory Development, the Deputy Director of Environmental Measurement and Compliance Assurance, the technical lead for Environmental Measurement and Compliance Assurance, the Environmental Fellow, and the Business Administrator. Activities of the Deputy Director for Field Services and the Field Services technical lead are included in the Field Services portion of this analysis. Activities of the technical lead for Permitting and Regulatory Development are included in the Permitting portion of this analysis.

Workload supports 3.4 FTEs of Title V work for the Director's Office.

CALCULATION BASIS

Title V workload was calculated by the number of existing staff assigned to the Director's Office in this Workload Analysis times the percentage of their workload that is estimated to be Title V related. Percent Title V workload for the Deputy Director for Permitting and Regulatory Development is the average of the three programs he manages (Permitting, Regulatory Development, and Emissions Inventory; average = 51.5%) and the Deputy Director and the technical lead (EC4) for Environmental Measurement and Compliance Assurance is the average of the four programs they lead, excluding PM2.5 funded time (Technical Services, Quality Assurance, Compliance Validation, and Enforcement; average = 51.7%). The Title V percentage for each of these programs is based on billing data gathered during FY2019 through FY2021. Title V time for all other positions is based billing data compiled from FY2019 through FY2021 for the Administrative Services and Directors Office staff.

ASSUMPTIONS

It is assumed that the Title V activities of the Deputy Director of Permitting and Regulatory Development are the same percentage as the average of the Permitting, Regulatory Development, and Emissions Inventory program. It is assumed that the Title V activities of the Deputy Director and the technical lead of the Environmental Measurement and Compliance Assurance programs are the same percentage as the average of the Compliance Validation, Enforcement, Quality Control, and Quality Assurance programs. For all other positions, the percentage of work that is Title V is assumed to be the same as historical workload.

Table 2 – Director’s Office Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Deputy Director of Permitting and Regulatory Development	828	0.51
Deputy Director and Technical Lead of Environmental Measurement and Compliance Assurance	1664	1.03
Three Other Director’s Office Positions	2988	1.86
TOTAL	5480	3.40

SMALL BUSINESS ENVIRONMENTAL ASSISTANCE PROGRAM

Program Overview

Section 507 of the CAA requires an environmental compliance assistance program in each state to support small businesses in understanding and complying with air quality regulations. The CAA also requires that this program be funded entirely with Title V fees. Tennessee's program provides confidential assistance free of charge to small businesses. Services include permitting assistance, onsite visits, training, a toll-free hotline, regulatory notifications, outreach, and guidance in preventing and eliminating non-compliance situations. A small business is defined as one that has 100 or fewer employees, is not a major stationary source, and meets the federal Small Business Act's definition of a small business. TDEC policy has expanded the definition of Small Business to include any source that does not have an employee dedicated to environmental compliance.

Required Program Components

(1) State Ombudsman

The Small Business Ombudsman represents small business in regulatory matters, identifies, and proposes solutions to small business technical and compliance problems.

(2) Environmental Technical Assistance

Staff members provide technical, administrative, and permitting assistance. Staff members inform businesses of regulatory requirements in easy-to-understand language. When needed, staff members conduct on-site visits and provide training opportunities.

(3) Compliance Advisory Panel (CAP)

An advisory panel comprised of individuals appointed by the Governor and the legislature, plus one Department representative, is required. The Panel advises and provides technical, administrative and evaluation assistance to the program. The CAP is a seven-member panel.

Program Activities

New Regulations/Sources

- Staff members review regulations, determine potentially impacted sources, develop a strategy for notification and assistance, develop compliance assistance tools, conduct training programs, and work with regulatory programs on outreach activities.
- Staff members assist the Division of Air Pollution Control in developing regulations and programs that impact small businesses.
- Staff members assist potential new companies in understanding regulatory requirements.
- Staff members participate in monthly conference calls on regulations with other SBEAPs and EPA.

Existing Sources

- Staff members respond to small business compliance and permitting questions.
- Staff members monitor enforcement reports to determine sectors with compliance problems and develop compliance assistance strategies.
- Staff members assist companies in meeting permit conditions, including developing tools to meet recordkeeping requirements.
- Staff members assist companies in resolving non-compliance issues, as well as assisting companies in utilizing the Department's self-disclosure audit policy.

Workload supports 2.0 FTEs of Title V work for the Small Business Environmental Assistance Program.

CALCULATION BASIS

Title V of the Clean Air Act requires that activities of the small business assistance programs and the small business ombudsman be funded by Title V fees. Thus, the number of FTEs is based on the current staffing levels of the SBEAP program.

ASSUMPTIONS

It is assumed that the SBEAP is fully staffed and that workload reflects historical levels.

Table 3 – Small Business Environmental Assistance Program Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Compliance assistance	1609	1.00
Workshops/training events	805	0.50
Material development	402	0.25
Regulatory Development/Notification	201	0.125
Administration/Other	201	0.125
TOTAL	3218	2.0

COMPLIANCE VALIDATION

The Compliance Validation Program is an enforcement tool for the Division. Compliance Validation provides a key component in the Division of Air Pollution Control’s quality assurance program that ensures the accuracy of the data being submitted by Title V facilities certifying compliance.

The Compliance Validation Program maintains the capability to conduct stack testing. The program also retains the capability to: (1) address special situations as directed by higher management, and (2) ensure that all staff conducting stack test observations are adequately trained to competently observe stack testing conducted by contractors or facility personnel. Observation of stack testing ensures that all proper testing procedures are followed, and that facility operation is representative of typical operation. This constitutes the major job function of the program. Observation of stack testing, followed by a technical review of the reports of this testing, constitutes a major Division effort to validate that the emissions values reported from Title V facilities are as accurate as possible. Continuous Emission Monitoring Systems (CEMS) are utilized by some Title V facilities to determine compliance on an on-going basis. Compliance Validation conducts audits of CEMS data to ensure the data submitted is accurate and reviews emissions reports of CEM data to verify compliance with emission standards. Compliance Validation conducts Visible Emission Evaluator Certification (VEE) schools to train state and industry personnel to certify compliance with visible emission standards. The majority of the work done by this group involves facilities is related to Title V.

Responsibility for asbestos renovation and demolition activities was moved to this program in FY2017, but this activity is not considered Title V. The “Other Compliance Validation Activity” category includes things such as administrative report preparation, file clean-up work, regulatory and SIP work, and assigned special projects previously incorporated into major work duties.

Workload supports 3.9 FTEs of Title V work for this program.

CALCULATION BASIS

Projected workload was estimated based on actual time and activity data for FY2021. One position in the Compliance Validation program is primarily dedicated to asbestos demolition and renovation work and is funded entirely by non-Title V funds. Personnel billing data from FY2019 through FY2021 indicates that approximately 63.6% of the remaining Compliance Validation program work is Title V related.

ASSUMPTIONS

It is assumed that FY2023 workload will be similar to historical workload.

Table 4 – Compliance Validation Program Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
CEMS/COMS Data Validation	382	0.24
Source Test Validation	2896	1.80
Stack Testing	201	0.12
CEMS/COMS Report Review	198	0.12
Visible Emissions Evaluation School	725	0.45
Program Management	912	0.57
Training	874	0.54
Other Compliance Validation Activity	124	0.08
TOTAL	6312	3.92

ENFORCEMENT

The Enforcement program is responsible for processing violations discovered in Tennessee by individuals, Division staff, other government agencies, and facilities. Processing of violations includes responding to the regulated community when a violation occurs, issuing Technical Secretary's Orders, issuing letters resolving noncompliance, and tracking penalties and compliance schedules in orders. Additionally, Enforcement staff track and quality assure (QA) compliance-related data using Smog Log. Much of this data is available to the public via the departmental data-viewer website. Enforcement also serves as a point of contact in enforcement matters between the Division and EPA Region 4.

The Enforcement program is also responsible for management and further development of the Division's Oracle database known as Smog Log. This includes writing and modifying code in development and then implementing revisions with the assistance of the State of Tennessee's Strategic Technology Solutions. Enforcement staff members review requests from Division staff for additional features to help determine which requests should be implemented as time and resources allow.

Enforcement staff members update EPA's Compliance and Enforcement database (Integrated Compliance Information System [ICIS-Air]) on a weekly basis, ensuring the data in the Smog Log database is properly reflected in ICIS-Air. Enforcement is also responsible for entering and quality assuring all data entered in ICIS-Air. The data reported to ICIS-Air includes inspections, report reviews, stack tests, continuous emission monitoring audits, formal and informal enforcement actions, penalties assessed and collected, Federally Reportable Violations, High Priority Violations, facility status (Title V, non-Title V, CM), applicable air programs, facility operational status, etc. The data reported to ICIS-Air is available to the public via EPA's ECHO website.

Workload supports 2.4 FTEs of Title V work for this program.

CALCULATION BASIS

The total amount of workload for the program is estimated based on historical time and activity from FY2020 through FY2021. To determine what portion of that workload was Title V related, billing data compiled from FY2019 through FY2021 was evaluated and indicated that 50% of the Enforcement program work is Title V related.

ASSUMPTIONS

Much of the Enforcement Program workload is based on violations reported or discovered by the Division. The Division does not project future violations. Therefore, enforcement related activity is assumed to be the same as historical workload. Other activity of the program (such as database and computer-related activity) is assumed to remain unchanged.

Table 5 – Enforcement Program Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Enforcement Related Activities	1799	1.12
ICIS-Air Data Management	466	0.29
Smog Log Development	431	0.27
APC Data Management	184	0.11
Computer Hardware/Software Support	25	0.02
Training	38	0.02
Special Projects	206	0.13
Program Management	724	0.45
TOTAL	3873	2.41

FIELD SERVICES

Field Services program staff are located throughout the state in seven Environmental Field Offices: Johnson City, Knoxville, Chattanooga, Cookeville, Nashville, Columbia, and Jackson. Major duties accomplished by field services staff that are associated with the Title V Program include compliance inspections of Title V stationary sources, review of the majority of Title V semi-annual reports and annual compliance certifications, operation and maintenance of the state's ambient air monitoring network, and investigation and resolution of complaints.

Other Title V duties include responding to inquiries from citizens, local officials, and the regulated community; review and discussion of draft permits; follow-up on enforcement related issues; staff training; involvement in emergency response incidents; participation in public meetings and hearings, various special projects; and maintenance of reports, records and other correspondence.

Workload supports 12.1 FTEs of Title V work for this program.

CALCULATION BASIS

The number of Title V inspections is based on the current Compliance Monitoring Strategy Plan. Title V facilities will generally be inspected on a biennial basis unless the division receives a complaint on the facility, the facility is categorized as a "mega-site," or the facility had compliance issues during the previous on-site inspection. Total inspection workload is based on the number of planned inspections and average inspection time. Average inspection time is based on the actual time from federal fiscal year 2020 (October 1, 2019 through September 30, 2020). The average inspection time included the time spent on reviewing reports. Title V complaint workload is estimated to be 5% of the total complaint workload. Workload associated with the ambient monitoring network is based on actual data for FY2019 through FY2021. The remaining work, including program management, is estimated to be 45% Title V related. This percentage is based on billing data from FY2019 through FY2021.

ASSUMPTIONS

It is assumed that on-site inspections of Title V sources will generally be conducted on a biennial basis unless the division receives a complaint on the facility, the facility is categorized as a "mega-site", or the facility had compliance issues during the previous on-site inspection. It is assumed that the average time for each inspection will be the same as historical data. It is assumed that report review time is consistent with recent historical data. It is assumed that the percentage of complaints related to Title V sources will be similar to historical levels.

Table 6 – Field Services Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Title V Inspections	5055	3.14
Report Reviews	3255	2.02
Complaint Investigations	222	0.14
Ambient Monitoring	2756	1.71
Training	989	0.61
Review of Draft Permits	337	0.21
Special Projects	1124	0.70
Program Management	2607	1.62
Environmental Assistance	315	0.20
Environmental Response	130	0.08
Meetings	1124	0.70
Administrative Activities	1573	0.98
TOTAL	19,487	12.11

PERMITTING

Permitting staff are located in the Nashville Central Office and the Knoxville Environmental Field Office. The permitting program consists of four sector-based permitting sections. Each section consists of one Environmental Manager 3, one Environmental Consultant 3, and four to five permit writers. A Deputy Director oversees the entire program with the technical assistance of a TDEC-Environmental Consultant 4 (EC4). The Deputy Director's time is included in the Director's office and the EC4 time is included here.

