

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

**Wednesday, November 08, 2023  
9:30 A.M.**

	<b>Item</b>	<b>Presenter</b>	<b>Page</b>
1.	Roll Call		
2.	Approval of the October 11, 2023, Board Meeting Minutes		2
3.	Title V Work Analysis BO-23-005 Title V Fee Diversification Rule Chapter 1200-3-26-2023 Title V Amendment	James Johnston	7 46
4.	Questions from the Public or Online Participants		

Air Pollution Control Board  
of the  
State of Tennessee  
Regular Meeting

On Wednesday October 11, 2023, at 9:33 A.M., the Air Pollution Control Board of the State of Tennessee, (hereinafter, referred to as the “Board”), began its meeting on the 3<sup>rd</sup> Floor of the Tennessee Tower in the Nashville Room. The following Board members were physically present.

Dr. Ronne’ Adkins  
Dr. Joshua Fu  
Mr. Mike Haverstick  
Dr. Shawn Hawkins  
Mr. Richard Holland  
Ms. Caitlyn Jennings  
Mayor Ken Moore  
Mr. Stephen Moore  
Mr. Nicholas Ramos  
Ms. Amy Spann  
Mayor Larry Waters  
Mr. Jimmy West

The following Board members joined the meeting via WebEx.

Dr. John Benitez  
Dr. Chunrong Jia

Since the Chairman, David Salyers, P.E., could not attend the meeting, Dr. Ronne’ Adkins represented the Chairman by proxy. Ms. Michelle Owenby, Director, Division of Air Pollution Control, served as Technical Secretary.

The Vice-Chairman, Mayor Larry Waters, called the meeting to order and asked for a roll call and the response was as follows:

Dr. Adkins	Present	Dr. Benitez	Webex
Dr. Fu	Present	Mr. Haverstick	Present
Dr. Hawkins	Present	Mr. Holland	Present
Ms. Jennings	Present	Dr. Jia	Webex
Mayor Moore	Present	Mr. Moore	Present
Mr. Ramos	Present	Ms. Spann	Present
Mayor Waters	Present	Mr. West	Present

Twelve (12) Board members were present, two (2) participated via WebEx.

The next item on the agenda was the approval of the minutes from the August 09, 2023, Board meeting. The Vice-Chairman, Mayor Larry Waters, requested a motion to approve the minutes. Mayor Moore made a motion to approve the minutes and Mr. Holland seconded the motion. The Vice-Chairman asked if there were any additions or corrections to the minutes. Hearing none, the Vice-Chair asked for a roll call and the response was as follows:

Dr. Adkins	Yes	Dr. Benitez	Yes
Dr. Fu	Yes	Mr. Haverstick	Yes
Dr. Hawkins	Yes	Mr. Holland	Yes
Ms. Jennings	Yes	Dr. Jia	Yes
Mayor Moore	Yes	Mr. Moore	Yes
Mr. Ramos	Yes	Ms. Spann	Yes
Mayor Waters	Yes	Mr. West	Yes

The motion carried with Fourteen (14) affirmative votes; the minutes were approved as presented.

The Vice-Chairman then invited Mr. James Johnston to the podium.

Mr. Johnston was to present the 2024-2025 Title V Work Analysis, Board Order 23-005. The Work Analysis provides an estimate of the manpower and funding needed to support the Title V program in state fiscal year 2024-2025 to ensure compliance with federal law.

Dr. Ronne' Adkins, made a motion on behalf of the department for items 3 and 4, (Title V Work Analysis BO-23-0005, Title V Fee Diversification, Rule Chapter 1200-3-26-2023 Title V Amendment) be tabled and moved to the agenda for the November 08, 2023, meeting. Dr. Adkins stated, the department received a request from the Tennessee Chamber of Commerce to delay consideration of these items until they can further review them. So, we support the Tennessee Chamber of Commerce request to further review the Workload Analysis.

The Vice-Chairman requested a motion to approve the postponement of Title V Work Analysis, Board Order 23-005 until November 08, 2023. Dr. Adkins made a motion to approve, and Mr. West seconded the motion.

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

Dr. Adkins	Yes	Dr. Benitez	Yes
Dr. Fu	Yes	Mr. Haverstick	Yes
Dr. Hawkins	Yes	Mr. Holland	Yes
Ms. Jennings	Yes	Dr. Jia	Yes
Mayor Moore	Yes	Mr. Moore	Yes
Mr. Ramos	Yes	Ms. Spann	Yes
Mayor Waters	Yes	Mr. West	Yes

The motion carried with Fourteen (14) affirmative votes; the 2024-2025 Work Analysis, Board Order 23-005 and Diversification was postponed for review, to be heard November 08, 2023.

Mr. Jimmy West added, it was disappointing that we have the need to push this back. We've discussed these items for a year and a half, never received a whole lot of feedback regarding major concerns. We have tweaked and re-tweaked along the way to the benefit of many businesses. I am seconding the item, but I am regretfully seconding the item, but fully support deferring the item today.

The Vice-Chairman then invited Mr. Mark Reynolds to the podium.

Mr. Mark Reynolds, Division of Air Pollution Control, presented the New Source Performance Standards (NSPS) rule revision. Mr. Reynolds stated that the rule revision would incorporate by reference the federal NSPS rules into the state rules. This would include all the NSPS rules in 40 CFR Part 60, except the emission guidelines. Currently, most NSPS 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 NSPS that are not reproduced through the current regulations must be placed in a permit before they can be enforced. By adopting federal NSPS 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 proposes to repeal the current NSPS rules that are in the state rules. The NSPS rule revision would incorporate by reference the July 1, 2022, CFR version of the NSPS 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.

The Vice-Chairman requested a motion to approve the NSPS Rulemaking. Mayor Moore made a motion to approve, and Mr. Haverstick seconded the motion.

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

Dr. Adkins	Yes	Dr. Benitez	Yes
Dr. Fu	Yes	Mr. Haverstick	Yes
Dr. Hawkins	Yes	Mr. Holland	Yes
Ms. Jennings	Yes	Dr. Jia	Yes
Mayor Moore	Yes	Mr. Moore	Yes
Mr. Ramos	Yes	Ms. Spann	Yes
Mayor Waters	Yes	Mr. West	Yes

The motion carried with Fourteen (14) affirmative votes; the NSPS Rulemaking was approved.

Attorney, Mr. Grant Ruhl, Office of General Counsel, informed the board that he would be serving as the APC Board's primary attorney. Mr. Ruhl introduced Ms. Emily Vann to the board, Ms. Vann will serve as the secondary APC Board attorney. Mr. Ruhl then presented Public Chapter 300. Mr. Ruhl will propose the rules and procedures for public comment at the November 08, 2023, meeting for the board to review and adopt.

There being no further business to discuss before the Board, nor members of the public wishing to address the Board, the meeting was adjourned at 10:00 am.

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(Signed) Michelle Owenby, Technical Secretary  
Tennessee Air Pollution Control Board

Approved at Nashville, Tennessee on November 8, 2023

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(Signed) Mayor Larry Waters, Vice-Chairman  
Tennessee Air Pollution Control Board

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(Signed) David Salyers, Chairman  
Tennessee Air Pollution Control Board

# Title V

## Workload Analysis

Fiscal Year 2024-2025



Division of Air Pollution Control  
November 8, 2023

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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 (APC 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 56.4 full-time equivalent (FTE) positions in fiscal year 2024-2025 (FY2025).

This Implementation Plan consists of eleven (11) separate functional units within the Division, plus the Small Business Environmental Assistance Program<sup>1</sup>, 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. 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, 2023, through August 31, 2024, is \$61.73. This fee rate represents an increase of 5.43149% (or \$3.18) from the fee rate in effect for the prior 12-month period (\$58.55). 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 2022 through August 2023 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 based on the federal presumptive minimum fee rate.

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<sup>1</sup> 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 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.

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 June 14, 2023, the APC Board approved a Title V workload analysis that covered fiscal year 2023-2024 (FY2024). This workload analysis reflects projected workload for fiscal year 2024-2025 (FY2025).

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.

Tennessee has seen a significant growth in new and expanding industry. This affects both Title V and non-Title V activity of the Division. The increased Title V activity related to this growth is reflected in this workload analysis.

Several things could happen to require 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.
- Increased workload due to increased business activities at existing facilities and new facilities locating in the state.

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 1,601.5 hours per employee available work time yields the total number of full-time equivalents (FTEs) needed to conduct Title V work.

The 1,601.5 hours of work time per employee was derived as follows:

Scheduled Payroll Hours per Year	=	1950
Less: Holiday, Vacation & Sick Leave Hours (13.5 Days + 21 Days + 12 Days) X 7.5 hrs./day	=	- 348.5
Total Work Hours per Employee	=	<u>1601.5</u>

Note that the number of holidays per year has increased by one with the addition of Juneteenth as a state holiday by the Tennessee General Assembly during the 2023 legislative session.

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 are Title V or non-Title V<sup>2</sup>. This system also allows the Division to track time and expenses on a program and location level. These changes to Edison have resulted in a significant improvement in assessing the percentage of each work unit's time. 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 is 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 FY2025 are based on actual data from FY2023 or as otherwise specified in following sections of this analysis.

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.

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<sup>2</sup> Non-Title V funding includes annual emissions fees paid by non-Title V facilities, construction permit application fees, modification permit application fees, visible emissions certification fees, section 105 air quality grant funds received from EPA, state appropriations, and civil penalties.

## 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 4.0 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), Title V administrative activities are based on billing data compiled from FY2022 through FY2023 for the Administrative Services program and the procurement staff member. The workload for this work unit includes the Administrative Services team lead and staff including a 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 (51%).

**Table 1 – Administrative Services Title V Workload**

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
APC Data Management – Smog Log	2805	1.75
Administrative Support & Management	2430	1.52
Product Procurement	530	0.33
Office Supply Management	164	0.10
Record Maintenance	255	0.16
Training	153	0.10
<b>TOTAL</b>	<b>6337</b>	<b>3.96</b>

## 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. 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 3.0 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 three programs (Permitting, Regulatory Development, and Emissions Inventory; average = 54%) and the Deputy Director and the technical lead (EC4) for Environmental Measurement and Compliance Assurance is the average of four programs, excluding PM2.5 funded time (Technical Services, Quality Assurance, Compliance Validation, and Enforcement; average = 51%). The Title V percentage for each of these programs is based on billing data gathered during FY2019 through FY2023. Title V time for all other positions is based on billing data compiled from FY2019 through FY2023 for the Administrative Services and Directors Office staff (48%).

### ASSUMPTIONS

It is assumed that the Title V activities of the Deputy Director of Permitting and Regulatory Development, Deputy Director and the technical lead of the Environmental Measurement and Compliance Assurance programs are the same percentage as the average of the programs in which they lead. 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**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Deputy Director of Permitting and Regulatory Development	865	0.54
Deputy Director and Technical Lead of Environmental Measurement and Compliance Assurance	1634	1.02
Three Other Director’s Office Positions	2306	1.44
<b>TOTAL</b>	<b>4805</b>	<b>3.00</b>



# 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 this program to 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.

## 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 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**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Compliance assistance	1609	1.00
Workshops/training events	805	0.50
Material development	402	0.25
Regulatory Development/Notification	201	0.13
Administration/Other	201	0.13
<b>TOTAL</b>	<b>3218</b>	<b>2.01</b>

## 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 primary 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 related to Title V.

Responsibility for asbestos renovation and demolition activities are housed within the Compliance Validation Program, but this activity is not considered Title V. The “Other Compliance Validation Activity” category includes activities such as administrative report preparation, file clean-up work, regulatory and SIP work, and assigned special projects.

Workload supports 4.8 FTEs of Title V work for this program.

### CALCULATION BASIS

Projected workload was estimated based on actual time and activity data for FY2023. Asbestos demolition and renovation work is funded entirely by non-Title V funds. Data from the Division’s Smog Log database from FY2021 through FY2023 was used to determine Title V percentages for most activities. Program management, training, and other activity is based on the average Title V percentage for FY2023 for the entire program (56%).

### ASSUMPTIONS

It is assumed that FY2025 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
Stack Testing	231	0.14
Source Test Validation	4194	2.62
In-Stack Monitor Data Validation	349	0.22
In-Stack Monitor Report Review	187	0.12
Visible Emissions Evaluation School	692	0.43
Visible Emissions Data Validation	5	0.00
Program Management	868	0.54
Training	339	0.21
Other Compliance Validation Activity	883	0.55
<b>TOTAL</b>	<b>7748</b>	<b>4.83</b>

## 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 2.5 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 FY2023. To determine what portion of that workload was Title V related, billing data compiled from FY2018 through FY2023 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 activity and other activity of the program (database and computer-related) is assumed to be the same as historical workload.

**Table 5 – Enforcement Program Title V Workload**

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Enforcement Related Activities	1358	0.85
ICIS-Air Data Management	500	0.31
Smog Log Development	430	0.27
APC Data Management	240	0.10
Computer Hardware/Software Support	155	0.09
Training	150	0.15
Special Projects	335	0.21
Program Management	800	0.50
<b>TOTAL</b>	<b>3968</b>	<b>2.48</b>

## 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. A Deputy Director oversees the entire program with the technical assistance of a TDEC-Environmental Consultant 4 (EC4).

### **Responsibilities:**

The Field Services program has the following responsibilities:

- Conduct Comprehensive Evaluations on Title V facilities
- Review the majority of the Title V semi-annual reports (SARs) and annual compliance certifications (ACCs), and review some MACT and NSPS reports
- Operation and maintenance of the state's ambient air monitors
- Review and provide feedback regarding Title V draft permits
- Investigation and resolution of complaints associated with Title V facilities
- 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 Field Services Program
- Special projects as assigned (only those projects related to Title V issues are included here)
- Responding to inquiries from citizens, EPA, local and state officials, and the regulated community regarding Title V sources
- Responding to emergency response incidents at Title V facilities
- Participation in public meetings and hearings
- Maintenance of reports, records, and other correspondence
- 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 field offices to ensure that the field services program operates efficiently

Workload supports 12.6 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 2024 (October 1, 2023, through September 30, 2024). Report reviews is the estimated time for Title V Semi-Annual Report and Annual Compliance Certification reviews, Title V NESHAP report reviews and 84% of the NSPS report reviews. Title V complaint workload is estimated to be 5% of the total complaint workload. Workload associated with the ambient monitoring network is based on planned workload for FY2024 and a 2020 study of the ambient monitoring cost allocation (see Ambient Monitoring Quality Assurance section of this workload analysis). The remaining work, including program management, is based on the default funding split for all Division general activities (52% Title V/48% non-Title V).

**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, report review time, and the percentage of complaints related to Title V sources will be similar to historical levels.

**Table 6 – Field Services Title V Workload**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Title V Inspections	4995	3.12
Report Reviews	2607	1.63
Complaint Investigations	290	0.18
Ambient Monitoring	2782	1.74
Training	1997	1.25
Review of Draft Permits	428	0.27
Special Projects	1404	0.88
Program Management	3172	1.98
Meetings	1124	0.70
Administrative Activities	1300	0.80
<b>TOTAL</b>	<b>20,099</b>	<b>12.55</b>

## PERMITTING

Permitting staff are based 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 an average of five permit writers. A Deputy Director oversees the entire program with the technical assistance of a TDEC-Environmental Consultant 4 (EC4) and a TDEC Environmental Consultant (EC3) that handles complex permitting issues. The Deputy Director's time is included in the Director's office.

### **Responsibilities:**

The Permitting program has the following responsibilities:

- 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 some 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 Required 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 September 30, 2023, as well as the number expected in fiscal year 2025. 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, TV Sources Only**

<b>APPLICATION TYPE</b>	<b>Currently in System as of September 30, 2023</b>	<b>EXPECTED NEW SUBMITTALS IN FY2025</b>
Title V Sources – Initial	10	4
Title V Sources – Renewal	98	45
Significant Modifications	13	13
Re-opening for Cause	1	1
Minor Modifications	54	66
Administrative Amendments	10	43
Operational Flexibility and 502(b)(10) Changes	31	28
TV Insignificant Activity Requests	4	17
Title V General Permit NOIs	0	15
Initial Issuance Conditional Major Sources	8	3
TV Construction Permits - Non-Major NSR	29	52
TV Construction Permits - Major NSR (PSD)	2	4
Construction Permit Amendment for Title V Source	6	18
TV Construction Permits - Major NSR (Non-Attainment)	0	0
Initial Major NSR Plant Wide Applicability Limit (PAL) Permits	0	1
PAL renewals	3	0
CAIR and Acid Rain Permits	0	1
TV Semi-annual Reports and Annual Compliance Certifications*	0	86
TV MACT, NSPS, and Miscellaneous Reports*	8	445
TV AEAR Reports	21	118

\*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.

Workload supports 15.1 FTEs of Title V work for this program.

### **CALCULATION BASIS**

Permitting activity is based on the actual activity data from FY2019 through FY2022 August, FY2023. For most permit types, the average of all data was used. The projected number of non-Major NSR construction permits is based on July-September 2023, extrapolated for a full year. The number of PAL permits and CAIR/Acid Rain permits is based on the number of each that are scheduled to expire in FY2024.

The number of reports projected to be reviewed is based on the number that are currently due over the course of a year that will be reviewed by permit staff.

