Tennessee Board of Water Quality, Oil & Gas

Board Orientation Manual

Last Revised October 2024

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TAB 1

Board Description and Current Members

Board of Water Quality, Oil, and Gas

Board Description

Board Characteristics: Twelve members: nine citizen members appointed by the Governor for four-year terms, and three ex-officio members.

Members include:

- Department of Environment and Conservation;
- Department of Health;
- Department of Agriculture;
- One person representing the public-at-large;
- One person representing environmental interests;
- One person representing counties;
- One person representing agricultural interests;
- One person representing municipalities of the state;
- A small generator of water pollution representing automotive interests;
- One member representing manufacturing industries and has current full-ime employment with a manufacturing concern in Tennessee and holds a college degree in engineering or the equivalent, and has at least eight (8) years of combined technical training and experience in NPDES permit compliance and management of wastewater or water treatment facilities;
- One member representing the oil and gas industry;
- One member representing oil or gas property owners.

Commissioned under Tennessee Code Annotated section 69-3-104.

The statute authorizing this board expires June 30, 2028, and the one-year wind-down period begins.

Board of Water Quality, Oil, and Gas

Current Members

October 1, 2024

Member	Term Expires	Representation
Dr. Gary G. Bible	09-30-2027	Oil & Gas Industry
Elaine Boyd	Ex-Officio	Commissioner's Designee, Department of Environment and Conservation
Vacant	-	Small Generator of Water Pollution representing Automotive Interests
Terry Wimberley	09-30-2026	Municipalities
Mayor Kevin Davis	09-30-2025	Counties
Brent Galloway	09-30-2027	Oil or Gas Property Owner
Dodd Galbreath	09-30-2024	Environmental Interests
Dr. John Schwartz	09-30-2024	Public-at-large
Amanda Goff	Ex-Officio	Commissioner's Designee, Department of Health
John McClurkan	Ex-Officio	Commissioner's Designee, Department of Agriculture
Frank McGinley	09-30-2022*	Agricultural Interests
Neal Whitten	09-30-2027	Manufacturing Industry

* Re-appointment application pending with the Governor's office.

TAB 2

TDEC Contact Information

TDEC Contacts

Last updated July 23, 2024

Primary Board Attorney

Shelby Ward
Associate Counsel
Office of General Counsel
Knoxville Field Office
3711 Middlebrook Pike
Knoxville, TN 37921
shelby.ward@tn.gov | 865-722-1982

Secondary Board Attorney

Denard Mickens
Senior Associate Counsel
Office of General Counsel
Davy Crockett Tower, 5th Floor
500 James Robertson Pkwy, Nashville, TN 37243
denard.mickens@tn.gov | 615-532-0143

Technical Secretary

Drake Smarch
Executive Assistant
Office of Director April Grippo
Division of Water Resources
Davy Crockett Tower, 9th Floor
500 James Robertson Pkwy, Nashville, TN 37243
drake.smarch@tn.gov | 615-924-4286

TAB 3

Robert's Rules of Order Guide

ROBERT'S RULES IN SHORT:
A GUIDE TO RUNNING AN EFFECTIVE MEETING

"Where there is no law, but every man does what is right in his own eyes, there is the least of real liberty." Henry M. Robert.

Importance of Rules to an Effective Meeting:

While groups sometimes proceed informally or by consensus, it is generally accepted that deliberative bodies operate much more effectively when they follow known rules of procedure.

In most instances and except as changed by the deliberative body, the rules to be followed are **Robert's Rules of Order** (hereinafter referred to as RR). These rules were first established by General Henry M. Robert in 1876. The latest edition of RR is the 11th edition.

A complete copy of RR runs nearly 700 pages. Even abridged versions, which are quite useful, often run 200 pages. Thus it is clear that this is a very brief summary.

RR defines the role of the chair, of members of the body, and establishes rules of procedure. These rules have been crafted and adjusted over the years to assist in effective meetings, and to balance carefully the rights of the majority to act and the rights of the minority to be heard, and in some cases, prevent action.

Robert's Rules of Order / Common Motions

A. Proceed by Motion. The most basic element of RR is that matters come before the body by motion. A board member makes a motion simply by saying "I move that" or "Move adoption of," or "Move referral of," or "move to amend." It is not the form of the motion, but the substance of it which governs.

B. Role of the Chair. It is the obligation of the Chair to run an orderly meeting. Members of the board should not to speak until they have been recognized by the Chair. Except for a limited class of motions, a member may not interrupt another member when they have the floor. The Chair also rules on any votes and rules on any questions of proper procedure. In the event of a disruption in the meeting, the Chair may call on the "sergeant at arms" or others to return the meeting to order. Generally, under RR, the Chair does not participate in debate or vote unless the chair's vote affects the outcome of the motion. Some committees have changed this by rule to always allow the chair to vote.

C. Types of Motions. Under RR, motions generally fall into one of four classes. These are:

1. The Main Motion: This is the matter that is before the body at that moment. Nearly all other motions bear some relation to the main motion.

2. Subsidiary Motions: These are a series of motions which propose to do something to or with the main motion. Examples include amendment, referral, laying on the table, calling the question. These motions are all subject to an order of precedence which will be discussed below.

   Note that what is the "main motion" for application of the rules of precedence may change during the course of consideration of a matter: For example, if the main motion is to adopt a resolution, and a member offers a subsidiary motion to amend the resolution, the proposal for amendment becomes the main motion for purposes of consideration of the order of precedence of other motions. That is, the motion to amend is subject to further amendment, referral, laying on the table, etc. It is only when that motion has been disposed of that the motion to adopt is then back before the body for consideration.

3. Incidental Motions: Incidental motions relate to the pending matter, but generally relate to it in a procedural way such that the incidental motion must be dealt with before the body may return to either the main or subsidiary motion before it. Incidental motions take precedence over whatever motion is before the body, and in some instances, may be made when the mover does not have the floor. Examples of incidental motions are a point of order or procedure, appeal of a ruling on a point of order or procedure, a point of information, call for a roll call (division of the assembly), or a suspension of the rules.

4. Privileged Motions: These are very few motions that take precedence over all other motions. They include motion to recess, question of privilege, and a motion to adjourn.

D. Common Motions. An almost limitless number of motions may be made. RR lists at least 84 potential motions. This section will discuss some common motions; the reader is also referred to the accompanying "cheat sheet" attached as an appendix to this manual.

1. Adjourn: To end the meeting. Not debatable.

2. Adoption: This is to adopt the matter before the body.

3. Amendment: To modify the main motion before the body.

4. Division of Assembly / Roll Call: A call for division is the same as calling for a roll call vote. Any member may do this and the motion need not be seconded; it is simply granted when asked for. It is not debatable.

5. Division of the Question / Separation: This is a request to have separate votes on different paragraphs or portions of the proposal before the body. It is not debatable,

but does require a second.

6. Lay on the Table / Take off the Table: This is a motion to temporarily defer consideration of a matter and then to ask that the matter be taken up again. It is often used, when, for some reason, information necessary for consideration is temporarily unavailable. Motions to lay on the table or take off the table are not debatable. The motion is often made simply as a motion to "table." The motion should not be used if the intent is essentially to kill a proposal.

7. Place on File / Postpone Indefinitely: This is a common motion and is the equivalent of a motion to postpone or defer indefinitely. This is the motion to be used if the intent is to not adopt the matter before the board, without explicitly voting it down.

8. Point of Information: This is an incidental motion in which a member of the board desires some information prior to proceeding to a vote on the matter before the board. It does not require a second .and no vote is actually taken on the point of information. A member simply says "I rise to a point of information" or "Point of Information?" It is proper when another has the floor.

9. Point of Order or Procedure: This is another incidental motion and again is not subject to a second or a debate. It raises a question about the procedure being followed by the body. The ruling on the Point of Procedure is committed to the Chair of the board. If a member of the body disagrees with the ruling, they may appeal the ruling of the Chair to the full body. An appeal does require a second, and a majority of the body must disagree with the Chair's ruling for it to be reversed.

10. Point of Privilege: This is one of the privileged motions, and again does not require a second, nor is it debatable. This normally relates to some personal matter or something relating to the operation of the body, such as a room that is too hot, too cold, too loud, some confidential information which should not be discussed before the body, etc.

11. Previous Question: This is a motion requesting that the board immediately vote on whatever matter is otherwise before it; it cuts off debate and proceeds to an immediate vote. The motion can be made either by "calling the question", "moving the previous question," or simply stating "Question." The motion requires a second and is non-debatable and requires a two-thirds vote.

12. Recess. The motion asks that the board take a short break. The length of time of the recess should be established. This is a privileged motion, in that it takes precedence over almost all other pending motions. It requires a second, it is not debatable, and requires a majority vote.

13. Reconsideration: A motion for reconsideration asks that the body reconsider something it has already acted upon. It must be made either at the same meeting at which the matter was considered, or at the next succeeding meeting. If it is to be

made at the next succeeding meeting, it must be on the official agenda of the meeting.

A motion to reconsider may only be made by a member who voted on the winning side of the prior question. This normally will be a member in the majority, but if a matter fails because it does not reach the required majority, it may be that the motion for reconsideration may be made by a member who actually is less than a majority. For example, if a matter needing a 2/3 vote falls one vote short of 2/3, reconsideration may only be moved by a member of the minority. If the motion to reconsider is approved, the prior proposal is then again before the board.

14. Motion to Refer/Commit: This is a subsidiary motion which asks that a matter be referred to another body, or to another meeting of the same board. It is called a motion to commit in RR.

15. Suspension of the Rules: This is an incidental motion because it relates to the manner in which the board will take up an issue. It requires a two-thirds majority, but is not debatable.

E. Debate. Once a debatable motion is before the body, members of the body proceed to debate. In both the making of motions and in debating the motions, members should wait to be recognized by the Chair. The standing rules of a board may limit the number of times and length of time that a member of the board may participate in debate.

F. Unanimous Consent. Asking for unanimous consent is a quick way to dispose of non-controversial items. The board may do this by proposing a "consent agenda" near the beginnii1g of a meeting. Items that no member of the board objects to can be disposed of by unanimous approval. The Chair may ask for unanimous consent, or a member may ask for it on any pending matter. The Chair may do this by asking: "ls there any objection to recording a unanimous vote on item_____?"

Precedence of Motions

Some common motions are listed in descending order of precedence, that is, a motion is not in order if it has a higher number than the pending matter.

Undebatable Motions

1. Adjourn
2. Recess
3. Question of Privilege
4. Lay on the Table
5. Previous Question
6. Limit or Extend Debate

Debatable Motions

1. Postpone to a Definite Time
2. Refer or Commit
3. Amend
4. Postpone Indefinitely/ Place on File
5. Main Motion

Incidental Motions (e.g., Point of Order, Point of Information, Suspend the Rules, Division of the Assembly or of the Question) take precedence over whatever matter is pending.

Parliamentary Motions Guide

Based on *Robert's Rules of Order Newly Revised (11th Edition)*

The motions below are listed in order of precedence. Any motion can be introduced if it is higher on the chart than the pending motion.

YOU WANT TO:		YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§21	Close meeting	I move to **adjourn**	No	Yes	No	No	Majority
§20	Take break	I move to **recess** for	No	Yes	No	Yes	Majority
§19	Register complaint	I rise to a **question of privilege**	Yes	No	No	No	None
§18	Make follow agenda	I call for the **orders of the day**	Yes	No	No	No	None
§17	Lay aside temporarily	I move to **lay** the question **on the table**	No	Yes	No	No	Majority
§16	Close debate	I move the **previous question**	No	Yes	No	No	2/3
§15	**Limit or extend debate**	I move that debate be limited to ...	No	Yes	No	Yes	2/3
§14	**Postpone to a certain time**	I move to postpone the motion to ...	No	Yes	Yes	Yes	Majority
§13	**Refer** to committee	I move to refer the motion to …	No	Yes	Yes	Yes	Majority
§12	Modify wording of motion	I move to **amend** the motion by ...	No	Yes	Yes	Yes	Majority
§11	Kill main motion	I move that the motion be **postponed indefinitely**	No	Yes	Yes	No	Majority
§10	Bring business before assembly (a **main motion**)	I move that [or "to"] ...	No	Yes	Yes	Yes	Majority

Jim Slaughter, Certified Professional Parliamentarian-Teacher & Professional Registered Parliamentarian
336-378-1899(W) 336-378-1850(F) P.O. Box 41027, Greensboro 27404 web site: **www.jimslaughter.com**

Parliamentary Motions Guide

Based on *Robert's Rules of Order Newly Revised (11th Edition)*

Incidental Motions - No order of precedence. Arise incidentally and decided immediately.

YOU WANT TO:		YOU SAY:	INTERRUPT?	2ND?	DEBATE?	AMEND?	VOTE?
§23	Enforce rules	**Point of order**	Yes	No	No	No	None
§24	Submit matter to assembly	I **appeal** from the decision of the chair	Yes	Yes	Varies	No	Majority
§25	Suspend rules	I move to **suspend the rules** which …	No	Yes	No	No	2/3
§26	Avoid main motion altogether	I **object to the consideration** of the question	Yes	No	No	No	2/3
§27	Divide motion	I move to **divide the question**	No	Yes	No	Yes	Majority
§29	Demand rising vote	I call for a **division**	Yes	No	No	No	None
§33	Parliamentary law question	**Parliamentary inquiry**	Yes (if urgent)	No	No	No	None
§33	Request information	**Request for information**	Yes (if urgent)	No	No	No	None

Motions That Bring a Question Again Before the Assembly - no order of precedence. Introduce only when nothing else pending.

§34	Take matter from table	I move to **take from the table** …	No	Yes	No	No	Majority
§35	Cancel or change previous action	I move to **rescind/ amend something previously adopted**...	No	Yes	Yes	Yes	2/3 or maj. w/ notice
§37	Reconsider motion	I move to **reconsider** the vote ...	No	Yes	Varies	No	Majority

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TAB 4

Conflicts of Interest & Performance Audits

Ethics & Conflict of Interest Statement for Members of the Tennessee Board of Water Quality, Oil & Gas

1. No member of the board who receives a significant portion of his or her income directly or indirectly from permit holders or applicants in the previous two years shall participate in making any decision on an appeal of a permit matter. Tenn. Code Ann. § 69-3-104(b). Also, any board member is subject to disqualification for bias, prejudice, or any cause for which a judge may be disqualified. Tenn. Code Ann. § 4-5-302.

2. Each board member shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:

    i. Using public office for private gain;
    ii. Losing complete independence or impartiality;
    iii. Making a government decision outside of official channels; or
    iv. Affecting adversely the confidence of the public in the integrity of the government.

3. Use of information. No board member shall, directly or indirectly:

    i. Use, disclose, or allow the use of official information which was obtained through or in connection with his or her appointment to the board and which has not been made available to the general public for the purpose of furthering the private interest or personal profit of any person, including the board member; or
    ii. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her board appointment.

4. Use of government property. No board member shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the extent that the use is de minimus or is lawfully available to the general public.

5. Each board member will avoid all known conflicts of interest, and to the extent the board member becomes aware of a conflict of interest in connection with any matter brought before the board, the board member will disclose such conflict to the other board members, Administrative Law Judge, and/or other appropriate person(s) and will further recuse himself or herself from participating in any consideration of the matter.

6. No board member will participate in decisions or actions involving individuals in his or her immediate family, individuals employed by the board member or the board member's business or any other matter in which the board members participation may create an appearance of bias or impropriety.

7. Questions on interpretation of this statement.

   When a board member is in doubt as to the proper interpretation of this conflict of interest statement, he or she is expected to seek the advice of the Department of Environment and Conservation's Office of General Counsel.

Signature of Board Member

Date

Print Name

Performance Audits (**bolded** audits discuss the Board of Water Quality, Oil, and Gas, or a prior iteration)

- Clean Water State Revolving Fund 2023
- Clean Water State Revolving Fund 2022
- Clean Water State Revolving Fund 2021
- Clean Water State Revolving Fund 2020
- Clean Water State Revolving Fund 2019
- Clean Water State Revolving Fund 2018
- Department of Environment and Conservation 2018
- Clean Water State Revolving Fund 2017
- Clean Water State Revolving Fund 2016
- Clean Water State Revolving Fund 2015
- Clean Water State Revolving Fund 2014
- Clean Water State Revolving Fund 2013
- Department of Environment and Conservation 2013
- Clean Water State Revolving Fund 2012
- **Department of Environment and Conservation 2012**
- Clean Water State Revolving Fund 2011
- Clean Water State Revolving Fund 2010
- **Department of Environment and Conservation 2010**
- Clean Water State Revolving Fund 2009
- Department of Environment and Conservation 2008
- Clean Water State Revolving Fund 2008
- Clean Water State Revolving Fund 2007
- Clean Water State Revolving Fund 2006
- **Department of Environment and Conservation November 2005**
- Clean Water State Revolving Fund 2005
- Department of Environment and Conservation May 2005
- Clean Water State Revolving Fund 2004
- Clean Water State Revolving Fund 2003
- Clean Water State Revolving Fund 2002
- **Water Quality August 2001**
- Clean Water State Revolving Fund 2001
- Department of Environment and Conservation 2000-2001
- Water Quality May 2001
- Clean Water State Revolving Fund 2000

- **Department of Environment and Conservation 2000**
- Clean Water State Revolving Fund 1999
- Department of Environment and Conservation 1998-1999
- **Department of Environment and Conservation 1997**
- Department of Environment and Conservation 1996-1997
- State Oil and Gas Board 1996
- Department of Environment and Conservation 1994-1995

STATE OF TENNESSEE

EXECUTIVE ORDER

BY THE GOVERNOR

No. 2

AN ORDER CONCERNING ETHICS POLICIES APPLICABLE TO, AND ETHICS DISCLOSURES REQUIRED OF, EXECUTIVE BRANCH EMPLOYEES

WHEREAS, establishing, communicating, complying with, and enforcing a robust and comprehensive ethics policy within the Executive Branch of the State of Tennessee is essential to maintaining public trust in government and ensuring the proper performance of government; and

WHEREAS, disclosure is an indispensable element of an effective ethics policy; and

WHEREAS, this Administration is committed to simplifying and streamlining government processes, systems, and policies to a point understandable by Tennessee citizens;

WHEREAS, this Executive Order No. 2 underscores, expands, and enhances the commitment of this Administration to the highest standards of ethics and transparency by employees of the Executive Branch.

NOW THEREFORE, I, Bill Lee, Governor of the State of Tennessee, by virtue of the power and authority vested in me by the Tennessee Constitution and the laws of Tennessee, do hereby direct and order that:

1. Except where otherwise noted, this Order applies to the following employees of the Executive Branch of the State of Tennessee: the Governor, members of the Governor's staff, members of the Governor's Cabinet, and all other Executive Branch employees.
2. Each employee shall avoid any action, whether or not specifically prohibited by statute, regulation, or this Order, which might result in or create the appearance of:
    a. Using public office for private gain;
    b. Giving preferential treatment to any person;
    c. Impeding government efficiency or economy;
    d. Losing complete independence or impartiality;

e. Making a government decision outside of official channels; or

f. Affecting adversely the confidence of the public in the integrity of the government.

3. Each employee is expected to comply with the following ethical principles and policies governing financial interests, use of information, and use of government property:

a. Financial interests.

i. No employee shall enter into or derive any benefit, directly or indirectly, from any contractual arrangement with the State or any of its agencies. In recognition of the fact that many spouses have separate careers, the normal employment compensation of a spouse whose regular, ongoing employer or business has a contractual arrangement with the State shall not be considered a "benefit" to the employee, provided the contract with the State was procured without any participation, assistance, or influence by the employee.

ii. No employee shall have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her government duties or responsibilities. "Indirect financial interest" in this case includes a substantial interest on the part of a member of the employee's household. This subsection shall not apply to interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests. This subsection also shall not apply to ownership of publicly traded stocks or bonds where such ownership constitutes less than two percent (2%) of the total outstanding amount of the stocks or bonds of the issuing entity. If, at the time the employee begins employment with the State or at any subsequent time during State employment, the employee possesses such direct or indirect financial interests, the employee shall divest such interest within a reasonable time.

b. Use of Information.

i. No employee shall directly or indirectly use, disclose, or allow the use of official information obtained through or in connection with the employee's government employment and not available to the general public for the purpose of furthering the private interest of personal profit of any person, including the employee; or

ii. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through the employee's government employment.

c. Use of government property.

i. No employee shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the

extent that the use is incidental or de minimis or is lawfully available to the general public.

4. Gifts.
   a. No Executive Branch employee shall solicit or accept, directly or indirectly, on behalf of himself or herself or any member of the employee's household, any gift, including but not limited to any gratuity, service, favor, food, beverage, refreshment, entertainment, lodging, transportation, loan, loan guarantee, or any other thing of monetary value, from any person or entity that: (i) has, or is seeking to obtain, contractual or other business or financial relations with the department or agency of the State of Tennessee in which the individual is employed; (ii) conducts operations or activities that are regulated by the department or agency of the State of Tennessee in which the employee is employed; or (iii) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.
   b. Exceptions. The prohibition on accepting gifts in paragraph 4 does not apply in the following circumstances:
      i. A gift given by a member of the employee's immediate family or by an individual if the gift is given for a nonbusiness purpose and is motivated by a close personal friendship and not by the position of the employee. In determining whether a gift falls within this subdivision, the factors contained in Tenn. Comp. R. & Regs. 0580-01-05-.04(2) shall apply;
      ii. Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
      iii. Sample merchandise, promotional items, and appreciation tokens, if they are routinely given to customers, suppliers, or potential customers or suppliers in the ordinary course of business;
      iv. Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items; provided that any such item shall not be in a form which can be readily converted to cash;
      v. Food, refreshments, foodstuffs, entertainment, orbeverages provided as part of a meal or other event, if the value of such items does not exceed, per occasion, the dollar amount provided in Tenn. Code Ann. § 3-6-305(b)(8), as updated via posting on the Tennessee Ethics Commission's website to account for changes in the average consumer price index; provided further, that the value of a gift made pursuant to this subsection may not be reduced below the monetary limit by dividing the cost of the gift among two or more persons or entities identified in paragraph 4;
      vi. Food, refreshments, meals, foodstuffs, entertainment, beverages, or interstate travel expenses that are provided in connection with an event where the employee is attending a scheduled meeting of an established or recognized membership organization which holds regular meetings; and
      vii. Loans from an established financial institution made in the ordinary course of business on usual and customary terms, so long as there are no guarantees or collateral provided by any person described in paragraph 4.

c. There may be circumstances where refusal or reimbursement of a gift such as a lunch or dinner may be awkward and contrary to the larger interests of the State. In such circumstances, the employee is to use the employee's best judgment and disclose the gift, including a description, estimated value, the person or entity providing the gift, and any explanation necessary within fourteen (14) days to the Chief Ethics Officer on the form titled "Gift Prohibition Exception Disclosure" provided by the Department of Finance and Administration for that purpose.

5. Disclosures.

   a. The Commissioner of Finance and Administration shall prepare forms that should be utilized to report the information described in this Order and shall make those forms available to each individual on or before January 1 of each year. Such forms and statements can be located on the Commissioner of Finance and Administration's website and shall be completed and filed by the respective employees as follows:

      i. The Governor and Governor's Cabinet and Cabinet Level Staff.

         1. Pursuant to Tenn. Code Ann.§ 2-10-115 and§§ 8-50-501 and - 502 the Governor and the Governor's Cabinet and Cabinet level staff shall file annually the "Statement of Disclosure of Interest Form" with the Tennessee Ethics Commission and the Counsel to the Governor on or before April 15th of each year.

            a. The disclosure shall exceed the statutory requirements of Tenn. Code Ann. §§ 8-50-501 and -502 in one respect. Subsequent to appointment, each covered employee shall file annually the complete form required upon appointment (as set forth in Tenn. Code Ann. § 8-50- 501), and may not file a letter simply indicating any, or no, changes from the initial filing as is currently authorized by Tenn. Code Ann. § 8-50-504.

         2. The Governor and the Governor's Cabinet and Cabinet level staff shall file annually the "Ethics Policy Compliance Certification and Conflict of Interest Statement" with the Chief Ethics Officer on or before April 15th of each year.

      ii. All other employees listed on Attachment A of this Order.

         1. All other employees listed on Attachment A of this Order shall file annually the "Statement of Disclosure of Interest Form" and the "Conflict of Interest and Ethics Policy Receipt Statement" with the Chief Ethics Officer on or before April 15th of each year.

6. I appoint the Counsel to the Governor to serve as the Chief Ethics Officer for the Executive Branch charged with administering the provisions of this Order and maintaining all records related to the ethics policy.

7. The Chief Ethics Officer shall convene a meeting of the Chief of Staff, the

Commissioner of Finance and Administration, and the Commissioner of Human Resources to take any action necessary or convenient to determine or enforce the ethics policy and address any request for exemptions.

8. When an employee is in doubt as to the proper interpretation of this Order, the employee is expected to seek the advice of the Chief Ethics Officer.
9. The Chief Ethics Officer shall make the disclosures and statements required by this Order available for inspection by the public during normal working hours.
10. This Executive Order is intended only to improve the internal management of the Executive Branch of the State of Tennessee and does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the State of Tennessee, its agencies or instrumentalities, its officers or employees, or any other person.
11. This Executive Order No. 2 supersedes and rescinds Governor Haslam's Executive Order No. 20, dated August 31, 2012, and all other directives and memoranda concerning ethics policies applicable to the Executive Branch, and all previous executive orders, the terms of which are inconsistent with the terms of this Executive Order No.2, are hereby repealed.

IN WITNESS WHEREOF, I have subscribed my signature and caused the Great Seal of the State of Tennessee to be affixed this 24th day of January, 2019.

GOVERNOR

ATTEST:

SECRETARY OF STATE

TAB 5

Powers and Duties of Commissioner and Board

Duties and Authorities of the Board of Water Quality, Oil, and Gas

The Water Quality Control Act of 1977 ("Act") declares that the waters of Tennessee are held in public trust for the use of the people of the state. Tenn. Code Ann. § 69-3-102(a). Further, as beneficiaries of this trust, the people of Tennessee have a right to unpolluted waters. *Id.* To ensure this pledge is upheld, the Act creates the Tennessee Board of Water Quality, Oil, and Gas ("Board"), Tenn. Code Ann. § 69-3-104, and gives it certain enumerated powers and duties, Tenn. Code Ann. § 69-3-105.

Among these, it is the duty of the Board to classify all waters of the state and adopt appropriate water quality standards. Tenn. Code Ann. § 69-3-105(a)(1). The Board shall adopt, modify, and enforce rules deemed necessary to properly administer its responsibilities under the Act. This includes the creation of a comprehensive permitting program that will enable the Tennessee Department of Environment and Conservation (TDEC) to be designated by the United States Environmental Protection Agency (EPA) for administering the National Pollutant Discharge Elimination System (NPDES) permitting regime. Tenn. Code Ann. § 69-3-105(h).

The Act also requires the Board to formulate a state water quality plan consisting of water quality standards, objectives for planning and operation of water resource development projects, a program of implementation for waters not meeting established standards, and other principles deemed essential by the Board. Tenn. Code Ann. § 69-3-105(e). The Board has and shall exercise the power to adopt rules creating a system of incentives for alternatives to discharges to surface waters, such as land application and beneficial reuse of wastewater. Tenn. Code Ann. § 69-3- 105(l).

Public Hearings and Appeals

The Board shall hold public hearings for the following purposes: (1) classifying or reclassifying waters of the state; (2) adopting, amending, or revising standards of quality for state waters; (3) adopting, modifying, repealing and/or promulgating rules and regulations; and (4) adopting, amending, or revising water quality plans, or area-wide waste treatment plans. Tenn. Code Ann. § 69-3-105(d). Public notice must be given at least 30 days before the hearing through publication in a newspaper circulated within the area of the affected water. Tenn. Code Ann. § 69-3-105(d); Tenn. Comp. R. & Regs. 0400-40-01-.02(2)(a).

Contested Cases

Any petition for appeal of a TDEC permitting action or enforcement order shall be filed with the Board. Tenn. Code Ann. §§ 69-3-105(i), -109, -115, -116 and -118. These contested case hearings are heard by an administrative judge sitting alone, who will issue an initial order if the case is not settled. Tenn. Code Ann. § 69-3-110(a). The Board must review an

initial order upon appeal by any of the parties within 30 days, or upon the Board's motion to review the initial order within the longer of 30 days of entry of the initial order, or 7 days after the first Board meeting to occur after entry of the initial order. *Id*. The Board's review is limited to the record and is based on the briefs and oral arguments of counsel or unrepresented parties.

In addition, any affected person may file a petition for declaratory order with the Board. Tenn. Code Ann. § 4-5-223. This includes a petition filed pursuant to the Board's rule authorizing challenges to the economic or social necessity of greater than *de minimis* degradation of Exceptional Tennessee Waters. Tenn. Comp. R. & Regs. 0400-40-03-.06(4)(d). Contested case hearings for such petitions are heard by the Board, in the presence of an administrative judge.

TAB 6

Overview of Rulemaking

Rulemaking

An Overview

Section .01 – Scope

This is an overview of the legal requirements for the promulgation of rules as they apply to the Department of Environment and Conservation. The primary law governing this subject is the Uniform Administrative Procedures Act (UAPA) compiled in Tennessee Code Annotated Title 4, Chapter 5, Parts 2 and 4. Although the UAPA establishes the general rulemaking requirements, additional requirements may be established by any other statute administered by the Department of Environment and Conservation (TDEC). The area in which this most commonly occurs is in specifying how notice must be given to the public or the regulated community. If there are any applicable additional requirements, they must also be complied with or the rule may be invalid.

Section .02 - What is a Rule?

(1) The term "rule" should be understood as being synonymous with "regulation." A rule is defined by Section 4-5-102 of the UAPA as an agency's statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of the agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) Statements concerning only the internal management of state government and not affecting private rights, privileges, or procedures available to the public;

(b) Declaratory orders;

(c) Intra-agency memoranda; or

(d) General policy statements that are substantially repetitious of existing law.

(2) A properly promulgated rule has the full force and effect of any law passed by the legislature. The sanction for violating a rule varies and is set by the legislation authorizing the Board or Commissioner to adopt rules.

Section .03 - Is a rule authorized?

(1) Once it has been determined that a statement needs to be made into a rule, it must be determined whether the agency has the authority to make the rule to be proposed.

(2) An agency may do only what the legislature has delegated to it. An agency may not make a rule which exceeds its delegated authority or which in effect conflicts with any statutory provision governing the agency. Statutes may contain

"express" or "implied" authority for the agency to make rules on a particular subject.

(3) "Express authority" is easy to find in a statute. For example, Tenn. Code Ann. Section 69-3-105(b) says the Board of Water Quality, Oil, and Gas has the power, responsibility and duty to "adopt, modify, repeal, and promulgate after due notice and enforce rules and regulations which the board deems necessary for the proper administration of this part, the prevention, control and abatement of pollution, or…". It is clear that the Board can make rules on all matters pertaining to activities that impact the quality of state waters.

(4) "Implied authority" can be more difficult to identify. What is an implication to one person may be nothing but silence to another. When in doubt, consult the Office of General Counsel (OGC).

Section .04 - What type of rule is required?

(1) Once it has been determined that a contemplated statement needs to be a rule and that authority exists for the rule, it must be determined which type of rule is appropriate. There are three types of rules that differ only in the circumstances under which they may be used, the effective date, and length of time they are effective.

(2) The three types of rules are:

(a) Proposed Rules

(b) Emergency Rules

(c) Rulemaking Hearing Rules

(3) The first two rule types are rarely used by TDEC. Emergency Rules are only temporary. They expire after 180 days. If the content of those rules needs to be permanent, they will have to be followed immediately by a properly promulgated Rulemaking Hearing Rule. The Rulemaking Hearing Rule is the most common type used by TDEC regulatory boards and the Commissioner. Generally, the following determines when a particular type of rule should be used:

(a) A Proposed Rule, authorized by Tenn. Code Ann. Section 4-5-202(a)(2), may be filed without a rulemaking hearing and is defined as a rule that:

- Involves a minor, nonsubstantive modification, including, but not limited to, clerical updates;

- Is approved by the joint government operations committee

of the house of representatives and the senate pursuant to Tenn. Code Ann. Section 4-5-202(a)(2)(c)(ii), which states:

> "An agency may petition the joint government operations committee of the house of representatives and the senate to authorize a rule to be a proposed rule when the agency has given proper notice and held a public hearing pursuant to this part, but the rule is withdrawn to make nonsubstantive modifications to the rule prior to the review of the rule by the joint government operations committee;"

- Repeals an existing rule; or
- Eliminates or reduces a fee contained in an existing rule.

(b) An Emergency Rule, authorized by Tenn. Code Ann. Section 4-5-208, is used only when:

- An immediate danger to the public health, safety, or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking would not adequately protect the public;
- The rule only delays the effective date of another rule that is not yet effective;
- The rule is required by the Constitution, or court order;
- The rule is required by an agency of the federal government and adoption of the rule through ordinary rulemaking procedures described in the UAPA might jeopardize the loss of a federal program or funds; or
- The agency is required by an enactment of the General Assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures described in the UAPA the promulgation of permanent rules (Proposed or Rulemaking Hearing rules).

(c) A Rulemaking Hearing Rule, authorized by Tenn. Code Ann. Sections 4-5-202 through 4-5-204, follows the public notice and approval process prescribed by the UAPA and is used for almost all of the promulgation of new rules and changes or modifications to existing rules by TDEC regulatory boards and the Commissioner.

Section .05 - How to process a rule

(1) Once it has been decided that a rule is necessary, authorized, and what type of rule is needed, the drafting begins. Each of the three types of rules is different in the forms, procedure, and format used to process them. However, methods of drafting all types of rules are substantially similar.

(2) Generally, the process to draft and promulgate a rule follows this sequence:

(a) Decide "type" of Rulemaking;

(b) Drafting the rule;

(c) Review by Rulemaking Coordinator and OGC;

(d) Obtaining the concurrence of upper management;

(e) Filing Notice with Secretary of State;

(f) Notifying the public;

(g) Conduct public hearing(s);

(h) Consider comments received and revising the rule if appropriate;

(i) Review by Rulemaking Coordinator and OGC;

(j) Adoption of the rule by the Board or Commissioner;

(k) Review and approval by OGC and upper management;

(l) Review and approval by the Attorney General;

(m) Filing with the Secretary of State's Office, Division of Publications; and

(n) Explaining the rule to the Government Operations Committees of the General Assembly and obtaining their recommendation of the rule.

(o) Rules become effective on the effective date assigned by the Secretary of State's Office, Division of Publications (typically 90 days after filing with Secretary of State or as prescribed by the rule).

TAB 7

Travel Regulations

Board Member Travel Overview

September 2023

Reimbursement of travel expenses for board members traveling to and from official board meetings must be in accordance with the **State of Tennessee, *Department of Finance and Administration Comprehensive Travel Regulations (Policy 8)***.

All claims for travel reimbursement must be made on the **State of Tennessee Claim for Travel Expenses form**.

Current Travel Regulations and Reimbursement Rate Schedule are available at:

https://www.tn.gov/content/dam/tn/finance/documents/fa_policies/policy8.pdf

Mileage Reimbursement:

- Reimbursement for the use of personally owned cars is at the standard mileage rate, as reflected in the Reimbursement Rate Schedule (currently $0.655 per mile).

Meals:

- Per Diem rates, as reflected in the Reimbursement Rate Schedule, include a fixed allowance for meals and incidentals.
- No itemization of expenses is required.
- No receipts are required.
- Reimbursement for meals and incidentals for the day of departure and day of return is three-fourths of the appropriate per diem rate.
- Reimbursement of meals is allowed only when overnight travel is involved.

Parking:

- No receipt is required for daily parking fee of $8.00 or less.
- Receipt is required for daily parking fee greater than $8.00.

Lodging:

- Will be reimbursed for actual lodging costs plus tax up to the applicable maximum amounts listed on the Reimbursement rate Schedule.
- Receipts are required.
- Receipts must itemize room charges and taxes by date.

Department of Finance and Administration
Policy 8 - Comprehensive Travel Regulations
(Revised September, 2018)

Introduction

1. It is the intent of these regulations that employees not suffer additional cost as a result of travel incurred to carry out assigned duties. Employees shall be reimbursed for such expenses subject to the limitations provided in this travel policy and the accompanying Reimbursement Rate Schedule.

2. When traveling, state employees should be as conservative as circumstances permit. The lower cost should be selected whenever practical. Reimbursement for travel will be based upon the most direct or expeditious route possible. Employees traveling by an indirect route must assume any extra expense incurred. It is the responsibility of the employee to be familiar with and adhere to established state travel policies. Deliberate disregard of these regulations while traveling on state business or the filing of an intentionally misleading or fraudulent travel claim is grounds for disciplinary action including termination of employment.

3. The Commissioner of Finance & Administration will establish and maintain the maximum rates of reimbursement.

Travel Authorization

4. Travel may not be undertaken unless it is authorized in advance by proper authority. Approved state travel is the basis for reimbursement in accordance with these provisions. The employee is considered to be on official travel status, and eligible for reimbursement, at the time of departure from his/her official station or residence, whichever is applicable. When completing an Edison travel authorization, the destination should always be entered under "default location," to ensure appropriate work-flow for the authorization form.

5. The department head is authorized to approve all travel for state business, including meeting expenses, registration fees for conferences or seminars, etc. The Department head is responsible for determining the most cost-effective means of meeting the State's business objective considering the use of state meeting rooms, park convention centers, video conferencing, etc. The use of virtual meetings as an alternative to holding a conference or meeting in real life should be actively encouraged as a cost-savings tool. Video conferencing is a green technology, allowing departments to mitigate energy use by dramatically reducing the need to travel.

6. The Commissioner of Finance and Administration, through the Division of Accounts, shall approve exceptions to the travel policy. Department heads are authorized to approve any necessary travel by a non-state employee. Such travel should be conducted and reimbursed in accordance with these Travel Regulations. Department heads are authorized to approve occasional exceptions to lodging and meal rates when necessity requires and reasonable alternatives are not available (i.e. lodging unavailable at CONUS rates).

7. Approval for out-of-state employee travel is processed through the Edison Travel Authorization workflow. Once approved by the department head, Executive Level Travel Authorizations for out-of-state travel will be routed to the Department of Finance and Administration for review and approval. During periods of extreme budget stress, additional executive level review may occur.

8. The Commissioner of Finance and Administration retains the authority to change the approval process as circumstances require.