Responsibilities:

The Permitting program has the following responsibilities:

- Issuance of minor source construction and operating permits; review of and response to insignificant activity determinations; issuance of minor source operational flexibility determinations; and issuance of general permits and general permit Notices of Coverage (funding for minor source permitting is not included in this analysis)
- Issuance of conditional major source construction and operating permits (only funding of the first conditional major operating permit that must undergo Title V public notice procedures for a facility is included in this analysis)
- Issuance of construction permits and Title V operating permits to Title V facilities
- Issuance of administrative amendments, minor modifications, and significant modifications to Title V operating permits, as well as operational flexibility determinations
- Issuance of Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR) construction permits, including plantwide applicability limit (PAL) permits
- Review of most MACT and NSPS reports, some Title V semi-annual reports (SARs), some annual compliance certifications (ACCs), and review of plans required by MACT and GACT standards (the remaining MACT and NSPS reports, SARs, and ACCs are reviewed by the Field Services Program)
- Issuance of Notices of Violation; assistance to the Enforcement Program, TDEC's Office of General Counsel, and EPA's Office of Enforcement and Compliance Assurance pertaining to enforcement of violations discovered by the Permit Program
- Review of Title V fee Actual Emissions Analysis Report (AEAR) calculations
- Special projects as assigned (only those projects related to Title V issues are included here)
- Attendance at training sessions to stay knowledgeable about federal and state requirements, and remain familiar with source types and new emission control devices
- Management of the sections to ensure that the permitting program operates efficiently

Table 7 below shows the number of applications, modifications and reports in the system as of July 2021. Table 8 is a projection of the hours that will be necessary to review and complete current and new submittals, conduct report reviews, perform Title V related fee duties, enforcement, special projects, and for necessary technical training.

Table 7 – Current and Anticipated New Applications, T5 Sources Only

ACTIVITY	Currently in System as of July 2021	EXPECTED NEW SUBMITTALS IN FY2023
T5 Construction Permits - Non-Major NSR	10	44
T5 Construction Permits - Major NSR (PSD)	3	4
T5 Construction Permits - Major NSR (Non-Attainment)	0	0
Major NSR Plant Wide Applicability Limit (PAL) Permits	0	1
Title V Sources – Initial	4	3
Title V Sources – Renewal	47	56
CAIR and Acid Rain Permits	1	1
Significant Modifications	13	15
Re-opening for Cause	2	2
Minor Modifications	29	75
Administrative Amendments	12	45
Operational Flexibility and 502(b)(10) Changes	3	40
Construction Permit Amendment for Title V Source	3	30
Initial Issuance Conditional Major Sources	5	4
T5 Semi-annual Reports and Annual Compliance Certifications*	5	69
T5 MACT, NSPS, and Miscellaneous Reports*	3	301
T5 AEAR Reports	13	104

*This is the number of reports expected to be reviewed by Permit Program staff. The majority of Title V semiannual reports and compliance certifications will be reviewed by Field Services staff.

Annual planning workload analysis indicates a total of 14.2 that an additional FTE of Title V workload. The Division intends to manage the workload as detailed in the assumptions below. Therefore, the Division has determined that workload supports 13.7 FTEs of Title V work for this program.

CALCULATION BASIS

Permitting activity is based on the actual activity data from FY2021 and planned activity for FY2023. The number of projected Title V construction permits and construction permit amendments to be received was estimated based on the percentages of these two activities for Title V sources for the past three years. The number of Title V renewal applications is based on the number of Title V permits expected to expire between 12/31/2022 and 12/31/2023. The number of initial Title V permits expected is based on the number of greenfield PSD permits projected to be issued in FY2022. Workload for each permitting activity is calculated by multiplying the estimated number of each activity by the average estimated time for each type of activity. The average time for each activity type was derived mostly using data from FY2021 and considering data from FY2019 through FY2020 for some categories. The Title V portion of program management,

training, special projects, and other permitting time is based on the average Title V percentage for all permit program activities for FY2019 through FY2021 (48.3%). There is one Environmental Consultant 3 that is not located in the Permit Program but who does some permitting work. Approximately 50% of that individual's time is Title V permit-related and is reflected in this section of the Workload Analysis. The remainder of that individual's workload is associated with the Regulatory Development Program.

ASSUMPTIONS

It is assumed that the percentage of construction permits and construction permit amendments for Title V sources is the same as recent data. There are 12 facilities in the state with Acid Rain permits. Based on the expiration dates of those permits, it is assumed that one will be issued in FY2023. It is assumed that two Title V permits will need to be reopened for cause in FY2022 due to ongoing SIP development work. It is assumed that the number of initial Title V permit applications received in FY2023 is equal to the number of PSD permits projected to be issued in FY2022. PSD and PAL workload is based on the assumption that the increased economic development in Tennessee that began in FY2021 will continue through FY2023. For the sake of this workload analysis, all EC4 workload is included with the permitting program even though that position also does rule and SIP development, fee-related work, and supports other programs within the Division. That position's work is not counted elsewhere in this analysis.

Due to hiring of new staff members to fill held vacancies during the past two years and the need to train that staff prior to their ability to perform independent permit work, there were 13 backlogged (past the regulatory deadline) Title V actions at the end of FY2021. This number is expected to grow in FY2022. It is assumed that the eight new permit staff (three hired in FY2020 and five hired in FY2021) will be trained to the point that they can handle a full workload in FY2023. It is assumed that management and senior permit staff will continue to work beyond the state's regular weekly work hours to meet permit deadlines. It is also assumed that as the result of several permit efficiency improvements that were recently completed or under development (e.g., revised SOPs, new permit templates and standard conditions, new permit writer training program), permitting efficiencies will increase. As a result of these assumptions, it is assumed that the permitting program will be able to process incoming applications at the rate that they are received, and the permit backlog will begin to be reduced in FY2023. However, if some or all of these assumptions do not come to fruition or the business needs continue to increase at an unexpected rate, additional resources (i.e., FTEs) may be needed to satisfy the Title V permitting program workload. If additional FTEs are needed, they will be addressed in future workload analyses.

Table 8 – Projected Permitting Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Title V sources permit preparation – new sources	537	0.31
Title V sources permit preparation – renewals	5799	3.63
CAIR and Acid Rain Permits	9	0.01
Initial Issuance Conditional major sources	432	0.27
Significant Modifications	480	0.30
Re-opening for Cause	60	0.04
Minor Modifications	1350	0.84
Administrative Amendments	506	0.31
Operational Flexibility and 502(b)(10) Changes	200	0.12
Non-major NSR construction permits and amendments for Title V sources	1293	0.80
Major NSR permits	1900	1.18
PAL permits	365	0.23
Semiannual Report and Annual Compliance Certification Review	185	0.11
MACT, NSPS, and Miscellaneous Report Review	677	0.42
AEAR Report Review	293	0.18
Program Management	2438	1.52
Training	1365	0.85
Special Projects	975	0.61
Other Title V Permitting Time ⁴	3138	1.95
TOTAL	22,002	13.68

⁴ Other Permitting time includes APC Board support, complaint investigation, corresponding with EPA, work with multi-jurisdictional organizations, corresponding/assisting the public, enforcement activity, fee support, administrative activity, and General Permit and Permit-by-Rule development.

REGULATORY DEVELOPMENT

The Regulatory Development program has the following responsibilities⁵:

- Development of revisions to Tennessee's air quality rules
- Development of revisions to Tennessee's State Implementation Plan (SIP)
- Computer modeling (dispersion modeling) to support the Division's permitting program
- Photochemical computer modeling to support the development of SIPs
- Mobile source computer modeling using U.S. EPA's MOVES⁶ platform to support development of SIPs (non-Title V work).
- Policy analysis and development to assist TDEC's Policy Office or to address air quality-specific issues that are not assigned to the Policy Office
- Special projects as assigned
- Attendance at training sessions to stay knowledgeable of federal and state regulatory and SIP requirements, and technical training related to air pollution sources and controls
- Local program coordination with the four local air programs (Nashville/Davidson, Memphis/Shelby, Chattanooga/Hamilton, and Knoxville/Knox) to ensure local air regulations are as stringent as State requirements, as well as other oversight and coordination duties
- Management of the program to ensure it operates efficiently
- Managing all aspects of the Middle Tennessee and Hamilton County vehicle emission testing programs and their associated functions, including contract negotiation and administration, public outreach, vehicle exemptions, waivers/variances, rule development and mobile model analyses. (This is non-Title V work and it is assumed to have ended by FY2023.)
- Transportation conformity involving the development of mobile emission budgets, calculation of emission credits associated with mobile sources using the latest version of the EPA Mobile model, and production of periodic emission inventories of the sources for submission to the EPA. Conformity responsibilities include implementation of any new rules or guidance, as well as being an active participant in the Interagency Consultation Procedures. Consultation Procedures involve EPA, FHWA, TDOT, state and local air agencies, and Metropolitan Planning Organizations (non-Title V work)
- Coordination and participation in the implementation of diesel retrofit grant programs, including writing proposals for grant opportunities, overseeing the grant process, fulfilling grant requirements, and providing technical support to other TDEC offices regarding diesel retrofit technology (this is non-Title V work, much of which is scheduled to be transitioned to TDEC staff outside the Air Division by FY2023.)

Workload supports 3.0 FTEs of Title V work for this program.

CALCULATION BASIS

Of the work that will be performed by the Regulatory Development program, there are two categories (mobile source modeling and transportation conformity) that are completely non-Title V related. Billing data from FY2019 through FY2021 indicated that 47.7% of non-mobile source related work was Title V related. Thus, for the sake of this workload analysis, 47.7% of all other work, including program management, was estimated to be Title V fundable.

ASSUMPTIONS

It is assumed that the percentage of work that is Title V related is consistent with historical workload from the past three years. It is assumed that the motor vehicle emissions inspection

⁶ Motor Vehicle Emissions Simulator

program was terminated and that coordination of diesel retrofit programs is transferred outside of APC prior to the beginning of FY2023. It is assumed that resources made available by these changes will be utilized to meet the rule and SIP workload demand.

Table 9 – Regulatory Development Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Rule Development	1228	0.76
SIP Development	921	0.57
Permit and Photochemical Modeling	1535	0.95
Local Program Support	307	0.19
Special Projects	384	0.24
Project Management	537	0.33
TOTAL	4912	3.04

EMISSIONS INVENTORY AND SPECIAL PROJECTS

The Emissions Inventory and Special Projects program has the following responsibilities:

- Collecting, quality assuring, and reporting annual and triennial emissions inventories from stationary sources
- Developing and submitting triennial emissions inventories for on-road mobile, non-road mobile and area source inventories (non-Title V work not included in this analysis)
- Managing the Division’s Air Emission Inventory databases and updating EPA’s databases
- Development and implementation of the Division’s online system (SLEIS) for collecting annual and triennial emissions inventories and AEAR reports including training of regulated sources
- Requesting and collecting (SIP-required) annual NOx and VOC emission statements from sources in applicable counties and providing technical assistance to those sources
- Providing technical support to the Department’s Division of Fiscal Services pertaining to air permit-related fee invoicing and tracking of fee payment
- Title V fee AEAR tracking, review, data management, and, when necessary, enforcement
- Annual Title V and non-Title V fee invoicing and collections (only work relating to Title V fees is included in this analysis)
- Revisions to Title V and non-Title V fee systems (only work relating to Title V fees is included in this analysis)
- Special projects as assigned (only those projects related to Title V issues are included here)
- Attendance at training sessions to stay knowledgeable about federal and state emissions inventory requirements and technical training related air pollution sources and controls
- Providing assistance for virtual board meetings and other virtual meetings and hearings
- Management of the program to ensure it operates efficiently

Workload supports 2.6 FTEs of Title V work for this program.

CALCULATION BASIS

Workload for each task was estimated based on actual time and activity data. The percent of the program’s work that is Title V related is based on billing data from FY2019 through FY2021. Billing data compiled from all activities documented from FY2019 through FY2021 indicates that 65% of the Emissions Inventory and Special Projects program work was Title V related.

ASSUMPTIONS

It is assumed that this percentage of work that is Title V related is consistent with historical workload.

Table 10 – Emissions Inventory and Special Projects Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Emission Inventory	2302	1.43
Fee Development, Invoicing, and Support	1046	0.65
Program Management	628	0.39
Special Projects	209	0.13
TOTAL	4185	2.60

AMBIENT MONITORING QUALITY CONTROL

There are two programs that are responsible for the Division's Ambient Monitoring Network, the Quality Control program and the Quality Assurance program. The Quality Control program was previously referred to as Technical Services. The primary responsibility of the Quality Control program is to monitor ambient air quality across the state to assess compliance with national ambient air quality standards. This is accomplished by operating a network of air monitoring stations throughout the state that record air quality data that is subsequently stored in EPA's national database. The work requires continuing evaluation of all monitoring sites to ensure that each site conforms to federal ambient air quality monitoring site criteria and remedying or relocating the sites to the extent necessary to render the site compliant. Monitors require bench and field servicing to ensure all components of the monitors are in compliance with manufacturer specifications and EPA requirements and are calibrated to assure they give a true reading of air quality. Shelter maintenance is also required to make certain the internal shelter temperatures meet federal requirements, that the shelters have no air/water intrusion leaks, that periodic theft and vandalism damages are rectified, and that the electrical/data communication lines are properly connected. In the event of a lightning strike, significant effort must be undertaken to restore the site's operability. While the ambient air monitors measure the emissions impact of all types of air contaminant sources, a portion of those sources are Title V sources and those sources must pay a portion of monitoring expenses.