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 time it



takes to complete each permitting activity is generally based on actual activity data from FY2019 through FY2023. Shorter time frames were used for permitting actions whose process was changed during that period. Since no PALs were issued in FY2023, the workload is based on recent experience. The Division intends to develop its first Title V general permit in FY2024. The Title V portion of program management, training, special projects, and other permitting time is based on the default funding split for all Division general activities (52% Title V/48% non-Title V).

## **ASSUMPTIONS**

It is assumed that the number of non-PSD Title V construction permit and Title V minor modification applications received in FY2025 is consistent with what has been received during the first quarter of FY2024. There are 45 Title V permits that expire between January 2025, and December 2025. Since Title V renewal applications are due 6 months prior to expiration, it is assumed that 45 renewal applications will be received in FY2025. It is assumed that the number of PSD construction, initial conditional major, initial Title V operating permits, Title V significant modifications, Title V minor modification, Title V administrative amendments, amendments to construction permits for Title V sources, Title V insignificant activity determination requests, Title V operational flexibility change applications and re-openings for cause are the same as the average of FY2019 through FY2023. It is assumed that the Division will issue General Permit Notices of Coverage for the Title V General Permit mentioned above. It is assumed that the number of reports required to be reviewed by the permit program will remain unchanged. 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 FY2025. There are 5 facilities in the state with PAL limits in their Title V permit. Based on the expiration dates of those permits, it is assumed that none will be renewed in FY2025. It is assumed that one new PAL application will be received in FY2025. It is assumed that this will contain PALs for 4 pollutants (the average for all existing and pending PAL permits). It is assumed that the time to complete all permitting activities is the same as it was for FY2019 through FY2023. 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. 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.

**Table 8 – Projected Permitting Title V Workload**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Title V sources permit preparation – new sources	720	0.45
Title V sources permit preparation – renewals	8100	5.06
Significant Modifications	640	0.40
Re-opening for Cause	40	0.02
Minor Modifications	1848	1.15
Administrative Amendments	384	0.24
Operational Flexibility and 502(b)(10) Changes	140	0.09
Title V Insignificant Activity Determinations	55	0.03
Title V General Permit Notices of Coverage	53	0.03
Initial Issuance Conditional major sources	360	0.22
Non-major NSR construction permits	2340	1.46
Major NSR permits	1050	0.66
Amendments to construction permits for Title V sources	162	0.10
Initial PAL permits	360	0.22
PAL Renewals	0	0.00
CAIR and Acid Rain Permits	78	0.05
Semiannual Report and Annual Compliance Certification Review	138	0.09
MACT, NSPS, and Miscellaneous Report Review	636	0.40
AEAR Report Review	224	0.14
Program Management	3328	2.08
Training	1248	0.78
Special Projects	1040	0.65
Other Title V Permitting Time <sup>3</sup>	1248	0.78
<b>TOTAL</b>	<b>24,192</b>	<b>15.10</b>

<sup>3</sup> 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, and administrative activity.

## REGULATORY DEVELOPMENT

The Regulatory Development program has the following responsibilities<sup>4</sup>:

- 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 and special projects
- Policy analysis and development to assist the Division’s Environmental Fellow and TDEC's Policy Office or to address air quality-specific issues 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

Workload supports 4.4 FTEs of Title V work for this program.

### CALCULATION BASIS

For most program activities, it is assumed that the Title V portion is the same as historical Title V workload for the regulatory development program following elimination of the motor vehicle emission inspection program. Data from January, 2022, through FY2023 indicates that 51% of all activity is Title V-related. Permit modeling (which mostly involves major source PSD permitting) is assumed to be 90% Title V-related based on actual data.

### ASSUMPTIONS

Time is based on upcoming federal requirements and activities as well as projected permitting workload.

**Table 9 – Regulatory Development Title V Workload**

ACTIVITIES	ESTIMATED TITLE V HOURS/YR	ESTIMATED TITLE V FTE/YR
Rule and SIP Development	2288	1.43
SIP/Rule Reconciliation	245	0.15
Photochemical Modeling	735	0.46
Permit Modeling	2307	1.44
Local Program Support	327	0.20
Special Projects	408	0.26
Project Management	654	0.41
<b>TOTAL</b>	<b>6964</b>	<b>4.35</b>

## EMISSIONS INVENTORY, FEES, AND SPECIAL PROJECTS

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

- Collecting, quality assuring, and reporting annual and triennial<sup>5</sup> 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
- Management 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
- Delinquent Title V fee collection
- Title V fee AEAR tracking, review, data management, and, when necessary, enforcement
- Annual Title V fee invoicing
- Revisions to Title V fee system
- 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

In addition to the above listed activities, the Emissions Inventory and Special Projects program started work to identify systems to replace the SLEIS emissions inventory and AEAR on-line reporting and management system. During FY2023, the Division was informed that the operating system of SLEIS will not be supported in the near future.

Workload supports 3.4 FTEs of Title V work for this program.

### **CALCULATION BASIS**

Workload for each task is estimated based on actual time and activity data for upcoming requirements. The percent of the program's existing work that is Title V related is based on billing data from FY2019 through FY2023. Billing data compiled from all activities documented from for this period indicates that 59% of the Emissions Inventory and Special Projects program work was Title V related.

### **ASSUMPTIONS**

It is assumed that the percentage of work related to Title V is consistent with historical workload plus upcoming federal requirements and activities. It is assumed that the SLEIS replacement work will be handled using existing manpower including an assessment of any additional Title V funding to procure a replacement solution.

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<sup>5</sup> On July 25, 2023, U.S. EPA proposed revisions to the federal emissions reporting rule. Among other things, this proposed rule includes mandatory reporting of Hazardous Air Pollutants and increased the reporting frequency for all point sources from triennially to annually. In the "Overview Fact Sheet Proposed Updates to the AERR", EPA states "For states, local, and certain tribal air agencies, estimated annual costs are \$335,000 per agency, on average, from 2024 to 2026, and \$326,000 per agency, on average, beginning in 2027, the year the proposed rule would be fully implemented."

**Table 10 – Emissions Inventory and Special Projects Title V Workload**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Emission Inventory	3499	2.18
Fee Collection and Support	945	0.59
Special Projects	94	0.06
Training	189	0.12
Administration	94	0.06
Program Management	567	0.35
<b>TOTAL</b>	<b>5388</b>	<b>3.36</b>

## 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 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 facilities and those facilities 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. 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 PM<sub>2.5</sub> network funded by section 103 funds, the proper cost allocation is 52% Title V and 48% non-Title V. When combining these percentages, the projected Quality Control 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. The next EPA Technical Systems Audit is scheduled for calendar year 2025. For the purpose of this workload analysis, it is assumed that it will occur in FY2025.

**Table 11 – Quality Control Title V Workload**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Data Management – Input	15	0.01
Data Verification	1385	0.87
Document Development	84	0.05
Equipment Repair, Calibration, and Certification	1134	0.71
Monitoring Site Evaluation and Documentation	105	0.07
EPA Technical Systems Audit	147	0.09
Personnel Activities	294	0.18
Program Management	609	0.38
Special Projects	63	0.04
Training	210	0.13
<b>TOTAL</b>	<b>4046</b>	<b>2.53</b>

## 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 and within the Great Smoky Mountains National Park. 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**

<b>ACTIVITIES</b>	<b>ESTIMATED TITLE V HOURS/YR</b>	<b>ESTIMATED TITLE V FTE/YR</b>
Air Quality Forecasting	588	0.37
AQS Data Validation	420	0.26
Field Auditing	265	0.17
Local Program Field Auditing	420	0.26
Audit Equipment Repair, Calibration, and Certification	189	0.12
Certification and Calibration for Local Programs	84	0.05
EPA Technical Systems Audit	147	0.09
Personnel Activities	168	0.10
Program Management	504	0.31
Document Development	210	0.13
SOP Development	21	0.01
Training	210	0.13
Special Projects	126	0.08
<b>TOTAL</b>	<b>3352</b>	<b>2.08</b>

## SUMMARY OF FTEs BY FUNCTIONAL UNIT

The following table shows the projected FY2025 FTEs needed to complete all Title V activities as indicated in this workload analysis. In addition, the actual Title V FTEs for the past five fiscal years (FY2019 through FY2023) and projected Title V FTEs for FY2024 from the FY2024 Title V Workload Analysis are presented below.

Functional Unit	FY2019 Actual FTEs	FY2020 Actual FTEs	FY2021 Actual FTEs	FY2022 Actual FTEs	FY2023 Actual FTEs	Projected FY2024 FTEs	Projected FY2025 FTEs
Administrative Services <sup>6</sup>	3.3	4.2	3.9	3.6	3.0	3.8	4.0
Director's Office	3.7	3.1	2.4	3.0	2.8	3.0	3.0
Small Business Assistance	2.0	1.9	1.5	2.0	2.0	2.0	2.0
Compliance Validation	4.1	3.6	3.5	4.0	4.7	3.6	4.8
Enforcement	2.7	2.6	2.5	2.5	2.4	2.3	2.5
Field Services	14.1	14.2	14.1	12.5	12.6	12.3	12.6
Permitting	11.7	10.5	10.2	13.4	10.4	13.2	15.1
Regulatory Development	1.9	2.4	2.6	2.2	3.2	3.3	4.4
Emissions Inventory and Special Projects	2.6	2.5	3.2	2.4	1.7	2.4	3.4
Quality Control	2.5	2.1	3.1	2.5	2.5	2.5	2.5
Quality Assurance	1.9	2.5	2.2	2.1	1.8	2.0	2.1
<b>Total Title V FTEs</b>	<b>50.5</b>	<b>49.6</b>	<b>49.2</b>	<b>50.2</b>	<b>45.4</b>	<b>50.4</b>	<b>56.4</b>

<sup>6</sup> 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.

- Commissioner, Bureau of Environment Deputy Commissioner and staff, and the Deputy Commissioners of the Bureau of Operations, Strategy, & Engagement and their staff – management and organizational support
- Communications Office – media relations, website management, strategic messaging, video production, and social media engagement
- Office of Stakeholder Engagement – 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; sustainable practices, and management of the Small Business Environmental Assistance Program
- People and Organizational Development Office – all personnel related services including human resources, talent management, and employee relations
- Continuous Process Improvement Office – intra-agency and interagency business improvement efforts
- Workplace Risk Management Office – occupational and workplace safety and medical monitoring
- 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
- Internal Audits Division - facilitates the promotion of good governance by performing audit, assurance, and consulting services that address key risks central to TDEC’s strategies and objectives and helps improve internal controls, transparency, and accountability of operations.
- Office of Policy & Planning – support with rule, SIP, and policy development that require in-depth research, strategic planning, NEPA review coordination, comparison to other state or national programs, and coordination with other state agencies or entities
- Finance and Budget Office – budget development and management as coordinated with the overall department budget, fee collections, and centralized accounting
- Operational Administrative Services – procurement of all necessary equipment and supplies, including monitoring network assets and field and office supplies, equipment inventory and asset management, grants and contracts, and vehicle management
- Data Governance & Records Management – records and facilities management, Alternative Workplace Solutions (AWS) coordination
- 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 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, 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, longevity<sup>7</sup> and bonus pay<sup>8</sup>. Personnel costs are based on the number of positions for each functional unit for FY2025 based on demonstrated workload explained in this Workload Analysis. Longevity and bonus costs are added to regular salaries based on historical levels. \$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 forecasted based on historical trends.

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

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<sup>7</sup> Longevity pay is based on years of service once an employee has been in state service a certain number of years.

<sup>8</sup> 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**

<b>Expense Description</b>	<b>FY2018</b>	<b>FY2019</b>	<b>FY2020</b>	<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>Projected FY2024</b>	<b>Projected FY2025</b>
Regular Salaries, Longevity, & Bonus	\$3,377,781	\$3,546,448	\$3,485,437	\$3,449,044	\$3,693,953	\$3,809,843	\$4,000,000	\$4,200,000
Benefits	\$1,494,311	\$1,503,257	\$1,463,404	\$1,429,963	\$1,611,779	\$1,691,175	\$1,750,000	\$1,800,000
APC General & Administrative Expenses	\$919,969	\$653,654	\$628,698	\$529,628	\$638,178	\$630,020	\$1,050,000	\$1,070,000
TDEC General & Administrative expenses	\$1,014,803	\$0 <sup>9</sup>	\$0 <sup>9</sup>	\$850,291	\$891,375	\$750,201	\$1,000,000	\$1,100,000
<b>Grand Total</b>	<b>\$6,806,864</b>	<b>\$5,703,359</b>	<b>\$5,577,539</b>	<b>\$6,321,925</b>	<b>\$6,835,285</b>	<b>\$6,881,239</b>	<b>\$7,800,000</b>	<b>\$8,170,000</b>

<sup>9</sup> No TDEC G&A expenses were charged to the Division in FY2019 or FY2020.

## FISCAL MANAGEMENT

The Division has established 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 FY2025.

The Division will continue, in FY2025, to use travel and training resources efficiently and utilize video conferencing tools effectively.

## 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 1<sup>st</sup> through June 30<sup>th</sup>. 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 1<sup>st</sup> of one year to June 30<sup>th</sup> of the next (i.e., the state fiscal year) and due on July 1<sup>st</sup>. Since it was usually impossible for a company to determine and report actual emissions on June 30<sup>th</sup>, fees based on actual emissions were usually received after July 1<sup>st</sup>, 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 1<sup>st</sup> and July 15<sup>th</sup> 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 15<sup>th</sup> could, and frequently did, request extensions until September 29<sup>th</sup> 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 1<sup>st</sup> and July 15<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup>. 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 <sup>10</sup>	\$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
2021-2022	\$6,204,515.21	\$114.00		\$6,835,285.12	\$1,277,400.69
2022-2023	\$7,365,769.12 <sup>11</sup>	\$4756.93		\$6,881,239.32	\$1,942,272.68

<sup>10</sup> 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.

<sup>11</sup> Includes construction application fees for Title V sources starting with FY2022-2023



**Table 16 - Historical Tonnage Projections & Collections and Historical Fees**

Year Fees Due	Number Companies/Facilities	\$/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
2023 Non-EGU	198	\$48.50	\$70.50	\$10,000/\$6000	87,035	83,382	66,415	62,876	20,620	20,506	41	40	\$5,747,760	\$5,783,309
2023 EGU	9	\$68.00	\$98.50	\$10,000/\$6,000	17,573	18,922	8015	8015	9578	10,907	0	0	\$1,673,366	1,673,376
2022 non-EGU	200	\$40.20	\$64.20	\$9000/\$5000	96,985	87,035	76,901	66,415	20,084	20,620	46	46	\$5,095,923	\$5,095,923
2022 EGU	9	\$57.00	\$90.00	\$9000/\$5000	19,850	17,593	6535	8015	13,315	9578	0	0	\$1,363,867	\$1,363,867
2021 non-EGU	198	\$40.20	\$64.20	\$9000/\$5000	93,258	86,598	73,246	66,363	20,0013	20,235	56	55	\$5,176,865	\$5,134,053
2021 EGU	9	\$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
Sept 2022 – Aug 2023	\$ 58.55	Calendar Year 2023	\$ 60.56
Sept 2023 – Aug 2024	\$ 61.73	Calendar Year 2024	\$ 63.85

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

IN THE MATTER OF )  
 )  
 )  
 2024-2025 Title V Workload Analysis ) Order Number: 23-005  
 )  
 )  
 )  
 )  
 )

**BOARD ORDER**

The 2024-2025 Workload Analysis, as prepared by the Division of Air Pollution Control, was approved by the following Board Members on November 8, 2023. 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 2024-2025 to ensure compliance with federal law.

This Workload Analysis projects that 56.4 full-time employee hours and \$8,170,000 will be needed to conduct Title V-related work in fiscal year 2024-2025.

Category	Projected FY25 Title V Expenses
Regular Salaries, Longevity, and Bonuses	\$4,200,000
Benefits	\$1,800,000
Air Pollution Control General and Administrative Expenses	\$1,070,000
<u>TDEC General and Administrative Expenses</u>	<u>\$1,100,000</u>
Total	\$8,170,000

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

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 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).*

<b>Agency/Board/Commission:</b>	Air Pollution Control Board
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	James P. Johnston
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 <sup>th</sup> Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 253-7319
<b>Email:</b>	<a href="mailto:james.johnston@tn.gov">james.johnston@tn.gov</a>

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

Amendment  Content based on previous emergency rule filed on \_\_\_\_\_  
 New  Content is identical to the emergency rule  
 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
1200-03-02	Definitions
Rule Number	Rule Title
1200-03-02-.01	General Definitions

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 1200-03-02  
Definitions

Amendments

Paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by adding a new definition (mmmm) placed in numeric order to read as follows:

(mmmm) "Hazardous air pollutant" or "HAP" means the air contaminants listed in this subparagraph:

CAS No.	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline) 92875
	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
106945	1-Bromopropane
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture) 95487
	o-Cresol
108394	m-Cresol

106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidine
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline) 64675
	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts 51285
	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane) 106934
	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane) 50000
	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)



74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane) 60344
	Methyl hydrazine
74884	Methyl iodide (Iodomethane) 108101
	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline) 75092
	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane) 75569
	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine) 91225
	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride

75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds <sup>1</sup>
0	Glycol ethers <sup>2, 6</sup>
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers <sup>3</sup>
0	Nickel Compounds
0	Polycyclic Organic Matter <sup>4</sup>
0	Radionuclides (including radon) <sup>5</sup>
0	Selenium Compounds

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

<sup>2</sup> Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR'. Where:  
n = 1, 2, or 3;  
R = alkyl C7 or less; or  
R = phenyl or alkyl substituted phenyl; R' =  
H or alkyl C7 or less; or  
OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

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

<sup>3</sup> Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of an average diameter of one micrometer or less.