9. If an employee travels into another state and back in the same day and such travel is less than fifty (50) miles one way, such travel will be considered in-state for approval and reimbursement purposes.

Official Station

10. The official station is designated by the department head of the employing agency, and the designation must be in the best interests of the State. The official station shall be a location where the employee regularly works and the work activities of the employee's position are based. The employee's home shall not be designated as the official station without documentation establishing that the employee's home office is the employee's principal place of business within the meaning of 26 USC § 280A (c)(1)(A). The department head should consider IRS regulations on the deductibility of travel expenses as well as wage and hour laws when designating an official station for employees, particularly in mobile work situations, and may want to consult with legal counsel.

11. An important purpose of an official station is to establish when the employee is in travel status and eligible for reimbursement of travel expenses. Travel between the employee's home (place of residence) and official station is considered commuting and is not reimbursable.

12. Employees who are authorized to participate in the alternative workplace arrangement may be assigned their residence (or alternative approved location) as their official designated reporting station for the days he or she works away from their regularly assigned State government office location. The employee's official station will be designated by their department head pursuant to paragraph 10, and the employee will not

receive reimbursement for travel incurred between his or her official designated reporting station and official station.

13. In the event that an employee is reassigned to a temporary work location, which is generally defined as a place where the work assignment is realistically expected to last (and does in fact last) one year or less, the employee will not be eligible for reimbursement unless he/she can demonstrate that by commuting to the temporary location he/she has incurred additional expense over the cost of the commute to his/her official station. However, an employee shall be eligible for reimbursement of mileage for travel to a temporary work location for travel at times other than the employee's normal working hours (i.e. nights or weekends).

14. If an employee does not have an official station due to a mobile work arrangement, the employee will not be entitled to reimbursement for mileage between the employee's home and temporary work locations within the metropolitan area where the employee lives, even if the travel occurs at times other than the employee's normal working hours. Generally, a metropolitan area includes the area within the city limits and the suburbs that are considered part of that metropolitan area.

Reimbursement Procedures

15. Submission of an expense report by an employee or his proxy initiates the travel reimbursement process with approvals handled electronically through the Edison role-mapping structure. Employees must authorize the set-up of a proxy in Edison prior to the submission of an initial expense claim by a proxy. Proxy-submitted travel claims must include the attached paper version of the travel claim, signed and dated by the employee, along with appropriate receipts.

16. Employees should submit claims for reimbursement through the Edison system as soon as possible following completion of travel. Employees on regular travel status should consider filing an expense report weekly or biweekly. Departments and agencies should review expense reports as rapidly as possible to ensure prompt payment to their employees. In accordance with Internal Revenue Service guidance (IRS Publication 463), reimbursement paid sixty (60) days after the date of travel may be considered as taxable income.

17. Expense reports prepared to request reimbursement of business related expenses incurred while on official travel must include the actual amount of all state paid expenses associated with the trip, even though the employee will not be reimbursed for these amounts (for example, airfare and registration fees). State paid expenses include amounts that are initially paid by the state and subsequently reimbursed or funded through federal, local or private sources.

Travel Advances

18. Travel advances are available only under extraordinary circumstances. Advances are subject to the approval of the Division of Accounts and will be allowed (a) only if the employee can justify extraordinary circumstances that warrant an advance, and (b) the employee has provided Accounts with a payroll deduction authorization form which will allow the state to recover the advance from any salary owed the employee in the event of termination of employment or failure to submit an expense report.

19. The amount of the travel advance will be based on eighty percent (80%) of the total estimated cost of travel. Advances will not be issued for less than one hundred dollars ($100). Immediately upon return the employee must submit an expense report regardless of whether he/she owes advance moneys back to the state or is due additional reimbursement.

Honorariums

20. For those employees who receive honorariums for appearing at meetings while on official state business, the employee may, at his/her option, accept the honorarium as full payment for travel expenses including airfare, or choose to surrender the honorarium to the State, and be reimbursed in accordance with established travel policy.

Air Travel

21. Departments may set their own policy as to how their employees may make reservations for air travel, for example, through the state travel agency, or directly through an on-line booking service. Advantage of discount fares and advance booking should be taken whenever practical, and fares should not exceed the regular tourist or coach fares offered the general public for both domestic and international flights. When making reservations directly through an on-line booking service, a print-out of the booking must accompany the employee's expense claim. Employees who have unused tickets that were booked on-line should inform their departmental fiscal office and make use of such tickets if additional travel is required.

Taxi Fares - Airport Transportation

22. Reasonable taxi fares are allowed from airports. It is expected that bus, limousine or light rail service to or from airports will be used when available and practical. In traveling between hotels or other lodging and meeting or conference sites, reasonable taxi fares will be allowed. No receipt is required for reimbursement of reasonable taxi fares.

State Contracted Vehicles and Rental Cars

23. The Department of General Services may provide a contract or contracts providing vehicles to state employees. Employees are expected to make use of these contracts when

available, and to follow guidance provided by the Department of General Services for the use of these vehicles and for the payment of fuel, maintenance, and repairs. State-owned and state-contracted vehicles should be used only for official business. Only properly authorized State of Tennessee employees may operate a State vehicle or state-contracted vehicle, and employees must possess a valid driver's license for the type of vehicle being operated. Employees should follow the instructions provided with the vehicle in the event of breakdown, emergency repairs, etc. Reimbursement for such expenses will be made when necessary and must be accompanied by proper receipt itemizing the services.

24. Car rental for out-of-state travel can be made through contracts with the Department of General Services. Reservations made through the General Services contract can ensure travelers of any negotiated rates. Car rental should be used only when necessary, i.e. when other forms of transportation such as hotel shuttle service are inconvenient, expensive, or not available. Charges for insurance for rental automobiles are not reimbursable costs. The State is self-insured for certain liability through the Department of Treasury, Division of Claims Administration. Charges for car rental and fuel receipts should be scanned and attached to the Edison Expense report for reimbursement.

Travel - Personally-Owned Automobile

25. Department head authorization is required for the use of personally owned automobiles in the daily performance of duties. Unnecessary expenses which result from the use of an automobile for reasons of personal convenience will not be allowed.

26. Reimbursement for the use of personally owned cars is at the standard mileage rate. Reasonable tolls and ferry fees will be allowed when necessary; no receipt is required for reimbursement.

27. Only mileage on official state business may be claimed for reimbursement. Reasonable vicinity mileage will be allowed. The Edison system will automatically calculate point to point mileage. If the point to point mileage calculation by Edison appears incorrect or excessive, employees may make changes to the expense report in accordance with procedures established by the Division of Accounts.

28. Procedures for calculating mileage are based on the fact that the State is prohibited from reimbursing employees for normal commuting mileage.

a) If an employee begins or ends a trip at his/her official station, reimbursable mileage will be the mileage from the official station to the destination.

b) If work is performed by an employee in route to or from his/her official station, reimbursable mileage is computed by deducting the employee's normal commuting mileage from the actual mileage driven.

c) If an employee begins or ends his/her trip at his/her residence without stopping at his/her official station, reimbursable mileage will be the lesser of the mileage from the employee's residence to his/her destination or his/her official station to the destination. On weekends and holidays, the employee may typically be reimbursed for actual mileage from his/her residence to the destination.

d) If an employee travels between destinations without returning to his/her official station or his/her residence, reimbursable mileage is the actual mileage between those destinations.

29. Employees who utilize the work from home and mobile work alternative arrangements shall not receive mileage for commuting to their official station from their residence (or alternative approved location) or vice versa (regardless of whether the trip is for reporting to a meeting, briefing, or special assignment).

Parking

30. Charges for routine parking while on travel status will be reimbursed. Receipts are required if the parking charge exceeds the allowance stated in the rate schedule. Charges for routine parking at the official work station will not be reimbursed. Long-term airport parking is reimbursed at the standard rate offered by the airport's long-term or economy parking facility.

31. If travel is by air the employee will be reimbursed for the lesser of: (a) the allowable mileage reimbursement for one round trip and long-term airport parking; or (b) the cost of one round trip taxi fare from the employee's official work station (or residence on weekends/evenings). The employee may also be allowed the appropriate mileage reimbursement for two round trips from home when driven by a friend or relative, at the employee's option.

Promotional Materials and Airline Baggage Fees

32. Fees for the handling of promotional materials or equipment will be allowed up to the maximum indicated in the Reimbursement Rate Schedule. Airline baggage fees for up to two (2) bags will be reimbursed.

Lodging

33. The employee will be reimbursed for actual lodging costs plus tax incurred up to the applicable maximum amounts as indicated on the Reimbursement Rate Schedule. This schedule includes state parks. Lodging receipts are required and must itemize room charges and taxes by date. If a convention rate exceeds the maximum reimbursement rate

and is documented by a convention brochure or registration form, a higher reimbursement rate will be allowed. Miscellaneous lodging expenses such as energy or utility surcharges are fully reimbursable and should be added to the lodging cost, in a manner similar to local hotel or sales taxes.

34. The maximum reimbursement rates for out-of-state travel are the same as those maintained by the U.S. General Services Administration for federal employees within the continental United States (CONUS). The CONUS list, available on the General Services Administration web site, contains a standard reimbursement rate for lodging and meals and incidentals, and several pages of exceptions. Most destinations for out-of-state travel fall within the list of exceptions.

35. If a room is shared with other than a state employee, actual costs subject to the applicable maximum rate in the reimbursement rate schedule apply. In the event of double occupancy for state employees on official travel, both employees should attach an explanation to his/her travel claim detailing dates and other employees with whom the room was shared. The lodging cost may be claimed by the employee who incurred the cost, or one half the double occupancy charges may be allowable for each employee.

Per Diem Rates for Meals and Incidentals

36. The maximum per diem rates include a fixed allowance for meals and incidental expenses (M & I). The M & I rate, or fraction thereof, is payable to the traveler without itemization of expenses or receipts. Incidentals are intended to include miscellaneous costs associated with travel such as tips for baggage handling, phone calls to home, etc. Reimbursement is made only when overnight travel is required. Generally, the applicable maximum per diem rate for each calendar day of travel shall be determined by the location of lodging for the traveler.

37. The per diem rates for meals and incidentals are established on the Reimbursement Rate Schedule. The M & I rates for out-of-state travel are the same as those for federal employees, and are available on the General Services Administration's web site. As with lodging, there is a standard rate for the continental United States (CONUS), and a list of exceptions. Please note that these rates may change effective October 1 of each year.

38. Reimbursement for meals and incidentals for the day of departure shall be three-fourths of the appropriate M & I rate (either the in-state rate or CONUS rate for out-of-state travel) at the rate prescribed for the lodging location. Reimbursement for M & I for the day of return shall be three-fourths of the M & I rate applicable to the preceding calendar day. Note that the Edison System defaults to the standard CONUS meal rate for a day and the employee must enter the three-fourths rate for the day of departure and day of return. To assist in this calculation, a table indicating three-fourths of the per diem rate accompanies the Standard Reimbursement Rates at the end of this document.

39. Employees who receive maintenance in the form of meals provided by their employing agency at their official work station shall be eligible for reimbursement if they are away from their official work station on state business and do not receive the maintenance meal.

40. Reimbursement for a single meal (or meals) for employees on one-day travel status with no overnight stay is not permitted. While on travel status if more than a single full meal is provided as part of a state-sponsored training session or conference, the employee should deduct the cost of those meals from the per diem for that day, using the schedule provided below. This also applies to the day of departure and the day of return. In those instances where all meals are provided, only the incidental rate should be claimed. For non-state sponsored training or conferences the employee is not required to deduct from the per diem the cost of a meal or meals provided through a conference fee. A schedule indicating the allocation for the breakfast, lunch, and dinner meals accompanies the Standard Reimbursement Rates at the end of this document.

Non-Standard Shift Hours

41. Employees who are scheduled to work nonstandard shifts (official work hours begin before 7:00 a.m. or end after 5:30 p.m.) and are eligible for meal reimbursement shall be reimbursed at one-third (1/3) of the daily M & I rate for each reimbursable meal. Total reimbursement is limited to the full day M & I allowance listed in the Reimbursement Rate Schedule.

Extended Travel

42. Extended travel status applies to those employees on continuous travel for a period of more than two (2) weeks. Employees on extended travel status may elect to rent an apartment rather than live in a motel or hotel. While this option is left to the discretion of the employee and the employing department, department head approval is required prior to renting an apartment. The monthly rental allowance shall include rental furniture and payment of utilities and shall not exceed the standard CONUS rate for thirty (30) days.

43. Employees on extended travel status working in-state are authorized to travel to and from his/her home station once a week at the mileage rate for personal vehicles. Those employees on extended travel status working out-of-state are authorized to take one trip to the home station by common carrier once every two (2) weeks. Employees authorized to use personal automobiles in out-of-state travel may be reimbursed at the personal mileage rate. The employee may also be reimbursed for local transportation to conduct state business.

Telecommunications Costs While on Travel Status

44. Local phone calls, fax charges and long distance calls for state business will be reimbursed. Employees must provide a statement furnishing the date, name and location called for long distance calls and fax charges. Hotel Internet access charges may be reimbursed when approved in advance and when it is anticipated the employee will be working from a hotel room on official state business.

45. Department heads may authorize an employee to use his personal cellular phone in conducting state business. Authorized employees shall be reimbursed for any additional cost incurred in using their personal cellular phones on official business. An itemized statement indicating the date, name, location, and cost of each call plus a billing statement indicating that additional cost was incurred above the standard monthly charge is required for reimbursement. In some instances employees may be able to obtain lower cellular rates by purchasing a package that offers lower per minute rates for a higher threshold of minutes per month. Reimbursement is acceptable for such billing packages subject to review by fiscal officers. In such situations, the state would typically reimburse the employee for a portion of the monthly package used for business calls.

Exceptions

46. The Commissioner of Finance and Administration shall have the authority to grant exception from any part or all of these rules and regulations when deemed appropriate for an employee or group of employees on official state travel. Approved exceptions other than those for individual trips shall be maintained in a central file by the Department of Finance and Administration. Policy exceptions, which have state-wide implications, shall be approved through established procedures in accordance with the provisions of T.C.A.§ 4-3-1008(3).

Statutory Authority

47. In accordance with the provisions of T.C.A.§ 4-3-1008(3), these travel regulations, effective when signed, supersede and rescind all previous promulgated travel regulations and shall remain in effect until subsequently modified or rescinded.

Larry B. Martin, Commissioner
Department of Finance and Administration

9/12/18
Date

APPROVED:

Herbert H. Slatery III
Attorney General and Reporter

9/19/2018
Date

Department of Finance and Administration
Standard Reimbursement Rate Schedule
Lodging Revised October 1, 2021
Mileage Revised August 1, 2011

General Reimbursement Rates

Standard Mileage Rate effective August 1, 2011	$	0.47/mile
Maximum Parking Fee Without Receipt		8.00/day
Fees for Handling Equipment/Promotional Materials		20.00/hotel

Out-of-State Reimbursement Rates

Employees should utilize the U.S. General Services Administration CONUS (Continental United States) rates provided by the federal government. To view the CONUS rates, access the Department of Finance and Administration web page at: https://www.tn.gov/finance . Click the "Financial" heading and then "Travel Information." Then, click on "Per Diem Rates" where there is a direct link to the GSA CONUS rates. There is also a link on the Finance and Administration Intranet Travel Page Site at: https://teamtn.gov/finance/. Click on "Travel Information" and then click on "Comprehensive Travel Regulations" and then "Per Diem Rates."
Use the CONUS standard rates for all locations within the continental United States not specifically shown on the CONUS web page as a listed point. Both in-state and out-of-state meals and incidentals are reimbursed at 75% for day of departure and/or day of return.

In – State Travel Reimbursement Rates

In –state lodging and meal rates follow the CONUS rates for Tennessee. The standard lodging rate of $96.00 and the standard rate of $59.00 for meals and incidentals should be used for all in-state locations not listed below.

Counties	Maximum Lodging	Maximum Meals & Incidentals	75% of Meals & Incidentals
Davidson (Nashville) September – November December - January February - June July – August	 $234 $187 $230 $207	$79	$59.25
Shelby (Memphis)	$123	$69	$51.75
Williamson (Brentwood/Franklin)	$125	$69	$51.75
Hamilton (Chattanooga)	$109	$64	$48.00
Knox (Knoxville)	$102	$64	$48.00

In-State and Out-of State
Meals & Incidentals - Allocated By Meal
Effective October 1, 2021

Per Diem	$59	$64	$69	$74	$79
Continental Breakfast/Breakfast	$13	$14	$16	$17	$18
Lunch	$15	$16	$17	$18	$20
Dinner	$26	$29	$31	$34	$36
Incidentals	$5	$5	$5	$5	$5

Per Diem Rates-
Three-Fourths Calculations
For Partial Day of Travel
Effective October 1, 2021

Total	First & Last Day of Travel
$59	$44.25
$64	$48.00
$69	$51.75
$74	$55.50
$79	$59.25

In accordance with the provisions of TCA 4-3-1008 and the Comprehensive Travel Regulations, the above travel rates supersede and rescind all previous promulgated travel rates. These rates are effective upon approval and shall remain in effect until subsequently modified or withdrawn.

Howard H. Eley, Commissioner
Department of Finance and Administration

9/17/21
Date

Department of Finance and Administration
Standard Reimbursement Rate Schedule
Lodging Revised October 1, 2020
Mileage Revised August 1, 2011

General Reimbursement Rates

Standard Mileage Rate effective August 1, 2011	$	0.47/mile
Maximum Parking Fee Without Receipt		8.00/day
Fees for Handling Equipment/Promotional Materials		20.00/hotel

Out-of-State Reimbursement Rates

Employees should utilize the U.S. General Services Administration CONUS (Continental United States) rates provided by the federal government. To view the CONUS rates, access the Department of Finance and Administration web page at: https://www.tn.gov/finance . Click the "Financial" heading and then "Travel Information." Then, click on "Per Diem Rates" where there is a direct link to the GSA CONUS rates. There is also a link on the Finance and Administration Intranet Travel Page Site at: https://teamtn.gov/finance/. Click on "Travel Information" and then click on "Travel Regulations" and then "Per Diem Rates."

Use the CONUS standard rates for all locations within the continental United States not specifically shown on the CONUS web page as a listed point. Both in-state and out-of-state meals and incidentals are reimbursed at 75% for day of departure and/or day of return.

In – State Travel Reimbursement Rates

In –state lodging and meal rates follow the CONUS rates for Tennessee. The standard lodging rate of $96.00 and the standard rate of $55.00 for meals and incidentals should be used for all in-state locations not listed below.

Counties	Maximum Lodging	Maximum Meals & Incidentals	75% of Meals & Incidentals
Davidson (Nashville) (September to November) (December to January) (February to June) (July to August)	 $234 $187 $230 $207	$61	$45.75
Shelby (Memphis)	$123	$61	$45.75
Williamson (Brentwood/Franklin)	$125	$61	$45.75
Hamilton (Chattanooga)	$109	$61	$45.75
Knox (Knoxville)	$102	$56	$42.00

In-State and Out-of State
Meals & Incidentals - Allocated by Meal
Effective October 1, 2020

Per Diem	$55	$56	$61	$66	$71	$76
Breakfast	$13	$13	$14	$16	$17	$18
Lunch	$14	$15	$16	$17	$18	$19
Dinner	$23	$23	$26	$28	$31	$34
Incidentals	$5	$5	$5	$5	$5	$5

Per Diem Rates-
Three-Fourths Calculations
For Partial Day of Travel
Effective October 1, 2020

Total	First & Last Day of Travel
$55	$41.25
$56	$42.00
$61	$45.75
$66	$49.50
$71	$53.25
$76	$57.00

In accordance with the provisions of TCA 4-3-1-008 (3) and the Comprehensive Travel Regulations, the above travel rates supersede and rescind all previous promulgated travel rates. These rates are effective upon approval and shall remain in effect until subsequently modified or withdrawn.

Howard H. Eley, Commissioner
Department of Finance and Administration

8/21/20
Date

Department of Finance and Administration
Department Head and Board Member - Travel Reimbursement Rate Schedule
Lodging Revised October 1, 2021
Mileage Revised August 1, 2011

General Reimbursement Rates

Standard Mileage Rate effective August 1, 2011	$	0.47/mile
Maximum Parking FeeWithout Receipt		8.00/day
Fees for Handling Equipment/Promotional Materials		20.00/hotel

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Out-of-State Reimbursement Rates

Employees should utilize the U.S. General Services Administration CONUS (Continental United States) rates provided by the federal government. To view the CONUS rates, access the Department of Finance and Administration web page at: https://www.tn.gov/finance/ . Click the "Financial" heading and then "Travel Information." Then click on "Per Diem Rates" where there is a direct link to the GSA CONUS rates. There is also a link on the Finance and Administration Intranet Travel Page Site at: https://teamtn.gov/finance/. Go to "Travel Information" and click on "Comprehensive Travel Regulations" and then "Per Diem Rates."

Use the CONUS standard rates for all locations within the continental United States not specifically shown on the CONUS web page as a listed point. Both in-state and out-of-state meals and incidentals are reimbursed at 75% for day of departure and/or day of return.

Department Head and Board Member - In-State Travel Reimbursement Rates

The department head lodging rate of $106.00 and the standard rate of $59.00 for meals and incidentals should be used for all in-state locations not listed below.

Counties	Maximum Lodging	Maximum Meals & Incidentals	75% of Meals & Incidentals
Davidson (Nashville) (September-November) (December-January) (February-June) (July-August)	 $244 $197 $240 $217	$79	$59.25
Shelby (Memphis)	$133	$69	$51.75
Williamson (Brentwood/Franklin)	$135	$69	$51.75
Hamilton (Chattanooga)	$119	$64	$48.00
Knox (Knoxville)	$112	$64	$48.00

In-State and Out-of State
Meals & Incidentals - Allocated By Meal
Effective October 1, 2021

Per Diem	$59	$64	$69	$74	$79
Continental Breakfast/Breakfast	$13	$14	$16	$17	$18
Lunch	$15	$16	$17	$18	$20
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Howard H. Eley, Commissioner
Department of Finance and Administration

9/17/21
Date

Department of Finance and Administration
Department Head and Board Member - Travel Reimbursement Rate Schedule
Lodging Revised October 1, 2020
Mileage Revised August 1, 2011

General Reimbursement Rates

Standard Mileage Rate effective August 1, 2011	$	0.47/mile
Maximum Parking Fee Without Receipt		8.00/day
Fees for Handling Equipment/Promotional Materials		20.00/hotel

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Out-of-State Reimbursement Rates

Employees should utilize the U.S. General Services Administration CONUS (Continental United States) rates provided by the federal government. To view the CONUS rates, access the Department of Finance and Administration web page at: https://www.tn.gov/finance/ . Click the "Financial" heading and then "Travel Information." Then click on "Per Diem Rates" where there is a direct link to the GSA CONUS rates. There is also a link on the Finance and Administration Intranet Travel Page Site at: https://teamtn.gov/finance/ . Go to "Travel Information" and click on "Comprehensive Travel Regulations" and then "Per Diem Rates."

Use the CONUS standard rates for all locations within the continental United States not specifically shown on the CONUS web page as a listed point. Both in-state and out-of-state meals and incidentals are reimbursed at 75% for day of departure and/or day of return.

Department Head and Board Member - In-State Travel Reimbursement Rates

The department head lodging rate of $106.00 and the standard rate of $55.00 for meals and incidentals should be used for all in-state locations not listed below.

Counties	Maximum Lodging	Maximum Meals & Incidentals	75% of Meals & Incidentals
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Knox (Knoxville)	$112	$56	$42.00

In-State and Out-of State
Meals & Incidentals - Allocated by Meal
Effective October 1, 2020

Per Diem	$55	$56	$61	$66	$71	$76
Breakfast	$13	$13	$14	$16	$17	$18
Lunch	$14	$15	$16	$17	$18	$19
Dinner	$23	$23	$26	$28	$31	$34
Incidentals	$5	$5	$5	$5	$5	$5

Per Diem Rates-
Three-Fourths Calculations
For Partial Day of Travel
Effective October 1, 2020

Total	First & Last Day of Travel
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$66	$49.50
$71	$53.25
$76	$57.00

In accordance with the provisions of TCA 4-3-1-008 (3) and the Comprehensive Travel Regulations, the above travel rates supersede and rescind all previous promulgated travel rates. These rates are effective upon approval and shall remain in effect until subsequently modified or withdrawn.

Howard H. Eley, Commissioner
Department of Finance and Administration

8/21/20
Date

The Department of Finance and Administration
Special Travel Regulation One
Travel to Promote the State of Tennessee

Unless specifically addressed by the provisions contained herein, the Comprehensive Travel Regulations shall apply to all expenses or travel incurred under this regulation.

1. The Commissioner of the Department of Agriculture, the Commissioner of the Department of Economic and Community Development and the Commissioner of the Department of Tourist Development may authorize a special travel status that will allow the reimbursement of expenses incurred to promote the State of Tennessee.

2. This may include expenses incurred by an employee in traveling with a prospect or when the employee is involved in a business activity directly related to the department's mission during which the employee is required to dine with or accompany a prospect's representative, or those persons who can make a direct contribution to the marketing, promotion, or economic development of the State.

3. Covered expenses may also include costs incurred at the official station of an employee at a time when the employee is working with a prospect or when the employee is involved in a business activity directly related to the department's mission.

4. Covered expenses may also include entertainment expenses for business and community leaders for the purpose of state business. These include but are not limited to meals, refreshments, hors' d'oeuvres, floral arrangements, and gratuities provided by a hotel, motel caterer, or other establishment providing similar services.

5. The determination of such expenses shall be made by the Commissioner of the respective department.

6. Business class airfare is permitted for travel to another continent when the traveler is expected to work on the day of arrival.

7. Expenses or travel incurred to promote the State of Tennessee are not subject to the limits established in the Reimbursement Rate Schedule. Reimbursement for exception expenses shall be allowed only if authorized in advance by proper authority. Receipts are required for all expenses reimbursed under this specific regulation. Reimbursements for exception expenses are limited to the time during which appropriate business activities occur. Meetings when state employees are working together exclusively do not qualify under this special regulation.

8. State officials engaged in business activities to promote the State should be mindful in these situations of their obligations under Tennessee State ethics laws.

Statutory Authority

9. In accordance with the provisions of T.C.A. § 4-3-1008(3), this travel exception, effective when signed, supersedes and rescinds all previously promulgated exceptions of this title and shall remain in effect until subsequently modified or rescinded.

Mark A. Emkes, Commissioner
Department of Finance and Administration

8/20/12
Date

APPROVED:

Robert E. Cooper, Jr.
Attorney General and Reporter

8-24-12
Date

The Department of Finance and Administration
Special Travel Regulation Two
Travel in the Company of the Governor

Unless specifically addressed by the provisions contained herein, the Comprehensive Travel Regulations shall apply to all expenses or travel incurred under this regulation.

1. Employees traveling in the company of the Governor or those persons directed in writing by the Governor to represent that office are hereby granted special travel status. Expenses or travel incurred shall not be subject to the limits set forth in the Reimbursement Rate Schedule.

2. This travel regulation shall not apply to normal daily expenses incurred at official duty stations unless accompanying the Governor to official meetings, luncheons, conventions, conferences, etc.

3. Expenses shall include all costs incurred by the Governor and any others traveling as members of the Governor's official party except for those costs of a purely personal nature such as laundry, valet service, theater, recreation, etc.

4. Each employee shall submit a claim for reimbursement detailing individual expense. When group expenses occur, the security personnel assigned to the Governor may claim reimbursement for the total group and identify on the claim persons incurring such expense.

5. In accordance with the provisions of TCA –4-3-1008(3), this travel exception, effective August 1, 1998, supersedes and rescinds all previous promulgated exceptions regarding travel in the company of the Governor, and shall remain in effect until subsequently modified or rescinded.

The Department of Finance and Administration
Special Travel Regulation Three
Travel by Department Heads

Unless specifically addressed by the provisions contained herein, the Comprehensive Travel Regulations shall apply to all expenses or travel incurred under this regulation.

1. Special Travel status is authorized for department heads, for state employees traveling in the company of department heads, or state employees representing a department head.

2. The Commissioner of Finance and Administration in consultation with the Comptroller of the Treasury shall designate persons as department heads for the purpose of traveling under the provisions of this regulation.

3. In addition, the following persons may, in consultation with the Comptroller of the Treasury, designate persons to travel under the provisions of this regulation: the Attorney General, the Chairpersons of the Senate and House Finance, Ways and Means Committees, the Chairpersons of the Fiscal Review Committee, and the Chief Justice of the Supreme Court.

4. The Commissioner of Finance and Administration has established a separate schedule for the maximum rate of reimbursement for department heads to accompany this regulation.

5. First class travel on common carrier shall be allowed at the option of the department head when accompanying others not employed by the State who are traveling in first class accommodations.

6. Department heads are authorized to hold group breakfasts, luncheons, or dinners for business purposes. Such events should be occasioned by a meeting of long duration or by circumstances where it is more feasible to provide such meals than to recess the meeting. Expenses incurred under this regulation may be reimbursed to the sponsoring department head or charged directly to the department. Expenses for meals for employees occasioned by meetings called by the department head are allowed. A receipt or other satisfactory evidence of payment is required for reimbursement.

7. Department heads are authorized to receive reimbursement of meals and related costs when acting as hosts to guests of the State or other official business functions. Department heads may be reimbursed for the actual expenses incurred. Authority granted by this item may be delegated by the department head to members of the department head's staff provided it is in writing and accompanies any claim for reimbursement, along with appropriate receipts. The propriety of such expenses shall be left solely to the discretion of the department head.

Statutory Authority

8. In accordance with the provisions of TCA § 4- 3-1008 (3), this travel exception, effective when signed, supersedes and rescinds all previous promulgated travel exceptions concerning travel by department heads and shall remain in effect until subsequently modified or rescinded.

Mark. A. Emkes, Commissioner
Department of Finance and Administration

8/20/12
Date

APPROVED:

Robert E. Cooper, Jr.
Attorney General and Reporter

8-24-12
Date

The Department of Finance and Administration
Special Travel Regulation Four
Travel by Board and Commission Members

Unless specifically addressed by the provisions contained herein, the Comprehensive Travel Regulations shall apply to all expenses or travel incurred under this regulation.

1. Special travel status is authorized for members of Boards, Authorities, Commissions or Committees of the Executive Branch, and when designated, by the appropriate authority through law, rule, regulation, and/or policy, to those of the Judicial and Legislative Branches (excluding elected officials of the Judicial and Legislative Branches). The provisions of this travel status are also applicable to non-state members.

2. The Commissioner of Finance and Administration has established a maximum of reimbursement authorized by this special travel regulation for board and commission members.

3. Members of boards and commissions are eligible for reimbursement regardless of any per diem paid to said member unless stated otherwise in law, rule, regulation and/or policy.

4. Reimbursement for all travel shall be claimed in accordance with the Comprehensive Travel Regulations.

5. To comply with the provisions of TCA 4-3-1—8(3), departments should report quarterly out-of-state travel by board and commission members to the Department of Finance and Administration, Budget Office.

6. In accordance with the provisions of TCA 4-3-1008(3), these travel regulations, effective August 1, 1998, supersede and rescind all previous promulgated travel exceptions concerning board and commission members, and shall remain in effect until subsequently modified or rescinded.

The Department of Finance and Administration
Special Travel Regulation Five
Pilot and Air Crew Travel

Unless specifically addressed by the provisions contained herein, the Comprehensive Travel Regulations shall apply to all expenses or travel incurred under this regulation.

1. Persons servings as pilot, co-pilot or crew member, including maintenance personnel serving in any of these capacities, on state-owned or leased aircraft used for the purpose of transporting passengers on state business are granted travel authorization without regard to the provisions Sections 4 through 6 of the Comprehensive Travel Regulations.

2. Expenses or travel incurred under this provision are not subject to the reimbursement limits set forth in the Reimbursement Rate Schedule.

3. Reimbursement for these expenses shall be limited to the time during which the state duties are being performed and shall not apply to other travel. Receipts or other satisfactory evidence of payment are required for reimbursement.

4. Employees shall be considered on travel status one hour before actual takeoff and one hour after actual landing.

5. In addition to overnight lodging costs, lodging shall be allowed when it is necessary for crew members to wait for passengers, or when due to excessive hours of work crew members need a location to obtain rest.

6. In accordance with the provisions of TCA 4-3-1008(3), these travel regulations, effective August 1, 1998, supersede and rescind all previous promulgated travel exceptions concerning pilot and air crew travel, and shall remain in effect until subsequently modified or rescinded.

TAB 8

State Environmental Statutes and TDEC Rules

State Environmental Statutes and TDEC Rules

The full text of the statutes listed below is included in this manual on the following pages. Full text of TDEC rules relevant to the Board is provided through individual hyperlinks through the Tennessee Secretary of State's Official Compilation of Rules and Regulations available online.

State Statutes

- ***Production of Oil and Gas Act***, Tenn. Code Ann. §§ 60-1-101 to -705
- ***Safe Drinking Water Act***, Tenn. Code Ann. §§ 68-221-701 to -720
- ***Storm Water Management***, Tenn. Code Ann. §§ 68-221-1101 to -1113
- ***Water Quality Control Act***, Tenn. Code Ann. §§ 69-3-101 to -148
- ***Inter-basin Water Transfer Act***, Tenn. Code Ann. §§ 69-7-201 to -212
- ***Tennessee Water Resources Information Act***, Tenn. Code Ann. §§ 69-7-301 to -309

TDEC Rules

Division of Water Pollution Control	
Chapter	**Description**
0400-40-01	General (Transferred from 1200-04-01 which was repealed)
0400-40-02	Regulations for Plans, Submittal, and Approval; Control of Construction; Control of Operation (Transferred from 1200-04-02 which was repealed)
0400-40-03	General Water Quality Criteria (Transferred from 1200-04-03 which was repealed)
0400-40-04	Use Classifications for Surface Waters (Transferred from 1200-04-04 which was repealed)
0400-40-05	Permits, Effluent Limitations and Standards (Transferred from 1200-04-05)

0400-40-06	Reserved
0400-40-07	Aquatic Resource Alteration (Transferred from 1200-04-07 which was repealed)
0400-40-08	Rules and Regulations Applied To T.C.A. § 69-1-117 (Transferred from 1200-04-08 which was repealed)
0400-40-09	Reserved
0400-40-10	National Pollutant Discharge Elimination System General Permits (Transferred from 1200-04-10 which was repealed)
0400-40-11	Environmental Protection Fund Fees (Transferred from 1200-04-11 which was repealed)
0400-40-12	Silvicultural Activity Stop Work Orders (Transferred from 1200-04-12 which was repealed)
0400-40-13	Inter-Basin Water Transfers (Transferred from 1200-04-13 which was repealed)
0400-40-14	Pretreatment Requirements (Transferred from 1200-04-14 which was repealed)
0400-40-15	Biosolids Management
0400-40-16	Public Sewerage Systems (Transferred from 1200-05-02 which was repealed)
0400-40-17	Certification of Qualified Hydrologic Professionals
0400-40-18	Rock Harvesting

Division of Water Resources (Surface Mining Program)	
Chapter	**Description**
0400-42-01	General Provisions (Transferred from 0400-03-01 which was repealed)
0400-42-02	Requirements for Surface Mining Permits (Transferred from 0400-03-02 which was repealed)
0400-42-03	Conclusion and Release Procedures (Transferred from 0400-03-03 which was repealed)
0400-42-04	Prospecting Permit (Transferred from 0400-03-04 which was repealed)
0400-42-05	Revegetation Plan (Transferred from 0400-03-05 which was repealed)
0400-42-06	Blasting (Transferred from 0400-03-06 which was repealed)
0400-42-07	Coal (Transferred from 0400-03-07 which was repealed)
0400-42-08	Phosphate (Transferred from 0400-03-08 which was repealed)
0400-42-09	Sand and Gravel (Transferred from 0400-03-09 which was repealed)
0400-42-10	Ballclay (Transferred from 0400-03-10 which was repealed)
0400-42-11	Brick, Clay and Shale (Transferred from 0400-03-11 which was repealed)
0400-42-12	Barite (Transferred from 0400-03-12 which was repealed)

Division of Water Resources **(Mineral Test Holes)**	
Chapter	**Description**
0400-43-01	Mineral Test Holes

Division of Water Resources **(Abandoned Mine Lands Reclamation Program)**	
Chapter	**Description**
0400-44-01	Abandoned Mine Lands Reclamation Program (Transferred from 0400-01-24 which was repealed)

Division of Water Resources **(Drinking Water Supply)**	
Chapter	**Description**
0400-45-01	Public Water Systems (Transferred from 1200-05-01 which was repealed)
0400-45-02 through 0400-45-03	Reserved
0400-45-04	Regulations Governing the "Waterworks Construction Loan Act" (Transferred from 1200-05-04)
0400-45-05	Reserved
0400-45-06	Underground Injection Control (Transferred from 1200-04-06)

0400-45-07	Rules and Regulations Applied to the "Safe Dams Act of 1973" (Transferred from 1200-05-07)
0400-45-08	Water Registration Requirements (Transferred from 1200-05-08 which was repealed)
0400-45-09	Water Well Licensing Regulations and Well Construction Standards (Transferred from 1200-04-09)
0400-45-10	Rules of the Board of Ground Water Management

Division of Water Resources **(Ground Water Protection Program)**	
Chapter	**Description**
0400-48-01	Regulations To Govern Subsurface Sewage Disposal Systems (Transferred from 1200-01-06)

Division of Water Resources **(Oil and Gas Program)** **(Drilling, Re-Entering, Plugging, and Abandoning Exploratory Oil and Gas Wells)**	
Chapter	**Description**
0400-52-01	Bond (Transferred from 1040-02-01)
0400-52-02	Permits (Transferred from 1040-02-02)
0400-52-03	Well Location Plats (Transferred from 1040-02-03)
0400-52-04	Well Spacing (Transferred from (1040-02-04)
0400-52-05	Well Identification (Transferred from 1040-02-05)

0400-52-06	Drilling Wells (Transferred from 1040-02-06)
0400-52-07	Casing Program (Transferred from 1040-02-07)
0400-52-08	Directional Drilling (Transferred from 1040-02-08)
0400-52-09	Well Abandonment (Transferred from 1040-02-09)
0400-52-10	Filing of Well Data, Reports and Maps (Transferred from 1040-02-10)
0400-52-11	Exceptions and Hearings (Transferred from 1040-02-11)
0400-52-12	Violations, Penalties, Notice, Hearing (Transferred from 1040-02-12)

Division of Water Resources (Oil and Gas Program) (Testing and Completing Wells for Production)	
Chapter	**Description**
0400-53-01	Completion, Recompletion, and Related Downhole Work (Transferred from 1040-03-01)
0400-53-02	Tubing and Well Equipment (Transferred from 1040-03-02)
0400-53-03	Prevention of Hazards and Pollution (Transferred from 1040-03-03)

Division of Water Resources (Oil and Gas Program) (Production)	
Chapter	**Description**
0400-54-01	Pollution and Safety Controls (Transferred from 1040-04)

0400-54-02	Procedures and Equipment for Metering, Measuring and Producing Oil Condensate and Gas (Transferred from 1040-04)
0400-54-03	Requirements for Reporting the Volume and Disposition of Oil and Gas Produced (Transferred from 1040-04)
0400-54-04	Ratable Take (Transferred from 1040-04)
0400-54-05	Commingling and Automatic Custody Transfer of Hydrocarbons (Transferred from 1040-04)
0400-54-06	Limiting Production (Transferred from 1040-04)
0400-54-07	Regulating High Gas/Oil Ratio Wells and Preventing Waste of Gas (Transferred from 1040-04)
0400-54-08	Subterranean Gas Storage (Transferred from 1040-04)
0400-54-09	Pressure Maintenance Projects and Secondary Recovery (Transferred from 1040-04)

0400-55-01 – Unit Operations: https://publications.tnsosfiles.com/rules/0400/0400-55/0400-55- 01.20130618.pdf

Division of Water Resources (Oil and Gas Program) (Administrative Procedures)	
Chapter	**Description**
0400-56-01	Hearings and Administrative Approval (Transferred from 1040-06-01)
0400-56-02	Rules of Procedure for Hearing Contested Cases (Transferred from 1040-06-02)

0400-57-01 – list of forms:
https://publications.tnsosfiles.com/rules/0400/0400-57/0400-57-01.20130618.pdf

0400-58-01 – determinations under federal natural gas policy act of 1978:
https://publications.tnsosfiles.com/rules/0400/0400-58/0400-58-01.20130618.pdf

Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies

Tenn. Comp. R. & Regs. 1360-04-01-.01 to -.20

Tenn. Code Ann. § 60-1-101

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-101. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Tennessee board of water quality, oil and gas created by *§ 69-3-104*;

(2) "Casinghead gas" means any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. It shall be treated as gas, if sold, for the purpose of paying privilege tax;

(3) "Condensate" means liquid hydrocarbons that were in the gaseous phase in the reservoir in initial reservoir conditions. It shall be treated as oil for the purpose of paying privilege tax;

(4) "Field" means the general area which is underlain or appears to be underlain by at least one pool and including the pool or pools beneath the area;

(5) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil, including condensate because it originally was in a gaseous phase in the reservoir;

(6) "Oil" means crude petroleum that was originally in an oil phase in the reservoir;

(7) "Operator" means any person who owns or is directly responsible for a business involved in some phase of the production, manufacture, refining or distribution of petroleum oil or natural gas;

(8) "Owner" means the person who has the right to drill into and to produce from any pool, and to appropriate the production for such person or others;

(9) "Person" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind;

(10) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of the general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used in this chapter;

(11) "Producer" means the owner of a well or wells capable of producing oil or gas, or both, in paying quantities;

(12) "Supervisor" means the commissioner of environment and conservation or the commissioner's designee; and

(13) "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. It includes:

(A) Underground waste and inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating, or producing of any oil well or gas ultimately recoverable from any pool; and

(B) Surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating or producing of oil wells or gas wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas.