Workload supports 2.5 FTEs of Title V work for this program.

CALCULATION BASIS

Projected workload was estimated based on actual time and activity data for FY2021. The Division receives CAA section 103 grant funds each year to partially fund the Quality Control program's personnel costs. As a result, approximately 20% of the Ambient Monitoring program's personnel costs is paid using section 103 funds. Upon request of the Air Pollution Control Board, the Division determined the proper cost allocation for the ambient monitoring network (which includes both the Quality Control program and the Quality Assurance program as well as a portion of the Field Services program) based on the sources of air pollutants and precursors in Tennessee. The findings of this analysis were presented to the board on June 10, 2020 and showed, that after subtracting the portion of the PM2.5 network funded by section 103 funds, the proper cost allocation is 52% Title V and 48% non-Title V. When combining these percentages, projected Technical Services workload is estimated to be 42% Title V, 38% non-Title V, and 20% section 103.

ASSUMPTIONS

It is assumed that there will be no significant changes to the network as the result of federal or state requirements.

Table 11 – Quality Control Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Data Management – Input	42	0.03
Data Verification	1260	0.78
Document Development	126	0.08
Equipment Repair, Calibration, and Certification	1176	0.73
Monitoring Site Evaluation and Documentation	84	0.05
Personnel Activities	378	0.23
Program Management	588	0.37
Special Projects	126	0.08
Technical Systems Audit	147	0.09
Training	147	0.09
TOTAL	4074	2.53

AMBIENT MONITORING QUALITY ASSURANCE

There are two programs that are responsible for the Division's Ambient Monitoring Network, the Quality Control program and the Quality Assurance program. The Quality Assurance program provides an independent review of ambient air quality monitoring measurements and data reduction/reporting of those measurements prior to uploading the data to EPA's national ambient air database. This process is referred to as data validation. The program is also responsible for the coordination, development, and review of Standard Operating Procedures (SOPs) for each type of ambient air monitor used, Quality Assurance Project Plans (QAPPs), and any other documents that may be necessary to ensure that quality procedures have been developed and are being followed by operators of ambient air monitors in Tennessee for regulatory purposes. Having data that is trusted to be accurate is essential for compliance with federal requirements, regulatory decision making, and for the public to know, with assurance, the quality of the air they breathe.

In addition to developing quality assurance documents and making certain that they are followed, the staff of the Quality Assurance program periodically audit monitoring sites operated within Tennessee's State or Local Air Monitoring Stations (SLAMs) network and sites at industrial facilities. The purpose of these audits is to ensure that ambient data being collected for evaluating regulatory compliance meet quality standards. If issues arise during these performance audits, Quality Assurance staff are responsible for coordinating a corrective action plan with the monitoring site operation personnel to minimize data loss.

The meteorology staff members are responsible for air quality forecasting. These staff members use meteorological parameters and current air quality conditions to predict future air quality. The forecast information is provided to the public so that informed decisions can be made to protect health and also to plan activities that lessen impact on air quality during high pollution days.

Workload supports 2.1 FTEs of Title V work for this program.

CALCULATION BASIS

Projected workload is based on time and activity data. Similar to information presented in the Quality Control section of this workload analysis, the Division receives CAA section 103 grant funds to partially fund the Quality Assurance's personnel cost. Using the same calculations as described in that section, projected Quality Assurance program workload is assumed to be 20% section 103, 42% Title V, and 38% non-Title V.

ASSUMPTIONS

It is assumed that there will be no significant changes to the network as the result of federal or state requirements.

Table 12 – Quality Assurance Title V Workload

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Air Quality Forecasting	462	0.29
AQS Data Validation	420	0.26
Field Auditing	252	0.16
Local Program Field Auditing	378	0.23
Audit Equipment Repair, Calibration, and Certification	420	0.26
Certification and Calibration for Local Programs	84	0.05
Personnel Activities	84	0.05
Program Management	504	0.31
Document Development	84	0.05
SOP Development	76	0.05
Training	126	0.08
Emergency Response	6	0.00
Special Projects	483	0.30
TOTAL	3379	2.09

SUMMARY OF FTEs BY FUNCTIONAL UNIT

The following table shows the projected FY2023 FTEs needed to complete all Title V activities as indicated in this workload analysis. In addition, the actual Title V FTEs for the past three fiscal years (FY2019 through FY2021) and projected Title V FTEs for FY2022 from the FY2022 Title V Workload Analysis are presented below.

Functional Unit	FY2019 Actual FTEs	FY2020 Actual FTEs	FY2021 Actual FTEs	Projected FY2022 FTEs	Projected FY2023 FTEs
Administrative Services ⁷	3.3	4.2	3.9	3.7	4.0
Director's Office	3.7	3.1	2.4	3.2	3.4
Small Business Assistance	2.0	1.9	1.5	2.0	2.0
Compliance Validation	4.1	3.6	3.5	4.0	3.9
Enforcement	2.7	2.6	2.5	2.5	2.4
Field Services	14.1	14.2	14.1	11.6	12.1
Permitting	11.7	10.5	10.2	13.8	13.7
Regulatory Development	1.9	2.4	2.6	3.7	3.0
Emissions Inventory and Special Projects	2.6	2.5	3.2	2.8	2.6
Quality Control	2.5	2.1	3.1	2.5	2.5
Quality Assurance	1.9	2.5	2.2	2.1	2.1
Total Title V FTEs	50.5	49.6	49.2	51.9	51.7

⁷ One position within the Administrative Services program reports to a member of the Leadership team. For FY2019 and FY2020, the Title V work associated with this position was included with the Director's Office. Since the work performed by this position is more administrative in nature, the Title V work associated with this position has been moved to the Administrative Services functional unit for FY2021 and beyond.

TDEC GENERAL AND ADMINISTRATIVE EXPENSES

In addition to Title V eligible costs incurred directly by the Division, the Division is assessed charges by the BOE and TDEC for a number of support activities provided by the other areas of the Department to support the activities of the Division. Some of the Title V related support activities and the offices that provide them are listed below.

- Services of the Commissioner, Deputy Commissioner, Chief of Staff, Assistant Commissioners, and Senior Advisor of the Bureau of the Environment – management and organizational support
- Communications Office – media relations
- Office of External Affairs – outreach and communication to department stakeholders, including local government, other government agencies, the regulated community, public interest groups, and citizens; public meeting and hearing support
- People and Organizational Development Office – all personnel related services including human resources, leadership, staff training, and development
- Office of General Counsel – rulemaking and SIP development support, enforcement activity, legislative services, administrative legal services, policy and guidance interpretation and development, emergency response, risk and safety planning
- Office of Policy & Sustainable Practices – support with rule, SIP, and policy development that require in-depth research, comparison to other state or national programs, or coordination with other state agencies or entities
- Budget and Financial Planning Division – budget development and management as coordinated with the overall department budget and fee collections
- Fiscal Services (Department of Finance & Administration)– accounting
- Purchasing Division – procurement of all necessary equipment and supplies, including monitoring network assets and field and office supplies, equipment inventory and asset management, property contracts, and vehicle services
- Records, Space, and Facilities Division – records and facilities management
- Field Office administrative support staff – support APC Field Services, Compliance Validation, Permitting, and Technical Services staff in seven field offices

G&A expenses are charged to the Division according to formulae based on the percentage of the Division's budget in proportion to that of other BOE division budgets and special reserve funds and the Division's headcount. The Division's G&A expenses are charged to Title V funds, non-Title V funds, and federal grant income.

TITLE V EXPENSE ESTIMATES

An important step in developing a Title V fee system is to estimate future expenses in order to determine if projected revenue, together with the available reserve balance, is sufficient to fund the Title V permitting program. As mentioned earlier, federal regulations preclude the use of non-Title V funds for funding Title V activities. Thus, a failure to collect sufficient funds through the Title V fee system would have significant ramifications on the efficacy of Tennessee's Title V Program and economic development within the state and could eventually lead to federal intervention. Therefore, when designing a Title V fee system, the Division plans for a reserve at year-end to account for unexpected expenses and unanticipated reductions in fee revenue.

Historical and projected expenses are broken down into four categories: 1) salaries, longevity, and bonuses, 2) benefits, 3) Air Pollution Control (APC) General & Administrative (G&A) Expenses, and 4) TDEC G&A Expenses. APC G&A expenses include expenses such as travel, rent and utility costs for ambient monitoring sites, shipping costs, maintenance and repair costs, third-party professional and administrative expenses, office supplies, field and laboratory supplies, equipment purchases, and charges from other state agencies for services such as telephone and computer services, office rent, liability insurance, and general accounting, purchasing, human resources, and legal services. TDEC G&A expenses are described earlier in this document.

Personnel costs: Personnel costs include salaries, benefits, longevity⁸ and bonus pay⁹. Personnel costs are based on the number of positions for each functional unit for FY2023 based on demonstrated workload explained in this Workload Analysis. Longevity and bonus costs are added to regular salaries based on historical levels (4.2% of salary) \$25,000 is then added to account for terminal leave. Benefit costs are approximately 45% of salary costs.

APC General & Administrative (G&A) Expenses: APC G&A expenses are based on recent historical averages (FY2017 through FY2021) except for some categories that may have been significantly impacted by financial constraints and/or COVID-19, for which previous data was considered (e.g., 2016-2019). Also, previous data was used for categories which received additional one-time state funds provided in recent years by the legislature for the purpose of rehabilitating the state's ambient monitoring network (i.e., Project Restore).

TDEC General & Administrative (G&A) expenses: Not-to-exceed TDEC G&A expenses were provided by TDEC's Budget and Financial Planning Division.

⁸ Longevity pay is based on years of service once an employee has been in state service a certain number of years.

⁹ Bonus pay is a feature of the Tennessee TEAM Act's Pay-for-Performance system that awards employees for advanced and outstanding performance.

Table 14 – Historical and Projected Title V Expenses						
Expense Description	FY2018	FY2019	FY2020	FY2021	Projected FY2022	Projected FY2023
Regular Salaries, Longevity, & Bonus	\$3,377,781	\$3,546,448	\$3,485,437	\$3,449,044	\$3,800,000	\$3,900,000
Benefits	\$1,494,311	\$1,503,257	\$1,463,404	\$1,429,963	\$1,600,000	\$1,700,000
APC General & Administrative Expenses	\$919,969	\$653,654	\$628,698	\$529,628	\$850,000	\$900,000
TDEC General & Administrative expenses	\$1,014,803	\$0 ¹⁰	\$0 ¹⁰	\$850,291	\$950,000	\$1,000,000
Grand Total	\$6,806,864	\$5,703,359	\$5,577,539	\$6,321,925	\$7,200,000	\$7,500,000

¹⁰ No TDEC G&A expenses were charged to the Division in FY2019 or FY2020.

FISCAL MANAGEMENT AND COST SAVING INITIATIVES

The Division has made significant efforts in the last few years to establish an accurate financial accounting structure and work practices such that Division and Department expenses can be monitored and properly allocated. This system has been institutionalized within the Division and will continue in FY2023.

The Division will continue, in FY2023, to use travel and training resources efficiently and utilize video conferencing tools effectively.

The Division will continue and expand use of the state supported Alternative Workplace Solutions (AWS) to allow staff members to work from home in lieu of traditional offices. AWS has demonstrated efficiencies in productivity. Corresponding real estate changes, when completed, will provide cost savings.

The Division has completed the rulemaking process to eliminate the requirement to publish public notices for construction permits in a newspaper of general circulation in the area in which the proposed new or modified source is located. The Division will continue to post public notices on its website. This rule change is estimated to save approximately \$55,000 per year. The Division experienced savings estimated at \$40,000 in FY 2021 as the rule took effect about half-way through the fiscal year.

HISTORICAL TITLE V FEE AND EXPENSE DATA

Tables 15 and 16 on the next two pages show historical Title V information. Table 15 is based on income and expenses during each fiscal year, which runs from July 1st through June 30th. This table is intended to match up with fiscal budget periods. Table 16 provides emissions and financial information for each year of the Title V fee program since 2002. Each row in Table 16 contains information about the Title V fees that were due in a particular year based on that year's fee rates. In each year, the fees for a particular year are due in two different fiscal years. This table is intended to illustrate the trends in emissions and fee collections for each year's Title V fee system.

The two tables present information in slightly different time periods. Historically, Title V fees were based on allowable or actual emissions from July 1st of one year to June 30th of the next (i.e., the state fiscal year) and due on July 1st. Since it was usually impossible for a company to determine and report actual emissions on June 30th, fees based on actual emissions were usually received after July 1st, which is the next fiscal year. Since interest and late penalties don't apply until a fee is 15 days late, a large portion of Title V fees were received between July 1st and July 15th each year. There is also a provision in the fee rules that allow some companies (those paying on an actual or mixed emissions basis) to apply for a 90-day extension on reporting and paying fees. Thus, facilities that could not submit payments by July 15th could, and frequently did, request extensions until September 28th each year without incurring penalties. Both of these situations resulted in a significant amount of Title V fees being collected in the fiscal year following the year in which the fees are based. This is reflected in fiscal year 2015-2016 during which the financial practice of allowing payments received between July 1st and July 15th to be credited for the previous fiscal year ended.