<sup>4</sup> Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

<sup>5</sup> A type of atom that spontaneously undergoes radioactive decay.

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

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

Chapter 1200-03-26  
Administrative Fees Schedule

Amendments

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

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

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (k) Reserved.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding three new subparagraphs (t), (u), and (v) to read as follows:

- (t) "Permit amendment" is a permit revision that:

1. Corrects typographical errors;
2. Identifies a change in the name, address, or phone number of any person identified in the permit, or makes a similar minor administrative change at the source;
3. Requires more frequent monitoring or reporting by the permittee;
4. Allows for a change of ownership or operational control of a source where the Technical Secretary determines that no other change in the permit is necessary, provided that a transfer of ownership permit application is filed consistent with the provisions of paragraph (6) of Rule 1200-03-09-.03;
5. Incorporates into a true minor source or conditional major source operating permit the requirements of a construction permit issued pursuant to Rule 1200-03-09-.01;
6. Extends the expiration date of a construction permit;
7. Changes the name of a source or facility;
8. Changes a deadline established in a permit; or
9. Adds or revises a monitoring parameter.

- (u) "Anticipated maximum emission rate" (AMER) means the maximum rate of actual emissions, in tons per year, from all regulated air pollutants, as defined in part (11)(b)19 of Rule 1200-03-09-.02, emitted from all sources listed in a construction permit application, excluding sources that are not required to obtain a permit in accordance with Rule 1200-03-09-.04. Except as specified below, the responsible official shall calculate AMER based on each source operating at its maximum actual hourly emission rate, as listed in the construction permit application, for 8,760 hours per year.

$$AMER = \sum_{i=1}^m \sum_{j=1}^n E_{i,j} \times h_j$$

Where:

m = number of pollutants emitted by sources included in the application

n = total number of sources included in the application, excluding sources that are exempt from permitting in accordance with Rule 1200-03-09-.04

E = emission rate in pounds per hour

h = hours per year (8,760 except as specified below)

For applications that do not list a maximum pound-per-hour emission rate for a particular pollutant or source, the responsible official shall use the potential emissions, in tons per year, as listed in the construction permit application. The responsible official may use a reduced emission rate or hours of operation if the same is limited by federal or state air quality regulation, limited by operational constraints within the process (i.e., a bottleneck), or the responsible official has requested a limitation of the same in the construction permit application. Emission of a greenhouse gas that is a regulated air pollutant solely because the pollutant is a constituent of greenhouse gases shall not be included when calculating AMER. Emission of a hazardous air pollutant that is also a VOC or particulate matter shall be counted only as VOC or particulate matter. When calculating the AMER for particulate matter, the responsible official shall use the highest of the source's PM, PM<sub>10</sub>, or PM<sub>2.5</sub> emission rate. For construction permit applications that include the retirement of existing sources or the reduction of emissions from existing sources, the AMER shall not include the emission reductions associated with such retirement or reduction of emissions.

- (v) "Anticipated maximum increase in emissions" means the anticipated maximum emission rate of the existing source following the change minus the anticipated maximum emission rate prior to the change.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (c) Any source exempted by Rule 1200-03-09-.04 is exempt from the annual emission fee requirements of this chapter, unless emissions from the exempt source are included in a facility-wide emissions limit. However, the emissions from any exempt source must comply with all rules and regulations of the Tennessee Air Pollution Control Board.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (d) All construction fees required by paragraph (5) of this rule must be paid in full upon submission of the application.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (h) In the event a fee is paid for a construction permit and it is later determined that only an operating permit is needed or the source is insignificant or otherwise exempt from permitting, 100% of the fee will be forfeited for the permit review.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (i) Where more than one allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.
  1. Major sources subject to the provisions of paragraph (9) of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.

- (i) For fee purposes, hazardous air pollutants that are also in the family of volatile organic compounds or the family of particulate matter will be included in their respective family category when determining annual emission fees.
- (ii) For fee purposes, hazardous air pollutants that are not in the family of volatile organic compounds or the family of particulate matter will be reported separately.
- (iii) Each individual hazardous air pollutant is subject to the 4,000-ton cap provisions of subparagraph (2)(i) of this rule.
- (iv) Major sources that wish to pay annual fees for PM<sub>10</sub> on an allowable emission basis may do so if they have a specific PM<sub>10</sub> allowable emission standard. If a major source has a total particulate emission standard but wishes to pay annual fees on an actual PM<sub>10</sub> emission basis, it may do so if the PM<sub>10</sub> actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM<sub>10</sub> emission levels must be made as part of the source's major source operating permit in advance in order to exercise this option. The PM<sub>10</sub> emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000-ton cap provisions of subparagraph (2)(i) of this rule shall also apply to PM<sub>10</sub> emissions.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (j) No construction fee, annual emission fee, or permit review fee under paragraph (1) of this rule shall be imposed for review of notices of intent for authorization under a permit-by-rule or issuance of a notice of authorization.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (a) Construction Permit and Opt-Out Permit Application Filing/Processing Fees
  - 1. The fee rates of this subparagraph effective on July 1, 2022, continue to apply until July 1, 2024.
  - 2. On and after July 1, 2024, 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, or an opt-out permit, must pay a construction permit application filing/processing fee as follows:
    - (i) A responsible official of a minor source or a conditional major source must pay construction permit application fees as set forth in subparagraph (g), Schedule A of this paragraph. The fee determined from subparagraph (g), Schedule A of this paragraph shall be calculated based on the definitions of anticipated maximum emission rate and anticipated maximum increase in emissions, as defined in subparagraphs (2)(u) and (v) of this rule.
    - (ii) A responsible official of a major source or a source subject to paragraph (11) of this rule (hereinafter, "Paragraph 11 source") must pay a construction permit application fee of \$7,000.
    - (iii) Except as specified in subpart (v) of this part, a responsible official applying for a Prevention of Significant Air Quality Deterioration permit as required by paragraph (4) of Rule 1200-03-09-.01 must pay a construction application fee of \$70,000.
    - (iv) Except as specified in subpart (v) of this part, a responsible official applying for a

permit under the provisions of paragraph (5) of Rule 1200-03-09-.01, Growth Policy, must pay a construction application fee of \$70,000.

- (v) A responsible official applying for a plantwide applicability limit (PAL) under the provisions of subparagraph (4)(s) of Rule 1200-03-09-.01 or part (5)(b)10 of Rule 1200-03-09-.01 must pay an application fee of \$10,000 per pollutant.
- (vi) A responsible official of an existing Paragraph 11 source applying for an operating permit to opt out of being a Paragraph 11 source, as described in subparagraph (11)(a) of Rule 1200-03-09-.02, by limiting the potential to emit such that the potential emissions of all pollutants are below the major source applicability thresholds, as defined in part (11)(b)14 of Rule 1200-03-09-.02, must pay an application fee of \$18,000.

3. On and after July 1, 2024, an applicant for a minor source or a conditional major source applying to make a change to an existing source or permit such that a new construction permit is required must pay a permit application fee as set forth in subparagraph (g), Schedule A of this paragraph. This fee is determined by the anticipated maximum increase in emissions, as defined in subparagraph (2)(v) of this rule, from the anticipated maximum emission rate of the previous construction permit for the source. The fee rates in this part in effect on July 1, 2022, continue to apply until July 1, 2024.

4. On and after July 1, 2024, an owner or operator of a source that submits notice of intent for coverage under a general permit serving as a construction permit shall pay a permit application fee equal to that determined in accordance with the subparagraph (g) of this paragraph, Schedule A fee corresponding to the applicant's anticipated maximum emission rate, unless an alternate construction permit application fee is stipulated in the table below. If Schedule A from subparagraph (g) of this paragraph is used to determine the fee, it shall be determined by the anticipated maximum increase in emissions, as defined in subparagraph (2)(v) of this rule, from the anticipated maximum emission rate of the previous construction permit for the source.

General Permit Category	Construction and Modification Permit Application Fee
Perchloroethylene and Petroleum Solvent Dry Cleaners	\$100
Concrete batch plants	\$100
Portable rock crushers	\$100
Asphalt plants	\$250
Air Curtain Incinerators	\$500

5. All application filing/processing fees required by this subparagraph are due upon submission of the permit application.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (b) 1. The fee rates required by this subparagraph effective July 1, 2022, continue until July 1, 2024.
- 2. With the exception of changes received during the initial construction permit evaluation period (i.e., prior to the Division letter or email denoting application completeness), all revisions under subparagraph (4)(e) of this rule that result in an increase in allowable emissions sought by the applicant or an increase in actual emissions declared in the original application for a permit shall be subject to a fee equal to the following:
  - (i) For minor sources and conditional major sources, one-half of the Schedule A fee

corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500.

(ii) For Paragraph 11 sources, \$3,500.

3. The fee required by subparts 2(i) and (ii) of this subparagraph is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

(c) Reserved.

T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

(e) The Division must make a decision to issue or deny a request for a permit in one of the categories listed in parts 1 through 4 of this subparagraph and notify the applicant of that decision in accordance with the following time-lines:

1. Major source or Paragraph 11 source construction permit reviews must be completed in 180 days, from receipt of a complete application unless a longer period is agreed to in writing by the applicant.
2. Minor and conditional major source construction permit reviews must be completed within 115 days from receipt of a complete application.
3. PAL reviews must be completed within 12 months from receipt of a complete application unless a longer period is agreed to in writing by the applicant.
4. Operating permit reviews for an existing major source or Paragraph 11 source applying for an operating permit to opt out of being a major source or Paragraph 11 source by limiting the potential to emit such that they are below the major source applicability thresholds must be completed within 12 months from receipt of a complete application unless a longer period is agreed to in writing by the applicant.
5. If a mutual agreement letter required by part (6)(b)1 of this rule or subparagraph (11)(a) of Rule 1200-03-09-.02 has been requested by the Division at least seven days prior to a deadline specified in part 1, 2, 3, or 4 of this subparagraph, but is not received by that deadline, the applicable deadline specified in part 1, 2, 3, or 4 of this subparagraph shall be seven days after receipt of the agreement letter.
6. If a source is required to have a compliance schedule in their permit in accordance with paragraph (4) of Rule 1200-03-09-.02 arises after an application was deemed complete, the deadlines specified in part 1, 2, 3, or 4 of this subparagraph shall be extended as follows:
  - (i) 21 days after receipt of a compliance schedule from the applicant that is acceptable to the Technical Secretary if the draft permit is not required to have a public comment period.
  - (ii) 60 days after receipt of a compliance schedule from the applicant that is acceptable to the Technical Secretary if the draft permit is subject to an opportunity for public comment, and no public hearing is held.
  - (iii) 60 days after receipt of a compliance schedule from the application that is

acceptable to the Technical Secretary if the draft permit is subject to an opportunity for public comment and a public hearing is announced along with the opportunity for public comment on the draft permit.

- (iv) 90 days after receipt of a compliance schedule from the applicant that is acceptable to the Technical Secretary if the draft permit is subject to an opportunity for public comment, if a public hearing is requested during the public comment period, and the public hearing is held after the close of the public comment period.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (g) The appropriate permit filing/processing fee shall be determined by the applicant from the following schedules:

**SCHEDULE A—  
CONSTRUCTION PERMIT FEES FOR MINOR AND CONDITIONAL MAJOR SOURCES**

Anticipated Maximum Emission Rate	(Filing/Processing) Permit Fee
Less Than 10 Tons/Year	\$100
10 to < 100 Tons/Year	\$500
100 to < 250 Tons/Year	\$1,000
250 to < 500 Tons/Year	\$2,000
500 to < 1,000 Tons/Year	\$3,000
1,000 to < 5,000 Tons/Year	\$4,000
5,000 and Greater Tons/Year	\$5,000

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (c) All minor and conditional major source annual fees are due and payable to the State of Tennessee in full according to Schedule I of this subparagraph. The county in which a source is located determines when the source's annual fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the State of Tennessee in full by the first day of the month that the fee is due. The Technical Secretary extends this due date by an appropriate period not to exceed 90 days where the source owner or operator's fee notice was mailed by the Department to an incorrect mailing address.

**SCHEDULE I**

**Month the Annual Fee is Due (Accounting Period)  
Counties in the Monthly Grouping**

January	Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, and Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay, and Cocke
March	Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, and Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene, and Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood, and Henderson



June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence, and Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon, and Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, and Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam, and Rhea
October	Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and Shelby
November	Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi, and Union
December	Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson, and Wilson

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Subparagraph (d) of paragraph (6) 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. A newly constructed minor or conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual fee for the remainder of the annual accounting period. A minor or conditional major source ceasing operations during the annual accounting period will not receive a refund for annual fees paid.
- 2. Sources issued a combination construction and operating permit in accordance with paragraph (12) of Rule 1200-03-09-.02 shall pay annual fees as if operation of the new or modified source began on the date of permit issuance. This part does not apply to sources for which construction and operation of the new source or modification began prior to receipt of a construction permit.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (e) Except for sources that are covered under a general permit issued in accordance with Rule 1200-03-09-.06, the appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$18.75 per ton of allowable emissions of regulated pollutants at the time of the fee assessment by the Division based on the current active permit(s). Sources with allowable emissions less than 10 tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major source.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (f) A responsible official of a source operating under a general permit shall pay an annual emissions fee as stipulated in subparagraph (e) of this paragraph based on the allowable emissions specified in the general permit unless different fee rates are stipulated in the following table. These fees are due and payable by the date established in subparagraph (c) of this paragraph:

General Permit Category	Combined Annual Emission Fee and Base Fee	Permit Review Fee
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Perchloroethylene and Petroleum Solvent Dry Cleaners	\$0	\$0
Concrete Batch Plants with emissions less than 10 tons per calendar year	\$0	\$0
Concrete Batch Plants with emissions greater than or equal to 10 tons per calendar year	\$400	\$0
Portable rock crushers at True Minor Facilities	\$1,000	\$0
Portable rock crushers at Conditional Major Facilities	\$1,000	\$500
Asphalt Plants	\$1,000	\$500

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (a) The Technical Secretary will not issue any permit or renewal of a permit to an applicant until all fees required by this chapter have been paid in full to the State of Tennessee.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-203-103, et seq.; and 68-201-101, et seq.

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

- (b) If any part of any fee imposed under this rule is not paid within 15 days of the due date, a late payment penalty of five percent of the amount due shall at once accrue and be added thereto. Thereafter, on the first day of each month during which any part of any fee or any prior accrued late payment penalty remains unpaid, an additional late payment penalty of five percent of the then unpaid balance shall accrue and be added thereto. In addition, the fees not paid within 15 days after the due date, shall bear interest at the maximum lawful rate from the due date to the date paid, compounded monthly; however, the total of the penalties and interest that accrue pursuant to this subparagraph shall not exceed three times the amount of the original fee.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Subpart (iii) part 2 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:

- (iii) Sources choosing to pay annual fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated 65% of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual fee is due August 1 of each year, except as allowed by part (g)3. of this paragraph.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Part 4 of subparagraph (b) 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:

- 4. The responsible official of a newly constructed major source, Paragraph 11 source, or minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's

start-up. However, in no case shall the annual fee be less than the annual base fee established in part (d)1 of this paragraph. Prior to July 1, 2024, in no case shall the annual fee be less than the minimum fee established in subpart (d)2(ii) of this paragraph effective on July 1, 2022.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, 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 parts 2 and 4 of this subparagraph, a responsible official of any source subject to this paragraph shall pay an annual base fee which shall be calculated in accordance with subparts (i) through (iii) of this part. This base fee shall be paid in addition to the annual emission fee established by subpart 2(iii) of this subparagraph. The fee rates required by this part effective July 1, 2022, continue to apply until July 1, 2024.

(i) The base fee shall be determined by the number of federal air quality standards to which a major source or Paragraph 11 source is subject. The following federal air quality standards shall be considered if the standards have been incorporated into a permit issued to the facility under the provisions of Chapter 1200-03-09 or have been incorporated into Chapter 0400-30-38 or Chapter 0400-30-39:

(I) Standards of Performance for New Stationary Sources as codified in 40 C.F.R. part 60, excluding subparts A, B, Ba, C, Cb, Cc, Cd, Ce, Cf, AAA, DDDD, FFFF, MMMM, and UUUUa.

(II) National Emission Standards for Hazardous Air Pollutants as codified in 40 C.F.R. part 61, excluding subpart A.

(III) National Emissions Standards for Hazardous Air Pollutants as codified in 40 C.F.R. part 63, excluding subparts A, B, C, D, E, OO, PP, QQ, RR, SS, TT, UU, VV, and XX.

