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

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Board of Water Quality, Oil and Gas
Division:	Water Resources
Contact Person:	Michael Burton
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Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
0400-52-02	Permits
Rule Number	Rule Title
0400-52-02-.02	Drilling Permit

Chapter Number	Chapter Title
0400-54-01	Pollution and Safety Controls
Rule Number	Rule Title
0400-54-01-.05	Containment Pit at Tank Batteries

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

http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-52-02

Permits

Amendment

Subparagraph (b) of paragraph (2) of Rule 0400-52-02-.02 Drilling Permit is amended by deleting it in its entirety and substituting instead the following:

- (b) If a well or wells revert back to a landowner, whether by court action, or by lease expiration or other provisions, and the well will remain in operation, then the landowner shall submit an Application to Change Operators (Form CN-0237), file an Organization Report (Form CN-0219), post a well plugging bond, post a reclamation bond if required, pay a fee of \$100, and otherwise comply with well spacing rules. If the well will be used for domestic gas only, then a plugging bond in the amount of \$1,500 shall be required. For domestic gas use wells deeper than 2,500 feet, the plugging bond shall increase at a rate of \$1.00 for every foot deeper than 2,500 feet. No reclamation bond shall be required for a well or wells that revert back to a landowner and will be used for domestic gas only.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-01

Pollution and Safety Controls

Amendment

Rule 0400-54-01-.05 Containment Pit at Tank Batteries is amended by adding a new sentence at the end of the introductory text, without amending the associated drawing with the title *CONSTRUCTION DETAILS FOR TANK PAD AND PIT*, so that as amended the introductory text shall read as follows:

A containment pit is required at each permanent oil tank or battery of tanks, and such pits shall be surrounded by a retaining wall or suitably ditched to a collecting sump, each of sufficient capacity and construction to contain potential spillage. No oil tank or battery of tanks shall be located closer than 50 feet from any state highway or county road.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)					
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)					
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)					
Jill E. Davis (Municipalities)					
Mayor Kevin Davis (Counties)					
Derek Gernt (Oil or Gas Property Owner)					
C. Monty Halcomb (Environmental Interests)					
Charlie R. Johnson (Public-at-large)					
Judy Manners (Commissioner's Designee, Department of Health)					
John McClurkan (Commissioner's Designee, Department of Agriculture)					
Frank McGinley (Agricultural Interests)					
D. Anthony Robinson (Manufacturing Industry)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 10/16/2018, 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: 06/21/18

Rulemaking Hearing(s) Conducted on: (add more dates). 08/28/18

Date: October 16, 2018

Signature: _____

Name of Officer: James W. Cameron III

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: Board of Water Quality, Oil and Gas

Rule Chapter Number(s): 0400-52-02 and 0400-54-01

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

There were no comments received during the comment period.

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 proposed rule would affect a small business if a landowner that utilizes the well as a domestic gas well is a small business. The estimated number per year of wells affected by this rule amendment is 8-10, but the Board does not know the number that would be owned by small businesses. Typically, domestic gas wells are used for residential heating.

The proposed decrease in the distance of oil tanks or batteries of tanks to the road could affect small businesses if a landowner is a business entity that is a commercial farm by allowing additional acreage to be utilized for agricultural purposes.

- (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.

There will be no additional reporting, recordkeeping or other administrative costs added as a result of this rulemaking.

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

A landowner that is a small business using a domestic gas well for business operations would see an increase in the cost of obtaining financial assurance. A landowner that is a small business commercial farming operation would benefit from the additional acreage available for agricultural purposes.

- (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.

As this rulemaking was developed, the regulated community was involved by giving input on possible ways to correct existing shortcomings in the rules. The methods in this rulemaking are the least burdensome, least intrusive, and least costly alternative to address the need for additional bonding of domestic gas wells. The additional bonding provides the State with a greater portion of the amount needed to address abandoned domestic gas wells.

The proposed tank battery location rule is a less intrusive means for landowners to utilize their property for future oil production on their property. The reduction from 100 feet to 50 feet from a public or county road will allow the landowners to access more of their land for agricultural or farming purposes without sacrificing public health or safety.

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

There is no known federal counterpart. Currently, the only surrounding state that has a specific landowner bond for domestic house gas is Kentucky. The amount of the bond is \$1,000 per well. However, the states of Ohio, West Virginia, and Virginia impose bond amounts of \$5,000, \$5,000, and \$10,000 (plus a \$2,000 per acre disturbance bond) respectively for general gas production activities.

Virginia requires a 25-foot setback and Ohio requires a 50-foot setback.

- (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.

Any business entity affected by the proposed rules will be a small business. Exempting small businesses would not address inadequate funds for plugging abandoned domestic gas wells; however, the Board believes that a majority of landowners impacted by the increased bond requirement are not small businesses. Small agricultural businesses will benefit from the decreased distance requirement.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Board of Water Quality, Oil and Gas anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule amendments address insufficient financial assurance for plugging abandoned wells used for domestic heating purposes and an overly burdensome distance requirement imposed on oil tanks and batteries of tanks.

- For wells used by landowners for domestic gas only, the plugging bond will be increased from \$500 to \$1,500. For domestic gas wells deeper than 2,500 feet, the plugging bond will be increased at a rate of \$1.00 for every foot deeper than 2,500 feet. No reclamation bond will be required for a domestic gas well that reverts back to a landowner. The increase is necessary to recover costs incurred by the State when it must plug abandoned wells.
- The minimum buffer between oil tanks or batteries of tanks and state highways and local roads will be reduced to 50 feet instead of the current 100 feet. The 100-foot buffer is creating problems for well operators and landowners because it requires too much surface disturbance. This regulatory decrease will allow the landowner to use more of the land for farming or other agricultural purposes and will not sacrifice public health or safety. The buffer prevents vehicles from striking the oil tanks or batteries of tanks which could cause an explosion and allows tankers to maneuver without being affected by oncoming traffic.

- (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;

There is no federal law relevant to this program. These rules are adopted pursuant to T.C.A. §60-1-201 et seq.

- (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;

Oil and gas drillers are most affected by this rule.

- (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 of Water Quality, Oil and Gas is not aware of any.

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

The increase in the domestic landowner bond will not generate any revenue for the State of Tennessee; however, it will have an impact on the agency's budget due to a decrease in expenditures incurred from plugging abandoned wells. More money will be available for plugging the abandoned wells.

The average cost to plug a well in the State of Tennessee is \$2,800. Using an example of 400 wells plugged over a 9-year timeframe the State of Tennessee would have had to expend approximately \$920,000 {400 X \$2,300 (\$2,800-\$500) = \$920,000} to plug the abandoned wells. Using this example, and under the current rules, only \$200,000 would have been available from collected domestic gas bonds {400 X \$500 = \$200,000}. This would cover approximately 22% of the costs. With the proposed bond increase of \$1,000 (\$500 to \$1,500) an additional \$400,000 would be available for plugging these abandoned wells {400 X \$1,500 = \$600,000}. With the proposed increase the bond amount covers approximately 65% of the costs to plug the well(s).

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

Michael Burton

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

Mallorie Kerby
Assistant General Counsel
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
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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

The Board of Water Quality, Oil and Gas is not aware of any requests.