History

Acts 1943, ch. 64, § 3; C. Supp. 1950, § 5240.3; Acts 1971, ch. 280, § 1; 1978, ch. 791, § 5; T.C.A. (orig. ed.), § 60-101; *Acts 1992, ch. 693, § 21*; *2012, ch. 986, § 29*.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Opinion Notes

ATTORNEY GENERAL OPINIONS

1. Natural Gas.

Providing natural gas within city limits. OAG 14-42, *2014 Tenn. AG LEXIS 43 (4/1/14)*.

Research References & Practice Aids

Cross-References.

Municipal corporations, oil and natural gas drilling authorized, *§ 6-54-110*.

Natural resources trust fund, *§ 11-14-301* et seq.

Petroleum Trade Practices Act, *§§ 47-25-601* — *47-25-607*, *47-25-611*.

Printed contract forms for products extracted from or beneath the earth, *§ 47-50-110*.

Law Reviews.

Conservation of Oil and Gas in Tennessee (Phillip J. Sheehe), *41 Tenn. L. Rev. 323 (1974)*.

Into the Fracking Fray: A Balanced Approach to Regulating Hydraulic Fracturing in Tennessee (W. McDonald Plosser), *44 U. Mem. L. Rev. 667 (2014)*.

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Tenn. Code Ann. § 60-1-102

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-102. Waste prohibited.

The production or handling of crude petroleum oil or natural gas in such manner or under such conditions as to constitute or result in waste as defined in *§ 60-1-101* is each prohibited.

History

Acts 1943, ch. 64, § 4; C. Supp. 1950, § 5240.4; T.C.A. (orig. ed.), § 60-102.

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Tenn. Code Ann. § 60-1-103

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-103. Permits — Applications — Operators' plans.

(a)

(1) No person shall drill any well for oil or gas, or conduct any surface disturbances incidental to or in preparation for such drilling, until a permit application has been submitted to the supervisor. The supervisor shall not issue a permit until the conditions established by this subsection (a) have been met.

(2) An application for a permit to drill shall be filed with the supervisor. The supervisor shall prescribe the form of the application.

(3) The application shall include the exact location of the well, the name and address of the person or persons responsible for the drilling operations, the proposed depth of the well, the location of all existing or proposed roads providing access to the well site, and the location of all blue-line streams within one-half mile (0.5 mi.) of the well site or access roads.

(4) The application shall also include a plan for erosion control prevention of pollution of surface waters, and reclamation of all areas disturbed by the operations, including access roads. The plan shall conform to the requirements of part 7 of this chapter. The plan must be sufficiently detailed to allow an inspector to locate the site of the facilities to be constructed and to estimate the expected environmental impact, but does not have to include detailed engineering design drawings.

(5) No drilling shall begin until the permit has been approved.

(6) A processing fee for permits shall be submitted with the application in an amount specified in rules promulgated by the board, which shall not exceed the amount stated in *§ 68-203-103(h)* for an oil and gas permit.

(b) All funds received by the commissioner under this chapter, except those under parts 3 and 4 of this chapter, together with any interest earned on the funds, shall be deposited into a separate account in the environmental protection fund created by *§ 68-203-101*.

(c) The supervisor may require or approve modifications in the operator's plan if such modifications are necessary to prevent pollution or to promote reclamation.

(d) Upon approval, the operator's plan shall be a condition of the operator's permit. Failure to comply with the plan shall be grounds for revocation of the permit and forfeiture of the bond.

History

Acts 1943, ch. 64, § 5; C. Supp. 1950, § 5240.5; impl. am. Acts 1959, ch. 9, § 3; impl. am. Acts 1961, ch. 97, § 3; Acts 1978, ch. 791, § 4; T.C.A. (orig. ed.), § 60-111; Acts 1981, ch. 146, § 1; 1987, ch. 257, § 1; *2007, ch. 362, §§ 1-3*; *2012, ch. 986, § 31*.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

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Tenn. Code Ann. § 60-1-104

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60-1-104. Records and reports of production and sales — False reports.

(a) It is the duty of every person producing, selling, gathering, transporting, or storing crude petroleum or natural gas from any well or wells in this state to keep and preserve suitable records of the amount of all such crude petroleum or natural gas produced, sold, gathered, transported, or stored, and the price received and paid therefor.

(b) Such person shall report such records to the oil and gas supervisor at such intervals as the board may direct and on forms provided by the supervisor.

(c) Anyone who shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this chapter, or by any rule, regulation or order made hereunder, or who for such purpose shall make or cause to be made any false entry in any account, record or memorandum kept by any person in connection with this chapter, or any rule, regulation or order made thereunder, or who for such purpose shall omit to make, or cause to be omitted, full, true and correct entries on such accounts, records or memoranda of all facts and transactions pertaining to the interest or activities in the oil and gas industry of such persons as may be required by the board under authority given in this chapter, or by any rule, regulation or order made hereunder, or who for such purpose shall remove out of the jurisdiction of the state, or mutilate, alter or by any other means falsify any book, record or other paper pertaining to the transactions regulated by this chapter, or by any rule, regulation or order made hereunder, is guilty of a Class C misdemeanor.

History

Acts 1943, ch. 64, § 11; C. Supp. 1950, § 5240.11; T.C.A. (orig. ed.), § 60-112; *Acts 1989, ch. 159, § 1*; *1989, ch. 591, § 113*.

Annotations

Research References & Practice Aids

Cross-References.

Penalty for Class C misdemeanor, *§ 40-35-111*.

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Tenn. Code Ann. § 60-1-105

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 60 Oil And Gas > Chapter 1 Production of Oil and Gas > Part 1 General Provisions

60-1-105. Requested status under federal law — Applications and fees.

Any person who files with the board an application requesting a determination by the board of whether natural gas produced from a well qualifies for a requested status under § 102, 103, 107 or 108 of the Natural Gas Policy Act of 1978, *Public Law No. 95-621*, *92 Stat. 3350* (including any act of congress which amends or supersedes those sections of that act) which determination the board is authorized to make under § 503 of that act, shall pay a fee of twenty-five dollars ($25.00) to the state treasurer through the supervisor at the time such application is filed. A separate fee shall be paid for each such application. All funds paid to the state treasurer pursuant to this section shall be disbursed by the state treasurer upon warrants drawn by the commissioner of finance and administration to defray expenses incurred in acting upon such Natural Gas Policy Act determinations.

History

Acts 1984, ch. 677, § 1.

Annotations

Notes

Compiler's Notes.

Sections 102, 103, 107, 108 and 503 of the Natural Gas Policy Act of 1978, *Public Law No. 95-621*, *92 Stat. 3350*, are codified as *15 U.S.C. §§ 3312*, *3313*, *3317*, *3318*, and *3413*, respectively.

60-1-105. Requested status under federal law — Applications and fees.

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Tenn. Code Ann. § 60-1-106

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-106. Spacing of oil wells.

(a)

(1) Wells drilled in search of oil or gas to a depth of less than two thousand five hundred feet (2,500′) shall not be located closer than four hundred feet (400′) from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool. The distance of such oil and gas wells from any property line shall not be closer than two hundred feet (200′).

(2) This subsection (a) applies only in counties having a population of not less than seventeen thousand five hundred fifty (17,550) and not more than seventeen thousand six hundred fifty (17,650), according to the 1980 federal census or any subsequent federal census.

(b)

(1) Wells drilled in search of oil and gas shall not be located closer than four hundred feet (400′) from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than two hundred feet (200′) from any property line.

(2) This subsection (b) applies only in counties having a population of not less than four thousand three hundred (4,300) and not more than four thousand four hundred (4,400) or in counties having a population of not less than seven thousand six hundred fifty (7,650) nor more than seven thousand seven hundred (7,700), according to the 1980 federal census or any subsequent federal census.

History

Acts 1984, ch. 967, §§ 1-3; 1986, ch. 802, § 1; 1987, ch. 215, § 1; 1987, ch. 455, § 1; 1988, ch. 749, § 1; 1990, ch. 1018, § 1; 1990, ch. 1019, § 1; *1992, ch. 634, § 1*.

Annotations

Notes

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties and municipalities, see Volume 13 and its supplement.

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Tenn. Code Ann. § 60-1-201

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 60 Oil And Gas > Chapter 1 Production of Oil and Gas > Part 2 General Provisions of the Board

60-1-201. [Reserved]

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Tenn. Code Ann. § 60-1-202

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-202. Powers of board.

(a) The board has jurisdiction and authority:

(1) Over all persons and property necessary to enforce this chapter;

(2) To make such inquiries as necessary to determine whether or not waste exists or is imminent;

(3) To collect data; to make investigations and inspections; to examine properties, leases, papers, books, and records including drilling records and logs; to examine, check, test, and gauge oil and gas wells, tanks, refineries, and modes of transportation; to hold hearings; to provide for the keeping of records and making of reports; and to take such action as may be necessary to enforce this chapter;

(4) To make rules, regulations, and orders for the following purposes:

(A) To require the drilling, casing, and plugging of wells in such manner as to prevent the escaping of oil and gas out of one (1) stratum to another; to prevent intrusion of water to oil and gas strata; to prevent pollution of fresh water by oil, gas, or salt water; to protect potentially minable coal and other minerals; and to require bond for the plugging of each dry or abandoned well;

(B) To require notification to the supervisor, upon such forms as the supervisor may prescribe, of the intention to drill any well for oil or gas;

(C) To require the filing of logs, including electrical logs and drilling records, cores and drill cutting samples, and all other downhole surveys and information, within thirty (30) days following the cessation of drilling operations of the well;

(D) To prevent wells from being drilled, operated, and produced in such manner as to cause injury to neighboring leases or property;

(E) To prevent the drowning by water of any oil and gas stratum in paying quantities, and to prevent the premature and irregular encroachment of water which would affect the total ultimate recovery of oil and gas;

(F) To require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(G) To prevent “blow outs,” “caving” and “seepage” in the same sense that conditions indicated by such terms are generally understood in the oil and gas business;

(H) To prevent fires;

(I) To identify ownership of oil and gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(J) To regulate the “shooting” and chemical treatment of wells;

(K) To regulate secondary recovery methods;

(L) To regulate the spacing of wells;

(M) To provide for the forced integration of separately owned tracts and other property ownership into drilling and production units;

(N) To provide that the board may, in the absence of a voluntary agreement and after a sixty-day notice to owners, force a volumetric or surface poolwide unit; provided, that the pool producers owning more than fifty percent (50%) of the pool acreage request such unitization of the pool;

(O) In the absence of an acceptable plan of unitization by the operators, the board may shut in the pool to prevent waste and to protect correlative rights until an acceptable plan is presented by the operators;

(P) To regulate and prescribe procedures with respect to applications for and determinations of whether natural gas produced from a well qualifies for a requested status under § 102, 103, 107 or 108 of the Natural Gas Policy Act of 1978, *Public Law No. 95-621*, *92 Stat. 3350* (including any act of Congress which amends or supersedes those sections of that act);

(Q) To require that any person conducting oil or gas operations, or causing surface disturbances preparatory to or incidental to such operations, conduct such operations in a manner which will prevent or mitigate adverse environmental impacts, such as soil erosion and water pollution, and perform reclamation of all areas disturbed by the operations, including access roads, as prescribed by part 7 of this chapter; and

(R) To require that any person conducting oil and gas operations, or causing surface disturbances preparatory to or incidental to such operations, for wells permitted and drilled after July 1, 1987, post a bond or bonds to secure compliance with the requirements of this chapter and the rules promulgated under this chapter, both for plugging of the wells and reclamation of the surface in an amount not to exceed fifteen thousand dollars ($15,000) per single well site. At sites with more than one (1) well, the portion of the bond or bonds to secure compliance with plugging requirements shall not exceed ten thousand dollars ($10,000) per well. The bond shall be filed with the supervisor at the time an operator's permit application is submitted, and shall be effective from the time the initial surface disturbances begin. As an alternative to the performance bond required in this subdivision (a)(4)(R), a person may submit:

(i) A federally insured certificate of deposit issued by any financial institution in this state to be placed in a separate departmental account that shall not revert to the general fund;

(ii) An irrevocable letter of credit issued by any federally insured bank or savings and loan association; or

(iii) Other cash or securities in an amount mutually agreed to by the supervisor and the operator, to be placed in a separate departmental account that shall not revert to the general fund.

(b) The applicant for any permit must swear to facts set out in any application for a permit to drill or deepen a well, or reopen a plugged or abandoned well, under the rules made by the board pursuant to this title.

History

Acts 1943, ch. 64, § 5; C. Supp. 1950, § 5240.5; Acts 1971, ch. 280, §§ 2-4; 1972, ch. 541, § 1; 1977, ch. 46, § 1; T.C.A. (orig. ed.), § 60-104; Acts 1984, ch. 677, § 2; 1987, ch. 257, § 2; *1992, ch. 618, § 1*; *2007, ch. 362, §§ 4-7*; *2012, ch. 986, § 32*.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Sections 102, 103, 107, 108 and 503 of the Natural Gas Policy Act of 1978, *Public Law No. 95-621*, *92 Stat. 3350*, are codified as *15 U.S.C. §§ 3312*, *3313*, *3317*, *3318*, and *3413*, respectively.

Research References & Practice Aids

Cross-References.

Maximum term of leases, *§ 66-7-103*.

Law Reviews.

Conservation of Oil and Gas in Tennessee (Phillip J. Sheehe), *41 Tenn. L. Rev. 323 (1974)*.

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Tenn. Code Ann. § 60-1-203

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-203. Quorum of board.

Any three (3) members of the board shall constitute a quorum, but three (3) affirmative votes shall be necessary for the adoption of any rule or order of the board.

History

Acts 1943, ch. 64, § 2; C. Supp. 1950, § 5240.2; Acts 1978, ch. 791, § 3; T.C.A. (orig. ed.), § 60-106.

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Tenn. Code Ann. § 60-1-204

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-204. Rules, regulations, and orders of board.

(a) The board shall prescribe its rules of order, procedure in hearings or other proceedings before it under this chapter.

(b) No rule or order, in the absence of an emergency, may be made by the board except after a public hearing upon at least ten (10) days' notice in a manner and form prescribed by the board. Such public hearing shall be held at such time, place, and manner as may be prescribed by the board and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) If an emergency appears to the board to exist, it may act without a public hearing and the rule, regulation, or order shall be valid. This emergency rule or regulation shall remain in force not longer than fifteen (15) days after its effective date, and, in any event, shall expire when the rule or regulation made after due notice and hearing shall become effective.

(d) All rules and regulations of the board shall be entered in writing by the supervisor in a book kept for such purposes, which shall be a public record and open to inspection. A copy of such rules and regulations certified by the supervisor shall be received in evidence in all courts in this state with the same effect as the original.

History

Acts 1943, ch. 64, § 6; C. Supp. 1950, § 5240.6; T.C.A. (orig. ed.), § 60-107.

Annotations

Research References & Practice Aids

Law Reviews.

An Examination of the Tennessee Law of Administrative Procedure (George Street Boone), 1 Vand. L. Rev. 339 (1948).

60-1-204. Rules, regulations, and orders of board.

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Tenn. Code Ann. § 60-1-205

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-205. Power to subpoena and swear witnesses.

(a) The board, or any member thereof, is empowered to issue subpoenas for witnesses, to require their attendance and the giving of testimony before it, and to require the production of books, papers and records in any proceeding before the board as may be material upon questions lawfully before the board. Such subpoenas shall be served by the sheriff or any other officer authorized by law to serve process in this state. No person shall be excused from attending and testifying, or from producing books, papers and records before the board or a court, or from obedience to the subpoena of the board or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of such person may tend to incriminate the person or subject the person to a penalty or forfeiture; provided, that nothing herein shall be construed as requiring any person to produce any books, papers or records, or to testify in response to any inquiry, not pertinent to some question lawfully before such board or court for determination. No natural person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person may be required to testify or produce evidence, documentary or otherwise, before the board or court, or in obedience to its subpoena; provided, that no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the board or any members thereof, or in case of the refusal of any witness to testify or answer to any matter regarding which the person may be lawfully interrogated, any circuit court in this state in the county where the board is sitting, on application of the board, may in term time or vacation, issue an attachment for such person and compel the person to comply with such subpoena and to attend before the board and produce such documents, and give testimony upon such matters, as may be lawfully required, and such court shall have the power to punish for contempt as in case of disobedience of like subpoenas issued by or from such court, or for a refusal to testify therein. The chair or any member of the board is authorized to administer oaths to witnesses, and any false swearing shall constitute perjury and be punished in accordance with the general criminal statutes relating to perjury.

History

Acts 1943, ch. 64, § 7; C. Supp. 1950, § 5240.7; impl. am. Acts 1978, ch. 754, § 1; T.C.A. (orig. ed.), § 60-108.

Annotations

Research References & Practice Aids

Cross-References.

Perjury, *§ 39-16-701* et seq.

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Tenn. Code Ann. § 60-1-206

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60-1-206. Enforcement of chapter.

The supervisor is charged with enforcing this chapter and the regulations and orders of the board.

History

Acts 1943, ch. 64, § 2; C. Supp. 1950, § 5240.2; T.C.A. (orig. ed.), § 60-109.

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Tenn. Code Ann. § 60-1-207

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-207. Employment of personnel.

The oil and gas supervisor, with the concurrence of the board, shall have the authority, and it shall be the supervisor's duty to employ all necessary personnel to carry out this chapter.

History

Acts 1943, ch. 64, § 10; C. Supp. 1950, § 5240.10; T.C.A. (orig. ed.), § 60-110.

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Tenn. Code Ann. § 60-1-208

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-208. Travel expenses.

Board members and the supervisor shall be reimbursed for travel expenses in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

History

Acts 1976, ch. 806, § 1(63); T.C.A., § 60-119.

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Tenn. Code Ann. § 60-1-209

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-209. Notice to surface owners of oil and gas estates.

(a)

(1) No later than the filing of the application with the board for a permit to drill and prior to initiating any site preparation, the applicant shall give notice by certified mail, return receipt requested, of the applicant's intent to drill to the property owner or owners of the surface of the land to be drilled or to be affected by the surface disturbances listed in subdivision (a)(3).

(2) The property owners to be notified under this section shall be the property owners of record in the property tax assessor's office in the county where the property is located.

(3) The notice shall include the proposed location of the oil or gas well site, the proposed location of all new ingress and egress, the location of all diversions, drilling pits, dikes, and related structures and facilities, the location of proposed storage tanks and all other surface disturbances.

(4) The notice shall state that the property owner and applicant have fifteen (15) working days from the date of mailing to discuss the location of surface disturbances in connection with the drilling operation. It shall also state that if the property owner and applicant are unable to resolve differences regarding the location of surface disturbances, either or both may request in writing a hearing before the supervisor or the supervisor's designee. The notice shall provide the name and address of the supervisor.

(b)

(1) The applicant and the property owners given notice under subsection (a) shall attempt to resolve any differences between them regarding surface disturbances related to the proposed drilling operation.

(2) Any property owners entitled to notice or the applicant may request, within fifteen (15) working days of the mailing of the notice required in subsection (a), that the supervisor or the supervisor's designee conduct a hearing. A request for hearing under this section shall be in writing to the supervisor by certified mail, return receipt requested. The purpose of the hearing will be to minimize the impact of the proposed drilling operation on the surface of the land.

(3) The hearing shall be conducted as a contested case pursuant to the Uniform Administrative Procedures Act, title 4, chapter 5, part 3, and shall be held before a hearing officer sitting alone. For purposes of the hearing, the supervisor or the supervisor's designee shall be the hearing officer. The hearing shall be held within ten (10) working days of receipt of a request for hearing by the supervisor or the supervisor's designee and shall be held in the county of the proposed oil and gas well. Notice of the hearing shall be given to all persons entitled to notice under subsection (a) and the applicant.

(4) The hearing officer shall render a decision within ten (10) calendar days of the hearing. The decision shall be considered a final order not subject to further agency review pursuant to *§ 4-5-315(a)(1)*.

(5) For purposes of this subsection (b), "working day" means all calendar days excluding Saturdays, Sundays and legal holidays as designated in *§ 15-1-101*.

(c) Notwithstanding any other requirements for a permit to drill, such a permit may only issue:

(1) If the applicant submits to the supervisor statements of no objection signed by all property owners entitled to notice under subsection (a);

(2) If a hearing is not requested as provided in subdivision (b)(2); or

(3) Upon the issuing of a final order pursuant to subdivision (b)(4).

History

Acts 1984, ch. 863, § 1.

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Tenn. Code Ann. § 60-1-301

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-301. Severance tax levied — Exceptions — Disposition of revenues — Moratorium on taxes.

(a) There is levied a severance tax on all gas and oil removed from the ground in Tennessee. The measure of the tax for such gas and oil shall be three percent (3%) of the sale price of such gas and oil. Every person actually engaged in severing oil or gas, or actually operating oil or gas property under contracts or agreements requiring direct payments to the owners of any royalty interest, excess royalty or working interest, either in money or otherwise, shall be liable for the tax imposed by this section and shall, prior to making any such payments, withhold from any quantity or amount due the amount of tax due pursuant to this section.

(b) The tax shall be levied for the use and benefit of the state, as well as the county governments and one-third (⅓) of all revenues collected from the tax shall be allocated to the county which was the site of the wellhead for that gas or oil. The remaining two-thirds (⅔) of such revenues shall be deposited to the credit of the state treasurer as a part of the general funds of the state.

(c) No other tax shall be imposed on such gas and oil by the state, counties or any other political subdivision of the state; provided, however, that:

(1) Free gas used by the property owner or tenant under the terms of the lease, unless it be in lieu of cash payment; and

(2) Gas which has been injected into the ground for underground storage and thereafter withdrawn shall not be subject to this, or any taxation.

History

Acts 1943, ch. 64, § 13; C. Supp. 1950, § 5240.13; Acts 1963, ch. 106, § 1; 1978, ch. 761, § 115; 1978, ch. 777, § 1; 1979, ch. 153, § 1; T.C.A. (orig. ed.), § 60-116; Acts 1981, ch. 155, § 1; 1982, ch. 878, § 1.

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Tenn. Code Ann. § 60-1-302

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-302. Reports and payment of tax.

The severance tax imposed in this part shall be payable as follows:

(1) On or before the twentieth day of each month the person liable for the tax shall file with the commissioner of revenue, on forms prescribed by the commissioner, a report of all oil removed from the ground during the preceding month, and shall remit to the commissioner of revenue therewith the amount of tax due for the period covered by the report;

(2) On or before the twentieth day of each month the person liable for the tax shall file with the commissioner, on forms prescribed by the commissioner, a report of all gas removed from the ground during the second preceding month and shall remit to the commissioner therewith the amount of tax due for the period covered by the report.

History

Acts 1943, ch. 64, § 14; C. Supp. 1950, § 5540.14; impl. am. Acts 1959, ch. 9, § 14; 1979, ch. 153, § 2; T.C.A. (orig. ed.), § 60-117; Acts 1981, ch. 155, § 2; 1984, ch. 634, § 1; 1988, ch. 526, § 18.

TENNESSEE CODE ANNOTATED
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Tenn. Code Ann. § 60-1-401

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-401. Violations — Penalties — Notice — Appeals — Hearing.

(a) The Tennessee board of water quality, oil and gas through the supervisor shall have the authority to assess monetary penalties as provided in subsections (c)-(e) for any violation of this chapter, rules and regulations, or any order adopted by the board. In making such assessment, the board shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the operator charged, the gravity of the violation, the good faith of the operator, and the operator's history of previous violations.

(b) If, upon an inspection or investigation, the supervisor or any of the supervisor's authorized personnel shall determine that any operator is not in compliance with any standard or regulation or rule or order of the board promulgated by the board pursuant to this chapter, the supervisor shall with reasonable promptness and in no event later than six (6) months following the inspection, issue to the operator by certified mail a written citation that states the nature and, if appropriate, the location of the violation, including a reference to the provision of the chapter and the regulation alleged to have been violated. In addition, the citation shall fix a reasonable time for abatement of the violation. If the issuing supervisor has reason to believe that such violation, or the failure to abate such violation, should result in the assessment of a penalty under subsections (c)-(e), the citation may so state.

(c) Any operator who has received a citation for a violation of this chapter, rules and regulations or order of the board, promulgated pursuant to this chapter and has failed to correct such violation within the period of correction of this citation, shall be assessed a penalty of up to one thousand dollars ($1,000) for each day the violation exists. The period of correction may be suspended or lengthened by the assessing party upon a showing by the operator of a good faith effort to comply with the correction requirements and that failure to comply with the correction requirements is due to factors beyond the operator's reasonable control.

(d) Any operator who has received a citation for a violation of this chapter, or rules and regulations or order of the board, and such violation is specifically determined not to be of a serious nature, may be assessed a penalty of up to one thousand dollars ($1,000) for each such violation.

(e) Any operator who willfully or repeatedly violates the requirements of this chapter, or rules and regulations, or order of the board promulgated pursuant to this chapter may be assessed a penalty of up to ten thousand dollars ($10,000) for each violation.

(f) Penalties provided for by subsections (c)-(e) shall be imposed in the manner hereinafter provided. Whenever the Tennessee board of water quality, oil and gas, through the supervisor, has determined that such a penalty should be assessed against an operator, a written notice and assessment of a penalty shall be issued to the operator by certified mail, return receipt requested, stating the amount of the penalty to be assessed and the reason therefor (which may be done by reference to citations issued prior to or simultaneously with such notification).

(g) Any citation or notice and assessment of a penalty issued pursuant to this section shall inform the operator of the operator's right to appeal such citation or assessment of a penalty to the Tennessee board of water quality, oil and gas. Any such citation or assessment of a penalty shall become final twenty (20) days after the receipt of such citation or notice and assessment of penalty by the operator unless the operator, within the period of twenty (20) days, shall file a written notice of appeal with the supervisor.

(h) If the operator files an appeal of such citation or assessment of a penalty as provided by subsection (g), the proceedings on such appeal shall be conducted as a contested case and shall be heard before an administrative judge sitting alone pursuant to *§§ 4-5-301(a)(2)* and *4-5-314(b)*, unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the appeal is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to *§ 4-5-315*, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with *§ 4-5-314*, affirming, modifying, remanding, or vacating the supervisor's citation or assessment of a penalty. A final order rendered pursuant to this section is effective upon its entry, except as provided in *§ 4-5-320(b)* unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under *§ 4-5-316*. A petition for reconsideration of a final order may be filed pursuant to *§ 4-5-317*. Judicial review of a final order may be sought by filing a petition for review in accordance with *§ 4-5-322*. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; provided, however, that in other matters before the board, it may be considered but shall not be binding on the board.

History

Acts 1978, ch. 791, § 1; T.C.A., § 60-113; Acts 1984, ch. 700, §§ 1, 2; *2007, ch. 362, § 8*; *Acts 2012, ch. 986, § 29*; *2013, ch. 181, § 1*.

Annotations

Notes

Compiler's Notes.

Acts 2013, ch 181, § 19 provided that for the purpose of construing the act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the act shall be deemed to be procedural in nature. It is the intent of the general assembly that Acts 2013, chapter 181 and the Uniform Administrative Procedures Act shall be complied with; however, when in conflict, the provisions of Acts 2013, chapter 181 shall govern.

Acts 2013, ch 181, § 20 provided that the act, which amended subsection (h), shall apply to all cases filed on or after July 1, 2013.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Research References & Practice Aids

Law Reviews.

The Tennessee Court Systems — Prosecution, 8 Mem. St. L. Rev. 477 (1978).

TENNESSEE CODE ANNOTATED
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Tenn. Code Ann. § 60-1-402

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 60 Oil And Gas > Chapter 1 Production of Oil and Gas > Part 4 Violations

60-1-402. Restraining violations.

Whenever it shall appear that any person is violating or threatening to violate any provisions of this chapter, or any rule, regulation or order made hereunder, and unless the board without litigation can effectively prevent further violation or threat of violation, then the board, through the attorney general, who may call to the attorney general's assistance the district attorney general of the district in which suit is instituted, shall bring suit in the name of the state of Tennessee against such person in the circuit or chancery court in the county of the residence of the defendant, or if there be more than one (1) defendant, in the circuit or chancery court in the county of the residence of any of same, or in the circuit or chancery court in the county in which such violation is alleged to have occurred, to restrain such person from continuing such violation or from carrying out the threat of violation. In such suit the board, in the name of the state of Tennessee, may obtain an injunction prohibitory and mandatory, including temporary restraining orders and temporary injunctions as the facts may warrant.

History

Acts 1943, ch. 64, § 8; C. Supp. 1950, § 5240.8; T.C.A. (orig. ed.), § 60-114.

Annotations

Research References & Practice Aids

Law Reviews.

Conservation of Oil and Gas in Tennessee (Phillip J. Sheehe), *41 Tenn. L. Rev. 323 (1974)*.

60-1-402. Restraining violations.

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Tenn. Code Ann. § 60-1-403

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-403. Right to damages unimpaired.

Nothing in this chapter contained or authorized and no suit by or against the board and no penalties imposed or claimed against any person for violating any provision of this chapter, or any rule, regulation or order issued hereunder, and no forfeiture shall impair or abridge or delay any cause of action for damages which any person may have or assert against any person violating any provisions of this chapter or any rule, regulation or order issued hereunder. Any person so damaged by the violation may sue for and recover such damages as the person may show that the person is entitled to receive.

History

Acts 1943, ch. 64, § 9; C. Supp. 1950, § 5240.9; T.C.A. (orig. ed.), § 60-115.

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Tenn. Code Ann. § 60-1-404

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-404. Tennessee board of water quality, oil and gas reclamation fund.

(a) All sums received in payment of penalties assessed by the board pursuant to this part shall be placed in the state treasury in a separate account to be designated as the Tennessee board of water quality, oil and gas reclamation fund.

(b) This fund shall be available to the board for expenditure for site protection and reclamation work on land and waters damaged by surface disturbances. The fund may be expended for such work following default and notice of forfeiture of bond, if the bond furnished by the operator is not sufficient to cover the cost of reclamation. It may also be expended for such work if the operations which caused the damage were not covered by the bond, including operations conducted before January 1, 1988.

(c) This fund shall also be available to the board for expenditure for the plugging of dry or abandoned wells. The fund may be expended for such work, following default and notice of forfeiture, if the bond furnished by the operator is not sufficient to cover the cost of plugging. It also may be expended to plug dry or abandoned wells not covered by a bond, including wells drilled before January 1, 1988.

(d) Any unencumbered or unexpended balance of this fund remaining at the end of any fiscal year together with any interest earned thereon shall not revert to the general fund, but shall be carried forward until expended for the purpose of site protection and reclamation or the plugging of dry or abandoned wells, as provided in this section.

History

Acts 1987, ch. 257, § 4; *2007, ch. 362, § 9*; *2013, ch. 94, § 1*.

Annotations

Notes

Compiler's Notes.

60-1-404. Tennessee board of water quality, oil and gas reclamation fund.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 60-1-501

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-501. Short title.

This part shall be known and may be cited as the “Mineral Test Hole Regulatory Act.”

History

Acts 1982, ch. 654, § 4.

Annotations

Research References & Practice Aids

Law Reviews.

Into the Fracking Fray: A Balanced Approach to Regulating Hydraulic Fracturing in Tennessee (W. McDonald Plosser), *44 U. Mem. L. Rev. 667 (2014)*.

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Tenn. Code Ann. § 60-1-502

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-502. Purpose.

The purpose of this part is to:

(1) Regulate the drilling of mineral test holes in order to prevent the pollution of potable water resources, both surface and subsurface, as the result of the introduction of undesirable substances, including natural brines, oil, gas, or mineralized waters through the process of the drilling of mineral test holes; and

(2) Provide basic geologic data to the state relating to oil, gas and water occurrences.

History

Acts 1982, ch. 654, § 4.

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Tenn. Code Ann. § 60-1-503

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-503. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Board" means the Tennessee board of water quality, oil and gas;

(2) "For exploratory purposes" means drilling of mineral test holes for the specific purpose of exploring for mineral resources;

(3) "Mineral" means any substance with economic value whether organic or inorganic that can be extracted from the earth, but excluding oil and gas;

(4) "Mineral test hole" means any hole in excess of one hundred feet (100′) drilled during the exploration for minerals but excludes auger drilling in surficial or otherwise unconsolidated material, drilling in conjunction with mining or quarrying operations, drill holes for the exploration of oil and/or gas, water, structural foundations, and seismic surveys;

(5) "Natural brine" means naturally occurring mineralized water other than potable or fresh water;

(6) "Operator" means the person, whether owner or not, supervising or responsible for drilling, operating, repairing, abandoning or plugging of mineral test holes subject to this part;

(7) "Owner" means the person who has or attains the right to drill, convert or operate any mineral test hole subject to this part;

(8) "Person" means any individual, corporation, company, association, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative or private organization of any kind;

(9) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters, soils, animal, fish and aquatic life or surface property of this state as will:

(A) Result or will likely result in harm, potential harm, or detriment to the public health, safety, or welfare;

(B) Result or will likely result in harm, potential harm, or detriment to the health of animals, birds, fish, or aquatic life;

(C) Render or will likely render the waters, soils, animal, fish and aquatic life or surface property substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

(D) Leave or will likely leave the waters in such condition as to violate any standards of water quality established by the Tennessee board of water quality, oil and gas; and

60-1-503. Part definitions.

(10) “Supervisor” means the commissioner or the commissioner's designee.

History

Acts 1982, ch. 654, § 4; *1992, ch. 693, § 23*; *2012, ch. 986, § 29*.

Annotations

Notes

Compiler's Notes.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 60-1-504

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60-1-504. Administration of part — Powers of supervisor.

(a) The supervisor shall administer and enforce this part.

(b) The supervisor shall exercise the following powers to:

(1) Adopt rules and regulations necessary for the implementation of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Make inspections of drilling operations and require the keeping of accurate records;

(3) Require that the location, drilling, deepening, reworking, reopening, casing and plugging of mineral test holes subject to this part be accomplished in a manner which prevents surface and underground pollution;

(4) Require on all mineral test holes the keeping of data and the filing of such data with the supervisor which are appropriate to the purposes of this chapter. Oil, gas and hydrologic data obtained from the drilling of mineral test holes are deemed appropriate to the purposes of this part. This information shall be held confidential by the supervisor for a period of six (6) months at the request of the operator;

(5) Release to the board for meetings and hearings only data which are necessary to the administration of this part;

(6) Order by written notice, the immediate suspension or prompt correction of any operation, condition, or practice found to exist which is causing or resulting in, or threatening to cause or result in, surface or underground pollution. Orders shall remain in force until cancelled by the supervisor, or modified by the board, or the courts;

(7) Require the filing of adequate surety or security bonds and to provide for the release thereof;

(8) Qualify persons for blanket permits; and

(9) Bring proceedings at law or in equity for the enforcement of this part and rules, regulations or orders promulgated thereunder in the circuit or chancery court of the county in which a violation is alleged to have occurred.

History

Acts 1982, ch. 654, § 4; *2007, ch. 362, § 10*.

Annotations

Research References & Practice Aids

Cross-References.

Confidentiality of public records, *§ 10-7-504*.

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Tenn. Code Ann. § 60-1-505

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60-1-505. Permit required — Fees.