(ii) If a facility is subject to 40 C.F.R. part 60 subpart IIII or JJJJ, or 40 C.F.R. part 63 subpart ZZZZ or CCCCC and is only subject to that subpart for air contaminate sources that are not required to be included in a permit in accordance with paragraph (4) of Rule 1200-03-09-.04, then such subpart shall not be included when determining the number of federal air quality standards that a source is subject.

(iii) The base fee is determined in accordance with the following table:

Number of federal air quality standards	Base Fee
0	\$10,000
1	\$15,000
2 to 3	\$20,000
4 to 5	\$30,000
6 to 10	\$40,000
11 to 20	\$50,000
21 and up	\$75,000

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 shall be no less than:
    - (I) \$5,500 for sources (Once in/Always in sources) subject to this paragraph 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 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 must be supported by the Division's annual workload analysis that is approved by the Board.
  - (v) When subparts 1(i) through (iii) of this subparagraph become effective, subpart (ii) of this part will no longer be applicable.
3. The fees and fee rates specified in this subparagraph shall remain in effect until the effective date of an amendment to this subparagraph. 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.
  4. Notwithstanding the fee rates established by part 1 or 2 of this subparagraph, a responsible official of any source subject to this paragraph shall pay a Title V modification fee calculated as follows:
    - (i) For each minor permit modification issued in accordance with subpart (11)(f)5(ii) of Rule 1200-03-09-.02 during the calendar year preceding the year in which the annual fee is due, the responsible official shall pay \$2,800.
    - (ii) For each significant modification issued in accordance with subpart (11)(f)5(iv) of Rule 1200-03-09-.02 during the calendar year preceding the year in which the annual fee is due, the responsible official shall pay \$5,000.
  5. The Title V modification fee required by part 4 of this subparagraph shall be paid in addition to the annual emission fee established by subpart 2(iii) of this subparagraph. The Title V modification fee is not required for complete minor permit modification and significant modification applications received prior to July 1, 2024.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Subpart (i) part 3 of subparagraph (g) 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:

- (i) Responsible officials choosing to pay the annual fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may, for facilities paying fees on a calendar year basis, be granted by the Technical Secretary for up to 90 days after the fee is due pursuant to subparagraph (a) of this paragraph. The extension may, for facilities paying fees on a fiscal year basis, be granted by the Technical Secretary for up to 60 days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1 or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual fee payment of no less than 65% of the annual fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual fee.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

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

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 10/11/2023 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: 06/20/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 08/11/2023

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

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

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

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Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-02 and 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.

\_\_\_\_\_  
Jonathan Skrmetti  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

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

Effective on: \_\_\_\_\_

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

## Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Comment: A commenter stated that a construction and modification permit application fee of \$500 for air curtain incinerators should be added to the proposed table in part (5)(a)4 of Rule 1200-03-26-.02.

Response: The Board agrees to add a \$500 fee for air curtain incinerators to the table in part (5)(a)4 of Rule 1200-03-26-.02. The Division is in the process of developing a general construction permit for air curtain incinerators and a fee of \$500 is typical for a traditional permit for an air curtain incinerator.

2. Comment: A commenter stated that it would be appropriate to retain the existing language in subpart (9)(d)2(ii) of Rule 1200-03-26-.02 and add subpart (9)(d)2(v) to read as follows: "When subparts (1)(i) through (iii) of this subparagraph become effective, subpart (ii) of this part will no longer be applicable."

Response: The Board agrees these changes are needed to ensure there will not be any unintended revenue erosion if the effective date of the amendments is delayed past July 1, 2024.

3. Comment: Commenters stated that the Division should encourage the use of plantwide applicability limit (PAL) permits because they reduce the burden on the Division. Application fees associated with an initial PAL permit are to be expected, and the PAL permit renewal fees, per pollutant or otherwise, are unwarranted and should be covered by the annual Title V fees. A commenter included a quote from the federal rule that established EPA's PAL rule, which states that fewer resources are required by the permitting agency. A commenter noted that changes made during the 10-year term of a PAL permit are already incorporated into the compliance demonstration methodologies and that PAL renewals should be "uncomplicated, straightforward, and efficient administrative affirmation of the changes that involve minimal staff time and effort."

Response: While the commenter is correct that PAL permits reduce the burden on the Division, only prevention of significant air quality deterioration (PSD) and PSD-avoidance permitting is avoided. All other permit workload remains for facilities that have PALs. Some of the substantial work required by the Division to renew a PAL includes:

- Adjusting the level of the PAL based on (1) the facility's current potential to emit, (2) state and federal requirements that became applicable during the PAL term, (3) updated baseline actual emissions, (4) units that were constructed during the term of the PAL, (5) air quality needs, (6) advances in control technology, (7) anticipated economic growth in the area, (8) rewarding or encouraging voluntary emission reductions, and (9) other factors specified by the Technical Secretary. See 40 C.F.R. § 52.21(aa)(10)(iv) and subpart (4)(s)10(iv) of Rule 1200-03-09-.01.
- Adjustment of emission factors based on re-validation performance testing (which is required every five years). See 40 C.F.R. § 52.21(aa)(12)(vi) and 14(iii) and subparts (4)(s)12(vi) and (4)(s)14(iii) of Rule 1200-03-09-.01.
- Public participation. See 40 C.F.R. § 52.21(aa)(5) and part (4)(s)5 of Rule 1200-03-09-.01.

Tennessee currently has four facilities with active PAL permits. These range from a single-pollutant PAL with eight sources to a facility with PALs for 10 different pollutants with approximately three dozen sources. Thus, the level of complexity and resulting amount of work to renew a PAL can range from being rather straightforward to relatively difficult. The Division does not have any recent data on the person-hours required for PAL Renewals. Given the lack of data on the workload associated with a PAL renewal, the Board has decided not to include a fee for PAL renewals, and the associated proposed deadline, in the current rule. A fee for PAL renewals may be revisited once sufficient data is collected.

4. Comment: Commenters stated that the 2023-2024 Title V Workload Analysis provided by the Division indicated that 1.34 FTEs will be required to process an estimated 86 significant and minor modifications received and that the \$5000 fee for significant modifications and \$2800 fee for minor modifications seem excessive based on the number of documents being processed and should be significantly reduced. The Commenters stated that fees for these services should be covered by the Title V annual fees.



Response: The entire set of proposed fees, including proposed significant modification and minor modification fees, that pertain to Title V sources are necessary to cover the actual cost to the State of the Title V program. The cost of the Title V program includes various expenses that are directly attributable to individual sources, such as source inspections, stack test observations and report reviews, continuous emissions monitor report reviews, enforcement activity, and emission inventory reviews, as well as many expenses that are not directly attributable to individual sources, such as ambient monitoring, management and administration, TDECs Small Business Environmental Assistance Program, regulatory development, and a portion of the Division's General and Administrative fees. Where the Board can identify specific activities that are directly related to a specific permitting activity for a specific facility and data exists to estimate the average amount of time taken to complete those activities, such as Title V minor modification and significant modification, per-service fees to be paid by the facility receiving the service were developed to capture those costs. This was done to align the costs for these services with those companies that are directly requesting those services whenever possible. It is expected that the cost for many of the services mentioned above that cannot be directly attributable to individual sources would be covered by the Title V annual emission fee or base fee.

The proposed minor modification fee is based on a five-year average number of man-hours (25.7) for issuing a minor modification and an hourly rate of \$108/hour. Thus, the proposed minor modification fee was calculated as follows: 25.7 hours x \$108/hour = \$2776, which was rounded up to \$2800 for the proposal.

The proposed significant modification fee is based on a five-year average number of man-hours (45.5) for issuing a minor modification and an hourly rate of \$108/hour. Thus, the proposed minor modification fee was calculated as follows: 45.5 hours x \$108/hour = \$4,903, which was rounded up to \$5,000 for the proposal.

The average hourly cost of \$108/hour was projected for FY2028, the target year for the fee rule analysis, and includes salary, benefits, and a pro-rated portion of the TDEC General & Administrative (G&A) costs. Actual salaries, benefit ratios, and TDEC G&A costs were used assuming a three percent per year increase to project them to FY2028.

5. Comment: Commenters supported the proposed flat fee of \$7,000 for construction permits at Title V facilities instead of the alternative proposed fee schedule based on the Anticipated Maximum Emission Rate associated with the application.

Response: The Board has included the flat \$7,000 construction permit application fee for Title V sources in the final rule.

6. Comment: A commenter inquired as to whether an individual who signed as a "responsible official" is personally liable to pay if the source does not have the ability to do so. The commenter stated that this should be clarified.

Response: Generally, the "responsible official" is not personally liable for the payment of fees unless there are specific circumstances such as when the responsible official is also the owner or operator of the facility and may have structured the business and personal finances in a way that may make the individual personally liable.

7. Comment: A commenter stated that facilities should be allowed to pay any permit fee, whether they be renewal fees, application fees, or modification fees, at the time of annual fee payment.

Response: The proposed rule allows for the proposed minor modification and significant modification fees to be paid along with the annual fee payment; therefore, the Board attempted to allow fees to be paid annually to the extent the law allows. The proposed construction fee for Title V sources, the PSD and Nonattainment NSR permit fees, and PAL fees are construction permit fees. Subparagraph (4)(a) of Rule 1200-03-26-.02 states: "A construction permit application is not considered complete unless the application filing/processing fee has been paid in full." A facility that is issued a Title V to Conditional Major permit would not be subject to Title V fees once that permit is issued and thus it would not be possible to assess the Title V to Conditional Major fee with annual Title V fees. Furthermore, T.C.A. section 68-203-103(d) of the Tennessee Environmental Protection Fund Act states: "No permit or renewal of a permit shall be issued to an applicant for a permit under the

foregoing authorities until all fees required by this chapter are paid in full.”

8. Comment: A commenter stated that the proposed 18-month regulatory deadline to review a 1-pollutant PAL or a Title V to Conditional Major application is excessive and hindering to business operations.

Response: The Division has issued two initial PAL permits in recent years. One was a three pollutant PAL permit (PM, PM<sub>10</sub>, and PM<sub>2.5</sub>) and took slightly over 19 months from the date of receipt of a complete application to issue. The other was a nine pollutant PAL permit (NO<sub>x</sub>, CO, SO<sub>2</sub>, VOC, TRS, H<sub>2</sub>S, Pb, H<sub>2</sub>SO<sub>4</sub>, and HF) and took slightly over seven months from the date of a complete application to issue. Both PAL permits were issued to the same company. Many key issues pertaining to the second PAL permit were resolved while processing the first PAL permit, making development of the second quicker. Also, issuance of the three pollutant PAL was delayed at the request of the applicant so the effective dates of both PAL permits would be the same.

The Division currently has four facilities with active PAL permits, which range from a single pollutant PAL for eight sources to 10 pollutant-specific PALs for more than three dozen sources. The compliance methods for the various PALs range from simple mass balance calculations for surface coating operations to emission factors that require initial validation and periodic re-validation for process sources. Because each PAL application is unique in its breadth and complexity, the length of time to issue a PAL permit will vary and is difficult to project. The regulatory deadline for taking final action on a PAL permit must cover both the simple single-pollutant PAL permit and the complex multi-pollutant, multi-source PAL permit.

Based on the information listed above, the Board recognizes that the Division may be able to take final action on a PAL application in less than the proposed regulatory deadline of 18 months. However, a standard 180-day deadline for a regular construction permit is not likely to provide sufficient time for the Division to work with the applicant to craft a quality PAL that meets the needs of the applicant and that can pass Environmental Protection Agency (EPA) and public scrutiny. Given the data currently available, the Board has determined that a 12-month deadline, with a provision for a longer issuance time if agreed to by the applicant, is appropriate to handle the wide range of PAL applications that would need to be processed.

Conditional major permits are one of the more complex types of permits issued by the Division. Conditional major permits require the development of voluntary emission or production limitations to ensure that the potential emissions of all pollutants emitted by the facility remain below major source threshold. These emission limits must include enforceable testing, monitoring, recordkeeping, and reporting requirements developed on a case-by-case basis. The Division uses an 18-month goal for initial conditional major permits, which is the same deadline that would apply to the same facility for a Title V permit. The workload required for going from an existing Title V permit to a conditional major permit should be somewhat less because the Title V permit should already have the emission limits and compliance methods for applicable state and federal regulatory requirements. However, the source-specific conditional major requirements must still be developed.

The Division has issued four permits to change facilities from Title V to Conditional Major in the last five years. The length of time to issue these permits ranged from 60 to 539 days from receipt of a complete application. As with the PAL permits, the Board recognizes that the Division may be able to take final action on a complete Title V to Conditional Major application in less than 18 months. However, given that half of these permits exceeded the standard 180-day deadline for a construction permit for a Title V source, the Board has determined that a 12-month deadline, with a provision for a longer issuance time if agreed to by the applicant, is appropriate.

These regulatory deadlines are the maximum time the Division is allowed to act on a permit application. The Board encourages the Division to continue to issue permits within timeframes necessary to meet the applicant's business needs.

9. Comment: A commenter requested that “in-process” modification and PAL renewal applications should be grandfathered as exempt from the proposed fee.

Response: Applications deemed complete before the effective date of this rule revision will be subject to the previous version of the Title V fee rule. Applications deemed complete on or after the effective date

of this rule change will be subject to the new fee structure. Language has been added to part (9)(d)5 of Rule 1200-03-26-.02 to clarify this.

10. Comment: TDEC's Small Business Environmental Ombudsman expressed support for establishment of general permits, many of which cover source categories that include small businesses. He stated that he understands that even general permits require some staff time to process and supported the proposed fees for general permits. Based on comments from industry, small costs, such as those proposed, may make a facility pay more attention to a general permit than if it was provided at no cost.

Response: The Board appreciates the comment.

## 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.

The Board does not require sources to identify whether a facility is a small business in air quality permit applications, therefore, identification of individual small businesses subject to these rule changes is not possible. However, some examples of the types of small businesses that would be subject to the various parts of the rule revision are as follows:

- Fees for Title V sources – Categories of industries that will be impacted may include fiberglass boat, tub, and spa manufacturers; furniture manufacturers; building materials production companies; chemical plants; private landfill operators; foam products manufacturers; and secondary metals plants. While the proposed rule will require affected businesses to pay more in fees, adequate funding of the Title V program should ultimately result in the timely issuance of Title V operating permits, modifications, and construction permits for sources subject to the Title V permitting program. Small businesses required to obtain Title V operating permits will see increased fees because of this proposed rulemaking. However, only a small percentage of facilities required to obtain such permits are small businesses as defined in the Uniform Administrative Procedures Act, Tennessee Code Annotated section 4-5-102(13). Also, as stated below, it is expected that small businesses, which tend to be subject to fewer federal regulations, should see only a modest impact in annual fees.
- General Permits – Categories of industries that may be impacted include dry cleaners, concrete batch plants, asphalt plants, portable rock crushing companies, and owners of air curtain incinerators. General permits, which are included in these amendments, should be beneficial to small businesses that would fall into the categories covered by general permits as it provides an expedited process for permitting new and modified sources.

- (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.

- Fees for Title V sources – The proposed amendments will not add any reporting, recordkeeping, or other administrative costs for compliance with the proposed rule.
- General Permits – The proposed rule, which adds fees for facilities that choose to be covered by a general permit, will require minimal administrative costs associated with payment of the fees. It is anticipated that a facility's existing administrative and financial staff will be able to cover payment of the fees. However, the burden associated with applying for and complying for a general permit itself will significantly reduce the burden on the facility.

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

The rule amendments increase fees owed for small businesses required to have Title V operating permits or construction permits. However, the base fee structure that aligns increasing cost with the number of federal regulations applicable to the company ensures that small business with few federal regulations applied to their facility will see minimal increase to their annual fee. Additionally, small businesses have an opportunity to avoid construction permits and the associated costs by using Title V minor modifications, which have a lower fee, and operational flexibility changes, which have no fee.

- (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.

Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the 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[.]" All facilities within the program must contribute to the direct and indirect costs.

Regarding the proposal's changes relative to general permits, both in the Title V and the non-Title V program, these are a less burdensome and less costly alternative to standard permits. The changes to the general permit fees will allow the Division to develop and implement general permits without impacting fee revenue.

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

Each state's fee system is unique, so direct comparisons cannot be made. However, federal law requires each state to recoup the cost from the participants of the title V program that are adequate to cover the program. Therefore, small businesses would be required to contribute to the cost of each states Title V program.

- (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 from Title V fee rules would violate federal law and would collect insufficient funds to fund the Title V program. [Section 502(b)(3)(A) of the Clean Air Act] Because small businesses are generally subject to less federal regulations than larger businesses and do not require some of the more complex permitting services like PSD permits, it is anticipated that this proposal avoids putting any additional burden on small businesses to cover the cost of services that are requested by other businesses and streamlines the fee structure to be more specific to what the companies are requesting wherever possible.

### **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 or 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 have a financial impact on local governments with a Title V 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;

The rule amendments achieve three different purposes: (1) diversify the Title V fee structure to establish a stable revenue stream to adequately fund the Title V program, (2) establish fees for categories of general permits that currently exist or are under development, and (3) make miscellaneous changes to clarify or streamline the fee process.