In 2018, the Title V fee deadlines changed with calendar year based fees (which became an option to fiscal year based fees) due on April 1st of each year as well as an estimated 60% of a facility's fees due the same date for facilities that continued to determine fees based on fiscal year emissions. Fees based on allowable emissions are also due April 1st. Ninety-day extensions are still available for facilities who determine fees based on actual emissions. However, with these changes, a much larger percentage (approximately 95%) of Title V fees are now collected in the year in which the fees are based.

Note that the projected and collected tons indicated in Table 16 excludes allowable and reported actual tons for facilities that paid the minimum fee.

Table 15 – Historical Title V Collections and Expenses

Fiscal Year	Fees	Interest, penalties, and internet processing fees	Transfer In	Expenditures	Balance
2002-2003					\$1,387,223.12
2003-2004	\$5,780,573.30	\$17,261.10		\$5,299,426.96	\$1,885,630.56
2004-2005	\$5,773,095.32	\$33,124.15		\$6,289,281.06	\$1,402,568.97
2005-2006	\$6,806,903.33	\$62,547.16		\$6,604,384.65	\$1,667,634.81
2006-2007	\$6,170,217.54	\$67,707.22		\$6,993,064.19	\$912,495.38
2007-2008	\$7,116,004.10	\$35,456.47		\$7,254,796.79	\$809,159.16
2008-2009	\$7,939,773.17	\$21,518.17		\$6,613,669.61	\$2,156,780.89
2009-2010	\$7,587,853.93	\$9317.34		\$6,415,182.16	\$3,338,770.00
2010-2011	\$5,800,630.50	\$5527.40		\$7,261,266.44	\$1,883,661.46
2011-2012	\$6,336,163.20	\$1636.87		\$7,463,530.81	\$757,930.72
2012-2013	\$6,891,980.16	\$1113.83		\$6,844,668.87	\$806,355.84
2013-2014	\$6,844,856.89	\$9484.30		\$6,543,335.07	\$1,117,361.96
2014-2015	\$7,040,610.80	\$1129.83		\$6,694,005.01	\$1,465,097.58
2015-2016	\$5,321,521.83	\$2108.31	\$1,919,777.74 ¹¹	\$6,094,831.92	\$2,613,673.54
2016-2017	\$4,617,895.15	\$9697.10		\$5,687,186.70	\$1,554,079.09
2017-2018	\$6,293,711.88	\$945.29		\$6,818,383.34	\$1,030,352.92
2018-2019	\$6,347,961.86	\$5268.62		\$5,703,359.09	\$1,591,187.35
2019-2020	\$5,774,457.15	\$7320.71		\$5,577,539.13	\$1,795,426.09
2020-2021	\$6,088,563.08	\$1355.56		\$6,321,925.04	\$1,589,911.20

¹¹ During fiscal year 2015-2016, the Division determined that \$1,919,777.74 in non-Title V expenses had been charged to Title V fees over a several year period. This was corrected at the end of fiscal year 2015-2016, resulting in an increased Title V fee balance at the beginning of fiscal year 2016-2017.

Table 16 - Historical Tonnage Projections & Collections and Historical Fees

Year Fees Due	Number Companies	\$/Ton Allowable Emissions	\$/Ton Actual Emissions	Minimum /Base Fee*	Projected Total Tons	Total Tons Collected	Projected Allowable Tons	Allowable Tons Collected	Projected Actual Tons	Actual Tons Collected	Projected Companies Paying Min./Base	Companies Actually Paying Min./Base	\$ Amount Billed	\$ Amount Collected
2021 non-EGU	TBD	\$40.20	\$64.20	\$9000/ \$5000	93,258	86,598	73,246	66,363	20,0013	20,235	TBD	55	\$5,176,865	\$5,134,053
2021 EGU	TBD	\$57.00	\$90.00	\$9000/ \$5000	19,850	14,313	6535	8015	13,315	6298	0	0	\$1,068,698	\$1,068,698
2020 non-EGU	202	\$33.50	\$53.50	\$7500/ \$4000	92,783	96,985	71,943	76,901	20,840	20,084	49	55	\$4,361,916.31	\$4,383,491.96
2020 EGU	9	\$47.00	\$75.00	\$7500/ \$4000	17,724	19,850	4264	6535	13,460	13,315	0	0	\$1,341,788.20	\$1,341,788.20
2019 non-EGU	204	\$33.50	\$53.50	\$7500/ \$4000	90,255	93,206	70,769	73,181	19,486	20,024	57	59	\$4,413,431.57	\$4,386,631.42
2019 EGU	9	\$47.00	\$75.00	\$7500/ \$4000	19,675	20,420	4323	8264	15,352	12,156	0	0	\$1,336,098.20	\$1,336,098.20
2018 non-EGU	201	\$32.50	\$43.00	\$7500	78,116	86,627	58,114	63,343	20,002	19,284	109	107	\$3,787,675.97	\$3,780,175.97
2018 EGU	9	\$39.00	\$49.50	\$7500	27,994	26,737	16,642	12,323	11,352	14,414	2	1	1,201,499.94	1,201,499.94
2017 non-EGU	205	\$32.50	\$43.00	\$7500	83,580	108,057	65,071	76,008	18,509	21.292	108	98	\$4,083,515.65	\$3,916,319.73
2017 EGU	9	\$39.00	\$49.50	\$7500	27,994	28,235	16,642	16,532	11,352	11,719	2	0	\$1,224,857.24	\$1,224,857.24
2016 non-EGU	205	\$32.50	\$43.00	\$7500	124,500	100,365	104,000	81,260	20,500	19,105	105	97	\$4,215,224.16	\$4,059,712.98
2016 EGU	11	\$39.00	\$49.50	\$7500	43,000	41,259	39,500	36,603	3500	4656	3	4	\$1,691,011.45	\$1,691,011.45
2015 non-EGU	205	\$28.50	\$39.00	\$7500	119,500	114,977	102,000	99,567	17,500	15,410	201	200 (83 only paid base)	\$4,739,853.72	\$4,692,656.26
2015 EGU	10	\$45.50	\$56.00	\$7500	48,000	49,781	46,000	47,616	2000	2165	10	10 (1 only paid base)	\$2,362,785.29	\$2,362,785.29
*2014 non-EGU	201	\$28.50	\$39.00	\$7500	118,000	121,396	101,000	103,650	17,000	17,746	201	200	\$4,712,238.32	\$4,646,138.70
*2014 EGU	10	\$45.50	\$56.00	\$7500	57,000	48,802	55,000	46,648	2000	2154	10	10	\$2,318,133.81	\$2,318,133.81
2013 non-EGU	211	\$29.50	\$40.00	\$7500	184,000	125,576	160,000	105,256	24,000	20,320	105	102	\$4,403,500	\$4,096,563.73
2013 EGU	9	\$45.50	\$56.00	\$7500	65,000	60,425	62,500	58,110	2500	2315	3	3	\$2,795,416.43	\$2,795,416.43
2012	214	\$28.50	\$39.00	\$7500	200,000	190,232	175,000	165,782	25,000	24,450	105	108	\$5,973,274.94	\$6,167,959.21
2011	220	\$24.50	\$35.00	\$6500	210,000	204,961	190,000	179,953	20,000	25,008	110	106	\$5,682,497	5,800,630.50
2010	221	\$28.50	\$39.00	\$7500	217,064	211,344.7	195,801	191,346	21,263	19,999	105	111	\$7,298,632.70	\$7,587,853.93
2009	239	\$28.50	\$39.00	\$7500	217,064	232,996	195,801	206,725.8	21,263	26,271	115	110	\$7,835,606.93	\$7,939,773.17
2008	243	\$26.50	\$37.00	\$7500	230,489	234,615.4	213,772	207,541.6	16,717	27,073.8	88	119	\$7,394,083.80	\$7,317,445.36
2007	244	\$22.50	\$33.00	\$5000	257,989	236,936.8	238,232	214,385.8	19,757	22,551	100	96	\$6,093,539.15	\$6,095,634.93
2006	250	\$21.50	\$32.00	\$4500	284,639	259,420	256,578	232,764	28,061	26,656	100	92	\$5,976,181.77	\$6,000,240.56
2005	264	\$19.50	\$30.00	\$3500	324,896	290,030.7	294,836	262,405.1	30,050	27,625.6	80	80	\$5,869,607.39	\$5,874,970.52
2004	267	\$19.50	\$30.00	\$2500	330,731	287,381.9	309,213	258,052.4	21,519	29,329.5	72	56	\$6,024,377.47	\$6,032,675.99

2003		\$17.50	\$28.00		321,279								\$	\$
2002		\$13.00	\$21.70		382,476								\$	\$

*For FY 2013-2014, the Division replaced the minimum fee of \$7500 with a base fee of \$7500. All sources with total allowable emissions (excluding CO) of 250 TPY or less paid only the base fee. All sources with total allowable emissions (excluding CO) greater than 250 TPY paid the base fee plus their total tonnage (excluding CO) times the applicable \$/ton value (actual, allowable, or mixed basis). This is also the case for 2014-2015. In 2015-2016, the base fee was replaced with the minimum fee. A base fee was re-instated in 2018-2019 and the minimum fee was retained.

Table 17 - Historical Federal Presumptive Minimum and Part 71 Fees

Presumptive Minimum		Part 71	
Effective	Fee Rate	Effective	Fee Rate
Sept 1989 – Aug 1990	\$ 25.00		
Sept 1990 – Aug 1991	\$ 26.21		
Sept 1991 – Aug 1992	\$ 27.59		
Sept 1992 – Aug 1993	\$ 28.43		
Sept 1993 – Aug 1994	\$ 29.30		
Sept 1994 – Aug 1995	\$ 30.07		
Sept 1995 – Aug 1996	\$ 30.93	Calendar Year 1996	\$ 32.00
Sept 1996 – Aug 1997	\$ 31.78	Calendar Year 1997	\$ 32.88
Sept 1997 – Aug 1998	\$ 32.65	Calendar Year 1998	\$ 33.78
Sept 1998 – Aug 1999	\$ 33.21	Calendar Year 1999	\$ 34.35
Sept 1999 – Aug 2000	\$ 33.82	Calendar Year 2000	\$ 34.98
Sept 2000 – Aug 2001	\$ 34.87	Calendar Year 2001	\$ 36.07
Sept 2001 – Aug 2002	\$ 36.03	Calendar Year 2002	\$ 37.27
Sept 2002 – Aug 2003	\$ 36.60	Calendar Year 2003	\$ 37.86
Sept 2003 – Aug 2004	\$ 37.43	Calendar Year 2004	\$ 38.72
Sept 2004 – Aug 2005	\$ 38.29	Calendar Year 2005	\$ 39.61
Sept 2005 – Aug 2006	\$ 39.48	Calendar Year 2006	\$ 40.84
Sept 2006 – Aug 2007	\$ 41.02	Calendar Year 2007	\$ 42.43
Sept 2007 – Aug 2008	\$ 41.96	Calendar Year 2008	\$ 43.40
Sept 2008 – Aug 2009	\$ 43.75	Calendar Year 2009	\$ 45.25
Sept 2009 – Aug 2010	\$ 43.83	Calendar Year 2010	\$ 45.33
Sept 2010 – Aug 2011	\$ 44.48	Calendar Year 2011	\$ 46.00
Sept 2011 – Aug 2012	\$ 45.55	Calendar Year 2012	\$ 47.11
Sept 2012 – Aug 2013	\$ 46.73	Calendar Year 2013	\$ 48.33
Sept 2013 – Aug 2014	\$ 47.52	Calendar Year 2014	\$ 49.15
Sept 2014 – Aug 2015	\$ 48.27	Calendar Year 2015	\$ 49.93
Sept 2015 – Aug 2016	\$ 48.49	Calendar Year 2016	\$ 50.16
Sept 2016 – Aug 2017	\$ 48.88	Calendar Year 2017	\$ 50.56
Sept 2017 – Aug 2018	\$ 49.85	Calendar Year 2018	\$ 51.56
Sept 2018- Aug 2019	\$ 51.06	Calendar Year 2019	\$ 52.81
Sept 2019 – Aug 2020	\$ 52.03	Calendar Year 2020	\$ 53.81
Sept 2020 – Aug 2021	\$ 52.79	Calendar Year 2021	\$ 54.60
Sept 2021 – Aug 2022	\$54.37	Calendar Year 2022	\$56.23



Department of
**Environment &
Conservation**

F2023 Title V Fee Rule

November 10, 2021



Title V Fees Statutory and Regulatory Requirements

What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a) (1) In order to facilitate the proper administration of each statute listed in § 68-203-101(b), the **department of environment and conservation shall charge fees** for the various services and functions it performs under each of those statutes, including, but not limited to, **permit processing fees, permit maintenance fees**, license fees, registration fees, plans review fees, facility inspection fees and **emission fees**.

