

**Department of State
Division of Publications**

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File Date: _____

Notice of Rulemaking Hearing

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Pollution Control
Contact Person:	Bruce Ragon
Address:	Knoxville Environmental Field Office 3711 Middlebrook Pike Knoxville, TN 37921-6538
Phone:	(865) 594-5547
Email:	Bruce.Ragon@tn.gov

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

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

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

Address 1:	Knoxville Environmental Field Office Large Conference Room		
Address 2:	3711 Middlebrook Pike		
City:	Knoxville, TN		
Zip:	37921-5602		
Hearing Date :	03/20/12		
Hearing Time:	6:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Additional Hearing Information:

These rules were developed to implement Public Chapter 341 of 2011 which added sections 69-3-143 through 69-3-147 to *The Tennessee Water Quality Control Act of 1977*. The legislation is the result of several previous attempts to address industry and citizen concerns over variability in permitting and reclamation requirements for rock harvesting operations and issues that arise when surface and mineral rights are severed.

Points addressed in the rules, consistent with the new law, require operators to:

- obtain coverage under Sector J of the Industrial Stormwater general permit or, in some cases, obtain an individual NPDES permit;
- provide proof of their legal right to harvest minerals on the area(s) involved;
- provide proof of general liability insurance;
- provide proof of Workers' Compensation insurance;

- provide proof of registration with the TN Dept. Of Revenue; and,
- in cases where the surface and mineral rights are severed, provide notice to the surface owner of the intent to harvest minerals and provide a copy of the approved permit;

The rules outline standards for other elements of the new law, e.g., maps, grading, revegetation, and reclamation success. Also addressed are standards for sediment and erosion control measures to be utilized during and after harvesting activities.

The rules are not expected to cause a substantive increase in costs to operators. As the state presently permits such operations, no increased cost to the state will be involved.

An initial set of draft rules has been prepared for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Chattanooga Environmental Field Office
Suite 550- State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-6538
(865) 594-6035/1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The "DRAFT" rules may also be accessed for review using <http://tn.gov/environment/wpc/ppo>.

Draft copies are also available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation
Division of Water Pollution Control
6th Floor, L & C ANNEX
401 Church Street
Nashville, TN 37243-1534
(615) 532-0625

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Water Pollution Control; Tennessee Department of Environment and Conservation; Attention: Bruce Ragon; Knoxville Environmental Field Office; 3711 Middlebrook Pike; Knoxville, TN 37921-6538; telephone 865-594-5547 or FAX 865-594-6105. However, such written comments must be received by the Division by 4:30 PM EDT, April 19, 2012, in order to assure consideration. For further information, contact Bruce Ragon at the above address or telephone number.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-40-18	Rock Harvesting
Rule Number	Rule Title
0400-40-18-.01	Purpose
0400-40-18-.02	Application or Notice of Intent
0400-40-18-.03	Requirements for Sediment and Erosion Control During and After Harvesting

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

New Rules

0400-40-18 Rock Harvesting

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0400-40-18-.01 Purpose

0400-40-18-.02 Application or Notice of Intent

0400-40-18-.03 Requirements for Sediment and Erosion Control During and After Harvesting

0400-40-18-.01 Purpose

The purpose of these regulations is to implement T.C.A. §§ 69-3-143 through 69-3-147 which govern rock harvesting operations as defined in T.C.A. §§ 69-3-144 (1) through (3).

0400-40-18-.02 Application or Notice of Intent

- (1) Operators shall submit a Notice of Intent for coverage under Sector J of the Tennessee Storm Water Multi-Sector General Permit for Industrial Activities unless the division informs them that an individual NPDES permit is required. The reasons for requiring an individual permit include the following:
 - (a) There will be stone processing operation(s) on the site;
 - (b) There will be a discharge of any waste water other than storm water from the site;
 - (c) There will be a discharge to Exceptional Tennessee Waters;
 - (d) The receiving stream is listed as impaired for the pollutant(s) to be discharged from the site; and,
 - (e) The division determines that an individual permit is required in order to adequately protect water quality in the receiving stream(s).
- (2) An original and two copies of all application forms and notices of intent and supporting materials shall be submitted.
- (3) Written proof of general liability insurance coverage shall be submitted by the operator along with the permit application or notice of intent.
 - (a) Liability coverage shall be in an amount no less than one million dollars (\$1,000,000).
 - (b) Insurance coverage shall remain in effect for the life of the rock harvesting operation.
 - (c) The policy shall provide that the insurer will notify the department at least thirty (30) days prior to the effectiveness of any cancellation of coverage by the insurer.
 - (d) The operator shall notify the department of any change in insurance coverage during the life of the rock harvesting operation and provide a copy of any new policy after the initial one no later than one week after it becomes effective.
- (4) Written proof of Workers' Compensation insurance coverage, if applicable, shall be submitted by the operator along with the permit application or notice of intent.
- (5) Written proof of registration with the Tennessee Department of Revenue for all operators and any subcontractors shall be submitted with the permit application or notice of intent.
- (6) Evidence of the operator's legal right to harvest minerals on the land covered by the permit application or notice of intent, in the form of a properly executed deed, lease, or other appropriate document, shall be

submitted with the permit application or notice of intent.