### Title V Program Fee Diversification:

The Title V program was added to the Clean Air Act (CAA) with the 1990 amendments and is a self-funded<sup>1</sup> federal permitting program for which states seek delegation from EPA to implement for major sources of air emissions in the state. This rule reflects the Board's partnership with stakeholders to develop a long-term funding solution ensuring the state of Tennessee continues to meet the CAA requirement that each state's Title V program fees cover the cost of administering the program. Cost recovery is also a goal of the state's Environmental Protection Fund statute. The proposed rule establishes a more stable and diverse fee structure resulting in a long-term funding solution. Projections for the Title V program show a \$16.8 million deficit from FY24 to FY30 without the proposed rule change, due to projected emission reductions resulting from TVA plant closures and conversions and the general downward trend in emissions from non-EGUs. These amendments are projected to fund \$13.5 million of this gap, with the balance covered by reserves.

Tennessee's Title V program is primarily funded through emissions-based fees. Although the regulated community in Tennessee is continuing to make major strides in limiting emission of pollutants, program workload has not decreased (technical reviews continue to increase in complexity as federal rules are added or change), and the Title V program has become increasingly underfunded. The Division worked with stakeholders to explore a more diverse fee structure with a goal of avoiding the frequently recurring need to request emission-fee rate increases.

These amendments retain Tennessee's competitive advantage when recruiting businesses to Tennessee. The Division relies on the ability to hire and retain highly qualified technical employees to conduct the work. The Division consistently receives positive feedback from regulated entities regarding the high level of personalized service they receive and how important this service is to their success in Tennessee. The Division's timely and competent processing of permit applications for new and modified facilities, compliance assistance, and response to information requests enables Tennessee to attract and retain large businesses.

The current Title V fee system is based on the federal model that was promulgated over 30 years ago. The model, based on emissions, assumes the cost of a Title V program is proportionally related to emissions (i.e., fee = tons emitted times dollars per ton). This model has proven to be short-sighted as the state's work to meet federal requirements does not decrease proportionally with the reduction in emissions in the Title V program. In fact, as the federal regulatory structure has grown, so has the program's workload.

Cleaner air in Tennessee can be attributed to a decrease of about 70% of the emissions from Title V facilities over the past 20 years. A significant share of the decreasing emissions has occurred at electric utility units as TVA has made changes to its power generation fleet. This decrease is expected to continue as TVA completes the conversion of its generation fleet from coal to cleaner fuels over the next few years. Other large industrial sources have also moved to power their facilities with cleaner, less emitting fuels, causing emissions to decline over time. Because the Title V program has been predominately funded on a dollar/ton emission fee, The Board has had to continually raise that fee to ensure the program continues to comply with federal law as a self-funded program. However, as emissions continue to decline as more facilities move to lesser emitting fuels to power their operations, more fee increases would be needed to fund the program and comply with federal law. During the same 20-year time frame, the Title V workload, and the level of technical complexity associated with such, has increased. The number of federal air quality rules implemented by the Division has nearly doubled from 136 to 264. The number of Title V facilities is remaining steady at between 210 and 220; however, the need for

<sup>1</sup> The CAA requires that a minimum element of the Title V program administered by a state include that the owner or operator of all sources subject to the requirement to obtain a permit pay 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 program. 502(b)(3)(A).



Division support of these facilities has grown. For example, the number of major new source permits increased from an average of two per year in FY2012 through FY2021 to eight in FY2022. The Division is now challenged with meeting current workload needs to support this program.

This proposed rulemaking is the result of stakeholder meetings, webinars, and surveys to explore options and develop consensus for a funding solution. The Division's and stakeholders' feedback is reflected in the proposed Title V fee structure. This new fee structure relies less on emissions and more on elements that reflect work associated with individual Title V facilities. This structure should be more stable over time and reduce the need for frequent fee rule changes. The elements added to the fee structure are related to workload pertaining to individual sources and the services they receive from the Division.

The proposed amendments will add several elements that are based on actual workload associated with each fee element:

- Establish a new construction permit application fee structure for Title V sources.
- Establish new application fees for major new source review (NSR) permits, plantwide applicability limit (PAL) permits, and permits for facilities that "opt out" of the Title V program. NSR, PAL, and "opt-out" permits are the most complex permits issued by the Division.
- Establish regulatory deadlines for issuing PAL and opt out permits (as required by the Environmental Protection Fund Act, Tenn. Code Ann. Title 68, Chapter 203)
- Establish new fees for Title V modifications (\$2,800 for minor permit modifications and \$5,000 for significant permit modifications).
- Replace the existing \$6,000 base fee and \$10,000 minimum fee with a base fee that ranges from \$10,000 to \$75,000 per year based on the number of federal air quality standards that a source is subject to.

The dollar-per-ton fee rates remains unchanged.

General Permit Fee (Non-Title V program):

In response to stakeholders' requests for a streamlined alternative to traditional air quality construction and operating permits, which were issued on an individual basis, the Division has developed a general permit program. General permits are utilized in other divisions within the Department and reduce the amount of work and the length of time required by regulated entities to obtain permits. They also reduce the amount of work for the Division to issue coverage under those permits while maintaining the same level of environmental protection. Coverage under general permits can be issued in much shorter time frames, averaging 25 days (for those that don't require individual public notice, which is the vast majority) since the program began in 2017 compared to 102 days for individual construction permits. To avoid revenue erosion, the proposed amendments remove the fee exemption for general permits and establish annual emission fees that are based on the average fee currently paid by sources in these fee categories.

- (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 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 Board to establish fees under the Tennessee Air Quality Act. Federal air quality rules, at 40 C.F.R. § 70.9 stipulates that states "shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The proposed Title V fee diversification rules include some fees that are paid by part 70 sources on an annual basis, and some fees that are paid at the time a permit application is submitted.

- (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;

The proposed changes to the Title V fee rule will affect owners and operators of sources in the state required to have Title V operating permits. Most of these sources are major sources of air pollution. Major sources are made up of large industrial, commercial, and governmental entities that are authorized to emit pollutants in amounts



exceeding 100 tons per year of any criteria pollutant, 10 tons per year of any hazardous air pollutant, and/or 25 tons per year of a combination of hazardous air pollutants. A few categories of sources (e.g., solid waste landfills) with lower emissions are required by the EPA to obtain Title V operating permits. The Division of Air Pollution Control conducted an extensive stakeholder process prior to proposal of the rule. That process began in August 2022, and included meetings with the Tennessee Chamber of Commerce and Industry, two stakeholder webinars, and several individual one-on-one meetings with key stakeholders. Additional stakeholder involvement was held to discuss the proposed rule including another stakeholder webinar and a meeting with the Tennessee Chamber of Comments and Industry. These stakeholders recognize the Title V program to be mandated and established as self-supporting and have participated in the development of the framework in Tennessee. These regulated entities have taken a vested interest in their responsibility to pay for the services they receive from the Division. As explained in detail above, the Division spent over a year with stakeholders discussing the changes proposed changes. The revisions to the current fee rules are necessary to provide stability and diversification of the fee system. The proposed rule included alternatives that were suggested by persons, organizations, corporations, and government entities that participated in the stakeholder process that began in 2022. This rule contains some provisions that are different than originally proposed by the Board based on comments received during the public comment period.

Owners and operators of sources that request coverage under a general permit will be affected by the general permit fees included in this rulemaking. This would include owners and operators of drycleaners, concrete batch plants, portable rock crushers, asphalt plants, and air curtain incinerators. Generally, these sources have supported the Division's efforts to create general permits for their businesses. TDEC's Small Business Ombudsman provided input when developing the regulations.

- (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 \$13.5 million over a six year period.

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

James P. Johnston  
Division of Air Pollution Control  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 15th Floor  
Nashville, Tennessee 37243  
[james.johnston@tn.gov](mailto:james.johnston@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 Director  
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) 253-5339

(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.

Fees for Title V sources: The Title V annual fee rule is revised by eliminating the minimum fee, revising the current base fee of \$6000 to one that ranges from \$10,000 to \$75,000 per year based on the number of federal air quality standards that a facility is subject to, and adding fees for Title V minor modifications (\$2800) and significant modifications (\$5000) issued. The rule increases the construction application fee from the current rates that range from \$100 to \$5000 per application to a flat rate of \$7000 per application. New fees are added for Prevention of Significant Deterioration and Nonattainment New Source Review applications (\$70,000), Plantwide Applicability Limit permit applications (\$10,000 per pollutant) and permits for Title V sources which “opt-out” of the Title V program and become Conditional Major sources (\$18,000).

General Permits: The fee exemption for general permits is removed. Application fees for general permits that serve as construction permits as follows: drycleaners - \$100, concrete batch plants - \$100, portable rock crushers - \$100, asphalt plants - \$250, and air curtain incinerators - \$500. Annual non-Title V fees are set for certain sources covered by a general permit: concrete batch plants with emissions  $\geq$  10 tons/year - \$400, portable rock crushers at true minor facilities - \$1000, portable rock crushers at conditional major facilities - \$1500, and asphalt plants - \$1500.

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

Title V fees: Because the U.S. Clean Air Act requires that fee payers pay all costs, direct and indirect, to operate the Title V operating 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 Title V permitting program and are the least-costly method of achieving the purposes of these amendments.

General permit fees: The fees for general permits were based on the average fee for a traditional permit for the same facility. Thus, affected facilities should not see a significant change.

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

Not amending the Title V fee rules to ensure adequate collections to fund the Title V operating permit program would place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the U.S. 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.

For Title V fees, major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the number applicable federal air quality regulations and number of permitting and modification applications processed for each source. Ensuring adequate funding for the Division will benefit Title V companies in that regulatory permitting and compliance activities will remain implemented by Tennessee and critical permits like construction permits will be issued by or even before in some cases, regulatory deadlines. Citizens of the state of Tennessee 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 Department. For the general permit fees, owners and operators of facilities that elect to be covered by a general permit will be affected by this action. They will benefit from a quicker, streamlined permitting process. The impact of the fee should be minimal because (1) the fee is designed to be the same as a typical traditional permit for the source category and (2) coverage under a general permit is voluntary.

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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).*

<b>Agency/Board/Commission:</b>	Air Pollution Control Board
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	James P. Johnston
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 <sup>th</sup> Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 253-7319
<b>Email:</b>	<a href="mailto:james.johnston@tn.gov">james.johnston@tn.gov</a>

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

Amendment  Content based on previous emergency rule filed on \_\_\_\_\_  
 New  Content is identical to the emergency rule  
 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
1200-03-02	Definitions
Rule Number	Rule Title
1200-03-02-.01	General Definitions

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 1200-03-02  
Definitions

Amendments

Paragraph (1) of Rule 1200-03-02-.01 General Definitions is amended by adding a new definition (mmmm) placed in numeric order to read as follows:

(mmmm) "Hazardous air pollutant" or "HAP" means the air contaminants listed in this subparagraph:

<u>CAS No.</u>	<u>Chemical name</u>
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline) 92875
	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate_(DEHP)
542881	Bis(chloromethyl) ether
75252	Bromoform
<u>106945</u>	<u>1-Bromopropane</u>
106990	1,3-Butadiene
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture) 95487
	o-Cresol
108394	m-Cresol

106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidine
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline) 64675
	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethylbenzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts 51285
	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	<b>Ethyl</b> acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl Chloride (Chloroethane) 106934
	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichlorethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane) 50000
	Formaldehyde
76448	Hepotachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)

74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane) 60344
	Methyl hydrazine
74884	Methyl iodide (Iodomethane) 108101
	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroniline) 75092
	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Arochlors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane) 75569
	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine) 91225
	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride

75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide compounds <sup>1</sup>
0	Glycol ethers <sup>2, 6</sup>
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers <sup>3</sup>
0	Nickel Compounds
0	Polycyclic Organic Matter <sup>4</sup>
0	Radionuclides (including radon) <sup>5</sup>
0	Selenium Compounds

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

<sup>2</sup> Include mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR'. Where:  
n = 1, 2, or 3;  
R = alkyl C7 or less; or  
R = phenyl or alkyl substituted phenyl; R' =  
H or alkyl C7 or less; or  
OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

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

<sup>3</sup> Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of an average diameter 4 of one micrometer or less.

<sup>4</sup> Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

<sup>5</sup> A type of atom ~~which that~~ spontaneously undergoes radioactive decay.

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

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



Chapter 1200-03-26  
Administrative Fees Schedule

Amendments

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

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

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

132649 ——— Dibenzofurans  
 96128 ——— 1,2-Dibromo-3-chloropropane  
 84742 ——— Dibutylphthalate  
 406467 ——— 1,4-Dichlorobenzene(p)  
 91941 ——— 3,3-Dichlorobenzidene  
 111444 ——— Dichloroethyl ether (Bis(2-chloroethyl)ether)  
 542756 ——— 1,3-Dichloropropene  
 62737 ——— Dichlorvos  
 111422 ——— Diethanolamine  
 121697 ——— N,N-Diethyl aniline (N,N-Dimethylaniline)  
 64675 ——— Diethyl sulfate  
 119904 ——— 3,3-Dimethoxybenzidine  
 60117 ——— Dimethyl aminoazobenzene  
 119937 ——— 3,3'-Dimethylbenzidine  
 79447 ——— Dimethyl carbamoyl chloride  
 68122 ——— Dimethyl formamide  
 57147 ——— 1,1-Dimethyl hydrazine  
 131113 ——— Dimethyl phthalate  
 77781 ——— Dimethyl sulfate  
 534521 ——— 4,6-Dinitro-o-cresol, and salts  
 51285 ——— 2,4-Dinitrophenol  
 121142 ——— 2,4-Dinitrotoluene  
 123911 ——— 1,4-Dioxane (1,4-Diethyleneoxide)  
 122667 ——— 1,2-Diphenylhydrazine  
 106898 ——— Epichlorohydrin (1-Chloro-2,3-epoxypropane)  
 106887 ——— 1,2-Epoxybutane  
 140885 ——— acrylate  
 100414 ——— Ethyl benzene  
 51796 ——— Ethyl carbamate (Urethane)  
 75003 ——— Ethyl Chloride (Chloroethane) 106934  
 ——— Ethylene dibromide (Dibromoethane)  
 107062 ——— Ethylene dichloride (1,2-Dichloroethane)  
 107211 ——— Ethylene glycol  
 151564 ——— Ethylene imine (Aziridine)  
 75218 ——— Ethylene oxide  
 96457 ——— Ethylene thiourea  
 75343 ——— Ethylidene dichloride (1,1-Dichloroethane)  
 50000 ——— Formaldehyde  
 76448 ——— Hepotachlor  
 118741 ——— Hexachlorobenzene  
 87683 ——— Hexachlorobutadiene  
 77474 ——— Hexachlorocyclopentadiene  
 67721 ——— Hexachloroethane  
 822060 ——— Hexamethylene-1,6-diisocyanate  
 680319 ——— Hexamethylphosphoramide  
 110543 ——— Hexane  
 302012 ——— Hydrazine  
 7647010 ——— Hydrochloric acid  
 7664393 ——— Hydrogen fluoride (Hydrofluoric acid)  
 123319 ——— Hydroquinone  
 78591 ——— Isophorone  
 58899 ——— Lindane (all isomers)  
 108316 ——— Maleic anhydride  
 67561 ——— Methanol  
 72435 ——— Methoxychlor  
 74839 ——— Methyl bromide (Bromomethane)  
 74873 ——— Methyl chloride (Chloromethane)  
 71556 ——— Methyl chloroform (1,1,1-Trichloroethane)  
 60344 ——— Methyl hydrazine  
 74884 ——— Methyl iodide (Iodomethane) 108101  
 ——— Methyl isobutyl ketone (Hexone)

624839 Methyl isocyanate  
80626 Methyl methacrylate  
1634044 Methyl tert butyl ether  
401144 4,4-Methylene bis(2-chloroniline) 75092  
Methylene chloride (Dichloromethane)  
401688 Methylene diphenyl diisocyanate (MDI)  
401779 4,4-Methylenedianiline  
91203 Naphthalene  
98953 Nitrobenzene  
92933 4-Nitrobiphenyl  
100027 4-Nitrophenol  
79469 2-Nitropropane  
684935 N-Nitroso-N-methylurea  
62759 N-Nitrosodimethylamine  
59892 N-Nitrosomorpholine  
56382 Parathion  
82688 Pentachloronitrobenzene (Quintobenzene)  
87865 Pentachlorophenol  
408952 Phenol  
406503 p-Phenylenediamine  
75445 Phosgene  
7803512 Phosphine  
7723140 Phosphorus  
85449 Phthalic anhydride  
1336363 Polychlorinated biphenyls (Arochlors)  
1120714 1,3-Propane sultone  
57578 beta-Propiolactone  
423386 Propionaldehyde  
414261 Propoxur (Baygon)  
78875 Propylene dichloride (1,2-Dichloropropane)  
75569 Propylene oxide  
75558 1,2-Propylenimine (2-Methyl aziridine)  
91225 Quinoline  
406514 Quinone  
400425 Styrene  
96093 Styrene oxide  
1746016 2,3,7,8-Tetrachlorodibenzo-p-dioxin  
79345 1,1,2,2-Tetrachloroethane  
427184 Tetrachloroethylene (Perchloroethylene)  
7550450 Titanium tetrachloride  
408883 Toluene  
95807 2,4-Toluene diamine  
584849 2,4-Toluene diisocyanate  
95534 o-Toluidine  
8001352 Toxaphene (chlorinated camphene)  
120821 1,2,4-Trichlorobenzene  
79005 1,1,2-Trichloroethane  
79016 Trichloroethylene  
95954 2,4,5-Trichlorophenol  
88062 2,4,6-Trichlorophenol  
121448 Triethylamine  
1582098 Trifluralin  
540841 2,2,4-Trimethylpentane  
408054 Vinyl acetate  
593602 Vinyl bromide  
75014 Vinyl chloride  
75354 Vinylidene chloride (1,1-Dichloroethylene)  
1330207 Xylenes (isomers and mixture)  
95476 o-Xylenes  
408383 m-Xylenes  
406423 p-Xylenes

- ~~0 \_\_\_\_\_ Antimony Compounds~~
- ~~0 \_\_\_\_\_ Arsenic Compounds (inorganic including arsine)~~
- ~~0 \_\_\_\_\_ Beryllium Compounds~~
- ~~0 \_\_\_\_\_ Cadmium Compounds~~
- ~~0 \_\_\_\_\_ Chromium Compounds~~
- ~~0 \_\_\_\_\_ Cobalt Compounds~~
- ~~0 \_\_\_\_\_ Coke Oven Emissions~~
- ~~0 \_\_\_\_\_ Cyanide compounds<sup>1</sup>~~
- ~~0 \_\_\_\_\_ Glycol ethers<sup>2, 6</sup>~~
- ~~0 \_\_\_\_\_ Lead Compounds~~
- ~~0 \_\_\_\_\_ Manganese Compounds~~
- ~~0 \_\_\_\_\_ Mercury Compounds~~
- ~~0 \_\_\_\_\_ Fine mineral fibers<sup>3</sup>~~
- ~~0 \_\_\_\_\_ Nickel Compounds~~
- ~~0 \_\_\_\_\_ Polycyclic Organic Matter<sup>4</sup>~~
- ~~0 \_\_\_\_\_ Radionuclides (including radon)<sup>5</sup>~~
- ~~0 \_\_\_\_\_ Selenium Compounds~~

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

<sup>2</sup>Include mono and di ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR'. Where:  
 n = 1, 2, or 3;  
 R = alkyl C7 or less; or  
 R = phenyl or alkyl substituted phenyl; R' =  
 H or alkyl C7 or less; or  
 OR' consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.