(a) A person shall not drill a mineral test hole for exploratory purposes until the owner, directly or through the owner's authorized representative, files a written application for a permit to drill, files an approved surety or security bond, and receives a permit in accordance with the rules of the supervisor. A fee shall be submitted with the application in an amount to be set in rules to be promulgated by the supervisor not to exceed the amount stated in *§ 68-203-103(h)* for a mineral test hole permit fee. Within ten (10) days after receiving the application and fee, the supervisor shall issue or deny the permit. No permit shall be issued to any owner or owner's authorized representative who is in violation of this part or any rules promulgated thereunder.

(b) Upon request, the supervisor may issue a blanket permit to qualified persons to drill mineral test holes within a limited or local area where an extensive drilling exploration program is planned.

(c) All information pertaining to the application for and issuance of permits for mineral test holes subject to this part shall be held confidential.

History

Acts 1982, ch. 654, § 4; *2007, ch. 362, §§ 11*, 12.

Annotations

Research References & Practice Aids

Cross-References.

Confidentiality of public records, *§ 10-7-504*.

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Tenn. Code Ann. § 60-1-506

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-506. Application of Administrative Procedures Act.

All administrative functions, proceedings and duties of the board relating to this part shall be subject to and conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History

Acts 1982, ch. 654, § 4.

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Tenn. Code Ann. § 60-1-507

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-507. Supervisor to correct problems upon failure of owner, operator or surety.

Whenever the supervisor has determined that an owner or operator has failed or neglected to drill, case, operate, repair or plug a mineral test hole in accordance with this part or the rules or orders adopted hereunder, notice of the determination shall be given to the owner or operator and to the surety executing the bond filed by such owner or operator, along with an order to correct the problem. If the owner or operator, or surety, fails to correct the specified conditions in accordance with the rule or order of the supervisor within sixty (60) days after service of notice, the supervisor may enter into or upon any private or public property on which the well is located, and across any private or public property to reach the mineral test hole, and repair or correct the specified condition, and the owner, operator and surety shall be jointly and severally liable for all expenses incurred. The supervisor shall certify to the owner, operator and surety the claim of the state, listing therein the items of expense in making the repair or correction. The claims shall be paid by the owner or operator, or surety, within thirty (30) days, and, if not paid within that time, the supervisor may bring suit in the circuit or chancery court against the owner, operator and surety, jointly and severally, for the collection.

History

Acts 1982, ch. 654, § 4.

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Tenn. Code Ann. § 60-1-508

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60-1-508. Actions prohibited.

It is unlawful for any person to:

(1) Violate any of this part or any rule or order of the supervisor or board;

(2) Make false entry or statement in any required report or record;

(3) Omit or cause to be omitted from any required report or record full, true and correct entries as required by this part;

(4) Fail in providing, within a reasonable time, a copy of any report or record requested by the supervisor; and

(5) Cause surface or subsurface pollution in the drilling, operation, or plugging of mineral test holes subject to this part.

History

Acts 1982, ch. 654, § 4.

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Tenn. Code Ann. § 60-1-509

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60-1-509. Civil and criminal penalties.

(a) Any person or operator who violates any of this part or regulations adopted pursuant thereto, or who fails to perform the duties imposed by these provisions or who fails or refuses to obtain a permit as provided herein, or who violates any determination or order promulgated pursuant to this part is liable to a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which such violation continues, and, in addition, may be enjoined from continuing such violation as hereinafter provided. The penalties shall be assessed and subject to appeal in accordance with *§ 60-1-401*.

(b) It shall be the duty of the district attorneys general in the various judicial districts throughout the state, or the attorney general and reporter, upon the request of the supervisor, to bring an action for the recovery of the penalties herein provided for and to bring an action for a restraining order, temporary or permanent injunction, against any operator or other person violating or threatening to violate any of this part or violating or threatening to violate any order or determination promulgated pursuant to this part.

(c) Any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or the supervisor or who willfully fails, neglects, or refuses to comply with any of this part is guilty of a Class C misdemeanor; provided, that no process by warrant, presentment or indictment shall be issued except upon application of the board or commissioner or such application for process authorized by them.

(d) Nothing in this part shall abrogate the right of any person who is materially or personally damaged or injured by the drilling of a mineral test hole to seek remedies against the responsible person in the courts.

History

Acts 1982, ch. 654, § 4; *1989, ch. 591, § 113*; *2007, ch. 362, § 13*.

Annotations

Research References & Practice Aids

60-1-509. Civil and criminal penalties.

Cross-References.

Penalty for Class C misdemeanor, *§ 40-35-111*.

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Tenn. Code Ann. § 60-1-510

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-510. Injunctions.

(a) When there is reason to believe that a person is violating or is about to violate or has violated any of this part or any permits or orders issued thereunder, the supervisor may institute proceedings in the chancery court of the county in which the alleged violation occurred for injunctive relief to prevent continuance of such action or to correct the conditions resulting in or about to result therefrom, or both. The court shall grant the injunction without the necessity of showing a lack of adequate remedy at law upon a showing by the supervisor that such person is violating or is about to violate or has violated one (1) or more of the permanent or temporary injunctions, prohibitory or mandatory, and restraining orders.

(b) The supervisor may bring suit for injunctive enforcement of any order made by the supervisor when such order has become final as a result of any person's failure to appeal to the board, and such person has failed to comply with the order. In such suits all findings of fact contained in the order and complaint shall be deemed to be final, and not subject to review except as to receipt of notice of the order, but the defendant may proffer evidence showing that the defendant has in fact complied with the supervisor's order. The order made by the supervisor in such cases shall be prima facie reasonable and valid, and it shall be presumed that the supervisor has complied with all requirements of the law. The board may likewise bring suit for enforcement of any order made by it, which has become final either by failure of any person to appeal the board's order or by an appellate court's decision against any person who fails to comply with such final order. In such suits, the board's decision shall not be subject to challenge as to matters of law or fact, but the violator may proffer evidence showing that the violator has in fact complied with the board's order.

(c) Any suit for an injunction brought by the supervisor shall be filed in the chancery court of the county in which all or a part of the violation is or is about to occur, in the name of the department, by the district attorney general at the direction of the supervisor or the board and under the supervision of the attorney general and reporter. Such proceedings shall not be tried by jury. Appeals from judgments or decrees of the chancery court in proceedings brought under this part shall lie to the supreme court despite the fact that controverted questions of fact may be involved.

History

Acts 1982, ch. 654, § 4.

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60-1-510. Injunctions.

End of Document

Tenn. Code Ann. § 60-1-511

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-511. Part supplemental.

This part shall not operate to repeal or affect any of the laws of the state relating to the pollution of the air or waters thereof, or any conservation or mining laws, but shall be held and construed as ancillary and supplemental thereto.

History

Acts 1982, ch. 654, § 4.

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Tenn. Code Ann. § 60-1-601

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-601. Short title.

This part shall be known as and may be cited as the “Oil and Gas Surface Owners Compensation Act of 1984.”

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-602

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-602. Purpose.

(a) The general assembly finds that the exploration for and development of oil and gas reserves must coexist with the equal right to the use, agricultural or otherwise, of the surface of land within this state.

(b) It is the purpose of this part to provide constitutionally permissible protection and compensation to surface owners of land on which oil and gas wells are drilled for the burden resulting from such drilling operations. This part shall be interpreted to benefit surface owners regardless of when any particular oil and gas estate was separated from the surface estate and regardless of who executed that document.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-603

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60-1-603. Part definitions.

For purposes of this part and unless the context clearly requires otherwise, the terms listed below will have the following meaning:

(1) “Drilling operation” means the actual drilling or redrilling of an oil or gas well and the related preparation of the drilling site and access roads, which requires entry upon the surface estate;

(2) “Oil and gas developer” means the person who acquires the oil and gas estate by any legal means for the purpose of extracting therefrom oil or gas;

(3) “Person” means any natural person, corporation, firm, partnership, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof; and

(4) “Surface owner” means a person who owns an estate in fee in the surface of land overlying an oil and gas estate being developed, either solely or as a co-owner.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-604

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60-1-604. Compensation of surface owners for drilling operations.

The oil and gas developer shall be obligated to pay the surface owner for:

(1) Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained, measured from the date the operator enters upon the land;

(2) The market value of crops destroyed, damaged or prevented from reaching market;

(3) Any damage to a water supply in use prior to the commencement of the permitted activity;

(4) The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality; and

(5) The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued, determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-605

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60-1-605. Notice of claim.

Any surface owner, to receive compensation under this part shall notify by certified mail, return receipt requested, the oil and gas developer of the damages sustained by the person within three (3) years after the injury occurs.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-606

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-606. Response to persons seeking compensation.

Within sixty (60) days after the oil and gas developer receives notice of damages, the oil and gas developer shall make a written response to the person seeking compensation for the damages.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-607

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-607. Arbitration.

(a) If the person seeking compensation receives a written rejection, rejects any counter-offer of the oil and gas developer, or receives no reply, that person may bring an action for compensation in a court of proper jurisdiction or the parties may elect to proceed by arbitration as provided herein. If the amount of compensation awarded by arbitration or the court is greater than that which had been offered by the oil and gas developer, the person seeking compensation shall also be awarded reasonable attorney fees, costs of expert witnesses, any other costs which may be legally assessed, and interest on the amount of the final compensation awarded from the day drilling was commenced.

(b) The person seeking compensation, in place of bringing an action in court, can request of the oil and gas developer in writing by certified mail, return receipt requested, that compensation be determined by binding arbitration. If the oil and gas developer agrees to binding arbitration, the developer shall notify the person seeking compensation of consent to arbitration in writing within fifteen (15) days of receiving the request.

(c)

(1) In the event of binding arbitration, compensation to be awarded the surface owner shall be determined by a disinterested arbitrator chosen by the surface owner and the oil and gas developer from a list of arbitrators approved by the American Arbitration Association.

(2) Such hearings shall be conducted as provided in title 29, chapter 5, part 3.

(d) Each party shall pay one-half (½) the compensation due the arbitrator.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-608

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60-1-608. Common law remedies preserved.

Nothing in this part shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's interest.

History

Acts 1984, ch. 863, § 2.

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Tenn. Code Ann. § 60-1-701

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-701. Measures by operator at well site.

At the well site, the operator shall take measures to prevent or minimize soil erosion and pollution of surface waters during the life of the operation. Such measures shall include sediment ponds, berms, diversion ditches, hay bales, and other measures designed to prevent erosion and discharge of pollutants from the well site.

History

Acts 1987, ch. 257, § 3.

Annotations

Research References & Practice Aids

Law Reviews.

Into the Fracking Fray: A Balanced Approach to Regulating Hydraulic Fracturing in Tennessee (W. McDonald Plosser), *44 U. Mem. L. Rev. 667 (2014)*.

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Tenn. Code Ann. § 60-1-702

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60-1-702. Access roads.

(a) Access roads shall be constructed in such a manner as to reduce erosion to a practical minimum.

(b) Any regulations promulgated pursuant to this part concerning access roads shall be guidelines only and shall not be mandatory.

History

Acts 1987, ch. 257, §§ 3, 7.

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Tenn. Code Ann. § 60-1-703

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60-1-703. Manner of accomplishing reclamation of disturbed areas.

Reclamation of all disturbed areas shall be accomplished in the following manner:

(1) The vegetative cover must be diverse, effective, and permanent. It must be capable of long-term stabilization of the soil and must not impede natural vegetative succession or interfere with surrounding vegetative cover;

(2) The permanent reclamation plant species must be capable of self-regeneration and must have the same seasonal characteristics of growth as the original vegetation. A different plant species not having these characteristics may be used to establish a quick-growing, temporary cover to stabilize the disturbed area;

(3) Suitable mulch and soil nutrients shall be applied where necessary to stabilize a regraded area and to establish the vegetative cover;

(4) Except for active work areas, a temporary vegetative cover shall be planted on all disturbed areas within thirty (30) days of the initial disturbance;

(5) Within thirty (30) days of the plugging of a well, the permanent vegetative cover shall be planted on all disturbed areas;

(6) Access roads are subject to all the above reclamation requirements unless the landowner establishes by sworn affidavit that a road will continue to be used for other legitimate purposes and maintained in usable condition, which condition reduces erosion to a practical minimum, by the surface owner. An access road may continue to be used by the operator to gain access to the well site in order to determine the adequacy of the vegetation cover or to perform additional revegetation;

(7) Revegetation success shall not be determined until after two (2) successfully completed growing seasons have occurred; and

(8) Revegetation shall be considered successful if a ground cover of at least ninety percent (90%) herbaceous and/or woody species is achieved, so long as at least eighty percent (80%) are perennial species.

History

Acts 1987, ch. 257, § 3.

60-1-703. Manner of accomplishing reclamation of disturbed areas.

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Tenn. Code Ann. § 60-1-704

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60-1-704. Release of reclamation bond.

(a) Upon satisfactory completion of regrading and revegetation of all disturbed areas except active work areas and access roads needed for oil or gas production, the supervisor shall release one-third (⅓) of the reclamation bond. After plugging, and upon final reclamation and satisfactory survival of the vegetation through two (2) growing seasons, the supervisor shall release the remainder of the reclamation bond.

(b) For the purposes of this section, “active work area” means that portion of the initially disturbed area necessary for production-related equipment, materials and facilities, as determined by the supervisor.

History

Acts 1987, ch. 257, § 3; *1989, ch. 352, § 1*.

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Tenn. Code Ann. § 60-1-705

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

60-1-705. Failure to perform — Forfeiture of bond — Securing performance.

Upon failure of any operator to perform site protection or reclamation activities, as required by this chapter, and notice of default, if the default is not cured within a reasonable time by the operator or the surety, if any, on the operator's bond, the board shall declare the bond forfeited, collect the bond and use the proceeds for the required site protection or reclamation work. The supervisor may contract with any person or public agency to perform the reclamation work. Any portion of the bond not thus expended shall be refunded to the operator or the operator's surety if the conditions of the bond are fully satisfied. If the conditions of the bond are not fully satisfied, because the bond is a blanket bond or otherwise, the unexpended proceeds shall be held or applied in a manner to secure the performance of the remaining obligations secured by the bond. If the bond is a blanket bond and the unexpended portion is less than is required for the remaining wells covered by the bond, a supplementary bond shall be required.

History

Acts 1987, ch. 257, § 3.

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Tenn. Code Ann. § 68-221-701

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-701. Short title.

This part shall be known and may be cited as the “Tennessee Safe Drinking Water Act of 1983.”

History

Acts 1983, ch. 324, § 2; T.C.A., § 68-13-701.

Annotations

Research References & Practice Aids

Cross-References.

Compensation for commissioners, *§ 68-221-605*.

Law Reviews.

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), *50 Tenn. L. Rev. 785 (1983)*.

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Tenn. Code Ann. § 68-221-702

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68-221-702. Declaration of policy and purpose.

Recognizing that the waters of the state are the property of the state and are held in public trust for the benefit of its citizens, it is declared that the people of the state are beneficiaries of this trust and have a right to both an adequate quantity and quality of drinking water.

History

Acts 1983, ch. 324, § 3; T.C.A., § 68-13-702.

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Tenn. Code Ann. § 68-221-703

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68-221-703. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Administrator" means the administrator of the United States environmental protection agency (EPA), or the administrator's designated representative;

(2) "Board" means the Tennessee board of water quality, oil and gas as established by *§ 69-3-104*;

(3) "Certified laboratory" means any facility for performing bacteriological, chemical or other analysis on drinking water which has received interim or final certification by the department;

(4) "Commissioner" means the commissioner of environment and conservation, the commissioner's duly authorized representative, and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(5) "Construction" means any placement, assembly or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises;

(6) "Contaminant" means any physical, chemical, biological or radiological substance or matter in water;

(7) "Cross connection" means any physical arrangement whereby a public water supply is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, pool, storage reservoir, plumbing fixture or other device which contains, or may contain, contaminated water, sewage or other waste or liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water supply as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices through which, or because of which, backflow could occur are considered to be cross-connections;

(8) "Department" means the department of environment and conservation;

(9) "Director" means the director of the division of water supply;

(10) "Division" means the division of water supply of the department;

(11) "Drinking water regulations" means regulations promulgated pursuant to this part;

(12) "Federal act" means the Safe Drinking Water Act, *P.L. 93-523*, as amended;

(13) "Ground water" means water beneath the surface of the ground, whether or not flowing through known or definite channels;

(14) “Lead free” means:

(A) Not containing more than two-tenths of one percent (0.2%) lead when used with respect to solder and flux; and

(B)

(i) Not more than a weighted average of twenty-five-hundredths of one percent (0.25%) lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;

(ii) The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture shall be calculated by using the following formula: For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product;

(iii) The lead content of the material used to produce wetted components shall be used to determine compliance with this subdivision (14)(B);

(iv) For lead content of materials that is provided as a range, the maximum content of the range shall be used;

(15) “Maximum contaminant level” means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system;

(16) “National primary drinking water regulations” means primary drinking water regulations, as amended, promulgated by the administrator pursuant to the federal act;

(17) “Person” means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(18) “Primary drinking water regulations” are regulations promulgated by the board in accordance with this part which specify contaminants which may have any adverse effect on the health of persons, and which specify a maximum contaminant level for each such contaminant and monitoring, reporting and record-keeping requirements as determined by the board;

(19) Public Water System.

(A) In general. “Public water system” means a system for the provision of water for human consumption through pipes or other constructed conveyances, if such serves fifteen (15) or more connections or which regularly serves twenty-five (25) or more individuals daily at least sixty (60) days out of the year. A public water system includes:

(i) Any collection, treatment, storage or distribution facility under control of the operator of such system and used primarily in connection with such system; and

(ii) Any collection or pretreatment storage facility not under such control which is used primarily in connection with such system.

(B) Connection.

(i) In general. For purposes of subdivision (19)(A), a connection to a system that delivers water by a conveyance other than a pipe shall not be considered a connection, if:

(a) The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(b) The commissioner determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(c) The commissioner determines that the water provided for residential or similar uses for drinking, cooking and bathing is centrally treated or treated at the point of entry by the provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(ii) Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subdivision (19)(B)(i)(*b*) or (*c*);

(20) "Secondary drinking water regulations" means regulations which apply to public water systems and which specify the maximum contaminant levels which, in the judgment of the board, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water which may:

(A) Adversely affect the odor or appearance of such water and consequently may cause a substantial number of persons served by the public water system providing such water to discontinue its use; or

(B) Otherwise adversely affect the public welfare;

(21) "Streams" includes any river, creek, slough or natural water course in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the water course from being a stream;

(22) "Supplier of water" means any person who owns, operates or controls a public water system;

(23) "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs; and

(24) "Waters" means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through, or border upon Tennessee, or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

History

Acts 1983, ch. 324, § 4; 1988, ch. 583, § 2; T.C.A. § 68-13-703; *Acts 1998, ch. 592, §§ 1-3*; *2015, ch. 56, § 1*.

Annotations

Notes

Compiler's Notes.

The federal Safe Drinking Water Act, referred to in this section, is compiled in U.S.C. in various sections throughout titles 5, 21, and 42.

Acts 2012, ch. 986, §§ 26-28 substituted “Tennessee board of water quality, oil and gas” for “Tennessee water quality control board.”

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Amendments.

The 2015 amendment rewrote the definition of “Lead free” which read, “(14) ‘Lead free’ means: “(A) When used with respect to solder or flux, a solder or flux containing not more than two tenths of one percent (0.2%) lead; or

“(B) When used with respect to pipe or pipe fitting, a pipe or pipe fitting containing not more than eight percent (8%) lead;”

Effective Dates.

Acts 2015, ch. 56, § 4. July 1, 2015.

Opinion Notes

ATTORNEY GENERAL OPINIONS

1. Priority of Act.

68-221-703. Part definitions.

The Safe Drinking Water Act takes priority over fifteen or more independent, individual water line connections to a spring and it does not unconstitutionally impair any individual and/or collective property rights regarding access to surface or ground water, OAG 05-128, *2005 Tenn. AG LEXIS 130 (8/22/05)*
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Tenn. Code Ann. § 68-221-704

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68-221-704. Duties and authority of board.

In the performance of its duties concerning safe drinking water, the board has the following duties and responsibilities, to:

(1) Establish by rule or regulation such policies, requirements or standards governing the source, collection, distribution, purification, treatment and storage of water for public water systems as it deems necessary for the reasonable and proper use thereof in conformity with the intent of this part, and such rules and regulations may include a schedule of fees for reviewing plans, making inspections, and performing tests and analyses of water samples as permitted by this part;

(2) Adopt, modify, repeal and promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, rules and regulations which the board deems necessary for the proper administration of this part. Such rules and regulations shall at a minimum:

(A) Establish maximum contaminant levels for each contaminant which, in the board's judgment, may have an adverse effect on the public health;

(B) Establish standards and procedures to assure an adequate supply of safe drinking water which dependably complies with maximum contaminant levels as determined in subdivision (2)(A). Such regulations may provide for:

(i) The minimum quality of raw water which may be taken into a public water system;

(ii) A program of laboratory certification;

(iii) Monitoring and analysis;

(iv) Record keeping and reporting;

(v) Public notification by the water supplier of violations of the primary drinking water regulations and such other drinking water regulations as determined necessary by the board;

(vi) Procedures for inspection of public water systems, inspection of records required to be kept and the taking of samples;

(vii) Procedures for design and construction review and approval of new or modified public water systems;

(viii) Siting of new public water system facilities as regards public health;

(ix) Elimination of cross-connections in distribution systems;

(x) A schedule of the amount of civil penalty which can be assessed by the commissioner for certain specific violations or categories of violations; and

(xi) Such additional criteria and procedures as may be required to carry out the purposes of this part;

(C) Establish criteria and procedures for setting performance bonds for water systems;

(D) Establish standards and procedures for granting variances or exemptions from certain provisions of these rules and regulations; provided, that the standards or procedures established shall not permit any variance or exemption under conditions and in a manner which is less stringent than the conditions under and the manner in which variances or exemptions may be granted under §§ 1415 and 1416 of the national Safe Drinking Water Act, as amended (*42 U.S.C. §§ 300g-4* and *300g-5*); and

(E) Establish a requirement that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity to comply with national primary drinking water regulations and this part and the rules promulgated hereunder;

(3) Hear appeals from orders issued by the commissioner, or civil penalties imposed by the commissioner; affirm, modify or revoke such actions or orders of the commissioner; issue notices of such appeals; issue subpoenas requiring attendance of witnesses and production of evidence; administer oaths; and take such testimony as the board deems necessary. Any of these powers may be exercised on behalf of the board by any member or members thereof appointed by the chair, or by a hearing officer designated by the chair, subject to review by the board; and

(4) Require the technical secretary to carry out surveys, research and investigations into all aspects of the supply of safe drinking water.

History

Acts 1983, ch. 324, § 5; 1988, ch. 583, §§ 3, 4; T.C.A., § 68-13-704; *Acts 1998, ch. 592, § 4*.

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Tenn. Code Ann. § 68-221-705

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68-221-705. Duties and authority of commissioner.

In addition to any power, duty or responsibility given to the commissioner by other sections of the code, the commissioner has the following powers, duties and responsibilities to:

(1) Exercise general supervision over the administration and enforcement of this part and all rules and regulations promulgated thereunder;

(2) Make inspections and investigations, collect samples, carry on research, or take such other action as may be necessary to carry out this part, rules and regulations issued pursuant thereto, and any orders which the commissioner may issue;

(3) Enter or authorize the commissioner's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of this part;

(4) Advise, consult, cooperate, contract and make other binding agreements with the various agencies of the federal government and with state and local administrative and governmental agencies, colleges and universities, or with any other persons. In addition, the department has the authority, subject to approval by the governor, to enter into agreements with other states and the United States relative to planning and use of water from interstate water. This authority shall not be deemed to extend to the modification of any agreement with the state concluded by direct legislative act, but unless otherwise expressly provided, the department shall be the agency for the administration and enforcement of any such legislative agreement;

(5) When funds may become available to the state as such, apply for, accept, administer and utilize loans and grants from the federal government, state government, and from any other sources, public or private, for provision and control of public water systems in the state;

(6) Collect and disseminate information relating to the water being furnished by the public water systems of the state;

(7) Administer oaths, issue subpoenas and compel attendance of witnesses and production of data for all purposes of this part;

(8) Bring suit in the name of the department for any violation of this part, rules and regulations of the board, and orders of the board or commissioner seeking any remedy therein provided, and any other statutory or common law remedy therein provided;

(9) Assess civil penalties for violation of any provision of this part or any rule, regulation, standard adopted or order issued by the board or commissioner pursuant to this part;

(10) Issue orders as may be necessary to secure compliance with this part, as well as the rules and regulations adopted pursuant to these sections. Such orders may include placing a moratorium on any further connections to a water system until remedial action is completed;

(11) Investigate any alleged or apparent violation of this part and take any action authorized hereunder as the commissioner deems necessary to enforce these sections;

(12) Delegate to the director any of the powers, duties and responsibilities of the commissioner under this part;

(13) In accordance with the standards and procedures established by the board, grant variances or exemptions from certain provisions of this part and the rules and regulations promulgated hereunder; and

(14) Develop and implement a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity to comply with national primary drinking water regulations and this part and the rules promulgated hereunder.

History

Acts 1983, ch. 324, § 6; 1988, ch. 583, § 5; T.C.A., § 68-13-705; *Acts 1998, ch. 592, § 5*.

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Tenn. Code Ann. § 68-221-706

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68-221-706. Supervision over construction of public water systems.

(a)

(1) The department shall exercise general supervision over the construction of public water systems throughout the state.

(2) Such general supervision shall include all of the features of construction of public water systems which do or may affect the sanitary quality or the quantity of the water supply.

(3) No new construction shall be done nor shall any change be made in any public water system until the plans for such new construction or change have been submitted and approved by the department.

(4) In granting approval of such plans, the department may specify such modification, conditions and regulations as may be required for the protection of the public health and welfare.

(5) The source of raw water and the quantity of raw water to be drawn from the waters of the state are subject to review and approval by the department.

(6)

(A) Records of construction, including plans and descriptions of existing works, shall be made available to the department upon request.

(B) The person in charge of the public water supply shall promptly comply with such request.

(b)

(1) Any unit of local government which imposes standards and requirements for the construction of public water systems may apply to the commissioner for the commissioner's certification that the locally imposed standards and requirements are at least as sufficient to protect the public health as those of the department.

(2) After certification, submission of plans to and approval by the local government for construction and changes in public water systems shall be sufficient in lieu of approval by the department as otherwise required by this section.

(3) The commissioner may periodically review the local standards and requirements and prescribe changes upon which continued certification may be conditioned.

History

68-221-706. Supervision over construction of public water systems.

Acts 1983, ch. 324, § 7; T.C.A., § 68-13-706.

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Tenn. Code Ann. § 68-221-707

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68-221-707. Supervision of operation and maintenance of public water systems.

(a) The department shall exercise general supervision over the operation and maintenance of public water systems throughout the state.

(b) Such general supervision shall include all the features of operation and maintenance which do or may affect the quality or quantity of the water supplied.

(c) In addition, all new community public water systems shall submit an operation and maintenance plan for review and approval by the department.

(d) Approval of this plan must be obtained before construction begins.

History

Acts 1983, ch. 324, § 8; T.C.A., § 68-13-707.

Annotations

Case Notes

NOTES TO DECISIONS

1. City Use of Interstate Aquifer.

Tennessee was an indispensable party under *Fed. R. Civ. P. 19(b)* to an action brought by Mississippi against a Tennessee city and its water system because equitable apportionment of an interstate aquifer between the states was required in that the city's access was controlled by *T.C.A. § 68-221-707*; however, dismissal was required

because the apportionment implicated exclusive jurisdiction of the U.S. Supreme Court under *28 U.S.C. § 1251(a)*. *Hood ex rel. Mississippi v. City of Memphis, 570 F.3d 625, — FED App. —, 2009 U.S. App. LEXIS 12149 (5th Cir. June 5, 2009)* , cert. denied, *Mississippi v. City of Memphis, 559 U.S. 904, 130 S. Ct. 1319, 175 L. Ed. 2d 1074, 2010 U.S. LEXIS 919 (2010)* .

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Tenn. Code Ann. § 68-221-708

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68-221-708. Notification to public and regulatory agencies.

(a) Whenever a public water system is not in compliance with the current primary drinking water regulations, the supplier shall inform the division of such noncompliance as soon as practicable, but not later than twenty-four (24) hours after learning of the noncompliance.

(b) The supplier shall also give such public notification as may be prescribed by regulations.

(c) Any public water system or waterworks system, as defined in this title, which determines to initiate or permanently cease fluoridation of its water supply, shall notify the department of environment and conservation and the department of health of its intention thirty (30) days prior to any vote. The water system shall additionally give public notice to its customers in a general mailing at least thirty (30) days prior to the meeting at which said vote shall take place.

History

Acts 1983, ch. 324, § 9; T.C.A., § 68-13-708; *Acts 2002, ch. 602, § 1*; *2011, ch. 237, § 1*; *2012, ch. 777, § 1*.

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Tenn. Code Ann. § 68-221-709

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68-221-709. Fluoride levels.

(a) If the quarterly analysis of a water sample from a public water system by a certified laboratory confirms that the level of fluoride in the sample exceeds one and one-half milligrams per liter (1.5 mg/L), the public water system from which the sample was taken must:

(1) Obtain laboratory analysis of water samples monthly for fluoride levels; and

(2) Notify all of its customers that a water sample tested exceeded one and one-half milligrams per liter (1.5 mg/L) of fluoride in a manner established by the department.

(b) Once the monthly analysis of water samples for fluoride conducted pursuant to subdivision (a)(1) confirms that the fluoride level in samples is less than one and one-half milligrams per liter (1.5 mg/L) for three (3) consecutive months, the public water system may resume quarterly laboratory analysis for fluoride.

History

Acts 2017, ch. 404, § 1.

Annotations

Notes

Compiler's Notes.

Former *§ 68-221-709* (Acts 1983, ch. 324, § 10; T.C.A., § 68-13-709), concerning performance bond or other security, was repealed by *Acts 1998, ch. 592, § 6*, effective March 10, 1998.

For the Preamble to the act concerning water systems and the notification of customers as to drinking water quality, refer to *Acts 2017, ch. 404*

Effective Dates.

Acts 2017, ch. 404, § 2. May 18, 2017.

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Tenn. Code Ann. § 68-221-710

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TN - Tennessee Code Annotated > Title 68 Health, Safety and Environmental Protection > Environmental Protection > Chapter 221 Water and Sewerage > Part 7 Tennessee Safe Drinking Water Act of 1983

68-221-710. Emergency plan for provision of water.

(a) The commissioner shall develop a plan for the provision of safe drinking water under emergency circumstances.

(b) When, in the judgment of the commissioner, emergency circumstances exist in the state with respect to a need for safe drinking water, the commissioner may take such actions as the commissioner may deem necessary in order to provide such water where it otherwise would not be available.

History

Acts 1983, ch. 324, § 11; T.C.A., § 68-13-710.

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Tenn. Code Ann. § 68-221-711

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-711. Prohibited acts.

The following acts are prohibited:

(1) Failure by a supplier of water to comply with this part, any order issued hereunder, or the drinking water regulations;

(2) Failure by a supplier of water to comply with the requirements of *§§ 68-221-706* and *68-221-707* or the dissemination by such supplier of any false or misleading information with respect to remedial actions being undertaken to achieve compliance with the drinking water regulations;

(3) Refusal by a supplier of water to allow an authorized representative of the department or any local health department to inspect any public water system as provided for in *§ 68-221-705*;

(4) The defiling by any person of any water supply of a public water system or the damaging of any pipe or other part of a public water system, unless due to an act of God;

(5) The discharge by any person of sewage or any other waste or contaminant at such proximity to the intake, well or spring serving a public water system in such a manner or quantity that it will, or will likely, endanger the health or safety of customers of the system or cause damage to the system;

(6) The installation, allowing the installation, or maintenance of any cross connection, auxiliary intake, or bypass, unless the source and quality of water from the auxiliary supply, the method of connection, and the use and operation of such cross connection, auxiliary intake, or bypass has been approved by the department;

(7) The return of drinking water to a public water distribution system after it has been used for cooling or any other purpose;

(8) The heavy pumping or other heavy withdrawal of water from a public water system or its water supply source in a manner that would either interfere with existing customers' normal and reasonable needs or threaten existing customers' health and safety; and

(9) The abandonment or other termination of water services by a supplier of water, without providing at least sixty (60) days' notice to all interested parties, including the department and all customers served by the public water system.

History

68-221-711. Prohibited acts.

Acts 1983, ch. 324, § 12; T.C.A., § 68-13-711; *Acts 2002, ch. 602, §§ 2*, 3.

Annotations

Case Notes

NOTES TO DECISIONS

1. Negligence Per Se.

Operator of industrial manufacturing site was not entitled to *Fed. R. Civ. P. 12(b)(6)* dismissal of heating and air conditioning manufacturer's action alleging negligence per se pursuant to the Tennessee Safe Drinking Water Act, *T.C.A. § 68-221-701* et seq., and pursuant to the Tennessee Hazardous Waste Management Act, 68-212-101 et seq., arising from the operator's alleged chromium contamination of municipal water wells; the manufacturer properly alleged that it was a member of the class of persons intended to be protected by both acts and it also alleged that its injury was of the type that both acts were intended to prevent. *Carrier Corp. v. Piper, 460 F. Supp. 2d 827, 2006 U.S. Dist. LEXIS 80098 (W.D. Tenn. 2006)* .

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Tenn. Code Ann. § 68-221-712

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68-221-712. Complaints issued to violator — Orders for corrective action.

(a)

(1) Whenever the commissioner has reason to believe that a violation of this part or regulations pursuant thereto has occurred, is occurring, or is about to occur, the commissioner may cause a written complaint to be delivered to the alleged violator or violators.

(2) The complaint shall specify the provision or provisions of this part or regulation or order alleged to be violated or about to be violated, the facts alleged to constitute a violation thereof, may order that corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the board.

(3) The order may be issued in conjunction with concurrent action against a violator under the Water Quality Control Act, pursuant to title 69, chapter 3, part 1.

(4) Any such order shall become final and not subject to review unless the person or persons named therein request by written petition a hearing before the board, no later than thirty (30) days after the date such order is delivered; provided, that the board may review such final order on the same grounds upon which a court of the state may review default judgments.

(b)

(1) Whenever the commissioner finds that the public health, safety or welfare imperatively requires immediate action, the commissioner may, without prior notice, or without preceding the action with a hearing, issue an order requiring that such action be taken as the commissioner deems necessary under the circumstances.

(2) A person to whom such an order is directed shall comply immediately pending the opportunity for a prompt hearing before the board.

(c) Except as otherwise expressly provided, any notice, complaint, order or other instrument issued by or under authority of this part may be served on any person by the commissioner or any person designated by the commissioner, by certified mail, or in accordance with Tennessee statutes authorizing service of process in civil actions.

History

Acts 1983, ch. 324, § 13; T.C.A., § 68-13-712.

68-221-712. Complaints issued to violator — Orders for corrective action.

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Tenn. Code Ann. § 68-221-713

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68-221-713. Penalties.

(a)

(1) Any person who violates or fails to comply with any provision of this part, any order of the commissioner or the board issued pursuant to this part or any rule, regulation or standard adopted pursuant to this part is subject to a civil penalty of not less than fifty dollars ($50.00) nor more than five thousand dollars ($5,000) per day for each day of violation.

(2) Each day such violation continues constitutes a separate violation.

(3) In addition, such person shall also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.

(b) Any civil penalty or damages shall be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation or damages;

(2)

(A) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for such person's objections and asking for a hearing in the matter involved before the board.

(B) If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final; and

(3)

(A) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment.

(B) The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(c) The commissioner, through the attorney general and reporter, may initiate proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violations occurred, in the name of the department.

(d) In assessing a civil penalty, the following factors may be considered:

(1) The harm done to the public health or the environment;

(2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(3) The economic benefit gained by the violator;

(4) The amount of effort put forth by the violator to remedy this violation;

(5) Any unusual or extraordinary enforcement costs incurred by the commissioner; and

(6) The amount of penalty set by the board for specific categories of violations.

(e) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, or any other actual damages caused by the violation.

(f)

(1) Any person violating, or failing, neglecting or refusing to comply with any of this part or rules or regulations commits a Class C misdemeanor.

(2) Each day upon which such violation occurs constitutes a separate offense.

(g) Any person who willfully and knowingly pollutes or threatens to pollute any public drinking water system in this state or willfully fails, neglects or refuses to comply with any of this part commits a Class E felony.

(h) No warrant, presentment or indictment arising under this part shall be issued except upon application by the board or the commissioner or upon such application authorized in writing by either of these.

History

Acts 1983, ch. 324, § 14; *1989, ch. 591, § 113*; T.C.A., § 68-13-713; *Acts 1989, ch. 591, §§ 1*, 6.

Annotations

Case Notes

NOTES TO DECISIONS

1. Constitutionality of Similar Provisions.

T.C.A. § 69-3-115 [language similar to that found in subsection (h) of this section], which requires that the district attorney general or the grand jury obtain permission from either the water quality control board (now the board of water quality, oil and gas) or the commissioner of the department of health and environment (now environment and conservation) before a warrant, presentment, or indictment, is unconstitutional because it infringes upon the prosecutorial discretion of the district attorney general and circumscribes the independence of the grand jury to investigate crimes and issue presentments. *State v. Superior Oil, Inc., 875 S.W.2d 658, 1994 Tenn. LEXIS 110 (Tenn. 1994)*.

Research References & Practice Aids

Cross-References.

Penalty for Class C misdemeanor, *§ 40-35-111*.

Penalty for Class E felony, *§ 40-35-111*.

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Tenn. Code Ann. § 68-221-714

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-714. Hearings — Initial order — Review of initial order — Final order — Judicial review of final order.

(a) The hearing on any petition for review of an order issued under *§ 68-221-712* or an assessment under *§ 68-221-713* shall be conducted as a contested case hearing and shall be heard before an administrative judge sitting alone pursuant to *§§ 4-5-301(a)(2)* and *4-5-314(b)*, unless settled by the parties.

(b) The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case hearing issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown.

(c) Within sixty (60) days of the completion of the record of the hearing, the administrative judge shall issue an initial order. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order, or, unless the board passes a motion to review the initial order pursuant to *§ 4-5-315*, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order.