What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a) (2) The **level of these fees** shall be determined after careful consideration of the **direct** and **indirect costs** incurred by the department in performing its various functions and services under each of the statutes listed in § 68-203-101(b).

What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a)(3) It is the intention of the general assembly that the **fees shall provide funding for additional staff** of the environmental regulatory programs and an **improvement of the salaries and benefits** of the existing staff of the environmental regulatory programs, to continue **to improve performance in carrying out its duties.**

What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a)(3) (continued) Prior to promulgating any fee increase, the authorities listed in subsection (b) shall review the basis for the fee increase and **make a determination that the fee increase is warranted**. The **factors** in the determinations shall include, if relevant: **staffing needs, ability to attract and retain quality staff, feasible cost containment measures, comparisons with salaries paid by other governments and the private sector, levels of federal grants and state appropriations, and the ability of the program to maintain or improve its performance in carrying out its duties.**

What regulatory requirements apply to air quality fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

(a) It is the purpose of this rule to establish construction fees, annual emission fees, and permit review 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.

What regulatory requirements apply to air quality fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

(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).

What regulatory requirements apply to Title V fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

- (c) Annual emission fees collected from sources named by the Board in the Division's Workload Analysis as being major sources pursuant to the provisions of **Title V** of the federal Clean Air Act and the federal regulations at 40 C.F.R. Part 70 [FR Vol 57, No. 140, Tuesday, July 21, 1992 p32295-32312] and the definition of a major source in subparagraph 1200-03-26-.02(2)(g) shall be used to pay for the direct and indirect costs of:
1. Preparing generally applicable **regulations or guidance** regarding the permit program or its implementation or enforcement;
 2. Reviewing and acting on any application for a **permit, permit revision, or permit renewal**, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
 3. General **administrative costs** of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry;

What regulatory requirements apply to Title V fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

(c) Annual emission fees collected from sources named by the Board in the Division's Workload Analysis as being major sources pursuant to the provisions of **Title V** of the federal Clean Air Act and the federal regulations at 40 C.F.R. Part 70 [FR Vol 57, No. 140, Tuesday, July 21, 1992 p32295-32312] and the definition of a major source in subparagraph 1200-03-26-.02(2)(g) shall be used to pay for the direct and indirect costs of:

4. **Implementing and enforcing** the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
5. **Emissions and ambient monitoring;**
6. **Modeling**, analyses, or demonstrations;
7. Preparing **inventories** and tracking **emissions**; and
8. Providing direct and indirect support to sources under the **Small Business Environmental Assistance Program**.



Proposed Changes to Title V Fee Rule

Projected FY2023 Income & Expenses

- Projected Income Without Fee Increase
 - \$6,245,562
 - Based on Information from Final Fee Reports
- Projected Expenses
 - \$7,500,000

Proposed Title V Fee Rule

- Need for Fee Increase
 - **Starting from Behind** (current rule collected ~\$600,000 less than projected)
 - **Fee Rule Adopted in 2019 Did Not Fully Fund Title V Program**
- Amount of Increase
 - Projected FY2023 Income = \$6,245,562
 - Projected FY2023 Expenses = \$7,500,000
 - Projected FY2023 Shortfall = \$1,254,483

Proposed Title V Fee Rule

- Changes to 1200-03-26-.02(9)(d)

	Current Rule	Proposed Rule
Base Fee	\$5000	\$6000
Minimum Fee	\$9000	\$10,000
Non-EGU Allowable \$/ton	\$40.20	\$48.50
Non-EGU Actual \$/ton	\$64.20	\$70.50
EGU Allowable \$/ton	\$57.00	\$68.00
EGU Actual \$/ton	\$90.00	\$98.50

- Proposed \$/ton rate represents Actual-to-Allowable Ratio of 1.45 to 1 (current rule = 1.6 to 1)
- Projected Income with Fee Increase
 - \$7,275,137

Proposed Title V Fee Rule

- Remove Construction Permit Fee Exemption for Existing Title V facilities
 - 1200-03-26-.02(5)(a) and 1200-03-26-.02(9)(a)
 - APC Issues ~ 300 Construction Permits per Year
 - ~15% Issued to Title V Facilities
 - Estimated Income from Title V facilities < \$10,000/yr
 - Effective 7/1/2022
 - Requested Comments on Structure and Amount of Construction Permit Fees for Major Source Reviews & Whether they Should Differ from Existing Construction Permit Fees (Schedule A of 1200-03-26-.02(5)(g))

Schedule

- Listening Session – 6/9/2021
- Present Draft Title V Workload Analysis to Board – 8/11/2021
- Present Proposed Title V Fee Rule to Board – 8/11/2021
- Public Hearing & Close of Comment Period – 10/4/2021
- Board Consideration of Final Approval of Final Title V Workload Analysis – 11/10/2021
- Board Consideration of Final Approval of Title V Fee Rule- 11/10/2021

Public Participation

- Webinar Held 10/6/2021
 - 99 Participants
- Public Hearing Held 10/18/2021
 - 3 Participants
 - Brief presentation w. Q&A before public hearing
 - No comments made during hearing
- Two Written Comments Received
 - Richard Holland, APC Board Member
 - Tennessee Chamber of Commerce & Industry
- Comments & Responses in Board Package

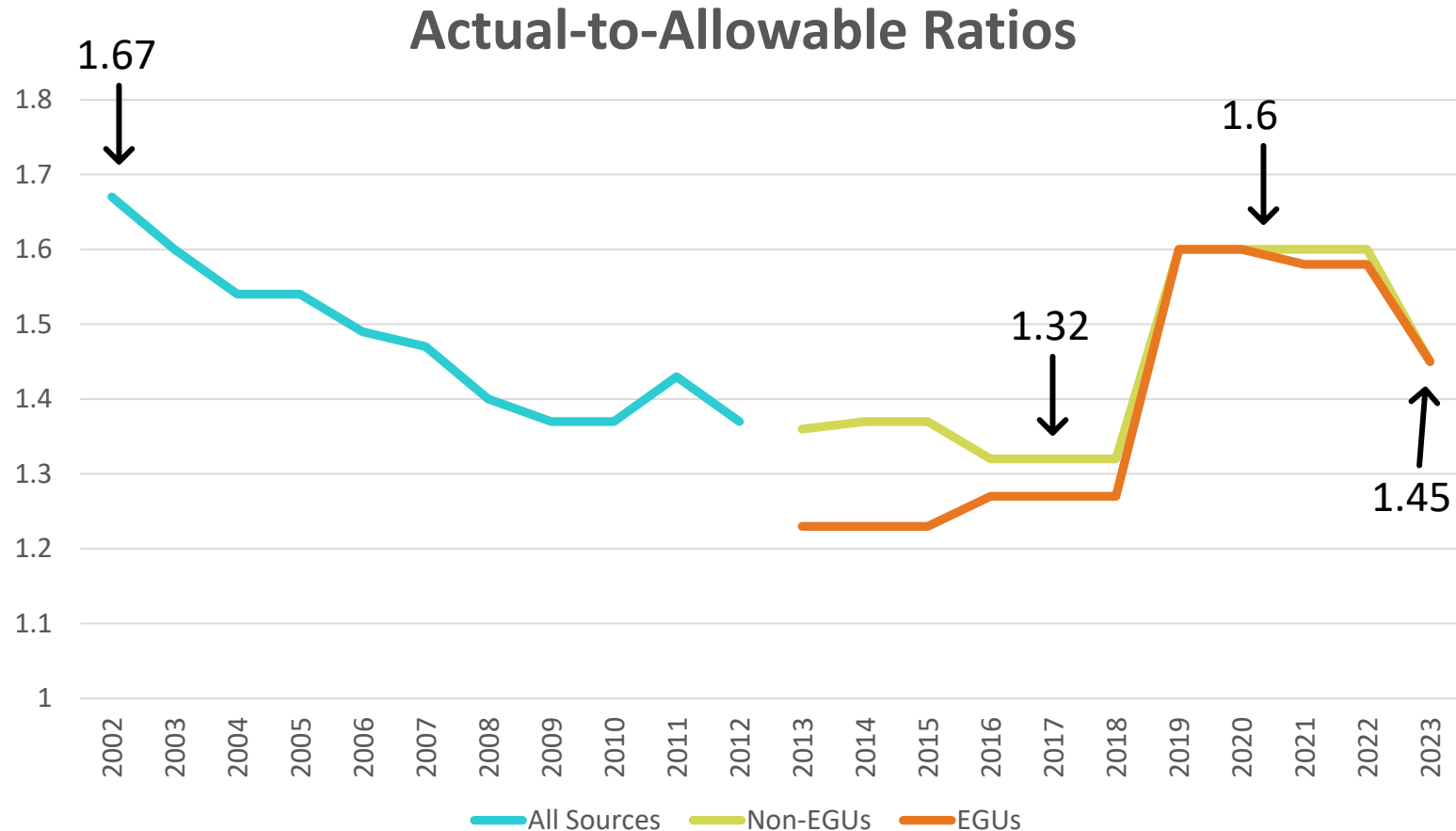
Mr. Holland's Comments

- Retain Actual-to-Allowable Ratio of 1.6 to 1
- Fee increase is ~10% for actual emissions, ~20% for allowable emissions
- Paying fees on allowable emissions is easier for companies and APC
- Fee rule should encourage payment on allowable emissions rather than penalize it with higher percentage increase
- Same percentage increase for both allowable and actual emissions

Response to Mr. Holland's Comments

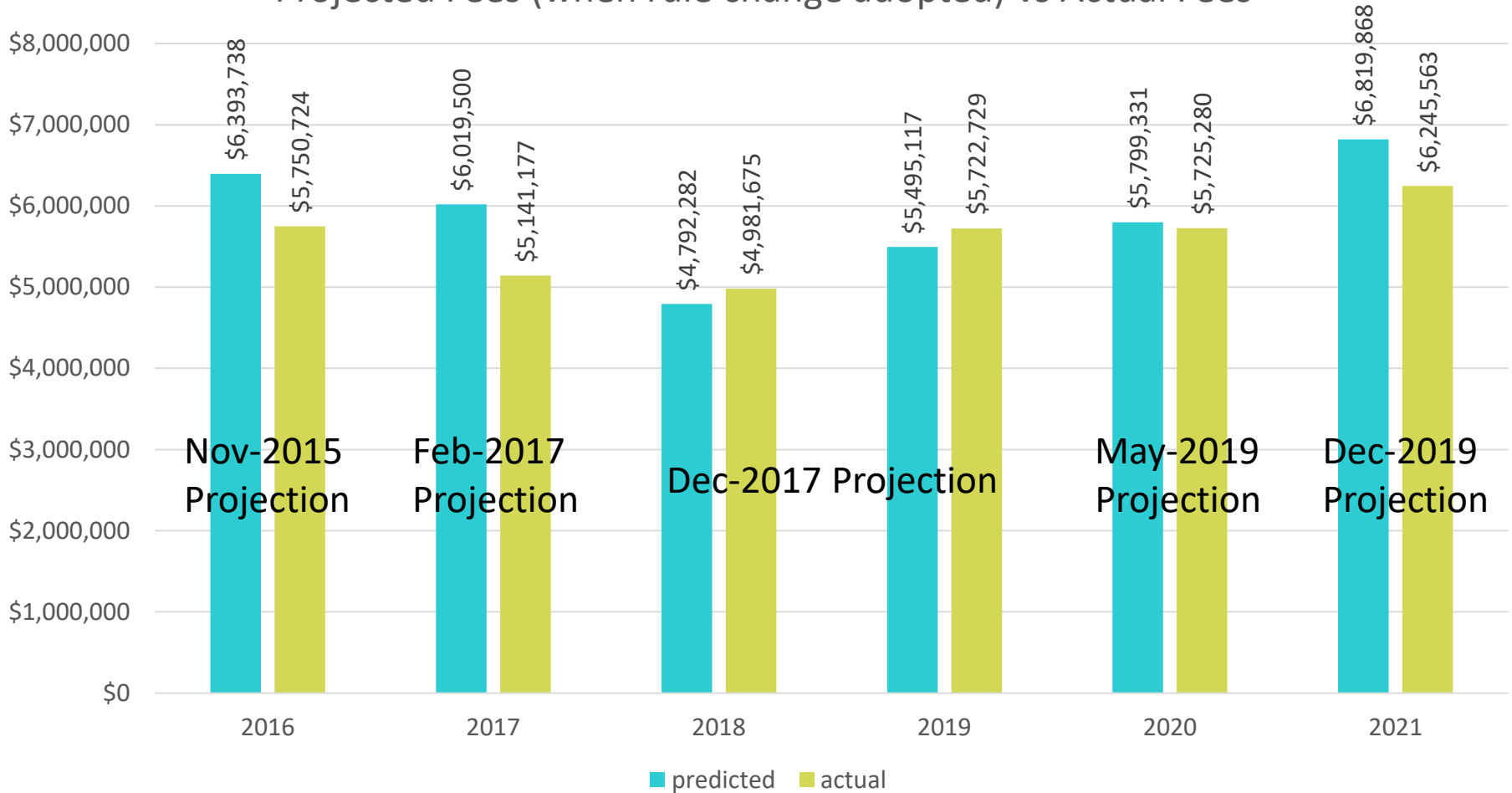
- Fee rate for actual emission based on assumption that actual emissions are lower than allowable emissions.
- Actual-to-allowable rate has varied from a high of 1.67-to-1 a low of 1.32-to-1 (1.23-to-1 for EGUs) (see following slide)
- 2015 Rule Change Allowed Facilities to Change Fee Calculation Method Each Year instead Upon Permit Renewal or Re-Opening
 - From Allowable to Actual or Mixed and vice-versa
 - From Fiscal Year to Calendar Year and vice-versa
 - Additional Flexibility Makes it More Difficult for Division to Predict Title V Income Resulting from Fee Change (see following slide)
- Changing actual-to-allowable ratio from 1.6-to-1 to 1.45-to-1 reduces impact of facilities changing calculation method
 - Improves ability to predict financial impact of fee changes