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

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

<sup>4</sup>~~Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C~~

<sup>5</sup>~~A type of atom which spontaneously undergoes radioactive decay.~~

<sup>6</sup>~~The substance ethylene glycol monobutyl ether (EGBE, 2-Butoxyethanol) (Chemical Abstract Service (CAS) Number 141-76-2) is deleted from the list of hazardous air pollutants established by 42 U.S.C. § 7412(b)(1).~~

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (k) ~~Reserved. "Synthetic minor source" is a minor or major source that wishes to restructure its allowable emissions for the purposes of lowering its annual emission fees. Upon mutual agreement of the responsible official and the Technical Secretary, a more restrictive regulatory requirement may be established to minimize the allowable emissions and thus the annual emission fee.~~

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Paragraph (2) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by adding three new subparagraphs (t), (u), and (v) to read as follows:

- (t) "Permit amendment" is a permit revision that:
1. Corrects typographical errors;
  2. Identifies a change in the name, address, or phone number of any person identified in the permit, or makes a similar minor administrative change at the source;

3. Requires more frequent monitoring or reporting by the permittee;
4. Allows for a change of ownership or operational control of a source where the Technical Secretary determines that no other change in the permit is necessary, provided that a transfer of ownership permit application is filed consistent with the provisions of paragraph (6) of Rule 1200-03-09-.03;
5. Incorporates into a true minor source or conditional major source operating permit the requirements of a construction permit issued pursuant to Rule 1200-03-09-.01;
6. Extends the expiration date of a construction permit;
7. Changes the name of a source or facility;
8. Changes a deadline established in a permit; or
9. Adds or revises a monitoring parameter.

(u) “Anticipated maximum emission rate” (AMER) means the maximum rate of actual emissions, in tons per year, from all regulated air pollutants, as defined in part (11)(b)19 of Rule 1200-03-09-.02, emitted from all sources listed in a construction permit application, excluding sources that are not required to obtain a permit in accordance with Rule 1200-03-09-.04. Except as specified below, the responsible official shall calculate AMER based on each source operating at its maximum actual hourly emission rate, as listed in the construction permit application, for 8,760 hours per year.

$$AMER = \sum_{i=1}^m \sum_{j=1}^n E_{i,j} \times h_j$$

Where:

- m = number of pollutants emitted by sources included in the application
- n = total number of sources included in the application, excluding sources that are exempt from permitting in accordance with Rule 1200-03-09-.04
- E = emission rate in pounds per hour
- h = hours per year (8,760 except as specified below)

For applications that do not list a maximum pound-per-hour emission rate for a particular pollutant or source, the responsible official shall use the potential emissions, in tons per year, as listed in the construction permit application. The responsible official may use a reduced emission rate or hours of operation if the same is limited by federal or state air quality regulation, limited by operational constraints within the process (i.e., a bottleneck), or the responsible official has requested a limitation of the same in the construction permit application. Emission of a greenhouse gas that is a regulated air pollutant solely because the pollutant is a constituent of greenhouse gases shall not be included when calculating AMER. Emission of a hazardous air pollutant that is also a VOC or particulate matter shall be counted only as VOC or particulate matter. When calculating the AMER for particulate matter, the responsible official shall use the highest of the source’s PM, PM<sub>10</sub>, or PM<sub>2.5</sub> emission rate. For construction permit applications that include the retirement of existing sources or the reduction of emissions from existing sources, the AMER shall not include the emission reductions associated with such retirement or reduction of emissions.

(v) “Anticipated maximum increase in emissions” means the anticipated maximum emission rate of the existing source following the change minus the anticipated maximum emission rate prior to the change.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

(c) Any source exempted ~~in by~~ Rule 1200-03-09-.04 ~~Exemptions~~ is exempt from the annual emission

fee requirements of this chapter, unless emissions from the exempt source are included in a facility-wide emissions limit. However, the emissions from any exempt source must comply with all rules and regulations of the Tennessee Air Pollution Control Board.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (d) Reserved. All construction fees required by paragraph (5) of this rule must be paid in full upon submission of the application.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (h) In the event a fee is paid for a construction permit and it is later determined that only an operating permit is needed or the source is insignificant or otherwise exempt from permitting, fifty percent (50%) of the fee will be credited toward the annual emission fee for the source and the other fifty percent (50%) 100% of the fee will be forfeited for the permit review.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (i) Where more than one allowable emission limit is applicable to a regulated pollutant, the allowable emissions for the regulated pollutants shall not be double counted.
  - 1. Major sources subject to the provisions of paragraph (9) of this rule shall apportion their emissions as follows to ensure that their fees are not double counted.
    - (i) Sources that are subject to federally promulgated hazardous air pollutant standards that can be imposed under Chapter 0400-30-38 or Chapter 1200-03-31 will place such regulated emissions in the specific hazardous air pollutant under regulation. If the pollutant is also in the family of volatile organic compounds or the family of particulates, the pollutant shall not be placed in that respective family category. For fee purposes, hazardous air pollutants that are also in the family of volatile organic compounds or the family of particulate matter will be included in their respective family category when determining annual emission fees.
    - (ii) A miscellaneous category of hazardous air pollutants shall be used for hazardous air pollutants listed at part (2)(i)12. of this rule that do not have an allowable emission standard under Chapter 0400-30-38 or Chapter 1200-03-31. A pollutant placed in this category shall not be subject to being placed in any other category such as volatile organic compounds or particulates. For fee purposes, hazardous air pollutants that are not in the family of volatile organic compounds or the family of particulate matter will be reported separately.
    - (iii) Each individual hazardous air pollutant and the miscellaneous category of hazardous air pollutants is subject to the 4,000-ton cap provisions of subparagraph (2)(i) of this rule.
    - (iv) Major sources that wish to pay annual fees for PM<sub>10</sub> PM<sub>10</sub> on an allowable emission basis may do so if they have a specific PM<sub>10</sub> PM<sub>10</sub> allowable emission standard. If a major source has a total particulate emission standard, but wishes to pay annual fees on an actual PM<sub>10</sub> PM<sub>10</sub> emission basis, it may do so if the PM<sub>10</sub> PM<sub>10</sub> actual emission levels are proven to the satisfaction of the Technical Secretary. The method to demonstrate the actual PM<sub>10</sub> PM<sub>10</sub> emission levels must be made as part of the source's major source operating permit in advance in order

to exercise this option. The ~~PM<sub>10</sub>~~ ~~PM<sub>10</sub>~~ emissions reported under these options shall not be subject to fees under the family of particulate emissions. The 4,000-ton cap provisions of subparagraph (2)(i) of this rule shall also apply to ~~PM<sub>10</sub>~~ ~~PM<sub>10</sub>~~ emissions.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (j) No construction fee, annual emission fee, or permit review fee under paragraph (1) of this rule shall be imposed for review of notices of intent for ~~coverage under a general permit~~, authorization under a permit-by-rule, or issuance of ~~the a~~ notice of ~~coverage or~~ authorization.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

(a) Construction Permit and Opt-Out Permit Application Filing/Processing Fees

1. The fee rates of this subparagraph effective on July 1, 2022, continue to apply until July 1, 2024.
2. A On and after July 1, 2024, 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, or an opt-out permit, must pay a construction permit application filing/processing fee as set forth in subparagraph (5)(g), Schedule A of this rule follows:
  - (i) A responsible official of a minor source or a conditional major source must pay construction permit application fees as set forth in subparagraph (g), Schedule A of this paragraph. The fee determined from subparagraph (5)(g), Schedule A of this rule paragraph shall be calculated based on increases in emissions of regulated pollutants, the definitions of anticipated maximum emission rate and anticipated maximum increase in emissions, as defined in subparagraphs (2)(u) and (v) of this rule.
  - (ii) A responsible official of a major source or a source subject to paragraph (11) of this rule (hereinafter, "Paragraph 11 source") must pay a construction permit application fee of \$7,000.
  - (iii) Except as specified in subpart (v) of this part, a responsible official applying for a Prevention of Significant Air Quality Deterioration permit as required by paragraph (4) of Rule 1200-03-09-.01 must pay a construction application fee of \$70,000.
  - (iv) Except as specified in subpart (v) of this part, a responsible official applying for a permit under the provisions of paragraph (5) of Rule 1200-03-09-.01, Growth Policy, must pay a construction application fee of \$70,000.
  - (v) A responsible official applying for a plantwide applicability limit (PAL) under the provisions of subparagraph (4)(s) of Rule 1200-03-09-.01 or part (5)(b)10 of Rule 1200-03-09-.01 must pay an application fee of \$10,000 per pollutant.
  - (vi) A responsible official of an existing Paragraph 11 source applying for an operating permit to opt out of being a Paragraph 11 source, as described in subparagraph (11)(a) of Rule 1200-03-09-.02, by limiting the potential to emit such that the potential emissions of all pollutants are below the major source applicability thresholds, as defined in part (11)(b)14 of Rule 1200-03-09-.02, must pay an application fee of \$18,000.
3. On and after July 1, 2024, an applicant for a minor source or a conditional major source

applying to make a change to an existing source or permit such that a new construction permit is required must pay a permit application fee as set forth in subparagraph (g), Schedule A of this paragraph. This fee is determined by the anticipated maximum increase in emissions, as defined in subparagraph (2)(v) of this rule, from the anticipated maximum emission rate of the previous construction permit for the source. The fee rates in this part in effect on July 1, 2022, continue to apply until July 1, 2024.

4. On and after July 1, 2024, an owner or operator of a source that submits notice of intent for coverage under a general permit serving as a construction permit shall pay a permit application fee equal to that determined in accordance with the subparagraph (g) of this paragraph, Schedule A fee corresponding to the applicant's anticipated maximum emission rate, unless an alternate construction permit application fee is stipulated in the table below. If Schedule A from subparagraph (g) of this paragraph is used to determine the fee, it shall be determined by the anticipated maximum increase in emissions, as defined in subparagraph (2)(v) of this rule, from the anticipated maximum emission rate of the previous construction permit for the source.

<u>General Permit Category</u>	<u>Construction and Modification Permit Application Fee</u>
<u>Perchloroethylene and Petroleum Solvent Dry Cleaners</u>	<u>\$100</u>
<u>Concrete batch plants</u>	<u>\$100</u>
<u>Portable rock crushers</u>	<u>\$100</u>
<u>Asphalt plants</u>	<u>\$250</u>
<u>Air Curtain Incinerators</u>	<u>\$500</u>

5. All application filing/processing fees required by this subparagraph are due upon submission of the permit application.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (b) 1. The fee rates required by this subparagraph effective July 1, 2022, continue until July 1, 2024.
2. With the exception of changes received during the initial construction permit evaluation period (i.e., prior to the ~~certified~~ Division letter or email denoting application completeness), all revisions under subparagraph (4)(e) of this rule ~~which that~~ result in an increase in allowable emissions sought by the applicant or an increase in actual emissions declared in the original application for a permit shall be subject to a fee equal to the following:
- (i) For minor sources and conditional major sources, one-half of the Schedule A fee corresponding to the applicant's anticipated maximum emission rate, not to exceed \$500.
- (ii) For Paragraph 11 sources, \$3,500.
3. This The fee required by subparts 2(i) and (ii) of this subparagraph is determined by the anticipated maximum increase in emissions from the anticipated maximum emission rate of the previous construction permit for the source.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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



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

T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (e) The Division must make a decision to issue or deny a request for a ~~construction~~ permit in one of the categories listed in parts 1 through 4 of this subparagraph and notify the applicant of that decision in accordance with the following time-lines:
1. Major source or Paragraph 11 source construction permit reviews must be completed in ~~one hundred eighty (180)~~ days, from receipt of a complete application unless a longer ~~time~~ period is agreed to in writing by the applicant.
  2. Minor and conditional major source construction permit reviews must be completed within ~~one hundred fifteen (115)~~ days from receipt of a complete application.
  3. PAL reviews must be completed within 12 months from receipt of a complete application unless a longer period is agreed to in writing by the applicant.
  4. Operating permit reviews for an existing major source or Paragraph 11 source applying for an operating permit to opt out of being a major source or Paragraph 11 source by limiting the potential to emit such that they are below the major source applicability thresholds must be completed within 12 months from receipt of a complete application unless a longer period is agreed to in writing by the applicant.
  5. If a mutual agreement letter required by part (6)(b)1 of this rule or subparagraph (11)(a) of Rule 1200-03-09-.02 has been requested by the Division at least seven days prior to a deadline specified in part 1, 2, 3, or 4 of this subparagraph, but is not received by that deadline, the applicable deadline specified in part 1, 2, 3, or 4 of this subparagraph shall be seven days after receipt of the agreement letter.
  6. If a source is required to have a compliance schedule in their permit in accordance with paragraph (4) of Rule 1200-03-09-.02 arises after an application was deemed complete, the deadlines specified in part 1, 2, 3, or 4 of this subparagraph shall be extended as follows:
    - (i) 21 days after receipt of a compliance schedule from the applicant that is acceptable to the Technical Secretary if the draft permit is not required to have a public comment period.
    - (ii) 60 days after receipt of a compliance schedule from the applicant that is acceptable to the Technical Secretary if the draft permit is subject to an opportunity for public comment, and no public hearing is held.
    - (iii) 60 days after receipt of a compliance schedule from the application that is acceptable to the Technical Secretary if the draft permit is subject to an opportunity for public comment and a public hearing is announced along with the opportunity for public comment on the draft permit.
    - (iv) 90 days after receipt of a compliance schedule from the applicant that is acceptable to the Technical Secretary if the draft permit is subject to an opportunity for public comment, if a public hearing is requested during the public comment period, and the public hearing is held after the close of the public comment period.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (g) The appropriate permit filing/processing fee shall be determined by the applicant from the following ~~schedule~~ schedules:

SCHEDULE A—  
CONSTRUCTION PERMIT FEES FOR MINOR AND CONDITIONAL MAJOR SOURCES

Anticipated Maximum Emission Rate	(Filing/Processing) Permit Fee
Less Than 10 Tons/Year	\$100- <del>00</del>
10 to < 100 Tons/Year	\$500- <del>00</del>
100 to < 250 Tons/Year	\$1,000- <del>00</del>
250 to < 500 Tons/Year	\$2,000- <del>00</del>
500 to < 1,000 Tons/Year	\$3,000- <del>00</del>
1,000 to < 5,000 Tons/Year	\$4,000- <del>00</del>
5,000 <del>to</del> <u>and</u> Greater Tons/Year	\$5,000- <del>00</del>

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (c) All minor and conditional major source annual fees are due and payable to the State of Tennessee in full according to Schedule I of this subparagraph. The county in which a source is located determines when the source's annual fee is due. If a source is located on contiguous property in more than one county, the county appearing earliest in the calendar year shall be used to determine the due date of the annual fee. Due to seasonal operations, cotton gin source annual fees are due and payable annually to the State of Tennessee by December 1 of each year regardless of the county in which the source is located. The fee must be paid to the State of Tennessee in full by the first day of the month that the fee is due. The Technical Secretary ~~may extend~~ extends this due date ~~an additional~~ by an appropriate period not to exceed 90 days where the source owner or operator's fee notice was mailed by the Department to an incorrect mailing address.