(d) Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and shall allow each party an opportunity to present oral argument. If appealed to the board, the board's review of the administrative judge's initial order shall be limited to the record but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with the provisions of *§ 4-5-314*, affirming, modifying, remanding, or vacating the administrative judge's order.

(e) A final order rendered pursuant to this section is effective upon its entry, except as provided in *§ 4-5-320(b)*, unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under *§ 4-5-316*. A petition for reconsideration of a final order may be filed pursuant to *§ 4-5-317*. Judicial review of a final order may be sought by filing a petition for review in accordance with *§ 4-5-322*.

(f) An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of determining the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

History

Acts 1983, ch. 324, § 15; T.C.A., § 68-13-714; *Acts 2014, ch. 624, § 2*.

Annotations

Notes

Amendments.

The 2014 amendment rewrote the section which read: “Any hearing or rehearing brought before the board or appeals from the board shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.”

Effective Dates.

Acts 2014, ch. 624, § 9. July 1, 2014.

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Tenn. Code Ann. § 68-221-715

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-715. Injunctions.

(a) The commissioner may initiate proceedings in the chancery court of Davidson County or the county in which the activities occurred against any person who is alleged to have violated or is about to violate this part, the rules and regulations of the board or orders of the commissioner.

(b) In such action the commissioner may seek, and the court may grant, injunctive relief and any other relief available in law or equity.

History

Acts 1983, ch. 324, § 16; T.C.A., § 68-13-715.

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Tenn. Code Ann. § 68-221-716

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68-221-716. Nuisance.

A violation of this part and the regulations of the board are declared to be public nuisances and may be abated by any means provided by law.

History

Acts 1983, ch. 324, § 17; T.C.A., § 68-13-716.

Annotations

Research References & Practice Aids

Cross-References.

Abatement of nuisances, title 29, ch. 3.

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Tenn. Code Ann. § 68-221-717

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-717. Disbursement of civil penalties and damages.

(a) All civil penalties collected pursuant to this part shall be earmarked for the use of the water quality control division in the discharge of its duties.

(b) Damages recovered from any person for violation of any provision of this part shall be earmarked for the division, or, in the event that another state agency has primary responsibility for the property for which the damages are recovered, such damages shall be earmarked for the use of that agency.

History

Acts 1983, ch. 324, § 18; T.C.A., § 68-13-717.

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Tenn. Code Ann. § 68-221-718

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68-221-718. Construction of part.

(a)

(1) The penalties, damages and injunctions provided for in this part are intended to provide additional and cumulative remedies to prevent, abate and control violations of this part.

(2) Nothing herein contained shall be construed to abridge or alter rights of action or remedies in equity or under common law, criminal or civil, nor shall any provision of this part or any act done by virtue thereof, be construed as precluding the state or any municipality or person, as riparian owner or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances, or to protect drinking water.

(b) This part shall be liberally construed for the accomplishment of its policy and purpose.

(c) All grants of power to the board or commissioner shall be liberally construed.

(d) Any list in this part preceded by “include” or “including” shall not be construed as exhaustive or otherwise limiting unless specifically stated.

(e)

(1) All procedures in this chapter are intended to be in conformity with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) If any provision of this part conflicts with the Uniform Administrative Procedures Act, then the latter shall govern.

History

Acts 1983, ch. 324, § 19; T.C.A., § 68-13-718.

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Tenn. Code Ann. § 68-221-719

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-719. Continuation of rules and regulations.

(a) The rules and regulations for public water systems previously promulgated under this chapter, pursuant to part 1 of this chapter, shall remain in effect as the rules and regulations under this part.

(b) Any of the rules or regulations which may conflict with a statutory provision of this part are rendered void, but shall not affect the validity of the remaining rules and regulations.

History

Acts 1983, ch. 324, § 20; T.C.A., § 68-13-719.

Annotations

Research References & Practice Aids

Law Reviews.

Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), *50 Tenn. L. Rev. 785 (1983)*.

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Tenn. Code Ann. § 68-221-720

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-720. Lead free requirements — Notice — Exceptions.

(a) All pipes, pipe or plumbing fittings or fixtures, solder, or flux that is used in the installation or repair of any public water system shall be lead free; provided, that this subsection (a) shall not apply to lead joints necessary for the repair of cast iron pipes.

(b) All pipes, pipe or plumbing fittings or fixtures, solder, or flux that is used in the installation or repair of any plumbing, in a residential or nonresidential facility, which provides water for human consumption and is connected to a public water system, shall be lead free.

(c) Subsections (a) and (b) shall not apply to:

(1) Pipes, pipe or plumbing fittings or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

(2) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves, fire hydrants, service saddles, or water distribution main gate valves that are two inches (2″) in diameter or larger.

(d)

(1) No later than twenty-four (24) hours after a public water system confirms that the lead and copper 90th percentile lead action level, according to the federal Safe Drinking Water Act (*42 U.S.C. § 300f et seq.*), has been exceeded, the public water system shall notify the commissioner. The commissioner shall direct the public water system to conduct appropriate follow-up actions in accordance with state and federal drinking water rule requirements.

(2) No later than seventy-two (72) hours after a public water system confirms that any individual lead monitoring result is above the lead action level, according to the federal Safe Drinking Water Act, the public water system shall provide notification to the customer or residence where the sample was collected. No later than seventy-two (72) hours after the public water system confirms that the lead and copper 90th percentile lead action level has been exceeded, the public water system shall provide public notification to all customers where such exceedance results from the following:

(A) The lead content in the construction materials of the public water distribution system; or

(B) Corrosivity of the water supply sufficient to cause leaching of lead.

(3)

(A) The notice required by this subsection (d) shall be provided in such manner, form, and frequency as may be reasonably required by the commissioner.

(B) Notice under this subsection (d) shall be provided, even if there has been no violation of any drinking water regulation of the state.

(4) Notice under this subsection (d) shall provide a clear and readily understandable explanation of the following:

(A) The potential sources of lead in the drinking water;

(B) Any potential adverse health effects;

(C) Any reasonably available methods of mitigating known or potential lead content in drinking water;

(D) Any steps the public water system is taking to mitigate lead content in drinking water; and

(E) The necessity for seeking alternative water supplies, if any.

(5)

(A) If a public water system fails to notify persons that may be affected by lead contamination as required by subdivision (d)(2), the commissioner shall take appropriate action to ensure the public water system provides such notice within at least ten (10) days of such failure.

(B) After the commissioner ensures proper notice has occurred by the public water system, the commissioner shall provide direct technical assistance to and oversight of the public water system to ensure the public water system conducts appropriate follow-up testing and exercises the necessary treatment optimization and distribution system modifications, where necessary, to achieve compliance.

(e)

(1) Any area where a local governmental unit has enacted or will enact ordinances, codes, regulations or governing policies not less stringent than subsection (b) is exempt from subsection (b).

(2) There is reserved to the state the right to administer or enforce any applicable ordinances, codes, regulations or governing policies of the local governmental unit, should it fail to properly administer or enforce such ordinances, codes, regulations or governing policies.

(f) Nothing herein shall be construed to require any public water system or any residential or nonresidential facility to remove or replace any piping or plumbing, installed prior to March 18, 1988, except as may be necessary in making a repair.

History

Acts 1988, ch. 583, § 1; T.C.A., § 68-13-720; *Acts 2015, ch. 56, §§ 2*, 3; *2016, ch. 836, § 1*.

Annotations

Notes

Amendments.

The 2015 amendment substituted “All pipes, pipe or plumbing fittings or fixtures, solder, or flux that” for “All pipe, solder or flux which” at the beginning of (a) and (b); inserted “subsection (a)” preceding “shall not apply” in (a); added current (c) and redesignated former (c)-(e) as current (d)-(f).

The 2016 amendment, effective January 1, 2017, rewrote (d), which read: “(d)(1) Each supplier shall identify and provide notice to all persons that may be affected by lead contamination of their drinking water where such contamination results from the following:

“(A) The lead content in the construction materials of the public water distribution system; or

“(B) Corrosivity of the water supply sufficient to cause leaching of lead.

“(2)(A) This notice shall be provided in such manner, form and frequency as may be reasonably required by the commissioner.

“(B) Notice under this subsection (c) shall be provided, notwithstanding the absence of a violation of any drinking water regulation of the state.

“(3) Notice under this subsection (c) shall provide a clear and readily understandable explanation of the following:

“(A) The potential sources of lead in the drinking water;

“(B) Potential adverse health effects;

“(C) Reasonably available methods of mitigating known or potential lead content in drinking water;

“(D) Any steps the supplier is taking to mitigate lead content in drinking water; and

“(E) The necessity for seeking alternative water supplies, if any.”

Effective Dates.

Acts 2015, ch. 56, § 4. July 1, 2015.

Acts 2016, ch. 836, § 2. January 1, 2017.

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Tenn. Code Ann. § 68-221-1101

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1101. Legislative purpose.

The purpose of this part is to facilitate compliance with the Water Quality Act of 1977, by municipalities which are affected by environmental protection agency (EPA) storm water regulations, particularly those arising from § 405 of the Water Quality Act of 1987, and § 402(p) of the Clean Water Act of 1977, regulating storm water discharges to protect water quality. This part shall enable municipalities to regulate such discharges, to establish a system of drainage facilities, and to fix and require payment of fees for the privilege of discharging storm water. This part shall also enable municipalities to construct and operate a system of drainage facilities for storm water management and flood control.

History

Acts 1993, ch. 257, § 1; *1995, ch. 133, § 1*; *2001, ch. 119, § 1*.

Annotations

Notes

Compiler's Notes.

Section 402 of the Clean Water Act of 1977, as amended by § 405 of the Water Quality Act of 1987, referred to in this section, is codified in *33 U.S.C. § 1342*.

Opinion Notes

ATTORNEY GENERAL OPINIONS

1. Authority.

Authority for storm water fees/unfunded federal mandates. OAG 12-96, *2012 Tenn. AG LEXIS 100 (10/9/12)*.

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Tenn. Code Ann. § 68-221-1102

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1102. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Agricultural land" means land used for agriculture, as defined in *§ 1-3-105*;

(2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of storm water facilities; preliminary planning to determine the economic and engineering feasibility of storm water facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of storm water facilities; and the inspection and supervision of the construction of storm water facilities;

(3) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water;

(4) "Municipality" means any incorporated city or town, county, metropolitan or consolidated government, or special district of this state empowered to provide storm water facilities;

(5) "Person" means any and all persons, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country;

(6) "Qualified farmer or nurseryman" has the meaning as defined in *§ 67-6-207*;

(7) "Storm water" means storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or by other discharges) and drainage;

(8) "Storm water facilities" means the drainage structures, conduits, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of; and

(9) "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes, and reservoirs.

History

Acts 1993, ch. 257, § 2; *1995, ch. 133, § 2*; *2001, ch. 119, § 2*; *2010, ch. 1143, §§ 2*, 3.

68-221-1102. Part definitions.

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Tenn. Code Ann. § 68-221-1103

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68-221-1103. Authorization of storm water facilities or flood control improvements by municipality.

The governing body of any municipality may authorize the construction, extension, enlargement, or acquisition of necessary storm water facilities or flood control improvements within its corporate boundaries. The improvements may include, but are not limited to, the extension, enlargement, construction, or acquisition of storm water facilities or flood control improvements; the widening, straightening, or relocating of streams, surface waters, or water courses; and the acquisition, extension, enlargement, or construction of any works necessary to regulate the quantity or quality of water for the protection of streams, water courses, surface waters, life, and property; provided, that the municipality obtains all applicable permits and complies with all applicable state and federal laws.

History

Acts 1993, ch. 257, § 3.

Annotations

Case Notes

1. Permit Not Required.
2. Use of Fees.

NOTES TO DECISIONS

1. Permit Not Required.

This section does not require a municipality to possess or to have previously obtained a national pollutant discharge elimination system (NPDES) permit before enacting and implementing a storm water ordinance. *Vandergriff v. City of Chattanooga, 44 F. Supp. 2d 927, 1998 U.S. Dist. LEXIS 22102 (E.D. Tenn. 1998)*, aff'd, *Rush v. City of Chattanooga, 182 F.3d 918, 1999 U.S. App. LEXIS 24525 (6th Cir. Tenn. 1999)*.

2. Use of Fees.

The use of fees collected pursuant to a municipal storm water ordinance to improve a combined sewer overflow system does not violate this section even if such system is part of a publicly owned treatment works and is covered by a separate national pollution discharge elimination system permit since the definition of storm water facilities in this act includes combined sewers and sewers. *Vandergriff v. City of Chattanooga, 44 F. Supp. 2d 927, 1998 U.S. Dist. LEXIS 22102 (E.D. Tenn. 1998)*, aff'd, *Rush v. City of Chattanooga, 182 F.3d 918, 1999 U.S. App. LEXIS 24525 (6th Cir. Tenn. 1999)*.

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Tenn. Code Ann. § 68-221-1104

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68-221-1104. Condemnation of property.

A municipality may condemn either the fee or such right, title, interest, or easement in property within its corporate boundaries for any of the purposes mentioned in this part, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes; provided, that such prior public use will not be interfered with by this use. Such power of condemnation may be exercised in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

History

Acts 1993, ch. 257, § 4.

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Tenn. Code Ann. § 68-221-1105

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68-221-1105. Municipal authority.

(a) In order to protect the public health, municipalities authorized to provide storm water and flood control facilities by this part are authorized by appropriate ordinance or resolution to:

(1) Exercise general regulation over the planning, location, construction, and operation and maintenance over storm water facilities in the municipality, whether owned and operated by the municipality or not;

(2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this part, including the adoption of a system of fees for services and permits;

(3) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;

(4) Review and approve plans and plats for storm water management in proposed subdivisions or commercial developments;

(5) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;

(6) Suspend or revoke permits when it is determined that the person has violated any applicable ordinance, resolution, or condition of the permit;

(7) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and

(8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

(b) Municipalities may only exercise the authority granted by subsection (a) in a manner consistent with all requirements of state and federal law that apply to such activities.

(c) In counties with a metropolitan form of government, the legislative body may, by ordinance, assign responsibility for the planning, location, construction, and operation and maintenance over storm water facilities in the metropolitan county to any department, board or commission.

(d) In counties having governments other than metropolitan or consolidated governments, the county shall only be empowered to exercise the authority granted by this part outside the jurisdiction of an incorporated city or town.

History

Acts 1993, ch. 257, § 5; *1995, ch. 409, § 1*; *2001, ch. 119, § 3*.

Annotations

Case Notes

NOTES TO DECISIONS

1. Permit Not Required.

Where it is undisputed that a municipality submitted a timely application for and ultimately received a national pollutant discharge elimination system (NPDES) permit and otherwise acted in accordance with the requirements of state and federal law, the municipality had not violated the federal Clean Water Act or the Tennessee Storm Water Management Act by enacting and implementing a storm water ordinance before obtaining the NPDES permit. *Vandergriff v. City of Chattanooga, 44 F. Supp. 2d 927, 1998 U.S. Dist. LEXIS 22102 (E.D. Tenn. 1998)*, aff'd, *Rush v. City of Chattanooga, 182 F.3d 918, 1999 U.S. App. LEXIS 24525 (6th Cir. Tenn. 1999)*.

Opinion Notes

ATTORNEY GENERAL OPINIONS

1. Authority.

Authority for storm water fees/unfunded federal mandates. OAG 12-96, *2012 Tenn. AG LEXIS 100 (10/9/12)*.

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68-221-1105. Municipal authority.

End of Document

Tenn. Code Ann. § 68-221-1106

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1106. Civil penalty for violation of ordinance.

(a) A municipality may establish by ordinance or resolution that any person who violates any ordinance or resolution regulating storm water discharges or facilities shall be subject to a civil penalty of not less than fifty dollars ($50.00) or more than five thousand dollars ($5,000) per day for each day of violations. Each day of violation may constitute a separate violation. A municipality shall give the violator reasonable notice of the assessment of any penalty. A municipality may also recover all damages proximately caused to the municipality by such violations.

(b) In assessing a civil penalty, the following factors may be considered:

(1) The harm done to the public health or the environment;

(2) Whether the civil penalty imposed will be substantial economic deterrent to the illegal activity;

(3) The economic benefit gained by the violator;

(4) The amount of effort put forth by the violator to remedy this violation;

(5) Any unusual or extraordinary enforcement costs incurred by the municipality;

(6) The amount of penalty established by ordinance or resolution for specific categories of violations; and

(7) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

(c) The municipality may also assess damages proximately caused by the violator to the municipality which may include any reasonable expenses incurred in investigating and enforcing violations of this part, or any other actual damages caused by the violation.

(d) The municipality shall establish a procedure for a review of the civil penalty or damage assessment by either the governing body of the municipality or by a board established to hear appeals by any person incurring a damage assessment or a civil penalty. If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty and it shall become final. The alleged violator may appeal a decision of the governing body or board pursuant to title 27, chapter 8.

(e) Whenever any damage assessment or civil penalty has become final because of a person's failure to appeal the municipality's damage assessment or civil penalty, the municipality may apply to the appropriate chancery court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such damage assessment or civil penalty as a confession of judgment.

History

Acts 1993, ch. 257, § 6.

Annotations

Case Notes

NOTES TO DECISIONS

1. Criminal Penalties Not Precluded.

The general authority granted to municipalities to set criminal penalties for the violation of municipal ordinances is not in conflict with this section and may be applied to support the imposition of criminal penalties on a party who violates a local storm water ordinance. *Vandergriff v. City of Chattanooga, 44 F. Supp. 2d 927, 1998 U.S. Dist. LEXIS 22102 (E.D. Tenn. 1998)* , aff'd, *Rush v. City of Chattanooga, 182 F.3d 918, 1999 U.S. App. LEXIS 24525 (6th Cir. Tenn. 1999)* .

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Tenn. Code Ann. § 68-221-1107

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1107. Facilities user's fee.

(a) All municipalities constructing, operating, or maintaining storm water or flood control facilities are authorized to establish a graduated storm water user's fee which may be assessed and collected from each user of the storm water facilities provided by the municipality. These fees shall be reasonable in amount and used exclusively by the municipality for purposes set forth in this part. Such a graduated storm water user's fee shall be based on actual or estimated use of the storm water and/or flood control facilities of the municipality, and each user or user class shall only be required to pay its proportionate share of the construction, administration, operation and maintenance including replacement costs of such facilities based on the user's actual or estimated proportionate contribution to the total storm water runoff from all users or user classes. To ensure a proportionate distribution of all costs to each user or user class, the user's contribution shall be based on factors such as the amount of impervious area utilized by the user, the water quality of user's storm water runoff or the volume or rate of storm water runoff. Persons whose storm water runoff is not discharged into or through the storm water or flood control facilities, or both, of the municipality; and owners and/or operators of agricultural land, in the municipality, upon which the owner and/or operator conducts activities that enable the owner and/or operator to satisfy the requirements of a qualified farmer or nurseryman shall be exempted from payment of the graduated storm water user fee authorized by this section. The fee structure shall provide adjustments for users who construct facilities to retain and control the quantity of storm water runoff. Prior to establishing or amending such user's fees, the municipality shall advertise its intent to do so by notice published in a newspaper of general circulation in such municipality at least thirty (30) days in advance of the meeting of the governing body which shall consider such adoption or amendment.

(b) The municipality providing such service is authorized to enter into a contract for the collection of such storm water facilities fees with any public or private corporation or municipal utilities board or commission operating a water, gas, or electric system other than an electric cooperative incorporated under the Electric Cooperative Law, compiled in title 65, chapter 25, part 2, in the area of the storm water facilities or to make contracts with any other city, town, or utility district to bill and collect storm water fees as a designated item on its utility bill or, in any county which is not in the state's computer assisted appraisal system (CAAS), to enter into a contract or interlocal agreement with the county in which such municipality is located to bill and collect storm water fees for the municipality as a designated item on the ad valorem tax notice issued by the county trustee. In addition, if any county which is not in the state's CAAS constructs, operates or maintains storm water or flood control facilities and establishes and assesses on each user of the storm water facilities provided by the county a graduated storm water user's fee in accordance with this chapter, then the county trustee of such county is authorized to bill and collect such storm water fees for such county as a designated item on the ad valorem tax notice issued by the county trustee. The contract may provide for the discontinuance of utility service to storm water facility users who fail or refuse to pay storm

water facility user charges, including the right not to accept payment of the utility bill from any user without receiving at the same time payment of any storm water facility charges owed by such user and not to re-establish utility services until such time as all past due storm water facility service charges owed by such user have been paid and/or the user of the storm water facility has performed all acts and discharged all obligations required by the ordinances or resolutions of the municipality.

History

Acts 1993, ch. 257, § 7; *2004, ch. 578, § 1*; *2004, ch. 849, § 1*; *2010, ch. 1143, § 4*.

Annotations

Case Notes

NOTES TO DECISIONS

1. Use of Fees.

The use of fees collected pursuant to a municipal storm water ordinance to improve a combined sewer overflow system does not violate this section even if such system is part of a publicly owned treatment works and is covered by a separate national pollution discharge elimination system permit since the definition of storm water facilities in this act includes combined sewers and sewers. *Vandergriff v. City of Chattanooga, 44 F. Supp. 2d 927, 1998 U.S. Dist. LEXIS 22102 (E.D. Tenn. 1998)*, aff'd, *Rush v. City of Chattanooga, 182 F.3d 918, 1999 U.S. App. LEXIS 24525 (6th Cir. Tenn. 1999)*.

Opinion Notes

1. Applicability.
2. Authority.
3. Authority to Exempt.

ATTORNEY GENERAL OPINIONS

1. Applicability.

Applicability, OAG 94-039, *1994 Tenn. AG LEXIS 40 (3/21/94)*
.

2. Authority.

Authority for storm water fees/unfunded federal mandates. OAG 12-96, *2012 Tenn. AG LEXIS 100 (10/9/12)*.

3. Authority to Exempt.

Legislative bodies of counties and/or municipalities do not have the authority to exempt those who qualify for the state tax relief program from collection of storm water fees, OAG 06-177, *2006 Tenn. AG LEXIS 197 (12/19/06)* .

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Tenn. Code Ann. § 68-221-1108

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1108. Financing of facilities.

A municipal legislative body may finance storm water facilities under the Local Government Public Obligations Act of 1986, compiled in title 9, chapter 21. To protect the public health and to assure payment of bonds issued for storm water facilities, the municipality may by appropriate ordinance or resolution use the procedures set forth in *§§ 68-221-208* and *68-221-209*, for payment and collection of charges.

History

Acts 1993, ch. 257, § 8.

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Tenn. Code Ann. § 68-221-1109

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1109. Powers in addition to other municipal powers.

The powers conferred by this part are in addition and supplemental to the powers conferred by any other law, charter, or home rule provision.

History

Acts 1993, ch. 257, § 9.

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Tenn. Code Ann. § 68-221-1110

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1110. Permit conditions for discharges.

To the extent practicable, municipalities shall provide permit conditions for storm water discharges associated with industrial activities that are consistent with any permits issued pursuant to the National Pollution Discharge Elimination System (NPDES), unless the discharge contains hazardous substances in excess of reporting quantities, or the facility and the municipality are not in compliance with applicable provisions of the NPDES permits issued to them for storm water, or the discharge materially affects the municipal storm water facilities through either the quantity of wastewater or its contamination.

History

Acts 1993, ch. 257, § 10.

Annotations

Case Notes

NOTES TO DECISIONS

1. Permit Not Required.

Where it is undisputed that a municipality submitted a timely application for and ultimately received a national pollutant discharge elimination system (NPDES) permit, the municipality had not violated the federal Clean Water Act or the Tennessee Storm Water Management Act by enacting and implementing a storm water ordinance before obtaining the NPDES permit. *Vandergriff v. City of Chattanooga, 44 F. Supp. 2d 927, 1998 U.S. Dist. LEXIS 22102 (E.D. Tenn. 1998)* , aff'd,

Rush v. City of Chattanooga, 182 F.3d 918, 1999 U.S. App. LEXIS 24525 (6th Cir. Tenn. 1999) .

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Tenn. Code Ann. § 68-221-1111

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1111. Water quality regulation authority not limited by this part.

Nothing herein shall be construed to limit the power or authority of the department of environment and conservation or of the Tennessee board of water quality, oil and gas with respect to regulation of the waters of the state. Any ordinances or regulations adopted or imposed by municipalities shall be subject to regulation and oversight by the department of environment and conservation or the Tennessee board of water quality, oil and gas.

History

Acts 1993, ch. 257, § 11.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 substituted “Tennessee board of water quality, oil and gas” for “water quality control board”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

68-221-1111. Water quality regulation authority not limited by this part.

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Tenn. Code Ann. § 68-221-1112

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 68 Health, Safety and Environmental Protection > Environmental Protection > Chapter 221 Water and Sewerage > Part 11 Storm Water Management

68-221-1112. Notice of federally mandated charges.

Any bill rendered as a result of this part shall contain the following statement with respect to the charges assessed under this part, which statement shall be printed in bold-faced type:

"**THIS FEE HAS BEEN MANDATED BY CONGRESS.**"

History

Acts 1993, ch. 257, § 13; *2010, ch. 716, § 1*.

Annotations

Notes

Compiler's Notes.

Acts 2010, ch. 716, § 2 provided that no change from "TAX" to "FEE" pursuant to § 1 of the act shall be required on any water bill until the current supply of water bills is exhausted.

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68-221-1112. Notice of federally mandated charges.

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Tenn. Code Ann. § 68-221-1113

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

68-221-1113. Annual report to state legislative delegation.

(a) The chief administrative officer of the agency or entity responsible for implementing this part or such officer's designated representative shall report annually and personally to the legislative delegation of any municipality to which this section applies on the storm water management program for which such officer is responsible. Such report shall include, at a minimum, the following:

(1) The status of the storm water management program in such municipality;

(2) The fee structure imposed to fund the implementation of this part and the adequacy of such fees to implement this part;

(3) Any long-range plans which have been developed to implement this part;

(4) The status of any projects to control storm water runoff;

(5) The status of any condemnation proceedings pursuant to this part; and

(6) Any other information deemed relevant by such officer or requested by the delegation.

(b) This section only applies to municipalities in counties having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000), according to the 1990 federal census or any subsequent federal census. This section also applies to the municipality having the largest population in any county with a population of not less than three hundred thirty-five thousand (335,000) nor more than three hundred thirty-six thousand (336,000), according to the 1990 federal census or any subsequent federal census. This section shall also apply to the municipality having the largest population in any county with a population in excess of eight hundred thousand (800,000), according to the 1990 federal census or any subsequent federal census.

History

Acts 1993, ch. 257, § 14.

Annotations

Notes

Compiler's Notes.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

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Tenn. Code Ann. § 69-3-101

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-101. Short title.

This part shall be known as the “Water Quality Control Act of 1977.”

History

Acts 1971, ch. 164, § 1; 1977, ch. 366, § 1; T.C.A., § 70-324.

Annotations

Notes

Compiler's Notes.

For transfer of the bureau of environment in the department of health and its related functions and the administration of the Tennessee environmental statutes (excluding title 68, chs. 14, 110 and 112) from the department of health to the department of conservation and environment, see Executive Order No. 42 (February 4, 1991).

Case Notes

1. Bankruptcy.
2. Private Right of Action.

NOTES TO DECISIONS

1. Bankruptcy.

The water quality control board's (now the board of water quality, gas, and oil) proceedings to fix civil liability under this part are within the exception to the automatic stay in bankruptcy. *Word v. Commerce Oil Co., 847 F.2d 291, 1988 U.S. App. LEXIS 6901 (6th Cir. 1988)* .

2. Private Right of Action.

No implied private right of action exists under the Tennessee Water Quality Control Act, *T.C.A. § 69-3-101* et seq. *Ergon, Inc. v. Amoco Oil Co., 966 F. Supp. 577, 1997 U.S. Dist. LEXIS 12817 (W.D. Tenn. 1997)* .

Opinion Notes

Attorney General Opinions.

Permit requirements for landowners, OAG 97-039, *1997 Tenn. AG LEXIS 38 (4/7/97)*.

Proposed private act purporting to give a single county zoning and regulatory authority over business activities and property uses that are subject to regulation by the department of environment and would be inconsistent with general laws and would constitute invalid class legislation, OAG 04-105, *2004 Tenn. AG LEXIS 123 (7/02/04)*.

Research References & Practice Aids

Cross-References.

Major energy projects, coordination of regulation, title 13, ch. 18.

Nontraditional sewage disposal systems, regulation by water and wastewater treatment authorities, *§ 68-221-607*.

Taxation of pollution control equipment, *§ 67-5-604*.

Textbooks.

Tennessee Jurisprudence, 25 Tenn. Juris., Waters and Watercourses, § 12.

Law Reviews.

The Tennessee Water Quality Control Act of 1971, 25 Vand. L. Rev. 325, 331.

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Tenn. Code Ann. § 69-3-102

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-102. Declaration of policy and purpose.

(a) Recognizing that the waters of Tennessee are the property of the state and are held in public trust for the use of the people of the state, it is declared to be the public policy of Tennessee that the people of Tennessee, as beneficiaries of this trust, have a right to unpolluted waters. In the exercise of its public trust over the waters of the state, the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right.

(b) It is further declared that the purpose of this part is to abate existing pollution of the waters of Tennessee, to reclaim polluted waters, to prevent the future pollution of the waters, and to plan for the future use of the waters so that the water resources of Tennessee might be used and enjoyed to the fullest extent consistent with the maintenance of unpolluted waters.

(c) Moreover, an additional purpose of this part is to enable the state to qualify for full participation in the national pollutant discharge elimination system (NPDES) established under § 402 of the Federal Water Pollution Control Act, *Public Law 92-500* (*33 U.S.C. § 1342*).

(d) Additionally, it is intended that all procedures in this part shall be in conformity with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History

Acts 1971, ch. 164, § 2; 1977, ch. 366, § 1; T.C.A., § 70-325; *Acts 1992, ch. 684, § 1*.

Annotations

Case Notes

1. Clean Water Act.
2. Diversion Plan.
3. Consent Order.

NOTES TO DECISIONS

69-3-102. Declaration of policy and purpose.

1. Clean Water Act.

The Clean Water Act precludes a citizen's suit only if the Administrator of the environmental protection agency (EPA) or a state is diligently prosecuting an enforcement action in a court of the United States, or a state. Thus, since neither the state's water quality control board (now the board of water quality, gas, and oil), nor the department of environment and conservation (TDEC), rise to the level of a federal or state court, the plaintiffs' citizen suit was not precluded, overruling *Jones v. City of Lakeland, 175 F.3d 410, 1999 FED App. 0144P, 1999 U.S. App. LEXIS 7517 (6th Cir. 1999)* . *Jones v. City of Lakeland, 224 F.3d 518, 2000 FED App. 265P, 2000 U.S. App. LEXIS 19013 (6th Cir. Tenn. 2000)* .

2. Diversion Plan.

It was arbitrary and capricious for Tennessee Solid Waste Disposal Control Board to dismiss a diversion option simply on the basis of possible delay because any delay occasioned by gauging a property owner's willingness to pay for the costs of diversion would be justified by future abatement of leachate discharges. *Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015)* , rev'd, *Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. 2016)* .

Tennessee Solid Waste Disposal Control Board's decision to dismiss a diversion option without fully considering its viability was arbitrary and capricious because the Board failed to fully consider the range of remedial options that were available and discussed at the hearing; it would be unreasonable to not consider the diversion plan given the threat the continued discharge of contaminants posed to the State's waters. *Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015)* , rev'd, *Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. 2016)* .

3. Consent Order.

Approval by the Tennessee Solid Waste Disposal Control Board of an amended consent order detailing necessary actions to be taken by a landfill permit holder to address the pollution issues of a creek and a lake was appropriate because the Board had the authority to approve the plan in the order to reduce the contamination stemming from a permit holder's landfill by diverting storm water away from the site and subsequently removing the waste from the landfill without the requirement of a National Pollutant Discharge Elimination System permit. *Starlink Logistics, Inc. v. ACC, LCC, — S.W.3d —, 2018 Tenn. App. LEXIS 57 (Tenn. Ct. App. Jan. 31, 2018)*, appeal denied, *Starlink Logistics Inc. v. ACC, LLC, — S.W.3d —, 2018 Tenn. LEXIS 311 (Tenn. June 7, 2018)*, cert. denied, *StarLink Logistics, Inc. v. ACC, LLC, 206 L. Ed. 2d 917, 140 S. Ct. 2738, — U.S. —, 2020 U.S. LEXIS 2593 (U.S. May 4, 2020)*.

Research References & Practice Aids

Law Reviews.

Tennessee Water Law, You Never Miss the Water Till the Well Runs Dry (Vincent A. Sikora), 24 No. 5 Tenn. B.J. 12 (1988).

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Tenn. Code Ann. § 69-3-103

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-103. Part definitions. [Effective until October 1, 2024. See the version effective on October 1, 2024.]

As used in this part, unless the context otherwise requires:

(1) "Administrator" means the administrator, or head by whatever name, of the United States environmental protection agency;

(2) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(A) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;

(3) "Areawide waste treatment management plan" means a plan that has been approved by the administrator pursuant to § 208 of the Federal Water Pollution Control Act, *Public Law 92-500* (*33 U.S.C. § 1288*);

(4) "Board" means the board of water quality, oil and gas, created in *§ 69-3-104*;

(5) "Boat" means any vessel or watercraft moved by oars, paddles, sails or other power mechanism, inboard or outboard, or any vessel or structure floating upon the water whether or not capable of self-locomotion, including, but not limited to, houseboats, barges, docks, and similar floating objects;

(6) "Commissioner" means the commissioner of environment and conservation or the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(7) "Construction" means any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

(8) "Department" means the department of environment and conservation;

(9) "Director" means the director of the division of water management of the department;

(10) "Discharge of a pollutant," "discharge of pollutants," and "discharge," when used without qualification, each refer to the addition of pollutants to waters from a source;

(11) "Division" means the division of water management;

(12) “Effluent limitation” means any restriction, established by the board or the commissioner, on quantities, rates and concentrations of chemical, physical, biological, and other constituents that are discharged into waters or adjacent to waters;

(13) “Forestry best management practices” means those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in rules promulgated in this part in accordance with *§ 11-4-301(d)(18)*. Until those rules are effective, “forestry best management practices” will be those that have been developed by the division of forestry of the department of agriculture. The commissioner of agriculture shall specifically identify these interim forestry best management practices prior to September 1, 2000;

(14) “Industrial user” means those industries identified in the standard industrial classification manual, bureau of the budget, 1967, as amended and supplemented, under the category “Division D — Manufacturing” and such other classes of significant waste producers as the board or commissioner deems appropriate;

(15) “Industrial wastes” means any liquid, solid, or gaseous substance, or combination thereof, or form of energy including heat, resulting from any process of industry, manufacture, trade, or business or from the development of any natural resource;

(16) “Liquid waste management system” means a waste management system that collects, stores, or land applies manure in a liquid, flowable form;

(17) “Local administrative officer” means the chief administrative officer of a pretreatment agency that has adopted and implemented an approved pretreatment program pursuant to this part and *33 U.S.C. § 1251 et seq.* and 40 CFR 403.1 et seq.;

(18) “Local hearing authority” means the administrative board created pursuant to an approved pretreatment program that is responsible for the administration and enforcement of that program and *§§ 69-3-123* — *69-3-129*;

(19) “Member” means a member of the board of water quality, oil and gas;

(20) “Municipal separate storm sewer system” means a municipal separate storm sewer system as defined in the Clean Water Act (*33 U.S.C. § 1251 et seq.*), and the rules promulgated thereunder;

(21) “New source” means any source, the construction of which is commenced after the publication of state or federal regulations prescribing a standard of performance applicable to such source;

(22) “Obligate lotic aquatic organisms” means organisms that require flowing water for all or almost all of the aquatic phase of their life cycles;

(23) “Operator” as used in the context of silvicultural activities, means any person who conducts or exercises control over any silvicultural activities; provided, however, that the term “operator” does not include an owner if the silvicultural activities are being conducted by an independent contractor;

(24) “Other wastes” means any and all other substances or forms of energy, with the exception of sewage and industrial wastes, including, but not limited to, decayed wood, sand, garbage, silt, municipal refuse, sawdust, shavings, bark, lime, ashes, offal, oil, hazardous materials, tar, sludge, or other petroleum byproducts, radioactive material, chemicals, heated substances, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, biological materials, wrecked and discarded equipment, rock, and cellar dirt;

(25) “Owner” as used in the context of silvicultural activities, means any person or persons that own or lease land on which silvicultural activities occur or own timber on land on which silvicultural activities occur;

(26) “Owner or operator” means any person who owns, leases, operates, controls, or supervises a source;

(27) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(28) "Pollutant" means sewage, industrial wastes, or other wastes;

(29) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state, including, but not limited to, changes in temperature, taste, color, turbidity, or odor of the waters that will:

(A) Result or will likely result in harm, potential harm or detriment to the public health, safety, or welfare;

(B) Result or will likely result in harm, potential harm or detriment to the health of animals, birds, fish, or aquatic life;

(C) Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

(D) Leave or likely leave the waters in such condition as to violate any standards of water quality established by the board;

(30) "Pretreatment agency" means the owner of a publicly owned treatment works permitted pursuant to this part that is required by its permit to adopt and enforce an approved pretreatment program that complies with this part and *33 U.S.C. § 1251 et seq.* and 40 CFR 403.1 et seq.;

(31) "Pretreatment program" means the rules, regulations, and/or ordinances of a pretreatment agency regulating the discharge and treatment of industrial waste that complies with this part and *33 U.S.C. § 1251 et seq.* and 40 CFR 403.1 et seq.;

(32) "Qualified local program" means a municipal separate storm sewer system that has been approved as such by the department pursuant to this part;

(33) "Regional administrator" means the regional administrator of the United States environmental protection agency whose region includes Tennessee, or any person succeeding to the duties of this official;

(34) "Schedules of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, condition of a permit, other limitation, prohibition, standard, or regulation;

(35) "Sewage" means water-carried waste or discharges from human beings or animals, from residences, public or private buildings, or industrial establishments, or boats, together with such other wastes and ground, surface, storm, or other water as may be present;

(36) "Sewerage system" means the conduits, sewers, and all devices and appurtenances by means of which sewage and other waste is collected, pumped, treated, or disposed;

(37) "Silvicultural activities" means those forest management activities associated with the harvesting of timber and including, without limitation, the construction of roads and trails;

(38) "Source" means any activity, operation, construction, building, structure, facility, or installation from which there is or may be the discharge of pollutants;

(39) "Standard of performance" means a standard for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction that the commissioner determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(40) “Stop work order” means an order issued by the commissioner of environment and conservation requiring the operator to immediately cease part or all silvicultural activities;

(41) “Stream” means a surface water that is not a wet weather conveyance;

(42) “Toxic effluent limitation” means an effluent limitation on those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of available information, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring;

(43) “Variance” means an authorization issued to a person by the commissioner that would allow that person to cause a water quality standard to be exceeded for a limited time period without changing the standard;

(44) “Watercourse” means a man-made or natural hydrologic feature with a defined linear channel that discretely conveys flowing water, as opposed to sheet-flow;

(45) “Waters” means any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters; and

(46) “Wet weather conveyance” means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(A) That flow only in direct response to precipitation runoff in their immediate locality;

(B) Whose channels are at all times above the groundwater table;

(C) That are not suitable for drinking water supplies; and

(D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

History

Acts 1971, ch. 164, § 3; 1977, ch. 366, § 1; T.C.A., § 70-326; Acts 1984, ch. 804, § 1; 1987, ch. 111, § 1; 1988, ch. 688, §§ 2, 6; *1992, ch. 693, § 1*; *1998, ch. 735, § 1*; *2000, ch. 680, § 1*; *2009, ch. 464, § 1*; *2012, ch. 1019, § 1*; *2017, ch. 293, § 1*; *2018, ch. 523, §§ 1*, 3.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

TENNESSEE CODE ANNOTATED
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Tenn. Code Ann. § 69-3-103

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-103. Part definitions. [Effective on October 1, 2024. See the version effective until October 1, 2024.]