Response to Mr. Holland's Comments



Response to Mr. Holland's Comments

Projected Fees (when rule change adopted) vs Actual Fees



Nov-2015
Projection

Feb-2017
Projection

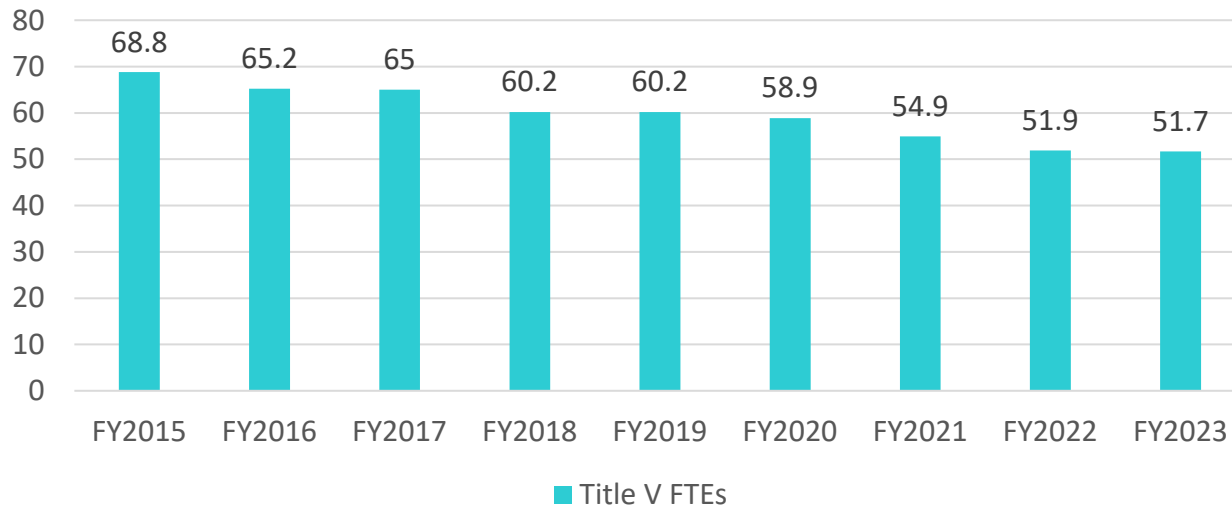
Dec-2017 Projection

May-2019
Projection

Dec-2019
Projection

Tennessee Chamber of Commerce and Industry (TCCI) Comment – Reduce Burden of Fee Increases

- Comment - It is vital for the Division to continue to identify ways to create efficiencies within its operations in order to lessen the burden of fee increases to the regulated community.
- Response
 - The Division has streamlined processes & increased efficiency, pursued workforce modernization. FTEs necessary to operate Title V Program has been reduce 33% since 2015 (as documented in Title V Workload Analyses approved by Board).
 - The Division will continue to evolve and modernize Title V program to meet needs of public and regulated community



Tennessee Chamber of Commerce and Industry (TCCI) Comments

- Increases to \$/ton rate, base fee, and minimum fee
 - Members prefer not to have fee increase, but recognize that expenses are projected to increase resulting in a shortfall if fee increase not adopted. Would support a fee increase that would not result in reserve balance greater than \$1 million. Since projections show balance below \$1 million at end of FY2023, chamber is neutral on proposed rule.
- Removal of Construction Permit Fee Exemption
 - While fee increases and additional fees never welcome, chamber is neutral on removal of exemption
- Future Rule Changes
 - Looks forward to working with APC in future to research alternatives to Title V fee structure. Make additional efforts to hold periodic ongoing conversations with Title V fee payers and acknowledge that emission will continue to decline

Questions



**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

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 (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Fees

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). 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 Fees Schedule

Amendments

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

- (a) 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. 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. §§ 68-201-101, et seq. and 4-5-201, et seq.

Part 1 of subparagraph (a) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Fees is amended by deleting it in its entirety and substituting instead the following:

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. Prior to July 1, 2022, a major source or Paragraph 11 source paying major source annual fees pursuant to this paragraph (9) 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. On or after July 1, 2022, all major sources and Paragraph 11 sources are subject to the construction permit fees of paragraph (5) of this rule.

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

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

- (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 \$6,000 for fees due on and after January 1, 2023. 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) \$10,000 for all other sources subject to this paragraph (9) for fees due on and after January 1, 2023.
 - (iii) The emission fee rates applied to calculate the annual fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:
 - (I) Fee based on actual emissions: \$70.50 per ton for non-EGU sources and \$98.50 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: \$48.50 per ton for non-EGU sources and \$68.00 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.

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. Ronné Adkins Commissioner's Designee, Dept. of Environment and Conservation					
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants					
Dr. Chunrong Jia Environmental Interests					
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation					
Richard Holland Working for Industry with technical experience					
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests					
Ken Moore Working in Municipal Government					
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control					
Mike Haverstick Working in management in Private Manufacturing					
Amy Spann, PE Registered Professional Engineer					
Greer Tidwell, Jr. Conservation Interest					
Larry Waters County Mayor					
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development					
Vacant Working for Industry with technical experience					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/10/2021 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: 08/24/2021

Rulemaking Hearing(s) Conducted on: (add more dates). 10/18/2021

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-26

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.

Herbert H. Slatery III
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

Mr. Richard Holland, a current member of the Tennessee Air Pollution Control Board, submitted comments via a letter dated October 15, 2021. A summary of his comments, and the Division of Air Pollution Control's (the Division's) responses, follow.

Comment: Mr. Holland stated that the Division's proposal is for emissions fees with a ratio of 1.45 for Actual: Allowable, but this ratio was set at 1.6 at the inception of the Title V program in Tennessee. He acknowledged that this ratio changed over time, but that it was reset to 1.6 in 2019. Mr. Holland suggested that this ratio remain at 1.6 rather than the proposed ratio of 1.45.

Response: The federal Clean Air Act ("CAA") requires Title V sources to cover all reasonable direct and indirect costs of administering a state-level Title V operating permit program ("Title V program"). State law authorizes the Air Pollution Control Board ("Board") to establish fees for the administration of Tennessee's Title V Program. Title V facilities may choose whether their annual emissions fee rate is based on actual emissions or allowable emissions. Based on the assumption that actual emissions are typically lower than allowable emissions, the dollar per ton fee rate for fees based on actual emissions is set at a higher rate than the fee rate for allowable emissions. The actual to allowable ratio for Title V fees has been adjusted several times over the past two decades. In FY2019, the actual to allowable ratio was set at the current ratio of 1.6 to 1 for both electric utility generating units ("EGUs") and non-EGUs. Prior to FY2019, the actual to allowable ratio has ranged from 1.32 to 1 for non-EGUs from FY2016 through FY2018; from 1.23 to 1 for EGUs from FY2013 through FY2015; and from 1.67 to 1 in 2002 for both non-EGUs and EGUs. In 2015, the Air Pollution Control Board amended the Title V fee rule to allow affected facilities to change the method used to determine their fees (allowable vs. actual or mixed, calendar year vs. fiscal year) each year. Prior to that amendment, facilities could only change the method at permit re-opening and renewal.

Due to flexibility created in the 2015 rule change for Title V facilities to switch their fee rate method from year to year, it has become difficult for the Division to accurately forecast Title V fee collections for future years. Since 2016, projections have been off between \$100,000 to \$900,000. Because federal law requires Title V sources to cover all direct and indirect costs of administering the state-level Title V program, incongruity between forecasts and actual fee collection is counter to both relatively predictable fee rates for the regulated community and the Division's ability to retain regulatory authority over the state-level Title V program.

To improve the Division's ability to forecast future Title V fee revenue while maintaining the flexibility allowed in the current rule, the proposed rule revises the actual to allowable ratio from 1.6 to 1 to 1.45 to 1. While the ratio is lower than the current ratio, it is higher than it was as recently as FY2018 and it is within the historical range of the actual to allowable dollar per ton ratios. The lower ratio will improve predictability of Title V fee collections and ensure Tennessee retains regulatory authority over the Title V program. Additionally, amending the schedule of fees set pursuant to Tennessee Code Annotated section 68-201-105(a)(1)(A) will result in collections closer to the amount projected during the rulemaking process.

Comment: Mr. Holland stated that the Division's proposed fee increase is about 10% for actual emissions and about 20% for allowable emissions. He further commented that paying fees on an allowable emissions basis is easier for both companies and the Division, and he feels that the fee rule should encourage payment on an allowable emissions basis rather than penalize it with a higher percentage increase. For this reason, he suggested that the Division adjust the dollar value of the fee rate such that the percent increase is closer to the same for both allowable and actual. Applying the same percentage increase to both Allowable and Actual would allow the ratio to remain at the 1.6 range.

Response: The proposed fee rule still has lower dollar per ton rates for facilities that choose to determine fees using allowable emissions and thus retains the advantage for companies that choose to do so. Also, please see the response to the first comment above.

The Tennessee Chamber of Commerce & Industry ("Chamber") submitted comments via a letter from Mallorie Kerby, Associate Vice President for Environment & Energy Affairs, dated October 18, 2021. The Chamber's comments were organized with introductory general comments followed by comments in two sections and closing comments. The general comments and each specific comment are summarized, and the Division's responses

follow.

General comment

Comment: The Chamber commented that it is vital for the Division to continue to identify ways to create efficiencies within its operations in order to lessen the burden of fee increases to the regulated community.

Response: The Board understands that the Division has undertaken efforts to streamline processes and increase the efficiency of the Title V program. Tennessee's Title V industry partners have been a driver to improve the Division's work product. As good stewards, the Division has pursued workforce modernization. The Title V program in Tennessee has undergone many changes since inception. As documented in the Title V Workload Analyses approved by the Air Pollution Control Board, these efforts have resulted in a 33% reduction in the number of Full Time Equivalents (FTEs) necessary to operate the Title V program over the past several years, as shown below:

FY2015 – 68.8 FTEs
FY2016 – 65.2 FTEs
FY2017 – 65.0 FTEs
FY2018 – 60.2 FTEs
FY2019 – 60.2 FTEs
FY2020 – 58.9 FTEs
FY2021 – 54.9 FTEs
FY2022 – 51.9 FTEs
FY2023 – 51.7 FTEs

It is the intention of the Board that the Division to continue to evolve and modernize the Title V program to meet the evolving needs of the public and regulated community. As with any workforce, modernization can create efficiencies, promote effectiveness, and reduce overhead. The Board is also cognizant that the Division remains obligated to comply with federal law to collect necessary funds to operate the Title V program as well as complying with all state applicable rules and policies regarding the state employee workforce.

Increases to \$/Ton Fee, Base Fee, and Minimum Fee

Comment: The Chamber commented that its member companies would prefer to not have a fee increase in this program. It acknowledged, however, that Division expenditures are projected to increase in fiscal year 2023 for many reasons, which will result in a shortfall if the proposed increase is not adopted. The Chamber also stated that it would not support a fee increase that would result in a reserve fund balance greater than \$1 million, and that since current projections show a balance below \$1 million at the end of fiscal year 2023 it does not oppose the proposed fee increases. The Chamber takes a neutral position on the proposed rules based on the information available at the time of comment submittal.

Response: The Board thanks you for your comments and looks forward to working with you and the Division in the future as we research alternatives to the current Title V fee structure.

Removal of Construction Permit Fee Exemption for Annual Fee Payers

Comment: The Chamber stated that, while fee increases and additional fees are never welcome, they acknowledged the Division's efforts to find ways to diversify the Title V fee structure. Thus, they are neutral on the removal of the construction permit fee exemption for Title V permitted facilities.