SCHEDULE I

Month the Annual Fee is Due (Accounting Period)  
Counties in the Monthly Grouping

January	Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, <u>and</u> Campbell
February	Cannon, Carroll, Carter, Cheatham, Chester, Claiborne, Clay, <u>and</u> Cocke
March	Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Dyer, <u>and</u> Fayette
April	Fentress, Franklin, Gibson, Giles, Grainger, Greene, <u>and</u> Grundy
May	Hamblen, Hamilton, Hancock, Hardeman, Hardin, Hawkins, Haywood, <u>and</u> Henderson
June	Henry, Hickman, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Lake, Lauderdale, Lawrence, <u>and</u> Lewis
July	Lincoln, Loudon, McMinn, McNairy, Macon, <u>and</u> Madison
August	Marion, Marshall, Maury, Meigs, Monroe, Montgomery, Moore, <u>and</u> Morgan
September	Obion, Overton, Perry, Pickett, Polk, Putnam, <u>and</u> Rhea

October Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, and Shelby  
 November Smith, Stewart, Sullivan, Sumner, Tipton, Trousdale, Unicoi, and Union  
 December Van Buren, Warren, Washington, Wayne, Weakley, White, Williamson, and Wilson

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Subparagraph (d) of paragraph (6) 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. A newly constructed minor or conditional major source beginning operation subsequent to the annual accounting period for the county in which it is located shall not be required to pay an annual fee for the remainder of the annual accounting period. A minor or conditional major source ceasing operations during the annual accounting period will not receive a refund for annual fees paid.
- 2. Sources issued a combination construction and operating permit in accordance with paragraph (12) of Rule 1200-03-09-.02 shall pay annual fees as if operation of the new or modified source began on the date of permit issuance. This part does not apply to sources for which construction and operation of the new source or modification began prior to receipt of a construction permit.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (e) ~~The~~ Except for sources that are covered under a general permit issued in accordance with Rule 1200-03-09-.06, the appropriate annual emissions fee for minor and conditional major sources in operation on or after July 1, 1993, shall be calculated at an emission fee rate of \$18.75 per ton of allowable emissions of regulated pollutants at the time of the fee assessment by the Division based on the current active permit(s). Sources with allowable emissions less than 10 ~~(ten)~~ tons will not be subject to this fee, provided that such source has not taken a limitation on their permit that would render them a conditional major ~~or synthetic minor~~ source.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (f) ~~Deleted.~~ A responsible official of a source operating under a general permit shall pay an annual emissions fee as stipulated in subparagraph (e) of this paragraph based on the allowable emissions specified in the general permit unless different fee rates are stipulated in the following table. These fees are due and payable by the date established in subparagraph (c) of this paragraph:

<u>General Permit Category</u>	<u>Combined Annual Emission Fee and Base Fee</u>	<u>Permit Review Fee</u>
<u>Perchloroethylene and Petroleum Solvent Dry Cleaners</u>	<u>\$0</u>	<u>\$0</u>
<u>Concrete Batch Plants with emissions less than 10 tons per calendar year</u>	<u>\$0</u>	<u>\$0</u>
<u>Concrete Batch Plants with emissions greater</u>	<u>\$400</u>	<u>\$0</u>

<u>than or equal to 10 tons per calendar year</u>		
<u>Portable rock crushers at True Minor Facilities</u>	<u>\$1,000</u>	<u>\$0</u>
<u>Portable rock crushers at Conditional Major Facilities</u>	<u>\$1,000</u>	<u>\$500</u>
<u>Asphalt Plants</u>	<u>\$1,000</u>	<u>\$500</u>

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

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

- (a) The Technical Secretary will not issue any ~~certificate~~, permit or ~~other official document subject to a fee in this chapter~~ renewal of a permit to an applicant until the required fee has all fees required by this chapter have been paid in full to the ~~Division~~ State of Tennessee.

Authority: T.C.A. §§ 4-5-201, et seq.; 68-203-103, et seq.; and 68-201-101, et seq.

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

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

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Subpart (iii) part 2 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:

- (iii) Sources choosing to pay annual fees on an actual emissions basis or a combination of actual and allowable emissions basis and on a fiscal year basis pursuant to subparagraph (b) of this paragraph shall pay an estimated 65% of the fee due pursuant to subparagraph (d) of this paragraph no later than April 1 of the current fiscal year. The remainder of the annual fee is due ~~July~~ August 1 of each year, except as allowed by part (g)3. of this paragraph.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Part 4 of subparagraph (b) 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:

- 4. The responsible official of a newly constructed major source, Paragraph 11 source, or minor source modifying its operation such that the source becomes a major source or Paragraph 11 source shall pay an initial annual fee based on a calendar year and allowable emissions for the fractional remainder of the calendar year commencing upon the source's start-up. However, in no case shall the annual fee be less than the annual base fee established in part (d)1 of this paragraph. Prior to July 1, 2024, in no case shall the annual fee be less than the minimum fee established in subpart (d)2(ii) of this paragraph effective on July 1, 2022.

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.~~ parts 2 and 4 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 which shall be calculated in accordance with subparts (i) through (iii) of this part.~~ 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.~~ The fee rates required by this part effective July 1, 2022, continue to apply until July 1, 2024.

(i) The base fee shall be determined by the number of federal air quality standards to which a major source or Paragraph 11 source is subject. The following federal air quality standards shall be considered if the standards have been incorporated into a permit issued to the facility under the provisions of Chapter 1200-03-09 or have been incorporated into Chapter 0400-30-38 or Chapter 0400-30-39:

(I) Standards of Performance for New Stationary Sources as codified in 40 C.F.R. part 60, excluding subparts A, B, Ba, C, Cb, Cc, Cd, Ce, Cf, AAA, DDDD, FFFF, MMMM, and UUUUa.

(II) National Emission Standards for Hazardous Air Pollutants as codified in 40 C.F.R. part 61, excluding subpart A.

(III) National Emissions Standards for Hazardous Air Pollutants as codified in 40 C.F.R. part 63, excluding subparts A, B, C, D, E, OO, PP, QQ, RR, SS, TT, UU, VV, and XX.

(ii) If a facility is subject to 40 C.F.R. part 60 subpart IIII or JJJJ, or 40 C.F.R. part 63 subpart ZZZZ or CCCCC and is only subject to that subpart for air contaminate sources that are not required to be included in a permit in accordance with paragraph (4) of Rule 1200-03-09-.04, then such subpart shall not be included when determining the number of federal air quality standards that a source is subject.

(iii) The base fee is determined in accordance with the following table:

<u>Number of federal air quality standards</u>	<u>Base Fee</u>
<u>0</u>	<u>\$10,000</u>
<u>1</u>	<u>\$15,000</u>
<u>2 to 3</u>	<u>\$20,000</u>
<u>4 to 5</u>	<u>\$30,000</u>
<u>6 to 10</u>	<u>\$40,000</u>
<u>11 to 20</u>	<u>\$50,000</u>
<u>21 and up</u>	<u>\$75,000</u>

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 OIA!~~ Once in/Always in 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.
- (v) When subparts 1(i) through (iii) of this subparagraph become effective, subpart (ii) of this part will no longer be applicable.

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.

4. Notwithstanding the fee rates established by part 1 or 2 of this subparagraph, a responsible official of any source subject to this paragraph shall pay a Title V modification fee calculated as follows:

(i) For each minor permit modification issued in accordance with subpart (11)(f)5(ii) of Rule 1200-03-09-.02 during the calendar year preceding the year in which the annual fee is due, the responsible official shall pay \$2,800.

(ii) For each significant modification issued in accordance with subpart (11)(f)5(iv) of Rule 1200-03-09-.02 during the calendar year preceding the year in which the annual fee is due, the responsible official shall pay \$5,000.

5. The Title V modification fee required by part 4 of this subparagraph shall be paid in addition to the annual emission fee established by subpart 2(iii) of this subparagraph. The Title V modification fee is not required for complete minor permit modification and significant modification applications received prior to July 1, 2024.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

Subpart (i) part 3 of subparagraph (g) 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:

- (i) Responsible officials choosing to pay the annual fee based on actual emissions or a mixture of actual and allowable emissions may request an extension of time for filing the emissions analysis with the Technical Secretary. The extension may, for

facilities paying fees on a calendar year basis, be granted by the Technical Secretary for up to 90 days after the fee is due pursuant to subparagraph (a) of this paragraph. The extension may, for facilities paying fees on a fiscal year basis, be granted by the Technical Secretary for up to 60 days after the fee is due pursuant to subparagraph (a) of this paragraph. The request for extension must be received by the Division no later than 4:30 p.m. on April 1 or the request for extension shall be denied. The request for extension to file must state the reason for the request and provide an adequate explanation. An estimated annual fee payment of no less than 65% of the annual fee must accompany the request for extension to avoid penalties and interest on the underpayment of the annual fee. The remaining balance due must accompany the emission analysis. If there has been an overpayment, the responsible official may request a refund in writing to the Division or the amount of the overpayment may be applied as a credit toward the next annual fee.

Authority: T.C.A. §§ 4-5-201, et seq., 68-203-103, et seq.; and 68-201-101, et seq.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

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

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 10/11/2023 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: 06/20/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 08/11/2023

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

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

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

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Agency/Board/Commission: Air Pollution Control Board

Rule Chapter Number(s): 1200-03-02 and 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.

\_\_\_\_\_  
Jonathan Skrmetti  
Attorney General and Reporter

\_\_\_\_\_  
Date

**Department of State Use Only**

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

Effective on: \_\_\_\_\_

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

## Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. Comment: A commenter stated that a construction and modification permit application fee of \$500 for air curtain incinerators should be added to the proposed table in part (5)(a)4 of Rule 1200-03-26-.02.

Response: The Board agrees to add a \$500 fee for air curtain incinerators to the table in part (5)(a)4 of Rule 1200-03-26-.02. The Division is in the process of developing a general construction permit for air curtain incinerators and a fee of \$500 is typical for a traditional permit for an air curtain incinerator.

2. Comment: A commenter stated that it would be appropriate to retain the existing language in subpart (9)(d)2(ii) of Rule 1200-03-26-.02 and add subpart (9)(d)2(v) to read as follows: "When subparts (1)(i) through (iii) of this subparagraph become effective, subpart (ii) of this part will no longer be applicable."

Response: The Board agrees these changes are needed to ensure there will not be any unintended revenue erosion if the effective date of the amendments is delayed past July 1, 2024.

3. Comment: Commenters stated that the Division should encourage the use of plantwide applicability limit (PAL) permits because they reduce the burden on the Division. Application fees associated with an initial PAL permit are to be expected, and the PAL permit renewal fees, per pollutant or otherwise, are unwarranted and should be covered by the annual Title V fees. A commenter included a quote from the federal rule that established EPA's PAL rule, which states that fewer resources are required by the permitting agency. A commenter noted that changes made during the 10-year term of a PAL permit are already incorporated into the compliance demonstration methodologies and that PAL renewals should be "uncomplicated, straightforward, and efficient administrative affirmation of the changes that involve minimal staff time and effort."

Response: While the commenter is correct that PAL permits reduce the burden on the Division, only prevention of significant air quality deterioration (PSD) and PSD-avoidance permitting is avoided. All other permit workload remains for facilities that have PALs. Some of the substantial work required by the Division to renew a PAL includes:

- Adjusting the level of the PAL based on (1) the facility's current potential to emit, (2) state and federal requirements that became applicable during the PAL term, (3) updated baseline actual emissions, (4) units that were constructed during the term of the PAL, (5) air quality needs, (6) advances in control technology, (7) anticipated economic growth in the area, (8) rewarding or encouraging voluntary emission reductions, and (9) other factors specified by the Technical Secretary. See 40 C.F.R. § 52.21(aa)(10)(iv) and subpart (4)(s)10(iv) of Rule 1200-03-09-.01.
- Adjustment of emission factors based on re-validation performance testing (which is required every five years). See 40 C.F.R. § 52.21(aa)(12)(vi) and 14(iii) and subparts (4)(s)12(vi) and (4)(s)14(iii) of Rule 1200-03-09-.01.
- Public participation. See 40 C.F.R. § 52.21(aa)(5) and part (4)(s)5 of Rule 1200-03-09-.01.

Tennessee currently has four facilities with active PAL permits. These range from a single-pollutant PAL with eight sources to a facility with PALs for 10 different pollutants with approximately three dozen sources. Thus, the level of complexity and resulting amount of work to renew a PAL can range from being rather straightforward to relatively difficult. The Division does not have any recent data on the person-hours required for PAL Renewals. Given the lack of data on the workload associated with a PAL renewal, the Board has decided not to include a fee for PAL renewals, and the associated proposed deadline, in the current rule. A fee for PAL renewals may be revisited once sufficient data is collected.

4. Comment: Commenters stated that the 2023-2024 Title V Workload Analysis provided by the Division indicated that 1.34 FTEs will be required to process an estimated 86 significant and minor modifications received and that the \$5000 fee for significant modifications and \$2800 fee for minor modifications seem excessive based on the number of documents being processed and should be significantly reduced. The Commenters stated that fees for these services should be covered by the Title V annual fees.

Response: The entire set of proposed fees, including proposed significant modification and minor modification fees, that pertain to Title V sources are necessary to cover the actual cost to the State of the Title V program. The cost of the Title V program includes various expenses that are directly attributable to individual sources, such as source inspections, stack test observations and report reviews, continuous emissions monitor report reviews, enforcement activity, and emission inventory reviews, as well as many expenses that are not directly attributable to individual sources, such as ambient monitoring, management and administration, TDECs Small Business Environmental Assistance Program, regulatory development, and a portion of the Division's General and Administrative fees. Where the Board can identify specific activities that are directly related to a specific permitting activity for a specific facility and data exists to estimate the average amount of time taken to complete those activities, such as Title V minor modification and significant modification, per-service fees to be paid by the facility receiving the service were developed to capture those costs. This was done to align the costs for these services with those companies that are directly requesting those services whenever possible. It is expected that the cost for many of the services mentioned above that cannot be directly attributable to individual sources would be covered by the Title V annual emission fee or base fee.

The proposed minor modification fee is based on a five-year average number of man-hours (25.7) for issuing a minor modification and an hourly rate of \$108/hour. Thus, the proposed minor modification fee was calculated as follows: 25.7 hours x \$108/hour = \$2776, which was rounded up to \$2800 for the proposal.

The proposed significant modification fee is based on a five-year average number of man-hours (45.5) for issuing a minor modification and an hourly rate of \$108/hour. Thus, the proposed minor modification fee was calculated as follows: 45.5 hours x \$108/hour = \$4,903, which was rounded up to \$5,000 for the proposal.

The average hourly cost of \$108/hour was projected for FY2028, the target year for the fee rule analysis, and includes salary, benefits, and a pro-rated portion of the TDEC General & Administrative (G&A) costs. Actual salaries, benefit ratios, and TDEC G&A costs were used assuming a three percent per year increase to project them to FY2028.

5. Comment: Commenters supported the proposed flat fee of \$7,000 for construction permits at Title V facilities instead of the alternative proposed fee schedule based on the Anticipated Maximum Emission Rate associated with the application.

Response: The Board has included the flat \$7,000 construction permit application fee for Title V sources in the final rule.

6. Comment: A commenter inquired as to whether an individual who signed as a "responsible official" is personally liable to pay if the source does not have the ability to do so. The commenter stated that this should be clarified.

Response: Generally, the "responsible official" is not personally liable for the payment of fees unless there are specific circumstances such as when the responsible official is also the owner or operator of the facility and may have structured the business and personal finances in a way that may make the individual personally liable.

7. Comment: A commenter stated that facilities should be allowed to pay any permit fee, whether they be renewal fees, application fees, or modification fees, at the time of annual fee payment.

Response: The proposed rule allows for the proposed minor modification and significant modification fees to be paid along with the annual fee payment; therefore, the Board attempted to allow fees to be paid annually to the extent the law allows. The proposed construction fee for Title V sources, the PSD and Nonattainment NSR permit fees, and PAL fees are construction permit fees. Subparagraph (4)(a) of Rule 1200-03-26-.02 states: "A construction permit application is not considered complete unless the application filing/processing fee has been paid in full." A facility that is issued a Title V to Conditional Major permit would not be subject to Title V fees once that permit is issued and thus it would not be possible to assess the Title V to Conditional Major fee with annual Title V fees. Furthermore, T.C.A. section 68-203-103(d) of the Tennessee Environmental Protection Fund Act states: "No permit or renewal of a permit shall be issued to an applicant for a permit under the

foregoing authorities until all fees required by this chapter are paid in full.”

8. Comment: A commenter stated that the proposed 18-month regulatory deadline to review a 1-pollutant PAL or a Title V to Conditional Major application is excessive and hindering to business operations.