As used in this part, unless the context otherwise requires:

(1) "Administrator" means the administrator, or head by whatever name, of the United States environmental protection agency;

(2) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(A) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;

(3) "Areawide waste treatment management plan" means a plan that has been approved by the administrator pursuant to § 208 of the Federal Water Pollution Control Act, *Public Law 92-500* (*33 U.S.C. § 1288*);

(4) "Board" means the board of water quality, oil and gas, created in *§ 69-3-104*;

(5) "Boat" means any vessel or watercraft moved by oars, paddles, sails or other power mechanism, inboard or outboard, or any vessel or structure floating upon the water whether or not capable of self-locomotion, including, but not limited to, houseboats, barges, docks, and similar floating objects;

(6) "Commissioner" means the commissioner of environment and conservation or the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(7) "Conflict of interest" means:

(A) Employment or other affiliation with, or financial interest in, the individual, firm, or corporation engaged in preparing an engineering report or plans, a permit package, or an inspection report, or engaged in inspecting the non-discharging treatment works or sewerage system, or the development served by the non-discharging treatment works or sewerage system; or

(B) A relationship with a family member or other individual involved in preparing the engineering report or plans, the permit package, inspection report, or inspecting the non-discharging treatment works or the development served by the treatment works that could create an appearance of impropriety;

(8) “Construction” means any placement, assembly, or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the premises where such equipment will be used, including preparation work at such premises;

(9) “Department” means the department of environment and conservation;

(10) “Director” means the director of the division of water management of the department;

(11) “Discharge of a pollutant,” “discharge of pollutants,” and “discharge,” when used without qualification, each refer to the addition of pollutants to waters from a source;

(12) “Division” means the division of water management;

(13) “Effluent limitation” means any restriction, established by the board or the commissioner, on quantities, rates and concentrations of chemical, physical, biological, and other constituents that are discharged into waters or adjacent to waters;

(14) “Forestry best management practices” means those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in rules promulgated in this part in accordance with *§ 11-4-301(d)(18)*. Until those rules are effective, “forestry best management practices” will be those that have been developed by the division of forestry of the department of agriculture. The commissioner of agriculture shall specifically identify these interim forestry best management practices prior to September 1, 2000;

(15) “Industrial user” means those industries identified in the standard industrial classification manual, bureau of the budget, 1967, as amended and supplemented, under the category “Division D — Manufacturing” and such other classes of significant waste producers as the board or commissioner deems appropriate;

(16) “Industrial wastes” means any liquid, solid, or gaseous substance, or combination thereof, or form of energy including heat, resulting from any process of industry, manufacture, trade, or business or from the development of any natural resource;

(17) “Liquid waste management system” means a waste management system that collects, stores, or land applies manure in a liquid, flowable form;

(18) “Local administrative officer” means the chief administrative officer of a pretreatment agency that has adopted and implemented an approved pretreatment program pursuant to this part and *33 U.S.C. § 1251 et seq.* and 40 CFR 403.1 et seq.;

(19) “Local hearing authority” means the administrative board created pursuant to an approved pretreatment program that is responsible for the administration and enforcement of that program and *§§ 69-3-123* — *69-3-129*;

(20) “Member” means a member of the board of water quality, oil and gas;

(21) “Municipal separate storm sewer system” means a municipal separate storm sewer system as defined in the Clean Water Act (*33 U.S.C. § 1251 et seq.*), and the rules promulgated thereunder;

(22) “New source” means any source, the construction of which is commenced after the publication of state or federal regulations prescribing a standard of performance applicable to such source;

(23) “Obligate lotic aquatic organisms” means organisms that require flowing water for all or almost all of the aquatic phase of their life cycles;

(24) “Operator” as used in the context of silvicultural activities, means any person who conducts or exercises control over any silvicultural activities; provided, however, that the term “operator” does not include an owner if the silvicultural activities are being conducted by an independent contractor;

(25) “Other wastes” means any and all other substances or forms of energy, with the exception of sewage and industrial wastes, including, but not limited to, decayed wood, sand, garbage, silt, municipal refuse, sawdust, shavings, bark, lime, ashes, offal, oil, hazardous materials, tar, sludge, or

other petroleum byproducts, radioactive material, chemicals, heated substances, dredged spoil, solid waste, incinerator residue, sewage sludge, munitions, biological materials, wrecked and discarded equipment, rock, and cellar dirt;

(26) "Owner" as used in the context of silvicultural activities, means any person or persons that own or lease land on which silvicultural activities occur or own timber on land on which silvicultural activities occur;

(27) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source;

(28) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies, or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country;

(29) "Pollutant" means sewage, industrial wastes, or other wastes;

(30) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters of this state, including, but not limited to, changes in temperature, taste, color, turbidity, or odor of the waters that will:

(A) Result or will likely result in harm, potential harm or detriment to the public health, safety, or welfare;

(B) Result or will likely result in harm, potential harm or detriment to the health of animals, birds, fish, or aquatic life;

(C) Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

(D) Leave or likely leave the waters in such condition as to violate any standards of water quality established by the board;

(31) "Pretreatment agency" means the owner of a publicly owned treatment works permitted pursuant to this part that is required by its permit to adopt and enforce an approved pretreatment program that complies with this part and *33 U.S.C. § 1251 et seq.* and 40 CFR 403.1 et seq.;

(32) "Pretreatment program" means the rules, regulations, and/or ordinances of a pretreatment agency regulating the discharge and treatment of industrial waste that complies with this part and *33 U.S.C. § 1251 et seq.* and 40 CFR 403.1 et seq.;

(33) "Qualified local program" means a municipal separate storm sewer system that has been approved as such by the department pursuant to this part;

(34) "Regional administrator" means the regional administrator of the United States environmental protection agency whose region includes Tennessee, or any person succeeding to the duties of this official;

(35) "Schedules of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, condition of a permit, other limitation, prohibition, standard, or regulation;

(36) "Sewage" means water-carried waste or discharges from human beings or animals, from residences, public or private buildings, or industrial establishments, or boats, together with such other wastes and ground, surface, storm, or other water as may be present;

(37) "Sewerage system" means the conduits, sewers, and all devices and appurtenances by means of which sewage and other waste is collected, pumped, treated, or disposed;

(38) "Silvicultural activities" means those forest management activities associated with the harvesting of timber and including, without limitation, the construction of roads and trails;

(39) “Source” means any activity, operation, construction, building, structure, facility, or installation from which there is or may be the discharge of pollutants;

(40) “Standard of performance” means a standard for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction that the commissioner determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(41) “Stop work order” means an order issued by the commissioner of environment and conservation requiring the operator to immediately cease part or all silvicultural activities;

(42) “Stream” means a surface water that is not a wet weather conveyance;

(43) “Third-party water resources engineer” means an engineer qualified by education or experience in wastewater design, including subsurface sewage disposal systems or land application systems, who is:

(A) Registered with the Tennessee state board of examiners for architects and engineers;

(B) Registered with the department as a third-party water resources engineer; and

(C) Not employed by the department or the contract county;

(44) “Third-party wetland professional” means an individual who is:

(A) Certified as a professional wetland scientist by the Society of Wetland Scientists or another wetland certifying entity acceptable to the department;

(B) Registered with the department as a third-party wetland professional, having met the qualifications required by the department; and

(C) Not employed by the department;

(45) “Toxic effluent limitation” means an effluent limitation on those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of available information, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring;

(46) “Variance” means an authorization issued to a person by the commissioner that would allow that person to cause a water quality standard to be exceeded for a limited time period without changing the standard;

(47) “Watercourse” means a man-made or natural hydrologic feature with a defined linear channel that discretely conveys flowing water, as opposed to sheet-flow;

(48) “Waters” means any and all water, public or private, on or beneath the surface of the ground, that are contained within, flow through, or border upon Tennessee or any portion thereof, except those bodies of water confined to and retained within the limits of private property in single ownership that do not combine or effect a junction with natural surface or underground waters; and

(49) “Wet weather conveyance” means, notwithstanding any other law or rule to the contrary, man-made or natural watercourses, including natural watercourses that have been modified by channelization:

(A) That flow only in direct response to precipitation runoff in their immediate locality;

(B) Whose channels are at all times above the groundwater table;

(C) That are not suitable for drinking water supplies; and

(D) In which hydrological and biological analyses indicate that, under normal weather conditions, due to naturally occurring ephemeral or low flow there is not sufficient water to support fish, or

multiple populations of obligate lotic aquatic organisms whose life cycle includes an aquatic phase of at least two (2) months.

(50) "Wetland" means:

(A) An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and

(B) A type of waters that are not wet weather conveyances, and generally include swamps, marshes, bogs, and similar areas;

History

Acts 1971, ch. 164, § 3; 1977, ch. 366, § 1; T.C.A., § 70-326; Acts 1984, ch. 804, § 1; 1987, ch. 111, § 1; 1988, ch. 688, §§ 2, 6; *1992, ch. 693, § 1*; *1998, ch. 735, § 1*; *2000, ch. 680, § 1*; *2009, ch. 464, § 1*; *2012, ch. 1019, § 1*; *2017, ch. 293, § 1*; *2018, ch. 523, §§ 1*, 3; *2024, ch. 771, § 7*.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute "board of water quality, oil and gas" for "board of water quality control".

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Amendments.

The 2024 amendment added (7), (43), (44), and (48).

Effective Dates.

Acts 2024, ch. 771, § 9. October 1, 2024.

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Tenn. Code Ann. § 69-3-104

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-104. Board of water quality, oil, and gas.

(a)

(1) There is hereby created and established the Tennessee board of water quality, oil, and gas, referred to as the "board" in this part, which shall be composed of twelve (12) members as follows:

(A) The commissioner of environment and conservation, who shall be the chair of the board;

(B) The commissioner of health;

(C) The commissioner of agriculture; and

(D) Nine (9) citizen members appointed by the governor for terms of four (4) years.

(2) Each ex officio member may, by official order filed with the director, designate a representative from such member's staff who shall have the powers and be subject to the duties and responsibilities of the ex officio member designating the representative, except that the representative designated by the commissioner of environment and conservation shall not serve as chair.

(3) The board shall annually elect a vice chair from among its members, who shall preside over all meetings at which the chair is not present.

(4)

(A) The citizen members of the board shall be appointed as follows:

(i) One (1) of the nine (9) citizen members shall be from the public-at-large. The public member's occupation shall not be in the same primary area of interest as any other citizen member of the board;

(ii) One (1) member shall represent environmental interests and may be appointed from lists of qualified persons submitted by interested conservation groups including, but not limited to, the Tennessee conservation league;

(iii) One (1) member shall represent counties and may be appointed from lists of qualified persons submitted by interested county services groups including, but not limited to, the County Services Association;

(iv) One (1) member shall represent agricultural interests and may be appointed from lists of qualified persons submitted by interested farm business groups including, but not limited to, the Tennessee Farm Bureau;

(v) One (1) member shall represent the municipalities of the state and may be appointed from lists of qualified persons submitted by interested municipal groups including, but not limited to, the Tennessee Municipal League;

(vi) One (1) member shall represent small generators of water pollution and may be appointed from lists of qualified persons submitted by interested automotive groups including, but not limited to, the Tennessee Automotive Association;

(vii) One (1) member shall represent manufacturing industries and have current full-time employment with a manufacturing concern in Tennessee, shall hold a college degree in engineering or the equivalent, and shall have at least eight (8) years of combined technical training and experience in national pollutant discharge elimination system (NPDES) permit compliance and management of wastewater or water treatment facilities, and may be appointed from lists of qualified persons submitted by interested business groups including, but not limited to, the Tennessee Chamber of Commerce and Industry;

(viii) One (1) member shall represent the oil and gas industry; and

(ix) One (1) member shall represent oil or gas property owners.

(B) The governor shall consult with the interested groups described in subdivision (a)(4)(A) to determine qualified persons to fill the citizen member positions on the board.

(5) Each appointive member shall be a resident and domiciliary of this state.

(6) No member shall be appointed, unless at the time of the member's appointment, the member or the member's employer is in compliance with this part as certified by the commissioner.

(7) The three (3) ex officio members shall hold their positions on the board throughout their respective terms and until the appointment of their successors as such.

(8) All appointments of citizen members shall be for a full four-year term.

(9) Any appointive member who is absent from three (3) consecutive, regularly scheduled meetings shall be removed from the board by the governor.

(10) Upon the death, resignation, or removal of any appointive member, the governor shall appoint some person representing the same area of interest as the member whose position has been vacated to fill the unexpired term of such member.

(11) Appointive members shall continue to serve until a successor has been appointed.

(12) In making appointments to the board, the governor shall strive to ensure that at least one (1) person appointed to serve on the board is sixty (60) years of age or older and that at least one (1) person appointed to serve on the board is a member of a racial minority.

(13)

(A) Notwithstanding subdivision (a)(8), the terms of the appointive members of the board serving on July 1, 2014, shall terminate as follows:

(i) The terms of the members appointed under subdivisions (a)(4)(A)(i) and (ii) shall terminate on September 30, 2016;

(ii) The terms of the members appointed under subdivisions (a)(4)(A)(iii) and (iv) shall terminate on September 30, 2017;

(iii) The terms of the members appointed under subdivisions (a)(4)(A)(v) and (vi) shall terminate on September 30, 2018; and

(iv) The terms of the members appointed under subdivisions (a)(4)(A)(vii), (viii) and (ix) shall terminate on September 30, 2019.

(B) The terms of all members appointed for terms beginning after September 30, 2016, shall be for four (4) years.

(b)

(1) The state shall ensure that those members of the board who do not receive, or during the previous two (2) years have not received, a significant portion of their income directly or indirectly from permit holders or applicants for a permit shall hear all appeals on permit matters. If the chair is not eligible to hear any permit matter, the members of the board shall select a member by majority vote to serve as chair. An ex officio member of the board who is not eligible to hear a permit matter shall designate a representative to serve on the board for that purpose in accordance with subsection (a). Board member participation in permit matters shall also be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in addition to the provisions set forth in subdivisions (b)(2)-(6) and subsection (h).

(2) For the purposes of this section, “significant portion of their income” means ten percent (10%) of gross personal income for a calendar year, except that it means fifty percent (50%) of gross personal income for a calendar year if the recipient is over sixty (60) years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.

(3) For the purposes of this section, “permit holders or applicants for a permit” does not include any department or agency of the state.

(4) For the purposes of this section, “income” includes retirement benefits, consultant fees, and stock dividends.

(5) For the purposes of this section, income is not received “directly or indirectly from permit holders or applicants for a permit” where it is derived from mutual fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income. If members other than the ex officio members are not qualified, then the seven (7) citizen members who are not ex officio members shall select, by agreement, qualified temporary replacements to serve for the duration of any proceeding before the board.

(6) For the purposes of this subsection (b), “permit” means national pollutant discharge elimination system (NPDES) permit.

(c) Each member of the board, other than the ex officio member, shall be entitled to be paid fifty dollars ($50.00) for each day actually and necessarily employed in the discharge of official duties, and each member shall be entitled to receive the amount of such member's traveling and other necessary expenses actually incurred while engaged in the performance of any official duties when so authorized by the board, but such expenses shall be made in accordance with the comprehensive state travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(d) The board shall have two (2) regularly scheduled meetings each year, one (1) in October and one (1) in April. Special meetings may be called by the chair at any time and shall be called as soon as possible by the chair on the written request of two (2) members. Regular meetings of the panel shall be held as necessary to review permit matters. All members shall be duly notified by the technical secretary of the time and place of any regular or special meeting at least five (5) days in advance of such meeting. The majority of the board constitutes a quorum and the concurrence of a majority of those present and voting in any matter within its duties shall be required for a determination of matters within its jurisdiction.

(e) The board shall keep complete and accurate records of the proceedings of all their meetings, a copy of which shall be kept on file in the office of the director and open to public inspection.

(f) The director shall serve as the technical secretary of the board. In that capacity, the member shall report the proceedings of the board pursuant to *§ 69-3-110* and perform such other duties as the board may require.

(g)

(1) If the board incurs a vacancy, it shall notify the appointing authority in writing within ninety (90) days after the vacancy occurs. All vacancies on the board, other than ex officio members, shall be filled by the appointing authority within ninety (90) days of receiving written notice of the vacancy and of

providing sufficient information for the appointing authority to make an informed decision in regard to filling such vacancy. If such sufficient information has been provided and the board has more than one (1) vacancy that is more than one hundred eighty (180) days in duration, such board shall report to the house of representatives and senate government operations committees why such vacancies have not been filled.

(2) If more than one-half (½) of the positions on the board are vacant for more than one hundred eighty (180) consecutive days, the board shall terminate, provided that such board shall wind up its affairs pursuant to *§ 4-29-112*. If the board is terminated pursuant to this subdivision (g)(2), it shall be reviewed by the evaluation committees pursuant to the Uniform Administrative Procedures Act before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or reestablishing the board.

(h) No member of the board shall participate in making any decision upon a permit or upon a case in which the municipality, firm or organization which the member represents, or by which the member is employed, or in which the member has a direct substantial financial interest, is involved.

History

Acts 1971, ch. 164, § 4; 1971, ch. 386, § 1; 1972, ch. 631, § 1; 1976, ch. 806, § 1(125); 1977, ch. 366, § 1; 1979, ch. 422, § 18; T.C.A., § 70-327; Acts 1984, ch. 804, § 2; 1988, ch. 1013, § 72; *1991, ch. 117, § 4*; *1992, ch. 693, § 3*; *1994, ch. 610, §§ 6*, 7, 8; *1994, ch. 628, §§ 3-6*; *1995, ch. 155, § 1*; *1996, ch. 728, §§ 4-8*; *2000, ch. 835, § 6*; *2005, ch. 85, §§ 1-4*; *2012, ch. 986, §§ 26-28*; *2014, ch. 624, §§ 3*, 6-8.

Annotations

Notes

Compiler's Notes.

The Tennessee board of water quality, oil, and gas, created by this section, terminates June 30, 2028. See *§§ 4-29-112*, *4-29-249*.

For transfer of the division of surface mining and reclamation and its functions under title 59, ch. 8, parts 2 and 3 and title 59, ch. 10 from the department of conservation (now environment and conservation) to the department of health and environment (now health), see Executive Order No. 40 (February 11, 1983).

Acts 2000, ch. 835, § 7 provided that the act shall not change any procedure, manner, or time that members of the Tennessee motor vehicle commission, who are selected from a list of qualified persons submitted by motor vehicle manufacturers licensed in Tennessee or their consumer replacements, are appointed pursuant to *§ 55-17-103*.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Commentary

Code Commission Notes.

Former subsection (h), concerning the transfer of the functions of the board of reclamation review to the water control board, was deleted as obsolete by the code commission in 2004.

Research References & Practice Aids

Cross-References.

Interstate mining compact, *§§ 59-10-101* — *59-10-103*.

Major energy projects, coordination of regulation, title 13, ch. 18.

Severance tax on coal, title 67, ch. 7, part 1.

Law Reviews.

Disqualification of Administrative Officers (William Bates), 13 Mem. St. U.L. Rev. 501 (1984).

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Tenn. Code Ann. § 69-3-105

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69-3-105. Duties and authority of the board.

(a)

(1) The board has and shall exercise the power, duty, and responsibility to establish and adopt standards of quality for all waters of the state.

(2) The general assembly recognizes that, due to various factors, no single standard of quality and purity is applicable to all waters of the state or to different segments of the same waters. It also recognizes the suitability of certain geologic formations for the placement of fluids and other substances through underground injection; provided, that adequate protection can be afforded the geologic formations. The board shall classify all waters of the state and adopt water quality standards pursuant to such classifications. Such classifications shall be made in accordance with the declaration of policy and purpose in *§ 69-3-102*. In preparing the classification of waters and the standards of quality mentioned above, the board shall give consideration to:

(A) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the water;

(B) The character of the land bordering, overlying or underlying the waters of the state and its particular suitability for particular uses, with a view to conserving the value of that land, encouraging the most appropriate use of the same for economic, residential, agricultural, industrial, recreational and conservation purposes;

(C) The past, present, and potential uses of the waters for transportation, domestic and industrial consumption, recreation, fishing and fish culture, fire prevention, the disposal of sewage, industrial and other wastes, and other possible uses.

(3) The state water quality plan provided for in subsection (e) shall contain standards of quality and purity for each of the various classes of water in accordance with the best interests of the public. In preparing such standards, the board shall give due consideration to all physical, chemical, biological, bacteriological, or radiological properties that may be necessary for preserving the quality and purity of the waters of the state.

(4) The board may amend and revise such standards and classifications, including revisions to improve and upgrade the quality of water.

(b) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, promulgate after due notice and enforce rules and regulations that the board deems necessary for the proper administration of this part, the prevention, control, and abatement of pollution, or the modification of classifications and the upgrading of the standards of quality in accordance with subsection (a).

69-3-105. Duties and authority of the board.

(c) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate, after due notice, all necessary rules and regulations for the purpose of controlling the discharge of sewage, other wastes, and other substances from any boats.

(d) Prior to classifying or reclassifying waters of the state, or adopting, amending, or revising standards of quality for waters of the state, or promulgating, adopting, modifying, or repealing rules and regulations, or adopting, amending, or revising water quality plans, or area-wide waste treatment plans, the board shall conduct, or cause to be conducted, public hearings in connection therewith. Notice of any public hearing shall be given not less than thirty (30) days before the date of such hearing and shall state the date, time, and place of hearing, and the subject of the hearing. Any such notice shall be published at least once in one (1) newspaper of general public circulation circulated within the area of the state in which the water affected is located. Any person within the area of the state in which the water affected is located may contact the board and request to be placed on a notification registry, which includes such person's full name, mailing address, and telephone number. The board shall notify in writing all persons on such notification registry as to the date, time, and place of hearing, and the subject of the hearing, ten (10) days before the hearing. Any person who desires to be heard relative to water quality matters at any such public hearing shall give notice thereof in writing to the board on or before the first date set for the hearing. The board is authorized to set reasonable time limits for the oral presentation of views by any person at any such public hearing.

(e)

(1) The board has and shall exercise the power, duty, and responsibility to proceed without delay to formulate and adopt a state water quality plan, which shall consist of the following:

(A) Water quality standards as outlined in subsection (a);

(B) Water quality objectives for planning and operation of water resource development projects, for water quality control activities, and for the improvement of existing water quality;

(C) Other principles and guidelines deemed essential by the board of water quality, oil and gas; and

(D) A program of implementation for those waters that do not presently meet established water quality standards.

(2) The state water quality plan shall be reviewed at least biennially and may be revised. During the process of formulating or revising the state water quality plan, the board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

(f) The board has and shall exercise the power, duty, and responsibility to:

(1) Hear appeals as specified in subsection (i) from administrative judges' orders assessing penalties or damages, or issuing, denying, revoking or modifying a permit; and

(2) Affirm, modify, or revoke such orders, as specified in subsection (i).

(g) The board has and shall exercise the power, duty, and responsibility to require the technical secretary to carry out surveys, research, and investigations into all aspects of water use and water quality.

(h)

(1) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate all necessary rules and regulations for the purpose of establishing and administering a comprehensive permit program that will enable the department of environment and conservation to be designated by the United States environmental protection agency as authorized to issue permits under the national pollutant discharge elimination system (NPDES) established by § 402 of the Federal Water Pollution Control Act, *P.L. 92-500* (*33 U.S.C. § 1342*).

(2) Such rules and regulations shall include provisions for:

(A) Forms and procedures for permit applications;

(B) Public notice and opportunity for public hearing on permit applications;

(C) Promulgation and application in permits of effluent standards and limitations, water quality standards, schedules of compliance, and such other terms and conditions as are necessary to implement this part;

(D) Monitoring and inspecting effluent discharges or treatment facilities and recording and reporting the results;

(E) Enforcement of this part, rules and regulations promulgated under it, and the terms and conditions of permits; and

(F) Adoption and enforcement of permits that have been issued by the United States environmental protection agency pursuant to § 402 of the Federal Water Pollution Control Act, *P.L. 92-500*.

(i) A petition for permit appeal may be filed by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application. Additionally, for those permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment. Any petition for permit appeal under this subsection (i) shall be filed with the board within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit. Notwithstanding *§ 4-5-223* or *§ 69-3-118(a)*, or any other law to the contrary, this subsection (i) and the established procedures of Tennessee's antidegradation statement, found in the rules promulgated by the department, shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with *§ 69-3-110(a)*.

(j) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate all necessary rules and regulations that the board deems necessary relating to the underground placement of fluids and other substances that do or may affect the waters of the state.

(k)

(1) Notwithstanding any other provisions of this title to the contrary, waters that are in areas of swamped-out bottomland hardwoods or swamped-out cropland shall be classified as protective of wildlife and humans that may come into contact with them, and shall maintain standards applicable to all downstream waters, but shall not be classified for the protection of fish and aquatic life.

(2) As used in this subsection (k):

(A) “Swamped-out bottomland hardwood” means an area subject to inundation or ponding of surface water that has resulted, or is resulting, in timber mortality or stress. The term does not include areas with a dominance of cypress or tupelo gum trees or areas in which the majority of the timber died prior to 1970; and

(B) “Swamped-out cropland” means an area that was previously in row crop cultivation or pasture, but can no longer be used for such purpose due to inundation or ponding of surface water. “Swamped-out cropland” does not include wetland areas that have not been cultivated or in pasture since 1970 because of inundation or ponding of surface water.

(l)

(1) The board shall promulgate rules creating a system of incentives for alternatives to discharges to surface waters, such as land application and beneficial reuse of the wastewater.

(2) For the purpose of this subsection (*l*), “system of incentives” includes regulatory flexibility recognizing increased environmental performance and enhanced water quality under specified permitted activities through permit conditions pursuant to duly promulgated rules.

(m) The commissioner shall develop and submit to the board proposed rules necessary for accurate and consistent wet weather conveyance determinations. These rules shall include at a minimum:

(1) Standard procedures for making stream and wet weather conveyance determinations that take into consideration biology, geology, geomorphology, precipitation, hydrology and other scientifically based principles; and

(2) A certification program for department staff and other persons who wish to become certified hydrologic professionals.

History

Acts 1971, ch. 164, § 5; 1977, ch. 366, § 1; T.C.A., § 70-328(a); Acts 1984, ch. 804, § 3; 1988, ch. 688, §§ 4, 8; *1991, ch. 123, § 1*; *1992, ch. 693, § 1*; *1998, ch. 643, § 1*; *2005, ch. 355, § 1*; *2007, ch. 362, § 36*; *2009, ch. 271, § 2*; *2009, ch. 464, § 3*; *2013, ch. 181, §§ 13*, 14; *2021, ch. 263, § 1*.

Annotations

Notes

Compiler's Notes.

Acts 2005, ch. 355, § 2 provided that the amendment of subsection (i) shall only apply to permit applications filed after June 7, 2005.

Acts 2009, ch. 454, § 3 provided that, within ninety (90) days of June 23, 2009, the commissioner shall develop and submit to the board proposed rules necessary for accurate and consistent wet weather conveyance determinations.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2013, ch.181, § 19 provided that for the purpose of construing the act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the act shall be deemed to be procedural in nature. It is the intent of the general assembly that Acts 2013, chapter 181 and the Uniform Administrative Procedures Act shall be complied with, however when in conflict, the provisions of Acts 2013, chapter 181 shall govern.

Acts 2013, ch. 181, § 20 provided that the act, which amended subsections (f) and (i), shall apply to all cases filed on or after July 1, 2013.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Amendments.

The 2021 amendment added (*l*)(2) and redesignated the existing provisions of (*l*) as (*l*)(1); and in (*l*)(1), substituted "shall promulgate" for "has and shall exercise the power to adopt."

Effective Dates.

Acts 2021, ch. 263, § 2. April 28, 2021.

Opinion Notes

Attorney General Opinions.

Memorandum of agreement between division of solid waste management and division of water pollution control not a rule subject to Uniform Administrative Procedures Act, OAG 95-084, *1995 Tenn. AG LEXIS 94 (8/15/95)*.

The water quality control board (now the board of water quality, oil and gas) has the authority to adopt rules that require applicants for individual aquatic resource alteration permits to evaluate practicable alternatives and to conduct an avoidance, minimization, and/or mitigation analysis for activities that will impact waters of the state as such requirements are in keeping with the public trust doctrine and the legislative policy of preserving and protecting the waters of the state from conditions of pollution, OAG 00-122, *2000 Tenn. AG LEXIS 123 (7/21/00)*.

The Tennessee water quality control board (now the board of water quality, oil and gas) does not have authority to promulgate a rule that would authorize the commissioner of the Tennessee department of environment and conservation to issue stop work orders for construction activity that is being done without a required permit or in violation of a permit, OAG 01-105, *2001 Tenn. AG LEXIS 96 (6/27/01)*.

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Tenn. Code Ann. § 69-3-106

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TN - Tennessee Code Annotated > Title 69 Waters, Waterways, Drains And Levees > Chapter 3 Water Pollution Control > Part 1 Water Quality Control Act

69-3-106. [Reserved.]

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Tenn. Code Ann. § 69-3-107

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-107. Duties and authority of the commissioner.

In addition to any power, duty, or responsibility given to the commissioner under this part, the commissioner has the power, duty, and responsibility to:

(1) Exercise general supervision and control over the quality of all state waters, administer and enforce all laws relating to pollution of such waters, and administer and enforce this part, and all standards, policies, rules, and regulations promulgated under this part;

(2) Administer oaths, issue subpoenas, and compel the attendance of witnesses and production of necessary data for all purposes of this part;

(3) Bring suit in the name of the department for any violation of this part, seeking any remedy provided in this part, and any other statutory or common law remedy available for the control, prevention, and abatement of pollution;

(4) Proceed against, as provided in this part, any owner or operator of any boat, located or operated on the waters of the state, that discharges or causes to be discharged any sewage, other wastes, or other substances into such waters in violation of this part or any rules or regulations promulgated under this part;

(5) Make inspections and investigations, carry on research, or take such other action as may be necessary to carry out this part;

(6) Enter or authorize the commissioner's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations and studies or enforcing any of this part;

(7) Advise, consult, cooperate, contract, and make other binding agreements with the various agencies of the federal government and with state and local administrative and governmental agencies, colleges and universities, or with any other persons;

(A) In furtherance of this part, the commissioner may require any state or local agency to investigate and report on any matters involved in water quality control; provided, that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports; and

(B) The department has the authority, subject to approval by the governor, to enter into agreements with other states and the United States relative to prevention and control of pollution in interstate waters. This authority is not deemed to extend to the modification of any agreement with the state concluded by direct legislative act, but unless otherwise expressly provided, the department shall be the agency for the administration and enforcement of any such legislative agreement;

(8) Apply for, accept, administer, and utilize loans and grants from the federal government, state government, and from any other sources, public or private, for prevention, abatement, and control of pollution of the waters of the state. The department is the water quality control agency for the state for the purpose of any federal water pollution control act;

(9) Prepare, publish, and issue such printed pamphlets and bulletins as the department deems necessary for the dissemination of information to the public concerning its activities;

(10) Require the submission of such plans, specifications, technical reports, and other information as deemed necessary to carry out this part or to carry out the rules and regulations adopted pursuant to this part;

(11) Be the administrative agent for the board and panel to carry out this part;

(12) Make an annual report to the governor and the general assembly on the status of water quality, including a description of the plan, regulations in effect, and other pertinent information, together with any recommendations the commissioner may care to make;

(13) Delegate to the director of the division with responsibility for water quality control any of the powers, duties, and responsibilities of the commissioner under this part, except the commissioner's powers, duties and responsibility as chair of the board;

(14) Issue permits and variances pursuant to *§ 69-3-108*;

(15) Inspect waters of the state where good cause is shown that the public health is threatened by pollutants in the waters, and, upon verification by the commissioner, post or cause to be posted such signs as required to give notice to the public of the potential or actual dangers of specific uses of such waters or restrictions of uses of such waters;

(16) Assess civil penalties in accordance with *§ 69-3-115*;

(17) Apply this part against any person who discharges into a publicly owned treatment works who is causing a violation of this part, or who is in violation of applicable pretreatment standards;

(18) Impose such restrictions, including an immediate cessation of connections and line extensions, upon the expansion of any sewerage or wastewater system as are necessary to mitigate or prevent violations of this part;

(19) Prepare a written report on stream bank erosion in Tennessee to be delivered to each member of the general assembly by January 15, 2000. Such report shall contain the following:

- **(A)** An examination of the causes of stream bank erosion;
- **(B)** The effectiveness of existing and new methods of bank protection;
- **(C)** An assessment of stream bank erosion in Tennessee; and
- **(D)** Any other matter the commissioner deems relevant to stream bank erosion that may be of concern to the general assembly;

(20) Conduct, or cause to be conducted, demonstration projects, to the extent of available funds, of methods of bank stabilization and debris removal in streams in western Middle Tennessee to be done as soon as is practicable and a report shall be made to the general assembly after the performance of the chosen techniques has been observed through at least a full year;

(21) Conduct, or cause to be conducted, a study or project comparing different techniques for stream bank stabilization and debris removal in streams in western Middle Tennessee to be done as soon as possible, either in conjunction with the project mentioned in subdivision (20), or separately;

(22) Develop a program of public education regarding simple, practical and affordable techniques for cleaning debris from streams and for stabilizing stream banks, including field examples of activities permissible without permits and activities that may be accomplished if permits are obtained;

(23) Produce a video by not later than January 1, 1999, that shows the above examples, explains the requirements of the law and rules for these activities, including the process of applying for a permit, and tells who to call for further assistance, which shall be distributed at no cost to public libraries and agricultural extension services;

(24) Perform a thorough and ongoing study of, and prepare recommendations regarding options for, the protection of watersheds and the control of sources of pollution, in order to assure the future quality of potable drinking water supplies throughout the state. The department is authorized to use information and studies from state, federal, and local governments and other sources of reliable scientific data. Initial findings and recommendations shall be presented to the governor and the general assembly no later than February 1, 2007, and annually thereafter; and

(25) Develop and submit to the board for comment proposed guidance that provides:

(A) Instructions, examples and definitions based upon scientifically based principles for consistently and accurately making hydrologic determinations; and

(B) Minimum qualifications for staff who are responsible for making or reviewing wet weather conveyance determinations.

History

Acts 1971, ch. 164, § 6; 1977, ch. 366, § 1; 1979, ch. 422, § 19; 1982, ch. 917, § 1; T.C.A., § 70-329; Acts 1984, ch. 804, § 5; 1988, ch. 688, §§ 5, 9; *1998, ch. 659, §§ 1*, 2; *2006, ch. 513, § 1*; *2009, ch. 464, § 4*.

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Tenn. Code Ann. § 69-3-108

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69-3-108. Permits. [Effective until October 1, 2024. See the version effective on October 1, 2024.]

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (*l*), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

(3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

(7)

(A) The construction, installation, or operation of a liquid waste management system supporting an animal feeding operation that stables or confines as many as, or more than, the numbers of animals specified by federal law defining a large concentrated animal feeding operation;

(B) A state operating permit issued pursuant to this subdivision (b)(7) shall be enforceable only in regards to submission and maintenance of a current approved nutrient management plan;

(C) Animal feeding operations that are not required under this subdivision (b)(7) to have a permit may apply for and be issued a state operating permit. An animal feeding operation issued a state operating permit pursuant to this subdivision (b)(7) is required to conduct such operations in accordance with the permit;

(8) The discharge of sewage, industrial wastes, or other wastes into a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids and other substances that do or may affect the waters of the state;

(9) The diversion of water through a flume for the purpose of generation of electric power by a utility; or

(10)

(A) Animal feeding operations that are required under the federal Clean Water Act (*33 U.S.C. § 1251 et seq.*), to have a permit for concentrated animal feeding operations. Such operations must be conducted in accordance with the conditions of a valid national pollutant discharge elimination system (NPDES) permit;

(B) Animal feeding operations that are not required under the federal Clean Water Act to have a permit for concentrated animal feeding operations may apply for and, if eligible under federal law, be issued a NPDES permit. An animal feeding operation issued a NPDES permit pursuant to this subdivision (b)(10)(B) is required to conduct such operations in accordance with the permit.

(c) Any person operating or planning to operate a sewerage system shall file an application with the commissioner for a permit or, when necessary, for modification of such person's existing permit. Unless a person holds a valid permit, it is unlawful to operate a sewerage system.

(d) Nothing in this section shall be construed to require any person discharging into a septic tank connected only to a subsurface drainfield, or any person constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, except in a county having a population of not less than sixty thousand two hundred fifty (60,250) nor more than sixty thousand three hundred fifty (60,350), according to the 1970 federal census or any subsequent federal census, as defined and regulated by *§§ 68-211-101* — *68-211-115*, to secure a permit; provided, that the exemption provided in this subsection (d) shall not exempt such person from any other provision of this part; and provided further, that any such person who is exempt from obtaining a permit for constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, shall not thereafter be required to obtain such permit.

(e) Applicants for permits that would authorize a new or expanded wastewater discharge into surface waters shall include in the application consideration of alternatives, including, but not limited to, land application and beneficial reuse of the wastewater.