Response: The Board thanks you for your comments and looks forward to working with you and the Division in the future as we research alternatives to the current Title V fee structure.

Closing comment

Comment: The Chamber asked that the Division make additional effort to hold periodic and ongoing conversations with Title V fee payers and acknowledged that emissions will continue to decline as a result of technological advancements, routine capital improvements, and sustainability efforts at

Title V facilities.

Response: The Board thanks you for your comments and looks forward to working with you and the Division in the future as we research alternatives to the current Title V fee structure.

Additional comments on these rules.

Comment: The rule amendments proposed to remove the exemption from payment of construction permit fees for sources that are paying annual emission fees pursuant to paragraph (9) of Rule 1200-03-26-.02. Due to the proposed removal of constructions permit fees, comments regarding the structure and amount of construction permit fee(s) for major source reviews and whether any such fee should differ from Schedule A of subparagraph (5)(g) of Rule 1200-03-26-.02 were solicited. As a result, new paragraph (5)(h) of Rule 1200-03-26-.02 was added for this purpose. No comments were received suggesting a different fee from those in Schedule A of subparagraph (5)(g) of Rule 1200-03-26-.02. The new subparagraph (5)(h) of Rule 1200-03-26-.02 should be deleted and, for consistency, subparagraph (5)(a) of Rule 1200-03-26-.02 revised to delete the language regarding the exemption.

Response: The Board agrees and has revised the rules as suggested.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Any small business with a Title V operating permit will be affected by these rule amendments. 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 requirement. The changes to Title V fee rates and the requirement for Title V facilities to pay construction permit application fees ensure collection of adequate revenue to meet federal requirements so Tennessee sources will continue to be directly regulated by Tennessee and not by the EPA. Types of small businesses with Title V permits can include boat manufacturing operations, automotive parts manufacturing, and coating operations.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

It is not anticipated that the proposed rule amendments will increase compliance costs relative to reporting, recordkeeping, or other administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed rule amendments will increase fees owed for small businesses required to have Title V operating permits. It is not anticipated that consumers will be measurably impacted.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

No less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule are known to exist.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Each state’s fee system is unique, so direct comparisons to either federal or state counterparts cannot be made; however, all states and the federal government impose fees to fund the Title V program. The federal government imposes a single rate while other states impose minimum and base fees like Tennessee.

In addition to annual fees based on emissions, many states require Title V permitted facilities to pay construction permit application fees. A majority of these states have significantly higher construction permit fee rates than Tennessee’s currently effective rates. Tennessee’s construction permit fee rates are not being revised in this proposed rulemaking.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses could increase the fees paid by businesses that do not meet the definition of a small business or, alternatively, result in the collection of insufficient fees to operate the Title V program as required by federal law.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits for the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments." The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Department anticipates that these amended rules will result in an increase in expenditures for local governments that own and operate sources required to have a Title V operating permit.

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;

This rulemaking makes necessary changes to ensure Tennessee's compliance with federal law that requires state and local permitting authorities charge Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. The rulemaking increases the existing Title V operating permit annual base fee by \$1,000, the existing minimum annual base fee by \$1,000, the dollar per ton for non-EGU sources by \$8.30 allowable and \$6.30 actual, and the dollar per ton for EGU sources by \$11.00 allowable and \$8.50 actual. The rulemaking also requires existing facilities that are required to have Title V operating permits to pay construction permit application fees.

- (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;

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 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[.]" Tennessee Code Annotated section 68-203-103 authorizes the Air Pollution Control Board ("Board") to establish fees under the Tennessee Air Quality Act for administration of the Title V program. To comply with the CAA requirement, the Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. The Board also approved a revision removing Title V sources from the exemption to pay construction permit application fees.

- (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 sources in the state required to have Title V permits are directly affected by this rule. Most of these sources are major sources of air pollution. These entities recognize the necessity of fee collections and of increases to the currently effective fees.

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

The Board is not aware of any opinions that directly relate to the rulemaking.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking will result in increased revenues of approximately \$963,000 above what would be collected under the existing rule.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

James Johnston and Lacey Hardin
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
James.Johnston@tn.gov
Lacey.Hardin@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Blair Beaty
Legislative Liaison
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-1965
Blair.Beaty@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

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[.]” Tennessee Code Annotated section 68-203-103 authorizes the Air Pollution Control Board (“Board”) to establish fees under the Tennessee Air Quality Act for administration of the Title V program. To comply with the CAA requirement, the Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit (“EGU”) and non-EGU sources. The Board also approved a revision removing Title V sources from the exemption to pay construction permit application fees.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

Because the federal CAA requires that regulated entities pay all costs, direct and indirect, to operate the state-level Title V permit program, the Division prepares a detailed Workload Analysis each year that must be approved by the Board. This analysis must show that the fees assessed will be adequate to fund the program. The Board has determined that these amendments are necessary to support continuing operation of the state-level Title V program and are the least-costly method of achieving the purposes of these amendments.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

Failure to amend the Title V fee rules to ensure adequate collections to fund the Title V program would negatively impact regulated businesses by decreasing the Division’s ability to be responsive to businesses’ needs and increase the time taken for permitting actions. Nonaction would ultimately place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the EPA.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources.

- (5) A determination of the effect of the action on competition.

No impact on competition is expected.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on the cost of living.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on employment.
- (8) The source of revenue to be used for the action.
- Existing revenues will be used to implement these revisions.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- Major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the magnitude of emissions from the source. These sources will directly benefit from this action by ensuring that the Division is able to retain primary regulatory authority over the Title V program, thereby retaining the ability to adequately address their permitting needs. Tennesseans will benefit directly from this action through continued maintenance of the National Ambient Air Quality Standards assured by adequate regulation and oversight of major sources of air pollution by the Division. Additionally, this action will indirectly support all Tennesseans by way of economic development/job creation in the state by allowing the Division to continue providing a competitive permitting services package attractive to prospective Title V industry.

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 Nashville, TN 37243
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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 (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

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

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Fees

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). 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 Fees Schedule

Amendments

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

- (a) ~~On and after October 24, 1991, a~~ 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. §§ 68-201-101, et seq. and 4-5-201, et seq.

Part 1 of subparagraph (a) of paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Fees is amended by deleting it in its entirety and substituting instead the following:

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 Prior to July 1, 2022, a major stationary source or Paragraph 11 source begins to pay paying~~ 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. On or after July 1, 2022, all major sources and Paragraph 11 sources are subject to the construction permit fees of paragraph (5) of this rule.

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

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

- (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~~ \$6,000 for fees due on and after ~~January 1, 2021~~ January 1, 2023. 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~~ \$10,000 for all other sources subject to this paragraph (9) for fees due on and after ~~January 1, 2024~~ January 1, 2023.
- (iii) The emission fee rates applied to calculate the annual fee assessed pursuant to subparagraph (a) of this paragraph shall be as follows:
- (I) Fee based on actual emissions: ~~\$64.20~~ \$70.50 per ton for non-EGU sources and ~~\$90.00~~ \$98.50 per ton for EGU sources; and
 - (II) Fee based on allowable emissions: ~~\$40.20~~ \$48.50 per ton for non-EGU sources and ~~\$57.00~~ \$68.00 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.

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. Ronné Adkins Commissioner's Designee, Dept. of Environment and Conservation					
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants					
Dr. Chunrong Jia Environmental Interests					
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation					
Richard Holland Working for Industry with technical experience					
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests					
Ken Moore Working in Municipal Government					
Dr. Joshua Fu Involved with Institution of Higher Learning on air pollution evaluation and control					
Mike Haverstick Working in management in Private Manufacturing					
Amy Spann, PE Registered Professional Engineer					
Greer Tidwell, Jr. Conservation Interest					
Larry Waters County Mayor					
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development					
Vacant Working for Industry with technical experience					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 11/10/2021 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: 08/24/2021

Rulemaking Hearing(s) Conducted on: (add more dates). 10/18/2021

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-26

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.

Herbert H. Slatery III
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

Mr. Richard Holland, a current member of the Tennessee Air Pollution Control Board, submitted comments via a letter dated October 15, 2021. A summary of his comments, and the Division of Air Pollution Control's (the Division's) responses, follow.

Comment: Mr. Holland stated that the Division's proposal is for emissions fees with a ratio of 1.45 for Actual: Allowable, but this ratio was set at 1.6 at the inception of the Title V program in Tennessee. He acknowledged that this ratio changed over time, but that it was reset to 1.6 in 2019. Mr. Holland suggested that this ratio remain at 1.6 rather than the proposed ratio of 1.45.

Response: The federal Clean Air Act ("CAA") requires Title V sources to cover all reasonable direct and indirect costs of administering a state-level Title V operating permit program ("Title V program"). State law authorizes the Air Pollution Control Board ("Board") to establish fees for the administration of Tennessee's Title V Program. Title V facilities may choose whether their annual emissions fee rate is based on actual emissions or allowable emissions. Based on the assumption that actual emissions are typically lower than allowable emissions, the dollar per ton fee rate for fees based on actual emissions is set at a higher rate than the fee rate for allowable emissions. The actual to allowable ratio for Title V fees has been adjusted several times over the past two decades. In FY2019, the actual to allowable ratio was set at the current ratio of 1.6 to 1 for both electric utility generating units ("EGUs") and non-EGUs. Prior to FY2019, the actual to allowable ratio has ranged from 1.32 to 1 for non-EGUs from FY2016 through FY2018; from 1.23 to 1 for EGUs from FY2013 through FY2015; and from 1.67 to 1 in 2002 for both non-EGUs and EGUs. In 2015, the Air Pollution Control Board amended the Title V fee rule to allow affected facilities to change the method used to determine their fees (allowable vs. actual or mixed, calendar year vs. fiscal year) each year. Prior to that amendment, facilities could only change the method at permit re-opening and renewal.

Due to flexibility created in the 2015 rule change for Title V facilities to switch their fee rate method from year to year, it has become difficult for the Division to accurately forecast Title V fee collections for future years. Since 2016, projections have been off between \$100,000 to \$900,000. Because federal law requires Title V sources to cover all direct and indirect costs of administering the state-level Title V program, incongruity between forecasts and actual fee collection is counter to both relatively predictable fee rates for the regulated community and the Division's ability to retain regulatory authority over the state-level Title V program.

To improve the Division's ability to forecast future Title V fee revenue while maintaining the flexibility allowed in the current rule, the proposed rule revises the actual to allowable ratio from 1.6 to 1 to 1.45 to 1. While the ratio is lower than the current ratio, it is higher than it was as recently as FY2018 and it is within the historical range of the actual to allowable dollar per ton ratios. The lower ratio will improve predictability of Title V fee collections and ensure Tennessee retains regulatory authority over the Title V program. Additionally, amending the schedule of fees set pursuant to Tennessee Code Annotated section 68-201-105(a)(1)(A) will result in collections closer to the amount projected during the rulemaking process.

Comment: Mr. Holland stated that the Division's proposed fee increase is about 10% for actual emissions and about 20% for allowable emissions. He further commented that paying fees on an allowable emissions basis is easier for both companies and the Division, and he feels that the fee rule should encourage payment on an allowable emissions basis rather than penalize it with a higher percentage increase. For this reason, he suggested that the Division adjust the dollar value of the fee rate such that the percent increase is closer to the same for both allowable and actual. Applying the same percentage increase to both Allowable and Actual would allow the ratio to remain at the 1.6 range.

Response: The proposed fee rule still has lower dollar per ton rates for facilities that choose to determine fees using allowable emissions and thus retains the advantage for companies that choose to do so. Also, please see the response to the first comment above.

The Tennessee Chamber of Commerce & Industry ("Chamber") submitted comments via a letter from Mallorie Kerby, Associate Vice President for Environment & Energy Affairs, dated October 18, 2021. The Chamber's comments were organized with introductory general comments followed by comments in two sections and closing comments. The general comments and each specific comment are summarized, and the Division's responses

follow.

General comment

Comment: The Chamber commented that it is vital for the Division to continue to identify ways to create efficiencies within its operations in order to lessen the burden of fee increases to the regulated community.

Response: The Board understands that the Division has undertaken efforts to streamline processes and increase the efficiency of the Title V program. Tennessee's Title V industry partners have been a driver to improve the Division's work product. As good stewards, the Division has pursued workforce modernization. The Title V program in Tennessee has undergone many changes since inception. As documented in the Title V Workload Analyses approved by the Air Pollution Control Board, these efforts have resulted in a 33% reduction in the number of Full Time Equivalents (FTEs) necessary to operate the Title V program over the past several years, as shown below:

FY2015 – 68.8 FTEs
FY2016 – 65.2 FTEs
FY2017 – 65.0 FTEs
FY2018 – 60.2 FTEs
FY2019 – 60.2 FTEs
FY2020 – 58.9 FTEs
FY2021 – 54.9 FTEs
FY2022 – 51.9 FTEs
FY2023 – 51.7 FTEs

It is the intention of the Board that the Division to continue to evolve and modernize the Title V program to meet the evolving needs of the public and regulated community. As with any workforce, modernization can create efficiencies, promote effectiveness, and reduce overhead. The Board is also cognizant that the Division remains obligated to comply with federal law to collect necessary funds to operate the Title V program as well as complying with all state applicable rules and policies regarding the state employee workforce.