Response: The Division has issued two initial PAL permits in recent years. One was a three pollutant PAL permit (PM, PM<sub>10</sub>, and PM<sub>2.5</sub>) and took slightly over 19 months from the date of receipt of a complete application to issue. The other was a nine pollutant PAL permit (NO<sub>x</sub>, CO, SO<sub>2</sub>, VOC, TRS, H<sub>2</sub>S, Pb, H<sub>2</sub>SO<sub>4</sub>, and HF) and took slightly over seven months from the date of a complete application to issue. Both PAL permits were issued to the same company. Many key issues pertaining to the second PAL permit were resolved while processing the first PAL permit, making development of the second quicker. Also, issuance of the three pollutant PAL was delayed at the request of the applicant so the effective dates of both PAL permits would be the same.

The Division currently has four facilities with active PAL permits, which range from a single pollutant PAL for eight sources to 10 pollutant-specific PALs for more than three dozen sources. The compliance methods for the various PALs range from simple mass balance calculations for surface coating operations to emission factors that require initial validation and periodic re-validation for process sources. Because each PAL application is unique in its breadth and complexity, the length of time to issue a PAL permit will vary and is difficult to project. The regulatory deadline for taking final action on a PAL permit must cover both the simple single-pollutant PAL permit and the complex multi-pollutant, multi-source PAL permit.

Based on the information listed above, the Board recognizes that the Division may be able to take final action on a PAL application in less than the proposed regulatory deadline of 18 months. However, a standard 180-day deadline for a regular construction permit is not likely to provide sufficient time for the Division to work with the applicant to craft a quality PAL that meets the needs of the applicant and that can pass Environmental Protection Agency (EPA) and public scrutiny. Given the data currently available, the Board has determined that a 12-month deadline, with a provision for a longer issuance time if agreed to by the applicant, is appropriate to handle the wide range of PAL applications that would need to be processed.

Conditional major permits are one of the more complex types of permits issued by the Division. Conditional major permits require the development of voluntary emission or production limitations to ensure that the potential emissions of all pollutants emitted by the facility remain below major source threshold. These emission limits must include enforceable testing, monitoring, recordkeeping, and reporting requirements developed on a case-by-case basis. The Division uses an 18-month goal for initial conditional major permits, which is the same deadline that would apply to the same facility for a Title V permit. The workload required for going from an existing Title V permit to a conditional major permit should be somewhat less because the Title V permit should already have the emission limits and compliance methods for applicable state and federal regulatory requirements. However, the source-specific conditional major requirements must still be developed.

The Division has issued four permits to change facilities from Title V to Conditional Major in the last five years. The length of time to issue these permits ranged from 60 to 539 days from receipt of a complete application. As with the PAL permits, the Board recognizes that the Division may be able to take final action on a complete Title V to Conditional Major application in less than 18 months. However, given that half of these permits exceeded the standard 180-day deadline for a construction permit for a Title V source, the Board has determined that a 12-month deadline, with a provision for a longer issuance time if agreed to by the applicant, is appropriate.

These regulatory deadlines are the maximum time the Division is allowed to act on a permit application. The Board encourages the Division to continue to issue permits within timeframes necessary to meet the applicant's business needs.

9. Comment: A commenter requested that “in-process” modification and PAL renewal applications should be grandfathered as exempt from the proposed fee.

Response: Applications deemed complete before the effective date of this rule revision will be subject to the previous version of the Title V fee rule. Applications deemed complete on or after the effective date

of this rule change will be subject to the new fee structure. Language has been added to part (9)(d)5 of Rule 1200-03-26-.02 to clarify this.

10. Comment: TDEC's Small Business Environmental Ombudsman expressed support for establishment of general permits, many of which cover source categories that include small businesses. He stated that he understands that even general permits require some staff time to process and supported the proposed fees for general permits. Based on comments from industry, small costs, such as those proposed, may make a facility pay more attention to a general permit than if it was provided at no cost.

Response: The Board appreciates the comment.

## 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.

The Board does not require sources to identify whether a facility is a small business in air quality permit applications, therefore, identification of individual small businesses subject to these rule changes is not possible. However, some examples of the types of small businesses that would be subject to the various parts of the rule revision are as follows:

- Fees for Title V sources – Categories of industries that will be impacted may include fiberglass boat, tub, and spa manufacturers; furniture manufacturers; building materials production companies; chemical plants; private landfill operators; foam products manufacturers; and secondary metals plants. While the proposed rule will require affected businesses to pay more in fees, adequate funding of the Title V program should ultimately result in the timely issuance of Title V operating permits, modifications, and construction permits for sources subject to the Title V permitting program. Small businesses required to obtain Title V operating permits will see increased fees because of this proposed rulemaking. However, only a small percentage of facilities required to obtain such permits are small businesses as defined in the Uniform Administrative Procedures Act, Tennessee Code Annotated section 4-5-102(13). Also, as stated below, it is expected that small businesses, which tend to be subject to fewer federal regulations, should see only a modest impact in annual fees.
- General Permits – Categories of industries that may be impacted include dry cleaners, concrete batch plants, asphalt plants, portable rock crushing companies, and owners of air curtain incinerators. General permits, which are included in these amendments, should be beneficial to small businesses that would fall into the categories covered by general permits as it provides an expedited process for permitting new and modified sources.

- (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.

- Fees for Title V sources – The proposed amendments will not add any reporting, recordkeeping, or other administrative costs for compliance with the proposed rule.
- General Permits – The proposed rule, which adds fees for facilities that choose to be covered by a general permit, will require minimal administrative costs associated with payment of the fees. It is anticipated that a facility's existing administrative and financial staff will be able to cover payment of the fees. However, the burden associated with applying for and complying for a general permit itself will significantly reduce the burden on the facility.

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

The rule amendments increase fees owed for small businesses required to have Title V operating permits or construction permits. However, the base fee structure that aligns increasing cost with the number of federal regulations applicable to the company ensures that small business with few federal regulations applied to their facility will see minimal increase to their annual fee. Additionally, small businesses have an opportunity to avoid construction permits and the associated costs by using Title V minor modifications, which have a lower fee, and operational flexibility changes, which have no fee.

- (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.

Section 502(b)(3)(A) of the federal Clean Air Act (CAA) requires Tennessee, as a state approved by the 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[.]" All facilities within the program must contribute to the direct and indirect costs.

Regarding the proposal's changes relative to general permits, both in the Title V and the non-Title V program, these are a less burdensome and less costly alternative to standard permits. The changes to the general permit fees will allow the Division to develop and implement general permits without impacting fee revenue.

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

Each state's fee system is unique, so direct comparisons cannot be made. However, federal law requires each state to recoup the cost from the participants of the title V program that are adequate to cover the program. Therefore, small businesses would be required to contribute to the cost of each states Title V program.

- (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 from Title V fee rules would violate federal law and would collect insufficient funds to fund the Title V program. [Section 502(b)(3)(A) of the Clean Air Act] Because small businesses are generally subject to less federal regulations than larger businesses and do not require some of the more complex permitting services like PSD permits, it is anticipated that this proposal avoids putting any additional burden on small businesses to cover the cost of services that are requested by other businesses and streamlines the fee structure to be more specific to what the companies are requesting wherever possible.

### **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 or 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 have a financial impact on local governments with a Title V 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;

The rule amendments achieve three different purposes: (1) diversify the Title V fee structure to establish a stable revenue stream to adequately fund the Title V program, (2) establish fees for categories of general permits that currently exist or are under development, and (3) make miscellaneous changes to clarify or streamline the fee process.

### Title V Program Fee Diversification:

The Title V program was added to the Clean Air Act (CAA) with the 1990 amendments and is a self-funded<sup>1</sup> federal permitting program for which states seek delegation from EPA to implement for major sources of air emissions in the state. This rule reflects the Board's partnership with stakeholders to develop a long-term funding solution ensuring the state of Tennessee continues to meet the CAA requirement that each state's Title V program fees cover the cost of administering the program. Cost recovery is also a goal of the state's Environmental Protection Fund statute. The proposed rule establishes a more stable and diverse fee structure resulting in a long-term funding solution. Projections for the Title V program show a \$16.8 million deficit from FY24 to FY30 without the proposed rule change, due to projected emission reductions resulting from TVA plant closures and conversions and the general downward trend in emissions from non-EGUs. These amendments are projected to fund \$13.5 million of this gap, with the balance covered by reserves.

Tennessee's Title V program is primarily funded through emissions-based fees. Although the regulated community in Tennessee is continuing to make major strides in limiting emission of pollutants, program workload has not decreased (technical reviews continue to increase in complexity as federal rules are added or change), and the Title V program has become increasingly underfunded. The Division worked with stakeholders to explore a more diverse fee structure with a goal of avoiding the frequently recurring need to request emission-fee rate increases.

These amendments retain Tennessee's competitive advantage when recruiting businesses to Tennessee. The Division relies on the ability to hire and retain highly qualified technical employees to conduct the work. The Division consistently receives positive feedback from regulated entities regarding the high level of personalized service they receive and how important this service is to their success in Tennessee. The Division's timely and competent processing of permit applications for new and modified facilities, compliance assistance, and response to information requests enables Tennessee to attract and retain large businesses.

The current Title V fee system is based on the federal model that was promulgated over 30 years ago. The model, based on emissions, assumes the cost of a Title V program is proportionally related to emissions (i.e., fee = tons emitted times dollars per ton). This model has proven to be short-sighted as the state's work to meet federal requirements does not decrease proportionally with the reduction in emissions in the Title V program. In fact, as the federal regulatory structure has grown, so has the program's workload.

Cleaner air in Tennessee can be attributed to a decrease of about 70% of the emissions from Title V facilities over the past 20 years. A significant share of the decreasing emissions has occurred at electric utility units as TVA has made changes to its power generation fleet. This decrease is expected to continue as TVA completes the conversion of its generation fleet from coal to cleaner fuels over the next few years. Other large industrial sources have also moved to power their facilities with cleaner, less emitting fuels, causing emissions to decline over time. Because the Title V program has been predominately funded on a dollar/ton emission fee, The Board has had to continually raise that fee to ensure the program continues to comply with federal law as a self-funded program. However, as emissions continue to decline as more facilities move to lesser emitting fuels to power their operations, more fee increases would be needed to fund the program and comply with federal law. During the same 20-year time frame, the Title V workload, and the level of technical complexity associated with such, has increased. The number of federal air quality rules implemented by the Division has nearly doubled from 136 to 264. The number of Title V facilities is remaining steady at between 210 and 220; however, the need for

<sup>1</sup> The CAA requires that a minimum element of the Title V program administered by a state include that the owner or operator of all sources subject to the requirement to obtain a permit pay 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 program. 502(b)(3)(A).

Division support of these facilities has grown. For example, the number of major new source permits increased from an average of two per year in FY2012 through FY2021 to eight in FY2022. The Division is now challenged with meeting current workload needs to support this program.

This proposed rulemaking is the result of stakeholder meetings, webinars, and surveys to explore options and develop consensus for a funding solution. The Division's and stakeholders' feedback is reflected in the proposed Title V fee structure. This new fee structure relies less on emissions and more on elements that reflect work associated with individual Title V facilities. This structure should be more stable over time and reduce the need for frequent fee rule changes. The elements added to the fee structure are related to workload pertaining to individual sources and the services they receive from the Division.

The proposed amendments will add several elements that are based on actual workload associated with each fee element:

- Establish a new construction permit application fee structure for Title V sources.
- Establish new application fees for major new source review (NSR) permits, plantwide applicability limit (PAL) permits, and permits for facilities that "opt out" of the Title V program. NSR, PAL, and "opt-out" permits are the most complex permits issued by the Division.
- Establish regulatory deadlines for issuing PAL and opt out permits (as required by the Environmental Protection Fund Act, Tenn. Code Ann. Title 68, Chapter 203)
- Establish new fees for Title V modifications (\$2,800 for minor permit modifications and \$5,000 for significant permit modifications).
- Replace the existing \$6,000 base fee and \$10,000 minimum fee with a base fee that ranges from \$10,000 to \$75,000 per year based on the number of federal air quality standards that a source is subject to.

The dollar-per-ton fee rates remains unchanged.

General Permit Fee (Non-Title V program):

In response to stakeholders' requests for a streamlined alternative to traditional air quality construction and operating permits, which were issued on an individual basis, the Division has developed a general permit program. General permits are utilized in other divisions within the Department and reduce the amount of work and the length of time required by regulated entities to obtain permits. They also reduce the amount of work for the Division to issue coverage under those permits while maintaining the same level of environmental protection. Coverage under general permits can be issued in much shorter time frames, averaging 25 days (for those that don't require individual public notice, which is the vast majority) since the program began in 2017 compared to 102 days for individual construction permits. To avoid revenue erosion, the proposed amendments remove the fee exemption for general permits and establish annual emission fees that are based on the average fee currently paid by sources in these fee categories.

- (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 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 Board to establish fees under the Tennessee Air Quality Act. Federal air quality rules, at 40 C.F.R. § 70.9 stipulates that states "shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The proposed Title V fee diversification rules include some fees that are paid by part 70 sources on an annual basis, and some fees that are paid at the time a permit application is submitted.

- (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;

The proposed changes to the Title V fee rule will affect owners and operators of sources in the state required to have Title V operating permits. Most of these sources are major sources of air pollution. Major sources are made up of large industrial, commercial, and governmental entities that are authorized to emit pollutants in amounts

exceeding 100 tons per year of any criteria pollutant, 10 tons per year of any hazardous air pollutant, and/or 25 tons per year of a combination of hazardous air pollutants. A few categories of sources (e.g., solid waste landfills) with lower emissions are required by the EPA to obtain Title V operating permits. The Division of Air Pollution Control conducted an extensive stakeholder process prior to proposal of the rule. That process began in August 2022, and included meetings with the Tennessee Chamber of Commerce and Industry, two stakeholder webinars, and several individual one-on-one meetings with key stakeholders. Additional stakeholder involvement was held to discuss the proposed rule including another stakeholder webinar and a meeting with the Tennessee Chamber of Comments and Industry. These stakeholders recognize the Title V program to be mandated and established as self-supporting and have participated in the development of the framework in Tennessee. These regulated entities have taken a vested interest in their responsibility to pay for the services they receive from the Division. As explained in detail above, the Division spent over a year with stakeholders discussing the changes proposed changes. The revisions to the current fee rules are necessary to provide stability and diversification of the fee system. The proposed rule included alternatives that were suggested by persons, organizations, corporations, and government entities that participated in the stakeholder process that began in 2022. This rule contains some provisions that are different than originally proposed by the Board based on comments received during the public comment period.

Owners and operators of sources that request coverage under a general permit will be affected by the general permit fees included in this rulemaking. This would include owners and operators of drycleaners, concrete batch plants, portable rock crushers, asphalt plants, and air curtain incinerators. Generally, these sources have supported the Division's efforts to create general permits for their businesses. TDEC's Small Business Ombudsman provided input when developing the regulations.

- (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 \$13.5 million over a six year period.

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

James P. Johnston  
Division of Air Pollution Control  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 15th Floor  
Nashville, Tennessee 37243  
[james.johnston@tn.gov](mailto:james.johnston@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 Director  
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) 253-5339

(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.

Fees for Title V sources: The Title V annual fee rule is revised by eliminating the minimum fee, revising the current base fee of \$6000 to one that ranges from \$10,000 to \$75,000 per year based on the number of federal air quality standards that a facility is subject to, and adding fees for Title V minor modifications (\$2800) and significant modifications (\$5000) issued. The rule increases the construction application fee from the current rates that range from \$100 to \$5000 per application to a flat rate of \$7000 per application. New fees are added for Prevention of Significant Deterioration and Nonattainment New Source Review applications (\$70,000), Plantwide Applicability Limit permit applications (\$10,000 per pollutant) and permits for Title V sources which “opt-out” of the Title V program and become Conditional Major sources (\$18,000).

General Permits: The fee exemption for general permits is removed. Application fees for general permits that serve as construction permits as follows: drycleaners - \$100, concrete batch plants - \$100, portable rock crushers - \$100, asphalt plants - \$250, and air curtain incinerators - \$500. Annual non-Title V fees are set for certain sources covered by a general permit: concrete batch plants with emissions  $\geq$  10 tons/year - \$400, portable rock crushers at true minor facilities - \$1000, portable rock crushers at conditional major facilities - \$1500, and asphalt plants - \$1500.

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

Title V fees: Because the U.S. Clean Air Act requires that fee payers pay all costs, direct and indirect, to operate the Title V operating 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 Title V permitting program and are the least-costly method of achieving the purposes of these amendments.

General permit fees: The fees for general permits were based on the average fee for a traditional permit for the same facility. Thus, affected facilities should not see a significant change.

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

Not amending the Title V fee rules to ensure adequate collections to fund the Title V operating permit program would place operation of the program by the State of Tennessee in jeopardy and could result in direct regulation of the affected sources by the U.S. 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.

For Title V fees, major sources of air pollution in the state will be affected by this action. The effects of this action will vary based on the number applicable federal air quality regulations and number of permitting and modification applications processed for each source. Ensuring adequate funding for the Division will benefit Title V companies in that regulatory permitting and compliance activities will remain implemented by Tennessee and critical permits like construction permits will be issued by or even before in some cases, regulatory deadlines. Citizens of the state of Tennessee 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 Department. For the general permit fees, owners and operators of facilities that elect to be covered by a general permit will be affected by this action. They will benefit from a quicker, streamlined permitting process. The impact of the fee should be minimal because (1) the fee is designed to be the same as a typical traditional permit for the source category and (2) coverage under a general permit is voluntary.