(f) With regard to permits for activities related to the surface mining of coal:

(1) No permit shall be issued that would allow removal of coal from the earth from its original location by surface mining methods or surface access points to underground mining within one hundred feet (100′) of the ordinary high water mark of any stream or allow overburden or waste materials from removal of coal from the earth by surface mining of coal to be disposed of within one hundred feet (100′) of the ordinary high water mark of a stream; provided, however, that a permit may be issued or renewed for stream crossings, including, but not limited to, rail crossings, utilities crossings, pipeline crossings, minor road crossings, for operations to improve the quality of stream segments previously disturbed by mining and for activities related to and incidental to the removal of coal from its original location, such as transportation, storage, coal preparation and processing, loading and shipping operations within one hundred feet (100′) of the ordinary high water mark of a stream if necessary due to site specific conditions that do not cause the loss of stream function and do not cause a discharge of pollutants in violation of water quality criteria. Nothing in this subdivision (f)(1) shall apply to placement of material from coal preparation and processing plants;

(2) Without limiting the applicability of this section, if the commissioner determines that surface coal mining at a particular site will violate water quality standards because acid mine drainage from the site

will not be amenable to treatment with proven technology both during the permit period or subsequent to completion of mining activities, the permit shall be denied.

(g)

(1) The commissioner may grant permits authorizing the discharges or activities described in subsection (b), including, but not limited to, land application of wastewater, but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board.

(2) Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others.

(3) If a permit is required under this part for a public transportation project commissioned by a federal, state, or local government, the alternatives analysis required by *Tenn. Comp. R & Regs. 0400-40-07-.04(5)* does not need to include alternative road locations but must include other measures to avoid and minimize impacts to resource values.

(4) In addition, the permits shall include:

(A) The most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards, necessary to comply with an area-wide waste treatment plan, or necessary to comply with other state or federal laws or regulations;

(B) A definite term, not to exceed five (5) years, for which the permit is valid. This term is subject to provisions for modification, revocation, or suspension of the permit;

(C) Monitoring, recording, reporting, and inspection requirements;

(D) In the case of permits authorizing discharges from publicly owned treatment works, terms and conditions requiring the permittee to enforce user and cost recovery charges, pretreatment standards, and toxic effluent limitations applicable to industrial users discharging into the treatment works; and

(E) In the case of permits authorizing permanent impacts to waters of the state, provision for adequate compensatory mitigation to not result in a condition of pollution, by mitigation banking, permittee-responsible mitigation, or in-lieu fee payments as approved by the department:

(i) No sponsor of an in-lieu fee instrument may accept in-lieu fee payments for a project in this state unless the sponsor's in-lieu fee instrument requires the sponsor, as to both new and previously sold in-lieu fee credits, to agree that the department may bring an enforcement action pursuant to subdivision (g)(4)(E)(ii) if the sponsor fails to complete land acquisition and initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer for the United States army corps of engineers determines that more or less time is needed to plan and implement an in-lieu fee project;

(ii) If an in-lieu fee sponsor fails to complete land acquisition and initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer for the United States army corps of engineers determines that more or less time is needed to plan and implement an in-lieu fee project, and the sponsor's instrument complies with subdivision (g)(4)(E)(i), then the department may bring an enforcement action in the chancery court of Davidson County to require the in-lieu fee sponsor to solicit proposals to procure appropriate mitigation credits from qualified third parties to provide for equivalent compensatory mitigation;

(iii) For purposes of this subdivision (g)(4)(E), "equivalent compensatory mitigation" means mitigation equivalent, to the extent practicable as determined by the department, to the amount and nature of mitigation purchased by the original in-lieu fee payment; and

(iv) Proposals received by the in-lieu fee sponsor pursuant to an action brought by the department pursuant to subdivision (g)(4)(E)(ii) must be submitted for approval by the in-lieu fee sponsor to the department. To the extent permitted by federal law, upon approval by the department and the purchase of such mitigation credits by the in-lieu fee sponsor, the in-lieu fee sponsor is considered to have performed the original required mitigation.

(5) Underground injection activities authorized by rule are not subject to a definite term.

(h) The commissioner may revoke, suspend, or modify any permit for cause, including:

(1) Violation of any terms or conditions of the permit or of any provision of this part;

(2) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts; or

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(i) No permit under subsection (g) or (h) for the construction of any new outlet or for construction activities involved in the development of natural resources, for the construction of a new waste treatment system or for the modification or extension of an existing waste treatment system shall be issued by the commissioner until the plans have first been submitted to and approved by the commissioner. No such approval shall be construed as creating a presumption of correct operation nor as warranting by the commissioner that the approved facilities will reach the designated goals. If an environmental impact statement is required for any permit, the commissioner may require the applicant to pay for its preparation. Any such impact statement must also include and address economic and social impact.

(j) Any permit procedure or other action required by or undertaken in accordance with this section or part shall be conducted in accordance with title 13, chapter 18, when the permit or action involves a major energy project, as defined in *§ 13-18-102*.

(k) Nothing in this section shall be construed to limit or circumscribe the authority of the commissioner to issue emergency orders as specified in *§ 69-3-109*.

(l) Where the commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the commissioner may issue such a permit. Any person conducting activities in the category covered by a general permit shall not be required to file individual applications for permits except as provided in specific requirements of the general permit. Any person conducting activities covered under a general permit may be required by the commissioner to file an application for any individual permit. Upon the issuance of an individual permit to a person with a general permit, the applicability of the general permit to that permitted activity or discharge shall be terminated. Any person who holds an individual permit for an activity or discharge covered under a general permit may request that the individual permit be revoked. Upon such revocation, the activity or discharge shall become subject to the general permit.

(m) Notwithstanding subsection (g), upon application by a person who discharges into groundwaters of the state and who is subject to a permit issued pursuant to the Hazardous Waste Management Act, compiled in title 68, chapter 212, the commissioner may issue variances from the applicable water quality standards, criteria, or classification for groundwater; provided, that:

(1) The waters to which the variance applies are not used as a current source of drinking water and such use is not reasonably anticipated for the term of the variance and a reasonable time thereafter;

(2) The applicant demonstrates that such discharges will not pose a substantial present or potential hazard to human health or the environment as defined in *Tenn. Comp. R. & Reg. 1200-01-11-.06(6)(e)(2)* (reserved) in effect on April 1, 1988, and will not impair any actual, current uses other than those affected by the variance;

(3) Variances will be effective for a specific term, not to exceed the effective term of the permit;

(4) The variance is consistent with the Federal Water Pollution Control Act (*33 U.S.C. § 1251 et seq.*), and the federal Safe Drinking Water Act (*42 U.S.C. § 300f et seq.*); and

(5) The variance provided for under this subsection (m) shall be applied for and issued in accordance with procedures regarding the issuance of permits as required by regulations issued under this chapter.

(n)

(1) A chief administrative officer of a county highway department does not violate this chapter by repairing or causing the repair of up to four hundred feet (400′) of highway or road in an emergency situation, if immediate repairs are necessary to protect human safety and welfare, and if such repairs comply with rules and regulations promulgated by the board that regulate the manner in which the repairs are made. Such officer need not obtain a permit prior to making such repairs under such circumstances.

(2) As soon as practicable, the chief administrative officer of a county highway department shall notify the commissioner by telephone that an emergency has arisen and that such chief administrative officer intends to make repairs in response to such emergency. The giving of such notice shall not be construed to authorize the commissioner to terminate such repairs.

(3) Within ten (10) days of the completion of any highway or road repair made pursuant to this subsection (n), the chief administrative officer of the county highway department ordering such repair shall notify the commissioner, in writing, of the action taken and the nature of the emergency necessitating such immediate repair.

(o) The following activities do not require a permit under this section:

(1) The removal of downed trees by dragging or winching and without grading or reshaping of the stream channel;

(2) The placement of downed trees on stream banks for erosion protection; and

(3) The planting of vegetation on stream banks.

(p) Unless the applicant agrees otherwise, when an individual landowner applies for a permit for debris removal or stream bank stabilization activities, the commissioner shall either issue or deny the permit or take action scheduling a public hearing on the application within sixty (60) days of receipt of a complete application; provided further, however, that the staff of the division will communicate orally or in writing to the applicant within fifteen (15) days of receipt of any such application.

(q)

(1) The alteration of a wet weather conveyance, as defined in *§ 69-3-103*, by any activity is permitted by this subsection (q) and shall require no notice or approval; provided, that it is done in accordance with all of the following conditions:

(A) The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;

(B) Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area;

(C)

(i) Sediment shall be prevented from entering other waters of the state;

(ii) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices;

(iii) Erosion and sediment control measures shall be in place and functional before earth moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day;

(iv) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size, depending on the application. Clean rock shall not contain fines, soils or other wastes or contaminants; and

(D) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills shall be reported to the appropriate emergency management agency and to the division. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including groundwater.

(2) There shall be no additional conditions upon a person's activity within a wet weather conveyance. This subdivision (q)(2) does not apply to national pollutant discharge elimination system (NPDES) permits.

(r) A person desiring to alter a specific water of the state may request a determination from the commissioner that it is a wet weather conveyance and submit a report from a qualified hydrologic professional in support of the request. If the report contains all information that is required in rules promulgated by the board, and in accordance with department procedures and guidance, and is certified by a qualified hydrologic professional to be true, accurate and complete and, if submitted after promulgation of the rules required by *§ 69-3-105(m)*, contains all information that is required in those rules, then the determination made in the report shall be presumed to be correct, unless the commissioner notifies the person, in writing, within thirty (30) days of submittal of the report, that the commissioner has affirmatively determined that there is a significant question about whether the water of the state in question is a stream or a wet weather conveyance and states the reasons for that determination. In that event, the commissioner must, within thirty (30) days following the initial notification, determine whether the water of the state in question is a stream or a wet weather conveyance and notify the person in writing of that decision and the reasons for that determination. A person may appeal a determination by the commissioner that the specific water is a stream by filing a petition for appeal with the board within thirty (30) days of receiving the commissioner's decision. For purposes of this subsection (r), a qualified hydrologic professional is a person holding a bachelor's degree in biology, geology, ecology, engineering or related sciences, having at least five (5) years of relevant experience in making hydrologic determinations and who has been certified as a hydrologic professional pursuant to rules promulgated by the board.

(s) Any NPDES permit issued pursuant to this section to a local governmental entity administering a municipal separate storm sewer system shall not impose post-construction storm water requirements, except to the extent necessary to comply with the minimum requirements of federal law. Any such NPDES permit that includes numeric or narrative effluent limitations to manage post-construction storm water shall allow the local governmental entity administering a municipal separate storm sewer system discretion in selecting measures to meet any such effluent limitations. These numeric or narrative effluent limitations to manage post-construction stormwater shall be adopted by the board as rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(t) This state shall not require any local governmental entity that administers a municipal separate storm sewer system under a NPDES permit issued pursuant to this section to impose control measures for post-construction storm water that exceed the minimum requirements of federal law. Any local governmental entity that adopts control measures that exceed the minimum requirements of federal law must do so by ordinance or resolution, as appropriate, by the local legislative body upon a majority vote. This subsection (t) shall not apply to any ordinance or resolution in effect on April 23, 2016, but shall not preclude a local governmental entity that administers a municipal separate storm sewer system from making changes consistent with subsection (s) and this subsection (t). When a local governmental entity seeks coverage

under any future version of the NPDES permit after April 23, 2016, such ordinance or resolution shall comply with subsection (s) and this subsection (t). The local government entity shall provide in writing the control measures that exceed federal minimum requirements to the local legislative body at least thirty (30) days in advance of a vote in order to provide for a public comment period.

(u)

(1) Notwithstanding any other law, a person who has contracted for the right to store water in a reservoir owned by the U.S. Army Corps of Engineers shall have exclusive rights to any return flows generated directly or indirectly to that reservoir by the person. The rights conferred by this subsection (u) shall be subject to any regulatory requirements imposed by the commissioner and to the availability to the person of unused storage capacity within the reservoir to store such return flows.

(2) As used in this subsection (u), “return flow” means water that is discharged directly or indirectly to a reservoir from a water reclamation facility.

(v)

(1) Compliance with a NPDES permit issued under this section shall be deemed compliance for purposes of *§§ 69-3-109*; 69-3-114(a); 69-3-114(b) with respect to this part or any rule, regulation, or standard of water quality promulgated by the board; 69-3-115; 69-3-116; 69-3-117; and 69-3-118(a), except for any standard imposed under Section 307 of the Federal Water Pollution Control Act for a toxic pollutant injurious to human health.

(2) Compliance includes the discharge of pollutants for which no standard or limit is set forth in the permit if:

(A) The permit holder complies with applicable reporting and disclosure requirements under this part; and

(B) The discharge of pollutants is disclosed to the department in such a manner that the discharge is within the reasonable contemplation of the department at the time of issuance of the final permit.

(w) Watershed activities conducted in accordance with a site-specific design developed through full application of the Natural Resource Conservation Service (NRCS) Conservation Practice Standard 580 (Tennessee) and NRCS Engineering Field Handbook, Chapter 16 Streambank and Shoreline Protection, and subject to NRCS oversight as a federal action, do not result in pollution and do not require compensatory mitigation. Such watershed activities shall be regulated under a general permit for aquatic alterations pursuant to subsection (*l*). The commissioner shall draft an initial general permit authorizing such watershed activities, conduct public notice in accordance with the board's rules, and issue the initial general permit no later than December 31, 2020. Thereafter, the commissioner shall ensure timely renewal of the general permit.

(x)

(1) The department may issue an aquatic resource alteration permit to a person in connection with the removal of sand, gravel, and similar sediments or deposits from streams or wetlands.

(2) A person who is issued a permit under this section associated with the commercial recovery of sand, gravel, and similar sediments or deposits, from a stream or wetland that is the property of this state is deemed to have received ownership of these materials from this state upon removal by the permittee from the stream or wetland and payment to this state as provided in subdivision (x)(3), notwithstanding the provisions of title 12 or another law to the contrary.

(3) If the permittee removes sand, gravel, or similar sediments from property of this state, it shall compensate the state for two and one-half percent (2.5%) of the market value of the finished product.

(4) The department shall not grant a permit associated with the removal of sand, gravel, or similar sediments from streams or wetlands located on private property unless the permit applicant owns the property, owns the mineral estate, or has received written consent from the private property owner, and has submitted documentation of such ownership or consent to the department.

(y) The department shall not charge a permit application fee to a local government entity for a general aquatic resource alteration permit for emergency infrastructure repair, or a general aquatic resource alteration permit for maintenance activities, necessary to replace or otherwise maintain a culvert.

History

Acts 1971, ch. 164, § 7; 1971, ch. 386, § 2; 1973, ch. 105, § 1; 1977, ch. 366, § 1; 1980, ch. 647, §§ 1, 2; 1981, ch. 131, § 43; T.C.A., § 70-330; Acts 1983, ch. 38, § 1; 1984, ch. 804, § 6; 1988, ch. 688, §§ 3, 7; *1989, ch. 114, § 1*; *1993, ch. 155, § 1*; *1998, ch. 659, § 4*; *1998, ch. 735, § 2*; *2004, ch. 519, § 1*; *2009, ch. 271, § 1*; *2009, ch. 289, § 2*; *2009, ch. 330, § 1*; *2009, ch. 464, §§ 2*, 5; *2016, ch. 1007, § 1*; *2017, ch. 220, § 1*; *2017, ch. 293, § 2*; *2018, ch. 496, § 1*; *2018, ch. 523, §§ 2*, 3; *2018, ch. 845, § 1*; *2019, ch. 110, § 1*; *2020, ch. 589, § 1*; *2021, ch. 208, § 1*; *2023, ch. 85, § 1*; *2023, ch. 342, § 1*; *2024, ch. 930, § 1*.

Annotations

Notes

Compiler's Notes.

Tenn. Comp. R. & Reg. 1200-01-11-.06(6)(e)(2), referred to in this section, is reserved.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2009, ch. 289, § 1 provided that the act, which added subsection (f), shall be known and may be cited as “The Responsible Mining Act of 2009.”

Acts 2018, ch. 496, § 2 provided that no NPDES permit regulating a local government entity's municipal separate storm sewer system shall be issued pursuant to this section, until after the rules required by subsection (s) take effect.

Acts 2018, ch. 523, § 3, which amended *Acts 2017, ch. 293, §§ 3-5*, changed the effective date in ch. 293 from March 1, 2018 to July 1, 2018. This amendment results in the amendment to this section by *Acts 2018, ch. 523* taking effect on July 1, 2018.

Amendments.

The 2019 amendment, in (g), redesignated the former first sentence as (1), redesignated the former second sentence as (2), added (3), redesignated the former introductory language at the end and former (1)-(4) as the present introductory language of (4) and (4)(A)-(D) respectively; and substituted “This term is subject to” for “This term shall be subject to” at the beginning of the last sentence of present (4)(B).

The 2020 amendment added (w).

The 2021 amendment added (g)(4)(E).

The 2023 amendment by ch. 85 added (g)(5).

The 2023 amendment by ch. 342 added (x).

The 2024 amendment by ch. 930 added (y).

Effective Dates.

Acts 2019, ch. 110, § 2. April 11, 2019.

Acts 2020, ch. 589, § 2. March 20, 2020.

Acts 2021, ch. 208, § 3. April 22, 2021.

Acts 2023, ch. 85, § 2. March 31, 2023.

Acts 2023, ch. 342, § 2. May 5, 2023.

Acts 2024 ch. 930, § 2. July 1, 2024.

Case Notes

1. Applicability to Federal Agency.
2. Penalties.
3. Consent Order.

NOTES TO DECISIONS

1. Applicability to Federal Agency.

State could not subject a federal agency, here the TVA, to the requirements of its discharge permit program where the pollution complained of does not result from the discharge of pollutants from a point source; here the dam, a nonpoint source, did not impound the water but only diverted it to a hydroelectric plant. *United States ex rel. TVA v. Tennessee Water Quality Control Bd., 717 F.2d 992, 1983 U.S. App. LEXIS 16606 (6th Cir. 1983)*, cert. denied, *Tennessee Water Quality Control Bd. v. Tennessee Valley Authority, 466 U.S. 937, 104 S. Ct. 1909, 80 L. Ed. 2d 458, 1984 U.S. LEXIS 1812 (1984)*.

2. Penalties.

Tennessee Solid Waste Disposal Control Board did not abuse its discretion in adopting an order that assessed penalties against a limited liability company (LLC) with remediation efforts in mind because the State's focus on preserving the LLC's resources for remediation of the site was a reasonable one; the Board was not without justification when it made the civil penalties provided for in the consent order contingent upon the LLC's failure to comply with the ordered remediation activities. *Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015)*, rev'd, *Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. 2016)*.

3. Consent Order.

Approval by the Tennessee Solid Waste Disposal Control Board of an amended consent order detailing necessary actions to be taken by a landfill permit holder to address the pollution issues of a creek and a lake was appropriate because the Board had the authority to approve the plan in the order to reduce the contamination stemming from a permit holder's landfill by diverting storm water away from the site and subsequently removing the waste from the landfill without the requirement of a National Pollutant Discharge Elimination System permit. *Starlink Logistics, Inc. v. ACC, LCC, — S.W.3d —, 2018 Tenn. App. LEXIS 57 (Tenn. Ct. App. Jan. 31, 2018)*, appeal denied, *Starlink Logistics Inc. v. ACC, LLC, — S.W.3d —, 2018 Tenn. LEXIS 311 (Tenn. June 7, 2018)*, cert. denied, *StarLink Logistics, Inc. v. ACC, LLC, 206 L. Ed. 2d 917, 140 S. Ct. 2738, — U.S. —, 2020 U.S. LEXIS 2593 (U.S. May 4, 2020)*.

Opinion Notes

Attorney General Opinions.

County zoning authority to regulate concentrated animal feeding operations, OAG 99-071, *1999 Tenn. AG LEXIS 71 (3/22/99)*.

Research References & Practice Aids

Cross-References.

Penalties for violations of title 69, ch. 3, part 1, *§ 69-3-115*.

Law Reviews.

Tennessee Water Law, You Never Miss the Water Till the Well Runs Dry (Vincent A. Sikora), 24 No. 5 Tenn. B.J. 12 (1988).

TENNESSEE CODE ANNOTATED
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End of Document

Tenn. Code Ann. § 69-3-108

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-108. Permits. [Effective on October 1, 2024. See the version effective until October 1, 2024.]

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (*l*), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

(2) The construction, installation, modification, or operation of any treatment works, or part thereof, or any extension or addition thereto;

(3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;

(6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

(7)

(A) The construction, installation, or operation of a liquid waste management system supporting an animal feeding operation that stables or confines as many as, or more than, the numbers of animals specified by federal law defining a large concentrated animal feeding operation;

(B) A state operating permit issued pursuant to this subdivision (b)(7) shall be enforceable only in regards to submission and maintenance of a current approved nutrient management plan;

(C) Animal feeding operations that are not required under this subdivision (b)(7) to have a permit may apply for and be issued a state operating permit. An animal feeding operation issued a state operating permit pursuant to this subdivision (b)(7) is required to conduct such operations in accordance with the permit;

(8) The discharge of sewage, industrial wastes, or other wastes into a well or a location where it is likely that the discharged substance will move into a well, or the underground placement of fluids and other substances that do or may affect the waters of the state;

(9) The diversion of water through a flume for the purpose of generation of electric power by a utility; or

(10)

(A) Animal feeding operations that are required under the federal Clean Water Act (*33 U.S.C. § 1251 et seq.*), to have a permit for concentrated animal feeding operations. Such operations must be conducted in accordance with the conditions of a valid national pollutant discharge elimination system (NPDES) permit;

(B) Animal feeding operations that are not required under the federal Clean Water Act to have a permit for concentrated animal feeding operations may apply for and, if eligible under federal law, be issued a NPDES permit. An animal feeding operation issued a NPDES permit pursuant to this subdivision (b)(10)(B) is required to conduct such operations in accordance with the permit.

(c) Any person operating or planning to operate a sewerage system shall file an application with the commissioner for a permit or, when necessary, for modification of such person's existing permit. Unless a person holds a valid permit, it is unlawful to operate a sewerage system.

(d) Nothing in this section shall be construed to require any person discharging into a septic tank connected only to a subsurface drainfield, or any person constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, except in a county having a population of not less than sixty thousand two hundred fifty (60,250) nor more than sixty thousand three hundred fifty (60,350), according to the 1970 federal census or any subsequent federal census, as defined and regulated by *§§ 68-211-101* — *68-211-115*, to secure a permit; provided, that the exemption provided in this subsection (d) shall not exempt such person from any other provision of this part; and provided further, that any such person who is exempt from obtaining a permit for constructing or operating a sanitary landfill between March 25, 1980, and March 24, 1982, shall not thereafter be required to obtain such permit.

(e) Applicants for permits that would authorize a new or expanded wastewater discharge into surface waters shall include in the application consideration of alternatives, including, but not limited to, land application and beneficial reuse of the wastewater.

(f) With regard to permits for activities related to the surface mining of coal:

(1) No permit shall be issued that would allow removal of coal from the earth from its original location by surface mining methods or surface access points to underground mining within one hundred feet (100′) of the ordinary high water mark of any stream or allow overburden or waste materials from removal of coal from the earth by surface mining of coal to be disposed of within one hundred feet (100′) of the ordinary high water mark of a stream; provided, however, that a permit may be issued or renewed for stream crossings, including, but not limited to, rail crossings, utilities crossings, pipeline crossings, minor road crossings, for operations to improve the quality of stream segments previously disturbed by mining and for activities related to and incidental to the removal of coal from its original location, such as transportation, storage, coal preparation and processing, loading and shipping operations within one hundred feet (100′) of the ordinary high water mark of a stream if necessary due to site specific conditions that do not cause the loss of stream function and do not cause a discharge of pollutants in violation of water quality criteria. Nothing in this subdivision (f)(1) shall apply to placement of material from coal preparation and processing plants;

(2) Without limiting the applicability of this section, if the commissioner determines that surface coal mining at a particular site will violate water quality standards because acid mine drainage from the site

will not be amenable to treatment with proven technology both during the permit period or subsequent to completion of mining activities, the permit shall be denied.

(g)

(1) The commissioner may grant permits authorizing the discharges or activities described in subsection (b), including, but not limited to, land application of wastewater, but in granting such permits shall impose such conditions, including effluent standards and conditions and terms of periodic review, as are necessary to accomplish the purposes of this part, and as are not inconsistent with the regulations promulgated by the board.

(2) Under no circumstances shall the commissioner issue a permit for an activity that would cause a condition of pollution either by itself or in combination with others.

(3) If a permit is required under this part for a public transportation project commissioned by a federal, state, or local government, the alternatives analysis required by *Tenn. Comp. R & Regs. 0400-40-07-.04(5)* does not need to include alternative road locations but must include other measures to avoid and minimize impacts to resource values.

(4) In addition, the permits shall include:

(A) The most stringent effluent limitations and schedules of compliance, either promulgated by the board, required to implement any applicable water quality standards, necessary to comply with an area-wide waste treatment plan, or necessary to comply with other state or federal laws or regulations;

(B) A definite term, not to exceed five (5) years, for which the permit is valid. This term is subject to provisions for modification, revocation, or suspension of the permit;

(C) Monitoring, recording, reporting, and inspection requirements;

(D) In the case of permits authorizing discharges from publicly owned treatment works, terms and conditions requiring the permittee to enforce user and cost recovery charges, pretreatment standards, and toxic effluent limitations applicable to industrial users discharging into the treatment works; and

(E) In the case of permits authorizing permanent impacts to waters of the state, provision for adequate compensatory mitigation to not result in a condition of pollution, by mitigation banking, permittee-responsible mitigation, or in-lieu fee payments as approved by the department:

(i) No sponsor of an in-lieu fee instrument may accept in-lieu fee payments for a project in this state unless the sponsor's in-lieu fee instrument requires the sponsor, as to both new and previously sold in-lieu fee credits, to agree that the department may bring an enforcement action pursuant to subdivision (g)(4)(E)(ii) if the sponsor fails to complete land acquisition and initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer for the United States army corps of engineers determines that more or less time is needed to plan and implement an in-lieu fee project;

(ii) If an in-lieu fee sponsor fails to complete land acquisition and initial physical and biological improvements by the third full growing season after the first advance credit in that service area is secured by a permittee, unless the district engineer for the United States army corps of engineers determines that more or less time is needed to plan and implement an in-lieu fee project, and the sponsor's instrument complies with subdivision (g)(4)(E)(i), then the department may bring an enforcement action in the chancery court of Davidson County to require the in-lieu fee sponsor to solicit proposals to procure appropriate mitigation credits from qualified third parties to provide for equivalent compensatory mitigation;

(iii) For purposes of this subdivision (g)(4)(E), "equivalent compensatory mitigation" means mitigation equivalent, to the extent practicable as determined by the department, to the amount and nature of mitigation purchased by the original in-lieu fee payment; and

(iv) Proposals received by the in-lieu fee sponsor pursuant to an action brought by the department pursuant to subdivision (g)(4)(E)(ii) must be submitted for approval by the in-lieu fee sponsor to the department. To the extent permitted by federal law, upon approval by the department and the purchase of such mitigation credits by the in-lieu fee sponsor, the in-lieu fee sponsor is considered to have performed the original required mitigation.

(5) Underground injection activities authorized by rule are not subject to a definite term.

(h) The commissioner may revoke, suspend, or modify any permit for cause, including:

(1) Violation of any terms or conditions of the permit or of any provision of this part;

(2) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts; or

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(i) No permit under subsection (g) or (h) for the construction of any new outlet or for construction activities involved in the development of natural resources, for the construction of a new waste treatment system or for the modification or extension of an existing waste treatment system shall be issued by the commissioner until the plans have first been submitted to and approved by the commissioner. No such approval shall be construed as creating a presumption of correct operation nor as warranting by the commissioner that the approved facilities will reach the designated goals. If an environmental impact statement is required for any permit, the commissioner may require the applicant to pay for its preparation. Any such impact statement must also include and address economic and social impact.

(j) Any permit procedure or other action required by or undertaken in accordance with this section or part shall be conducted in accordance with title 13, chapter 18, when the permit or action involves a major energy project, as defined in *§ 13-18-102*.

(k) Nothing in this section shall be construed to limit or circumscribe the authority of the commissioner to issue emergency orders as specified in *§ 69-3-109*.

(l) Where the commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the commissioner may issue such a permit. Any person conducting activities in the category covered by a general permit shall not be required to file individual applications for permits except as provided in specific requirements of the general permit. Any person conducting activities covered under a general permit may be required by the commissioner to file an application for any individual permit. Upon the issuance of an individual permit to a person with a general permit, the applicability of the general permit to that permitted activity or discharge shall be terminated. Any person who holds an individual permit for an activity or discharge covered under a general permit may request that the individual permit be revoked. Upon such revocation, the activity or discharge shall become subject to the general permit.

(m) Notwithstanding subsection (g), upon application by a person who discharges into groundwaters of the state and who is subject to a permit issued pursuant to the Hazardous Waste Management Act, compiled in title 68, chapter 212, the commissioner may issue variances from the applicable water quality standards, criteria, or classification for groundwater; provided, that:

(1) The waters to which the variance applies are not used as a current source of drinking water and such use is not reasonably anticipated for the term of the variance and a reasonable time thereafter;

(2) The applicant demonstrates that such discharges will not pose a substantial present or potential hazard to human health or the environment as defined in *Tenn. Comp. R. & Reg. 1200-01-11-.06(6)(e)(2)* (reserved) in effect on April 1, 1988, and will not impair any actual, current uses other than those affected by the variance;

(3) Variances will be effective for a specific term, not to exceed the effective term of the permit;

(4) The variance is consistent with the Federal Water Pollution Control Act (*33 U.S.C. § 1251 et seq.*), and the federal Safe Drinking Water Act (*42 U.S.C. § 300f et seq.*); and

(5) The variance provided for under this subsection (m) shall be applied for and issued in accordance with procedures regarding the issuance of permits as required by regulations issued under this chapter.

(n)

(1) A chief administrative officer of a county highway department does not violate this chapter by repairing or causing the repair of up to four hundred feet (400′) of highway or road in an emergency situation, if immediate repairs are necessary to protect human safety and welfare, and if such repairs comply with rules and regulations promulgated by the board that regulate the manner in which the repairs are made. Such officer need not obtain a permit prior to making such repairs under such circumstances.

(2) As soon as practicable, the chief administrative officer of a county highway department shall notify the commissioner by telephone that an emergency has arisen and that such chief administrative officer intends to make repairs in response to such emergency. The giving of such notice shall not be construed to authorize the commissioner to terminate such repairs.

(3) Within ten (10) days of the completion of any highway or road repair made pursuant to this subsection (n), the chief administrative officer of the county highway department ordering such repair shall notify the commissioner, in writing, of the action taken and the nature of the emergency necessitating such immediate repair.

(o) The following activities do not require a permit under this section:

(1) The removal of downed trees by dragging or winching and without grading or reshaping of the stream channel;

(2) The placement of downed trees on stream banks for erosion protection; and

(3) The planting of vegetation on stream banks.

(p) Unless the applicant agrees otherwise, when an individual landowner applies for a permit for debris removal or stream bank stabilization activities, the commissioner shall either issue or deny the permit or take action scheduling a public hearing on the application within sixty (60) days of receipt of a complete application; provided further, however, that the staff of the division will communicate orally or in writing to the applicant within fifteen (15) days of receipt of any such application.

(q)

(1) The alteration of a wet weather conveyance, as defined in *§ 69-3-103*, by any activity is permitted by this subsection (q) and shall require no notice or approval; provided, that it is done in accordance with all of the following conditions:

(A) The activity may not result in the discharge of waste or other substances that may be harmful to humans or wildlife;

(B) Material may not be placed in a location or manner so as to impair surface water flow into or out of any wetland area;

(C)

(i) Sediment shall be prevented from entering other waters of the state;

(ii) Erosion and sediment controls shall be designed according to the size and slope of disturbed or drainage areas to detain runoff and trap sediment and shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices;

(iii) Erosion and sediment control measures shall be in place and functional before earth moving operations begin, and shall be constructed and maintained throughout the construction period. Temporary measures may be removed at the beginning of the work day, but shall be replaced at the end of the work day;

(iv) Checkdams shall be utilized where runoff is concentrated. Clean rock, log, sandbag or straw bale checkdams shall be properly constructed to detain runoff and trap sediment. Checkdams or other erosion control devices are not to be constructed in stream. Clean rock can be of various type and size, depending on the application. Clean rock shall not contain fines, soils or other wastes or contaminants; and

(D) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the state. All spills shall be reported to the appropriate emergency management agency and to the division. In the event of a spill, measures shall be taken immediately to prevent pollution of waters of the state, including groundwater.

(2) There shall be no additional conditions upon a person's activity within a wet weather conveyance. This subdivision (q)(2) does not apply to national pollutant discharge elimination system (NPDES) permits.

(r) A person desiring to alter a specific water of the state may request a determination from the commissioner that it is a wet weather conveyance and submit a report from a qualified hydrologic professional in support of the request. If the report contains all information that is required in rules promulgated by the board, and in accordance with department procedures and guidance, and is certified by a qualified hydrologic professional to be true, accurate and complete and, if submitted after promulgation of the rules required by *§ 69-3-105(m)*, contains all information that is required in those rules, then the determination made in the report shall be presumed to be correct, unless the commissioner notifies the person, in writing, within thirty (30) days of submittal of the report, that the commissioner has affirmatively determined that there is a significant question about whether the water of the state in question is a stream or a wet weather conveyance and states the reasons for that determination. In that event, the commissioner must, within thirty (30) days following the initial notification, determine whether the water of the state in question is a stream or a wet weather conveyance and notify the person in writing of that decision and the reasons for that determination. A person may appeal a determination by the commissioner that the specific water is a stream by filing a petition for appeal with the board within thirty (30) days of receiving the commissioner's decision. For purposes of this subsection (r), a qualified hydrologic professional is a person holding a bachelor's degree in biology, geology, ecology, engineering or related sciences, having at least five (5) years of relevant experience in making hydrologic determinations and who has been certified as a hydrologic professional pursuant to rules promulgated by the board.

(s) Any NPDES permit issued pursuant to this section to a local governmental entity administering a municipal separate storm sewer system shall not impose post-construction storm water requirements, except to the extent necessary to comply with the minimum requirements of federal law. Any such NPDES permit that includes numeric or narrative effluent limitations to manage post-construction storm water shall allow the local governmental entity administering a municipal separate storm sewer system discretion in selecting measures to meet any such effluent limitations. These numeric or narrative effluent limitations to manage post-construction stormwater shall be adopted by the board as rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(t) This state shall not require any local governmental entity that administers a municipal separate storm sewer system under a NPDES permit issued pursuant to this section to impose control measures for post-construction storm water that exceed the minimum requirements of federal law. Any local governmental entity that adopts control measures that exceed the minimum requirements of federal law must do so by ordinance or resolution, as appropriate, by the local legislative body upon a majority vote. This subsection (t) shall not apply to any ordinance or resolution in effect on April 23, 2016, but shall not preclude a local governmental entity that administers a municipal separate storm sewer system from making changes consistent with subsection (s) and this subsection (t). When a local governmental entity seeks coverage

under any future version of the NPDES permit after April 23, 2016, such ordinance or resolution shall comply with subsection (s) and this subsection (t). The local government entity shall provide in writing the control measures that exceed federal minimum requirements to the local legislative body at least thirty (30) days in advance of a vote in order to provide for a public comment period.

(u)

(1) Notwithstanding any other law, a person who has contracted for the right to store water in a reservoir owned by the U.S. Army Corps of Engineers shall have exclusive rights to any return flows generated directly or indirectly to that reservoir by the person. The rights conferred by this subsection (u) shall be subject to any regulatory requirements imposed by the commissioner and to the availability to the person of unused storage capacity within the reservoir to store such return flows.

(2) As used in this subsection (u), “return flow” means water that is discharged directly or indirectly to a reservoir from a water reclamation facility.

(v)

(1) Compliance with a NPDES permit issued under this section shall be deemed compliance for purposes of *§§ 69-3-109*; 69-3-114(a); 69-3-114(b) with respect to this part or any rule, regulation, or standard of water quality promulgated by the board; 69-3-115; 69-3-116; 69-3-117; and 69-3-118(a), except for any standard imposed under Section 307 of the Federal Water Pollution Control Act for a toxic pollutant injurious to human health.

(2) Compliance includes the discharge of pollutants for which no standard or limit is set forth in the permit if:

(A) The permit holder complies with applicable reporting and disclosure requirements under this part; and

(B) The discharge of pollutants is disclosed to the department in such a manner that the discharge is within the reasonable contemplation of the department at the time of issuance of the final permit.

(w) Watershed activities conducted in accordance with a site-specific design developed through full application of the Natural Resource Conservation Service (NRCS) Conservation Practice Standard 580 (Tennessee) and NRCS Engineering Field Handbook, Chapter 16 Streambank and Shoreline Protection, and subject to NRCS oversight as a federal action, do not result in pollution and do not require compensatory mitigation. Such watershed activities shall be regulated under a general permit for aquatic alterations pursuant to subsection (*l*). The commissioner shall draft an initial general permit authorizing such watershed activities, conduct public notice in accordance with the board's rules, and issue the initial general permit no later than December 31, 2020. Thereafter, the commissioner shall ensure timely renewal of the general permit.

(x)

(1) The department may issue an aquatic resource alteration permit to a person in connection with the removal of sand, gravel, and similar sediments or deposits from streams or wetlands.

(2) A person who is issued a permit under this section associated with the commercial recovery of sand, gravel, and similar sediments or deposits, from a stream or wetland that is the property of this state is deemed to have received ownership of these materials from this state upon removal by the permittee from the stream or wetland and payment to this state as provided in subdivision (x)(3), notwithstanding the provisions of title 12 or another law to the contrary.

(3) If the permittee removes sand, gravel, or similar sediments from property of this state, it shall compensate the state for two and one-half percent (2.5%) of the market value of the finished product.

(4) The department shall not grant a permit associated with the removal of sand, gravel, or similar sediments from streams or wetlands located on private property unless the permit applicant owns the property, owns the mineral estate, or has received written consent from the private property owner, and has submitted documentation of such ownership or consent to the department.

(y)

(1) A person may engage a third-party water resources engineer to review engineering reports, plans, and specifications to construct, install, or modify a non-discharging treatment works or sewerage system, including the collection system, treatment facility, and land application components, pursuant to subdivision (b)(2).