Increases to \$/Ton Fee, Base Fee, and Minimum Fee

Comment: The Chamber commented that its member companies would prefer to not have a fee increase in this program. It acknowledged, however, that Division expenditures are projected to increase in fiscal year 2023 for many reasons, which will result in a shortfall if the proposed increase is not adopted. The Chamber also stated that it would not support a fee increase that would result in a reserve fund balance greater than \$1 million, and that since current projections show a balance below \$1 million at the end of fiscal year 2023 it does not oppose the proposed fee increases. The Chamber takes a neutral position on the proposed rules based on the information available at the time of comment submittal.

Response: The Board thanks you for your comments and looks forward to working with you and the Division in the future as we research alternatives to the current Title V fee structure.

Removal of Construction Permit Fee Exemption for Annual Fee Payers

Comment: The Chamber stated that, while fee increases and additional fees are never welcome, they acknowledged the Division's efforts to find ways to diversify the Title V fee structure. Thus, they are neutral on the removal of the construction permit fee exemption for Title V permitted facilities.

Response: The Board thanks you for your comments and looks forward to working with you and the Division in the future as we research alternatives to the current Title V fee structure.

Closing comment

Comment: The Chamber asked that the Division make additional effort to hold periodic and ongoing conversations with Title V fee payers and acknowledged that emissions will continue to decline as a result of technological advancements, routine capital improvements, and sustainability efforts at

Title V facilities.

Response: The Board thanks you for your comments and looks forward to working with you and the Division in the future as we research alternatives to the current Title V fee structure.

Additional comments on these rules.

Comment: The rule amendments proposed to remove the exemption from payment of construction permit fees for sources that are paying annual emission fees pursuant to paragraph (9) of Rule 1200-03-26-.02. Due to the proposed removal of constructions permit fees, comments regarding the structure and amount of construction permit fee(s) for major source reviews and whether any such fee should differ from Schedule A of subparagraph (5)(g) of Rule 1200-03-26-.02 were solicited. As a result, new paragraph (5)(h) of Rule 1200-03-26-.02 was added for this purpose. No comments were received suggesting a different fee from those in Schedule A of subparagraph (5)(g) of Rule 1200-03-26-.02. The new subparagraph (5)(h) of Rule 1200-03-26-.02 should be deleted and, for consistency, subparagraph (5)(a) of Rule 1200-03-26-.02 revised to delete the language regarding the exemption.

Response: The Board agrees and has revised the rules as suggested.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Any small business with a Title V operating permit will be affected by these rule amendments. 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 requirement. The changes to Title V fee rates and the requirement for Title V facilities to pay construction permit application fees ensure collection of adequate revenue to meet federal requirements so Tennessee sources will continue to be directly regulated by Tennessee and not by the EPA. Types of small businesses with Title V permits can include boat manufacturing operations, automotive parts manufacturing, and coating operations.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

It is not anticipated that the proposed rule amendments will increase compliance costs relative to reporting, recordkeeping, or other administrative costs.

- (3) A statement of the probable effect on impacted small businesses and consumers.

The proposed rule amendments will increase fees owed for small businesses required to have Title V operating permits. It is not anticipated that consumers will be measurably impacted.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

No less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule are known to exist.

- (5) A comparison of the proposed rule with any federal or state counterparts.

Each state’s fee system is unique, so direct comparisons to either federal or state counterparts cannot be made; however, all states and the federal government impose fees to fund the Title V program. The federal government imposes a single rate while other states impose minimum and base fees like Tennessee.

In addition to annual fees based on emissions, many states require Title V permitted facilities to pay construction permit application fees. A majority of these states have significantly higher construction permit fee rates than Tennessee’s currently effective rates. Tennessee’s construction permit fee rates are not being revised in this proposed rulemaking.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses could increase the fees paid by businesses that do not meet the definition of a small business or, alternatively, result in the collection of insufficient fees to operate the Title V program as required by federal law.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits for the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments." The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Department anticipates that these amended rules will result in an increase in expenditures for local governments that own and operate sources required to have a Title V operating permit.

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;

This rulemaking makes necessary changes to ensure Tennessee's compliance with federal law that requires state and local permitting authorities charge Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. The rulemaking increases the existing Title V operating permit annual base fee by \$1,000, the existing minimum annual base fee by \$1,000, the dollar per ton for non-EGU sources by \$8.30 allowable and \$6.30 actual, and the dollar per ton for EGU sources by \$11.00 allowable and \$8.50 actual. The rulemaking also requires existing facilities that are required to have Title V operating permits to pay construction permit application fees.

- (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;

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 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[.]" Tennessee Code Annotated section 68-203-103 authorizes the Air Pollution Control Board ("Board") to establish fees under the Tennessee Air Quality Act for administration of the Title V program. To comply with the CAA requirement, the Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit ("EGU") and non-EGU sources. The Board also approved a revision removing Title V sources from the exemption to pay construction permit application fees.

- (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 sources in the state required to have Title V permits are directly affected by this rule. Most of these sources are major sources of air pollution. These entities recognize the necessity of fee collections and of increases to the currently effective fees.

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

The Board is not aware of any opinions that directly relate to the rulemaking.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking will result in increased revenues of approximately \$963,000 above what would be collected under the existing rule.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

James Johnston and Lacey Hardin
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
James.Johnston@tn.gov
Lacey.Hardin@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Blair Beaty
Legislative Liaison
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-1965
Blair.Beaty@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

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[.]” Tennessee Code Annotated section 68-203-103 authorizes the Air Pollution Control Board (“Board”) to establish fees under the Tennessee Air Quality Act for administration of the Title V program. To comply with the CAA requirement, the Board adopted rule amendments that revise the amount of the dollar/ton (\$/ton) fees, the base fee, and the minimum fee for electric utility generating unit (“EGU”) and non-EGU sources. The Board also approved a revision removing Title V sources from the exemption to pay construction permit application fees.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

Because the federal CAA requires that regulated entities pay all costs, direct and indirect, to operate the state-level Title V permit program, the Division prepares a detailed Workload Analysis each year that must be approved by the Board. This analysis must show that the fees assessed will be adequate to fund the program. The Board has determined that these amendments are necessary to support continuing operation of the state-level Title V program and are the least-costly method of achieving the purposes of these amendments.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

Failure to amend the Title V fee rules to ensure adequate collections to fund the Title V program would negatively impact regulated businesses by decreasing the Division’s ability to be responsive to businesses’ needs and increase the time taken for permitting actions. Nonaction would ultimately place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the EPA.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

The Board, comprised of members that represent both public and private interests, believes that these amendments are an efficient allocation of public and private resources.

- (5) A determination of the effect of the action on competition.

No impact on competition is expected.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.
- These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on the cost of living.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.
- These amendments are applied equally across Tennessee and are not anticipated to have a measurable impact on employment.
- (8) The source of revenue to be used for the action.
- Existing revenues will be used to implement these revisions.
- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.
- Major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the magnitude of emissions from the source. These sources will directly benefit from this action by ensuring that the Division is able to retain primary regulatory authority over the Title V program, thereby retaining the ability to adequately address their permitting needs. Tennesseans will benefit directly from this action through continued maintenance of the National Ambient Air Quality Standards assured by adequate regulation and oversight of major sources of air pollution by the Division. Additionally, this action will indirectly support all Tennesseans by way of economic development/job creation in the state by allowing the Division to continue providing a competitive permitting services package attractive to prospective Title V industry.



STATE OF TENNESSEE

Update on Landfill Regulations

Summary of Landfill Regulations

- Old NSPS and emission guidelines:
 - 40 CFR 60 Subpart WWW (new sources)
 - 40 CFR 60 Subpart Cc and TAPCR 1200-03-07-.07(7) (State plan requirements for existing sources)
- New NSPS and emission guidelines:
 - 40 CFR 60 Subpart XXX (new sources)
 - 40 CFR 60 Subpart Cf (State plan requirements for existing sources)
 - 40 CFR 62 Subpart OOO (Federal plan requirements for existing sources).

40 CFR 60 Subpart WWW

- MSW landfills with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters
- Commenced construction, reconstruction, or modification on or after May 30, 1991, but before July 18, 2014.
- Control requirements apply if nonmethane organic compounds (NMOC) emissions are **50 Mg/year or higher**
 - Install, maintain, and operate a gas collection and control system (GCCS)
 - Monitor each GCCS wellhead for negative pressure
 - Monitor the nitrogen or oxygen concentration in each GCCS wellhead
 - Monitor landfill surface emissions concentration

40 CFR 60 Subpart Cc

- Subpart Cc applies to each State that has at least one MSW landfill with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters, which commenced construction, reconstruction, or modification before May 30, 1991. States must develop a 111(d) plan for existing sources.
- Compliance requirements are identical to 40 CFR 60 Subpart WWW.
- EPA adopted an equivalent Federal plan (40 CFR 62 Subpart GGG) for States that did not adopt a State plan. The Federal plan requirements have never applied in Tennessee.
- Tennessee's State plan is codified at TAPCR 1200-03-07-.07(7), requires all landfills (new and existing) to comply with the requirements of 40 CFR 60 Subpart WWW, and incorporates the rule text of Subpart WWW.

40 CFR 60 Subpart XXX

- MSW landfills with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters
- Commenced construction, reconstruction, or modification on or after July 18, 2014.
- Control requirements apply if nonmethane organic compounds (NMOC) emissions are **34 Mg/year or higher**
 - Install, maintain, and operate a gas collection and control system (GCCS)
 - Monitor each GCCS wellhead for negative pressure
 - Monitor landfill surface emissions concentration
 - Monitoring of nitrogen or oxygen concentrations is not required.
 - Updated testing and reporting requirements
 - Updated requirements for landfill gas treatment systems.

40 CFR 60 Subpart Cf

- Subpart Cc applies to each State that has at least one MSW landfill with a design capacity greater than 2.5 million megagrams and 2.5 million cubic meters, which commenced construction, reconstruction, or modification before July 18, 2014. States must develop a 111(d) plan for existing sources.
- Compliance requirements are identical to 40 CFR 60 Subpart XXX.
- EPA adopted an equivalent Federal plan (40 CFR 62 Subpart OOO) for States that did not adopt a State plan.
- Tennessee has been working on a State plan to implement the requirement of Subpart Cf. However, as of June 2021, the Federal plan applies to landfills in Tennessee.

Stay, Reconsideration, Legal Challenges

- Subparts XXX and Cf were finalized August 29, 2016, and the initial deadline for state plans was May 30, 2017. The Division drafted a regulation to implement subpart Cf in early 2017.
- Subparts XXX and Cf were stayed by EPA pending reconsideration of the final rules. The stay expired before reconsideration was completed, but EPA recommended that States hold off until reconsideration issues, including updates to related NESHAP (40 CFR 63 Subpart AAAA) were resolved.
- Several legal challenges to the stay were successful, and EPA was required to proceed with development of a federal plan for existing landfills. The federal plan (40 CFR 62 Subpart OOO) was adopted May 21, 2021 and has applied in Tennessee since June 2021.

Status of State Rulemaking

- The Division has revised and updated the 2017 State plan, which incorporates 40 CFR 60 Subpart XXX by reference.
- The Division requested stakeholder input for the rule in 2017 and again in 2020.
- EPA proposed a set of technical corrections to Subpart XXX in May 2021, and we are waiting for these corrections to be finalized before proceeding with rulemaking (since we are adopting the rule by reference, we need the most recent version).
- Technical corrections to Subpart XXX were expected September 2021 but have not been published.

Alternative Approach

- 40 CFR 62 Subpart 000 generally matches 40 CFR 60 Subparts XXX and Cf, but there are additional provisions for “legacy controlled landfills.” The federal plan does not require resubmittal of certain information (e. g., design capacity reports, NMOC emission rate reports) required under previous regulations.
- The Division has received positive comments from the regulated community on the Federal plan, but Tennessee currently does not have authority to implement and enforce 40 CFR 62 Subpart 000. One facility has suggested that Tennessee request delegation authority from EPA in lieu of developing a state plan.
- Any delegation request would require public participation, Board approval, and a submittal to U. S. EPA but would not require rulemaking.
- Tennessee also has the option of adopting a state plan that incorporates provisions of the federal plan, such as the provisions for legacy controlled landfills.
- The Division is planning a third round of stakeholder input to consider a delegation request in lieu of rulemaking. The third round of stakeholder input will take comments on A) adopting state plan based on Cf, B) adopting a state plan based on Cf with some provisions from federal plan, and C) seeking delegation of the federal plan.



THANK YOU