- (7) If the surface and mineral rights of any portion of the land covered by the permit application or notice of intent have been severed, the operator shall:
- (a) Notify the surface owner, by certified mail, return receipt required, of the intent to begin rock harvesting operations, at least thirty (30) days prior to beginning such operations including a copy of the permit or notice of coverage from the department;
 - (b) Prior to beginning rock harvesting operations, forward copies of all records relating to the notification required by subparagraph (5)(a) of this rule to the department; and
 - (c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (5)(a) and (b) of this rule.
- (8) A general location map taken from a USGS 7 ½ minute quadrangle map that shows the location of the mining area(s) and haul road(s) and which includes the name of the operation and the name and number of the quadrangle shall be submitted with the application or notice of intent.
- (9) A site/operations map at a scale of 1" = 500', or larger as needed to provide sufficient detail and avoid a cluttered look, shall be submitted with the application or notice of intent. The site/operations map shall include, at a minimum:
- (a) A title block which contains:
 - 1. The name of the operator;
 - 2. The name of the owner of the surface rights and the name of the owner of the mineral rights;
 - 3. The county(s) in which the operation is located;
 - 4. The total number of acres to be disturbed by mining operations and haulroads; and,
 - 5. The date the map was prepared along with a certification of its accuracy by the preparer.
 - (b) The body of the site/operations map shall show:
 - 1. The proposed permit boundary, including haulroads, marked in red;
 - 2. The location and type of all water treatment structures, including Best Management Practices;
 - 3. The location and name(s) of all stream(s) receiving drainage from the operation;
 - 4. The location and names of all property owners within 500 feet of the permit boundary;
 - 5. The location of any onsite structures (i.e. buildings, scales, processing equipment, stockpiles, storage areas, etc.);
 - 6. The location of significant features such as cemeteries, public roads, railroad tracks, oil and gas wells, surface mines, underground mines, transmission lines, pipelines or utility lines within 500 feet of the permit boundary;
 - 7. The location of initial cuts or excavation and the subsequent cut sequence and direction of mining; and
 - 8. The location(s) where topsoil and/or other materials suitable for revegetation will be stockpiled.

- (10) A reclamation plan shall be submitted with the application or notice of intent. The plan shall include, at a

minimum:

- (a) A description of the manner in which topsoil, and/or other material(s) suitable for revegetation, will be segregated;
- (b) A description of backfilling and grading operations to be carried out concurrently with mining excavation that addresses whether there will be sufficient overburden to return the land to its original conformation after mining; and if the land will not be returned to its original conformation, a reclamation plan map shall be submitted that depicts:
 - 1. The altered land conformation and drainage patterns that will exist after mining;
 - 2. The location of any permanent impoundment(s) proposed to remain when mining is complete; and
 - 3. The location of any roads to remain after mining, including information regarding the surfacing and drainage controls used to maintain road stability.
- (c) A revegetation plan which specifies:
 - 1. The types and amounts of seed, fertilizer, lime and mulch that will be applied per acre, following the recommendations of the Tennessee Erosion and Sediment Control Handbook;
 - 2. The type(s) and spacing of trees to be planted; and
 - 3. If the surface and mineral rights on any portion of the land covered by the permit application or notice of intent have been severed, a notarized letter confirming the concurrence of the surface owner as to the size and location of any impoundment(s) or roads to remain after mining and whether or not trees are to be planted must be submitted.

0400-40-18-.03 Requirements for Sediment and Erosion Control During and After Harvesting

(1) During Harvesting

- (a) Rock harvesting operations shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.
- (b) Operators shall select, design and install erosion prevention and sediment control measures to prevent discharges to waters of the state that would violate water quality standards or cause pollution.
- (c) Approved sediment and erosion control measures must be in place prior to beginning rock harvesting operations.
- (d) Approved sediment and erosion control measures must be maintained throughout the life of the harvesting operation until reclamation has been approved as being successful by the division.
- (e) Operators shall operate and maintain harvesting sites so that there are no discharges of oil or other waste to waters of the state.
- (f) Operators shall comply with all provision of permits.
- (g) Operators shall modify practices or control measures, as directed and/or approved by the division, to control discharges.

(2) Reclamation

- (a) The purpose of reclamation is to stabilize the site so that there will not be discharges of sediment

or other waste into waters of the state.

- (b) Grading shall be conducted so as to return the affected area as closely as possible to its pre-harvesting conformation, considering the amount of available overburden, drainage control, post-harvesting land use and other factors.
- (c) Revegetation shall be deemed acceptable when an eighty percent (80%) groundcover of self-sustaining vegetation, with no bare areas exceeding one fourth (1/4) of an acre, has been established for two (2) growing seasons. If trees are planted, there shall be six hundred (600) surviving stems per acre after two (2) growing seasons.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

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

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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Filed with the Department of State on: _____

Tre Hargett
Secretary of State