(2) After completion of the preliminary project discussion with the department, an applicant may engage a third-party water resources engineer to review the engineering report and preliminary plans. After the department has approved the engineering report and preliminary plans and granted site approval, the applicant may engage a third-party water resources engineer to review the final plans and specifications. Each review must be submitted by the person, or the person's designee, in a form acceptable to the department, and must include:

(A) The appropriate fee, if a fee is required;

(B) As applicable, a copy of the engineering report and preliminary plans, or the final plans and final specifications, each of which must be sealed;

(C) The intended address, parcel number or numbers, and county of the property to be served by the non-discharging treatment works or sewerage system;

(D) The basis of design for the non-discharging treatment works or sewerage system, including, as applicable, any modifications to the approved engineering report and any additional information required by the department;

(E) A sworn statement under penalty of perjury by the third-party water resources engineer, stating the following:

(i) The name and registration number of the third-party water resources engineer;

(ii) The engineer has reviewed the engineering report, plans, or specifications;

(iii) As applicable, there are no remaining deficiencies with the copy of the engineering report and preliminary plans, or the final plans and final specifications; and

(iv) All information is complete and complies with generally-accepted wastewater engineering practices; and

(F) Such other information as the department may reasonably require.

(3) A person may engage a third-party water resources engineer to conduct a final inspection of a non-discharging treatment works or sewerage system when construction has been completed. No later than ten (10) business days after completing the inspection, the person or the third-party water resources engineer who conducted the inspection shall submit the following to the department in a form required by the department:

(A) The appropriate fee, if a fee is required;

(B) A copy of the inspection report prepared by the third-party water resources engineer, including the permit number;

(C) A sworn statement under penalty of perjury by the third-party water resources engineer, stating the following:

(i) The name and registration number of the third-party water resources engineer;

(ii) Whether the non-discharging sewerage system was installed in conformance with approved plans and specifications, or what necessary revisions and alterations were made to comply with the approved plans and specifications;

(iii) There are no remaining deficiencies with the non-discharging treatment works or sewerage system; and

(iv) All information is complete and complies with generally accepted wastewater engineering practices; and

(D) Such other information as the department may reasonably require.

(4) No later than ten (10) business days after receipt of the third-party water resources engineer's construction permit review or inspection report pursuant to this subsection (y), the department shall review the submission and:

(A) Approve the submission;

(B) Reject the submission and submit a report of deficiencies found in the submission to the third-party water resources engineer and applicant; or

(C) Request additional information needed to determine compliance with this part and the rules promulgated pursuant to this part.

(5) If the department approves the construction permit review, then it shall issue conditional construction permit approval at the same time. Construction shall not commence until after issuance of the associated state operating permit. If the public comment period results in a state operating permit that requires changes to the approved construction permit, then the applicant shall submit revised plans and specifications to the department and receive department approval prior to commencing construction.

(6) If the department approves the inspection report, then it shall approve the installed non-discharging treatment works or sewerage system at the same time it approves the inspection report.

(7) If the department submits a report of deficiencies found in the third-party permit review or inspection report, or requests additional information, receipt by the department of a response to that request begins a new ten-business-day period for review.

(8) If the department does not approve, reject, or request additional information concerning the permit review or inspection report within ten (10) business days of receipt, then the department shall refund the entire associated fee but still complete the review.

(9) A third-party water resources engineer shall not conduct a construction permit review or inspection if the third-party water resources engineer has a conflict of interest.

(10) In reviewing a third-party water resources engineer's construction permit review or inspection report filed pursuant to this subsection (y), the department's determination that a conflict of interest exists constitutes grounds for rejection.

(11) The fee charged by the department for a third-party water resources engineer construction permit review or inspection must be the same amount charged by the department to perform the same services.

(12) If the department rejects a third-party water resources engineer's plans review, the applicant may appeal that determination in accordance with *§ 69-3-105(i)*.

(13) This subsection (y) does not apply to plans for animal feeding operations.

(z)

(1) For a general aquatic resource alteration permit to authorize wetland alterations, a person may engage a third-party wetland professional to review an application submitted pursuant to subdivision (b)(1) in lieu of department review. After the applicant has submitted an aquatic resource inventory and the department has concurred with this inventory, a third-party wetland professional may submit a permit application review to the department in a form required by the department. The permit application review must include:

(A) The appropriate fee;

(B) A copy of the completed application package;

(C) A sworn statement under penalty of perjury by the third-party wetland professional, stating the following:

(i) The name and registration number of the third-party wetland professional;

(ii) The application complies with this part and the rules adopted pursuant to this part;

(iii) The proposed activity is eligible for coverage under a specified general permit to authorize impacts on wetlands;

(iv) There are no remaining deficiencies with the application; and

(v) All information in the application is complete; and

(D) Such other information as the department may reasonably require.

(2) No later than ten (10) business days after receipt of the permit application review pursuant to this subsection (z), the department shall review the submission and:

(A) Approve the submission;

(B) Reject the submission and submit a report of deficiencies found in the submission to the third-party wetland professional and applicant; or

(C) Request additional information needed to determine compliance with this part and the rules promulgated pursuant to this part.

(3) If the department approves the permit application review, then it shall issue coverage under the applicable general permit at the same time.

(4) If the department submits a report of deficiencies found in the submission, or requests additional information, receipt by the department of a substantive response to that request begins a new ten-business-day period for review.

(5) If the department fails to approve, reject, or request additional information concerning the permit application review within ten (10) business days of submission, the department shall refund the entire associated fee but still complete the review.

(6) A third-party wetland professional shall not conduct a permit application review if the third-party wetland professional has a conflict of interest.

(7) In reviewing a third-party wetland professional's permit review filed pursuant to this subsection (z), the department's determination that a conflict of interest exists constitutes grounds for rejection.

(8) The fee charged by the department for a third-party wetland professional's permit review must be the same amount charged by the department to perform the same service.

(9) If the department rejects a third-party wetland professional's permit review, the permit applicant may appeal that determination in accordance with *§ 69-3-105(i)*.

(aa) The department shall not charge a permit application fee to a local government entity for a general aquatic resource alteration permit for emergency infrastructure repair, or a general aquatic resource alteration permit for maintenance activities, necessary to replace or otherwise maintain a culvert.

History

Acts 1971, ch. 164, § 7; 1971, ch. 386, § 2; 1973, ch. 105, § 1; 1977, ch. 366, § 1; 1980, ch. 647, §§ 1, 2; 1981, ch. 131, § 43; T.C.A., § 70-330; Acts 1983, ch. 38, § 1; 1984, ch. 804, § 6; 1988, ch. 688, §§ 3, 7; *1989, ch. 114, § 1*; *1993, ch. 155, § 1*; *1998, ch. 659, § 4*; *1998, ch. 735, § 2*; *2004, ch. 519, § 1*; *2009, ch. 271, § 1*; *2009, ch. 289, § 2*; *2009, ch. 330, § 1*; *2009, ch. 464, §§ 2*, 5; *2016, ch. 1007, § 1*; *2017, ch. 220, § 1*; *2017, ch. 293, § 2*; *2018, ch.*

496, § 1; *2018, ch. 523, §§ 2*, 3; *2018, ch. 845, § 1*; *2019, ch. 110, § 1*; *2020, ch. 589, § 1*; *2021, ch. 208, § 1*; *2023, ch. 85, § 1*; *2023, ch. 342, § 1*; *2024, ch. 771, § 8*; *2024, ch. 930, § 1*.

Annotations

Notes

Compiler's Notes.

Tenn. Comp. R. & Reg. 1200-01-11-.06(6)(e)(2), referred to in this section, is reserved.

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Acts 2009, ch. 289, § 1 provided that the act, which added subsection (f), shall be known and may be cited as “The Responsible Mining Act of 2009.”

Acts 2018, ch. 496, § 2 provided that no NPDES permit regulating a local government entity's municipal separate storm sewer system shall be issued pursuant to this section, until after the rules required by subsection (s) take effect.

Acts 2018, ch. 523, § 3, which amended *Acts 2017, ch. 293, §§ 3-5*, changed the effective date in ch. 293 from March 1, 2018 to July 1, 2018. This amendment results in the amendment to this section by *Acts 2018, ch. 523* taking effect on July 1, 2018.

Amendments.

The 2019 amendment, in (g), redesignated the former first sentence as (1), redesignated the former second sentence as (2), added (3), redesignated the former introductory language at the end and former (1)-(4) as the present introductory language of (4) and (4)(A)-(D) respectively; and substituted “This term is subject to” for “This term shall be subject to” at the beginning of the last sentence of present (4)(B).

The 2020 amendment added (w).

The 2021 amendment added (g)(4)(E).

The 2023 amendment by ch. 85 added (g)(5).

The 2023 amendment by ch. 342 added (x).

The 2024 amendment by ch. 771 added (y) and (z).

The 2024 amendment by ch. 930 added (aa).

Effective Dates.

Acts 2019, ch. 110, § 2. April 11, 2019.

Acts 2020, ch. 589, § 2. March 20, 2020.

Acts 2021, ch. 208, § 3. April 22, 2021.

Acts 2023, ch. 85, § 2. March 31, 2023.

Acts 2023, ch. 342, § 2. May 5, 2023.

Acts 2024 ch. 930, § 2. July 1, 2024.

Acts 2024, ch. 771, § 9. October 1, 2024.

Case Notes

1. Applicability to Federal Agency.
2. Penalties.
3. Consent Order.

69-3-108. Permits. [Effective on October 1, 2024. See the version effective until October 1, 2024.]

NOTES TO DECISIONS

1. Applicability to Federal Agency.

State could not subject a federal agency, here the TVA, to the requirements of its discharge permit program where the pollution complained of does not result from the discharge of pollutants from a point source; here the dam, a nonpoint source, did not impound the water but only diverted it to a hydroelectric plant. *United States ex rel. TVA v. Tennessee Water Quality Control Bd., 717 F.2d 992, 1983 U.S. App. LEXIS 16606 (6th Cir. 1983)*, cert. denied, *Tennessee Water Quality Control Bd. v. Tennessee Valley Authority, 466 U.S. 937, 104 S. Ct. 1909, 80 L. Ed. 2d 458, 1984 U.S. LEXIS 1812 (1984)*.

2. Penalties.

Tennessee Solid Waste Disposal Control Board did not abuse its discretion in adopting an order that assessed penalties against a limited liability company (LLC) with remediation efforts in mind because the State's focus on preserving the LLC's resources for remediation of the site was a reasonable one; the Board was not without justification when it made the civil penalties provided for in the consent order contingent upon the LLC's failure to comply with the ordered remediation activities. *Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015)*, rev'd, *Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. 2016)*.

3. Consent Order.

Approval by the Tennessee Solid Waste Disposal Control Board of an amended consent order detailing necessary actions to be taken by a landfill permit holder to address the pollution issues of a creek and a lake was appropriate because the Board had the authority to approve the plan in the order to reduce the contamination stemming from a permit holder's landfill by diverting storm water away from the site and subsequently removing the waste from the landfill without the requirement of a National Pollutant Discharge Elimination System permit.

Starlink Logistics, Inc. v. ACC, LCC, — S.W.3d —, 2018 Tenn. App. LEXIS 57 (Tenn. Ct. App. Jan. 31, 2018), appeal denied, *Starlink Logistics Inc. v. ACC, LLC, — S.W.3d —, 2018 Tenn. LEXIS 311 (Tenn. June 7, 2018)*, cert. denied, *StarLink Logistics, Inc. v. ACC, LLC, 206 L. Ed. 2d 917, 140 S. Ct. 2738, — U.S. —, 2020 U.S. LEXIS 2593 (U.S. May 4, 2020)*.

Opinion Notes

Attorney General Opinions.

County zoning authority to regulate concentrated animal feeding operations, OAG 99-071, *1999 Tenn. AG LEXIS 71 (3/22/99)*.

Research References & Practice Aids

Cross-References.

Penalties for violations of title 69, ch. 3, part 1, *§ 69-3-115*.

Law Reviews.

Tennessee Water Law, You Never Miss the Water Till the Well Runs Dry (Vincent A. Sikora), 24 No. 5 Tenn. B.J. 12 (1988).

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End of Document

Tenn. Code Ann. § 69-3-109

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-109. Complaints — Orders for corrective action.

(a)

(1) Whenever the commissioner has reason to believe that a violation of any provision of this part or regulation promulgated thereunder or orders issued pursuant thereto has occurred, is occurring, or is about to occur, the commissioner may cause a written complaint to be served upon the alleged violator or violators.

(2) The complaint shall specify the provision or provisions of this part or regulation or order alleged to be violated or about to be violated and the facts alleged to constitute a violation thereof, may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the board. Upon the request of the alleged violator or violators, the department shall promptly make available and provide access to any documents and other information that address the factual and scientific basis of the complaint.

(3) Any such order shall become final and not subject to review unless the person or persons named in the order request by written petition a hearing before the board, as provided in *§ 69-3-110*, no later than thirty (30) days after the date such order is served; provided, that the board may review such final order on the same grounds upon which a court of the state may review default judgments.

(b)

(1) Whenever the commissioner, with the concurrence of the governor, finds that an emergency exists imperatively requiring immediate action to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, the commissioner may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the commissioner deems necessary to meet the emergency.

(2) If the violator fails to respond or is unable to respond to the commissioner's order, the commissioner may take such emergency action as the commissioner deems necessary, or contract with a qualified person or persons to carry out the emergency measures. The commissioner may assess the person or persons responsible for the emergency condition for actual costs incurred by the commissioner in meeting the emergency.

(3) Furthermore, the commissioner is empowered to establish programs and procedures to qualify the state for emergency funding from the federal government.

(c) Except as otherwise expressly provided, any notice, complaint, order, or other instrument issued by or under authority of this part may be served on any person affected thereby personally, by the commissioner or any person designated by the commissioner, or such service may be made in accordance with

Tennessee statutes authorizing service of process in civil actions. Proof of service shall be filed in the office of the commissioner.

History

Acts 1971, ch. 164, § 8; 1971, ch. 386, § 3; 1977, ch. 366, § 1; T.C.A., § 70-331; *Acts 2008, ch. 1056, § 1*.

Annotations

Case Notes

NOTES TO DECISIONS

1. Federal Law.

Where an order of the Tennessee department of environment and conservation against a city became final under *T.C.A. § 69-3-109(a)(3)*, and the city fully complied with the order, citizens lacked standing for an action under the Clear Water Act, *33 U.S.C. §§ 1251*—1387, and the Resource Conservation and Recovery Act, *42 U.S.C. § 6901 et seq.*; the city's remedial actions preceded the citizens' action, and the action was not prompted by state or federal agency inaction. *Ailor v. City of Maynardville, 368 F.3d 587, 2004 FED App. 141P, 2004 U.S. App. LEXIS 9527 (6th Cir. 2004)* .

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Tenn. Code Ann. § 69-3-110

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-110. Hearings.

(a) Any hearing brought before the board pursuant to *§ 69-3-105(i)*, *§ 69-3-109*, *§ 69-3-115*, *§ 69-3-116*, or *§ 69-3-118* shall be conducted as a contested case. The hearing shall be heard before an administrative judge sitting alone pursuant to *§§ 4-5-301(a)(2)* and *4-5-314(b)*, unless settled by the parties. The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the petition is filed. The scheduling order for the contested case issued by the administrative judge shall establish a schedule that results in a hearing being completed within one hundred eighty (180) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown, and an initial order being issued within sixty (60) days of completion of the record of the hearing. The administrative judge's initial order, together with any earlier orders issued by the administrative judge, shall become final unless appealed to the board by the commissioner or other party within thirty (30) days of entry of the initial order or, unless the board passes a motion to review the initial order pursuant to *§ 4-5-315*, within the longer of thirty (30) days or seven (7) days after the first board meeting to occur after entry of the initial order. Upon appeal to the board by a party, or upon passage of a motion of the board to review the administrative judge's initial order, the board shall afford each party an opportunity to present briefs, shall review the record and allow each party an opportunity to present oral argument. If appealed to the board, the review of the administrative judge's initial order shall be limited to the record, but shall be de novo with no presumption of correctness. In such appeals, the board shall thereafter render a final order, in accordance with *§ 4-5-314*, affirming, modifying, remanding, or vacating the administrative judge's order. A final order rendered pursuant to this section is effective upon its entry, except as provided in *§ 4-5-320(b)* unless a later effective date is stated therein. A petition to stay the effective date of a final order may be filed under *§ 4-5-316*. A petition for reconsideration of a final order may be filed pursuant to *§ 4-5-317*. Judicial review of a final order may be sought by filing a petition for review in accordance with *§ 4-5-322*. An order of an administrative judge that becomes final in the absence of an appeal or review by the board shall be deemed to be a decision of the board in that case for purposes of the standard of review by a court; however, in other matters before the board, it may be considered but shall not be binding on the board.

(b) In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of Davidson County, or the chancery court of the county in which the hearing is conducted, shall have jurisdiction upon application of the board or commissioner to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt.

(c) The decision of the board shall become final and binding on all parties unless appealed to the courts as provided in *§ 69-3-111*.

(d) Any person to whom an emergency order is directed pursuant to *§ 69-3-109(b)* shall comply immediately, but on petition to the board shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than three (3) days from the receipt of such petition by the board.

(e) Any hearing required by this section or chapter shall be conducted in accordance with *§ 13-18-114* when the hearing involves a major energy project, as defined by *§ 13-18-102*.

History

Acts 1971, ch. 164, § 9; 1971, ch. 386, § 4; 1973, ch. 98, § 5; 1977, ch. 366, § 1; 1981, ch. 131, § 44; T.C.A., § 70-332; Acts 1984, ch. 804, § 7; *2007, ch. 362, § 37*; *2013, ch. 181, §§ 15*, 16; *2014, ch. 624, § 4*.

Annotations

Notes

Compiler's Notes.

Acts 2013, ch. 181, § 19 provided that for the purpose of construing the act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the act shall be deemed to be procedural in nature. It is the intent of the general assembly that Acts 2013, chapter 181 and the Uniform Administrative Procedures Act shall be complied with, however when in conflict, the provisions of Acts 2013, chapter 181 shall govern.

Acts 2013, ch. 181, § 20 provided that the act, which amended subsection (a) and deleted subsection (c), shall apply to all cases filed on or after July 1, 2013.

Case Notes

NOTES TO DECISIONS

1. Time for Holding Hearing.

There is no requirement in this section that the hearing be completed within 60 days; commencement within 60 days is sufficient absent some showing of prejudice. *Big Fork Mining Co. v.*

Tennessee Water Quality Control Bd., 620 S.W.2d 515, 1981 Tenn. App. LEXIS 609 (Tenn. Ct. App. 1981)
.

Research References & Practice Aids

Cross-References.

Contempt of court, title 29, ch. 9.

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Tenn. Code Ann. § 69-3-111

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-111. Appeals.

An appeal may be taken from any final order or other final determination of the board by any party, with the exception of the department. An appeal from a final order or other final determination of the board is instituted by filing a petition for review in the chancery court of Davidson County, or in the chancery court of the county in which the violation of this chapter occurred. The alleged violator shall elect in which court to file the petition for review.

History

Acts 1971, ch. 164, § 10; 1971, ch. 386, § 5; 1977, ch. 366, § 1; 1981, ch. 449, § 2; T.C.A., § 70-333; Acts 1984, ch. 804, § 8; *1993, ch. 156, § 1*; *2013, ch. 181, § 17*.

Annotations

Notes

Compiler's Notes.

Acts 1993, ch. 156, § 2 provided that the amendment by that act applied to all petitions for review filed on or after July 1, 1993.

Acts 2013, ch. 181, § 19 provided that for the purpose of construing the act in relation to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the act shall be deemed to be procedural in nature. It is the intent of the general assembly that Acts 2013, chapter 181 and the Uniform Administrative Procedures Act shall be complied with, however when in conflict, the provisions of Acts 2013, chapter 181 shall govern.

Acts 2013, ch. 181, § 20 provided that the act, which amended this section, shall apply to all cases filed on or after July 1, 2013.

Research References & Practice Aids

Cross-References.

Permissive appeals to supreme court, T.R.A.P. 11.

Law Reviews.

The Tennessee Court System — Supreme Court (Frederic S. Le Clercq), 8 Mem. St. U. L. Rev. 191.

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Tenn. Code Ann. § 69-3-112

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-112. Assistance in prosecuting violations.

It is the duty of the district attorneys general in the various districts throughout the state or the attorney general and reporter to assist the department, upon its request, by prosecuting those persons in violation of *§§ 69-3-115* — *69-3-117*.

History

Acts 1971, ch. 164, § 11; 1971, ch. 386, § 6; 1977, ch. 366, § 1; 1979, ch. 422, § 20; T.C.A., § 70-334.

Annotations

Research References & Practice Aids

Law Reviews.

The Tennessee Court System — Prosecution, 8 Mem. St. U.L. Rev. 477.

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Tenn. Code Ann. § 69-3-113

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-113. Procurement of information.

(a)

(1) Any person whom the board or the commissioner has reason to believe is causing, or may be about to cause, pollution, or any person having information concerning such person, shall furnish the board or the commissioner, upon request by the board or commission, all pertinent information required by the board or the commissioner in the discharge of the board's or commissioner's duties under this part.

(2) Under this section, information includes data relating to processes or methods of manufacture or production required by the board, the commissioner, or officers of the United States in the administration of their duties, including secret formulae and proprietary manufacturing processes.

(3) All information shall be used by the board only for purposes of water quality control. The board or the commissioner has the power to issue protection orders to prevent public dissemination of any secret formulae or proprietary manufacturing processes, except that such orders shall not extend to information concerning waste products discharged into the waters of the state.

(4) In addition to providing information, persons may be required to keep such records as deemed necessary by the board or the commissioner to facilitate the discharge of their duties.

(b) Any information obtained by the board or commissioner, except secret formulae or proprietary manufacturing processes, pursuant to this section, shall be available to the public for reasonable inspection and copying.

History

Acts 1971, ch. 164, § 12; 1977, ch. 366, § 1; T.C.A., § 70-335.

Annotations

Research References & Practice Aids

Cross-References.

Confidentiality of public records, *§ 10-7-504*.

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Tenn. Code Ann. § 69-3-114

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-114. Causing pollution or refusing to furnish information.

(a) It is unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in *§ 69-3-103*, unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

(b) In addition, it is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to this part; or to fail or refuse to file an application for a permit as required in *§ 69-3-108*; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

(c) The plea of financial inability to prevent, abate, or control pollution shall not be a valid defense under this part.

History

Acts 1971, ch. 164, § 13; 1972, ch. 631, § 2; 1977, ch. 366, § 1; T.C.A., § 70-336.

Annotations

Case Notes

1. Federal Law.
2. Penalties.
3. Consent Order.

NOTES TO DECISIONS

1. Federal Law.

Where a city fully complied with an order of the Tennessee department of environment and conservation to remedy violations of *T.C.A. § 69-3-108(b)(3)*, (6) and *T.C.A. § 69-3-114(b)*, citizens lacked standing for an action under the Clear Water Act, *33 U.S.C. §§ 1251-1387*, and the Resource Conservation and Recovery Act, *42 U.S.C. § 6901 et seq.*; the city's remedial actions preceded the citizens' action, and the action was not prompted by state or federal agency inaction. *Ailor v. City of Maynardville, 368 F.3d 587, 2004 FED App. 141P, 2004 U.S. App. LEXIS 9527 (6th Cir. 2004)* .

2. Penalties.

Tennessee Solid Waste Disposal Control Board did not abuse its discretion in adopting an order that assessed penalties against a limited liability company (LLC) with remediation efforts in mind because the State's focus on preserving the LLC's resources for remediation of the site was a reasonable one; the Board was not without justification when it made the civil penalties provided for in the consent order contingent upon the LLC's failure to comply with the ordered remediation activities. *Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015)* , rev'd, *Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. 2016)* .

Tennessee Solid Waste Disposal Control Board did not abuse its discretion in adopting an order that assessed penalties against a limited liability company (LLC) with remediation efforts in mind because the State's focus on preserving the LLC's resources for remediation of the site was a reasonable one; the Board was not without justification when it made the civil penalties provided for in the consent order contingent upon the LLC's failure to comply with the ordered remediation activities. *Starlink Logistics, Inc. v. ACC, LLC, — S.W.3d —, 2015 Tenn. App. LEXIS 118 (Tenn. Ct. App. Mar. 11, 2015)* , rev'd, *Starlink Logistics, Inc. v. ACC, LLC, 494 S.W.3d 659, 2016 Tenn. LEXIS 317 (Tenn. 2016)* .

3. Consent Order.

Approval by the Tennessee Solid Waste Disposal Control Board of an amended consent order detailing necessary actions to be taken by a landfill permit holder to address the pollution issues of a creek and a lake was appropriate because the Board had the authority to approve the plan in the order to reduce the contamination stemming from a

permit holder's landfill by diverting storm water away from the site and subsequently removing the waste from the landfill without the requirement of a National Pollutant Discharge Elimination System permit. *Starlink Logistics, Inc. v. ACC, LCC, — S.W.3d —, 2018 Tenn. App. LEXIS 57 (Tenn. Ct. App. Jan. 31, 2018)*, appeal denied, *Starlink Logistics Inc. v. ACC, LLC, — S.W.3d —, 2018 Tenn. LEXIS 311 (Tenn. June 7, 2018)*, cert. denied, *StarLink Logistics, Inc. v. ACC, LLC, 206 L. Ed. 2d 917, 140 S. Ct. 2738, — U.S. —, 2020 U.S. LEXIS 2593 (U.S. May 4, 2020)*.

Research References & Practice Aids

Cross-References.

Abatement of nuisances, title 29, ch. 3.

Penalties for violations of title 69, ch. 3, part 1, *§ 69-3-115*.

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Tenn. Code Ann. § 69-3-115

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-115. Violations — Penalties — Judgment by consent.

(a)

(1) Any person who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars ($10,000) per day for each day during which the act or omission continues or occurs:

(A) Violates an effluent standard or limitation or a water quality standard established under this part;

(B) Violates the terms or conditions of a permit;

(C) Fails to complete a filing requirement or causes false information to be filed with the department;

(D) Fails to allow or perform an entry, inspection, monitoring, or reporting requirement;

(E) Violates a final determination or order of the board, panel or commissioner;

(F) In the case of an industrial user of a publicly owned treatment works, fails to pay user or cost recovery charges or violates pretreatment standards or toxic effluent limitations established as a condition in the permit of the treatment works;

(G) After reasonable notice and opportunity to restore a ditch constructed pursuant to *§ 69-3-130*, the owner of the property fails to restore the ditch to permit specifications; or

(H) Violates any other provision of this part or any rule or regulation promulgated by the board.

(2) Any civil penalty shall be assessed in the following manner:

(A) The commissioner may issue an assessment against any person responsible for the violation;

(B) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing in the matter involved before the board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(C) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(D) The commissioner, through the attorney general and reporter, may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the pollution or violation occurred, in the name of the department.

(3) In assessing the civil penalty, the commissioner may consider the following factors:

(A) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(B) Damages to the state, including compensation for loss or destruction of wildlife, fish, and other aquatic life, resulting from the violation, as well as expenses involved in enforcing this section and the costs involved in rectifying any damage;

(C) Cause of the discharge or violation;

(D) The severity of the discharge and its effect upon the quality and quantity of the receiving waters;

(E) Effectiveness of action taken by the violator to cease the violation;

(F) The technical and economic reasonableness of reducing or eliminating the discharge;

(G) The social and economic value of the discharge source; and

(H) The economic benefit gained by the violator.

(4) The board may establish by regulation a schedule of the amount of civil penalty that can be assessed by the commissioner for certain specific violations or categories of violations.

(b) Any person unlawfully polluting the waters of the state or violating or failing, neglecting, or refusing to comply with any of the provisions of this part, commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.

(c) Any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or the commissioner, or who willfully and knowingly pollutes the waters of the state, or willfully fails, neglects or refuses to comply with any of the provisions of this part commits a Class E felony and shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) or incarceration, or both.

(d) The department is the sole state agency authorized to conduct investigations arising under this part. Notwithstanding any law to the contrary, other state agencies may assist the department in satisfying the duties arising under this part. The department of agriculture shall be notified of investigations associated with agricultural activities.

(e)

(1) Whenever any order or assessment has become a final action under this section, a notarized copy of the same may be filed in the office of the clerk of the chancery court of Davidson County, and shall be considered as an agreement of the parties thereto to entry of a judgment by consent, the terms and conditions of which shall be the same as those recited in the final order or assessment. Except as otherwise provided in this section, the procedures for entry of the judgment and the effect thereof shall be the same as provided in title 26, chapter 6.

(2) If the final action is by the board, the judgment by consent shall be promptly entered by the court and shall be effective upon entry, and it shall have the same effect and be subject to the same procedures as a judgment of a court of record of this state and may be enforced or satisfied in like manner.

(3) If the final action is by the commissioner, the judgment by consent shall be promptly entered by the chancery court, but shall not become a final judgment until expiration of a period ending forty-five (45) days after the date it was filed. During this period, any citizen shall have the right to intervene in such proceeding on the grounds that the remedy or remedies provided are inadequate or are based on erroneously stated facts. If intervention occurs, the court shall determine whether it is duplicitous or

frivolous and shall notify the parties and the intervenor of its determination. If determined not to be duplicitous or frivolous, review of the order or assessment shall be deemed to be sought by all parties and shall proceed in accordance with *§ 4-5-322*. If no citizen intervenes or if any such intervention is deemed duplicitous or frivolous, upon the expiration of the forty-five-day period, the judgment by consent shall be final, and it shall have the same effect and be subject to the same procedures as a judgment of a court of record of this state and may be enforced or satisfied in like manner.

History

Acts 1971, ch. 164, § 14; 1971, ch. 386, § 7; 1972, ch. 631, § 3; 1977, ch. 366, § 1; 1979, ch. 422, § 21; T.C.A., § 70-337; Acts 1985, ch. 160, § 1; 1988, ch. 688, § 1; *1989, ch. 321, § 10*; *1989, ch. 591, §§ 101*, 113; *1991, ch. 123, § 3*; *2007, ch. 362, § 19*; *2017, ch. 148, § 3*.

Annotations

Notes

Compiler's Notes.

Acts 1989, ch. 321, § 15 provided that the amendment of this section by that act does not affect rights or duties that matured, liabilities that were incurred, or proceedings begun before May 18, 1989.

Case Notes

1. Constitutionality.
2. Bankruptcy.
3. Penalty.

NOTES TO DECISIONS

1. Constitutionality.

T.C.A. § 69-3-115, which requires that the district attorney general or the grand jury obtain permission from either the water quality control board (now the board of water quality, oil and gas) or the commissioner of the department of health and environment (now environment and conservation) before a warrant,

presentment, or indictment, is unconstitutional because it infringes upon the prosecutorial discretion of the district attorney general and circumscribes the independence of the grand jury to investigate crimes and issue presentments. *State v. Superior Oil, Inc., 875 S.W.2d 658, 1994 Tenn. LEXIS 110 (Tenn. 1994)* .

2. Bankruptcy.

The water quality control board's (now the board of water quality, oil and gas) proceedings to fix civil liability under this part are within the exception to the automatic stay in bankruptcy. *Word v. Commerce Oil Co., 847 F.2d 291, 1988 U.S. App. LEXIS 6901 (6th Cir. 1988)* .

3. Penalty.

Owner of an auto repair business was properly fined by the Tennessee Department of Environment and Conservation because the penalty assessed was not arbitrary and capricious in light of the owner's widespread noncompliance with the owner's storm water permit – failure to properly provide required reports, failure to do required site sampling, and submission of a storm water pollution prevention plan years past due – over a period spanning several years. *Davis v. Tenn. Bd. of Water Quality, Oil & Gas, — S.W.3d —, 2017 Tenn. App. LEXIS 693 (Tenn. Ct. App. Oct. 16, 2017)* .

Sum of arguments presented established that defendants were challenging the validity of the Order implementing the statute, whether the Tennessee Department of Environment and Conservation's application of the statute violated the Constitution under the particular circumstances presented; defendants' failure to raise its as-applied constitutional challenges through the administrative appeal process rendered the issues brought before the trial court and now the appellate court untimely and subject to waiver. *State ex rel. Slatery v. Necessary Oil Co., — S.W.3d —, 2022 Tenn. App. LEXIS 114 (Tenn. Ct. App. Mar. 24, 2022)* .

Research References & Practice Aids

Cross-References.

Penalty for Class C misdemeanor, *§ 40-35-111*.

Penalty for Class E felony, *§ 40-35-111*.

Pretreatment enforcement, penalties, *§ 69-3-125*.

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Tenn. Code Ann. § 69-3-116

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69-3-116. Damages to the state.

(a) The commissioner may assess the liability of any polluter or violator for damages to the state resulting from any person's pollution or violation, failure, or neglect in complying with any rules, regulations, or standards of water quality promulgated by the board or permits, including failure by an in-lieu fee sponsor to timely complete land acquisition and initial physical and biological improvements, or orders issued pursuant to this part.

(b) If an appeal from such assessment is not made to the board by the polluter or violator within thirty (30) days of notification of such assessment, the polluter or violator shall be deemed to have consented to such assessment and it shall become final.

(c) Damages may include any expenses incurred in investigating and enforcing this part, in removing, correcting, and terminating any pollution, and also compensation for any loss or destruction of wildlife, fish, or aquatic life and any other actual damages caused by the pollution or violation.

(d) Whenever any assessment has become final because of a person's failure to appeal within the time provided, the commissioner may apply to the appropriate court for a judgment, and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

History

Acts 1971, ch. 164, § 15; 1977, ch. 366, § 1; T.C.A., § 70-338; *Acts 2021, ch. 208, § 2*.

Annotations

Notes

Amendments.

The 2021 amendment inserted “, including failure by an in-lieu fee sponsor to timely complete land acquisition and initial physical and biological improvements,” near the end of (a).

Effective Dates.

Acts 2021, ch. 208, § 3. April 22, 2021.

Case Notes

NOTES TO DECISIONS

0.5. Penalty.

Sum of arguments presented established that defendants were challenging the validity of the Order implementing the statute, whether the Tennessee Department of Environment and Conservation's application of the statute violated the Constitution under the particular circumstances presented; defendants' failure to raise its as-applied constitutional challenges through the administrative appeal process rendered the issues brought before the trial court and now the appellate court untimely and subject to waiver. *State ex rel. Slatery v. Necessary Oil Co., — S.W.3d —, 2022 Tenn. App. LEXIS 114 (Tenn. Ct. App. Mar. 24, 2022)* .

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Tenn. Code Ann. § 69-3-117

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69-3-117. Proceedings against violators — Injunctions.

The commissioner may initiate proceedings in the chancery court of Davidson County or the county in which the activities occurred against any person who is alleged to have violated or is about to violate this part, conditions of permits issued under this part, the rules and regulations of the board or orders of the board or commissioner. In such action the commissioner may seek, and the court may grant, injunctive relief and any other relief available in law or equity. Specifically, the commissioner may seek injunctive relief against industrial users of publicly owned treatment works who fail to pay user or cost recovery charges or who violate pretreatment standards or toxic effluent limitations established as a condition to the permit of the treatment works.

History

Acts 1971, ch. 164, § 16; 1972, ch. 444, § 1; 1977, ch. 366, § 1; 1979, ch. 422, § 22; T.C.A., § 70-339; Acts 1984, ch. 804, § 9.

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Tenn. Code Ann. § 69-3-118

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69-3-118. Other remedies.

(a)

(1) Any person may file with the commissioner a signed complaint against any person allegedly violating any provisions of this part. Unless the commissioner determines that such complaint is duplicitous or frivolous, the commissioner shall immediately serve a copy of it upon the person or persons named in the complaint, promptly investigate the allegations contained in the complaint, and notify the alleged violator of what action, if any, the commissioner will take. In all cases, the commissioner shall notify the complainant of the action or determination within ninety (90) days from the date of the commissioner's receipt of the written complaint.

(2) If either the complainant or the alleged violator believes that the commissioner's action or determination is or will be inadequate or too severe, such person may appeal to the board for a hearing, which will be conducted pursuant to *§ 69-3-110*. The appeal must be made within thirty (30) days after receipt of the notification sent by the commissioner.

(3) If the commissioner fails to take the action stated in the notification, the complainant may make an appeal to the board within thirty (30) days from the time at which the complainant knows or has reason to know of such failure.

(4) The department shall not be obligated to assist a complainant in gathering information or making investigations or to provide counsel for the purpose of drawing up the complaint.

(b) The penalties, damages, and injunctions provided for in *§§ 69-3-115* — *69-3-119* are intended to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the state. Nothing contained in this section shall be construed to abridge or alter rights of action or remedies in equity or under common law or statutory law, criminal or civil, nor shall any provision of *§§ 69-3-115* — *69-3-117* or this section, or any act done by virtue thereof, be construed as estopping the state or any municipality or person, as riparian owners or otherwise, in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances, to abate pollution, or to recover damages resulting from such pollution.

(c) The board, department or its officials and employees acting in their official capacity shall not be considered “persons” pursuant to this section.

History

Acts 1971, ch. 164, § 17; 1971, ch. 386, § 8; 1977, ch. 366, § 1; T.C.A., § 70-340; Acts 1984, ch. 804, § 10.

69-3-118. Other remedies.

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Tenn. Code Ann. § 69-3-119

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 69 Waters, Waterways, Drains And Levees > Chapter 3 Water Pollution Control > Part 1 Water Quality Control Act

69-3-119. Disposition of fees, penalties and damages.

All fees, penalties, and damages assessed and collected under this part shall be placed in a special fund and earmarked, allocated, and appropriated to the division for the purpose of complying with this part. Any unexpended balance of the special fund in any fiscal year shall revert to the general fund.

History

Acts 1971, ch. 164, § 18; 1971, ch. 386, § 9; 1977, ch. 366, § 1; T.C.A., § 70-341; Acts 1984, ch. 804, § 11; *1992, ch. 693, § 1*.

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Tenn. Code Ann. § 69-3-120

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-120. Construction of part.

(a) This part is intended to supplement other provisions of the Tennessee Code Annotated, and no part thereof shall be construed to repeal any such provisions specifically enacted for the protection of health or the protection of fish and game of the state, except that the administration of any laws pertaining to the pollution of waters as defined in *§ 69-3-103* shall be in accordance with the general policies and regulations adopted by the board.

(b) All sections in this part shall be liberally construed for the accomplishment of its policy and purpose.

(c) All grants of power to the board or commissioner shall be liberally construed.

(d) Any list in this part preceded by “include” or “including” shall not be construed as exhaustive or otherwise limiting unless specifically stated.

(e) All procedures in this part are intended to be in conformity with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If any provision of this part conflicts with the Uniform Administrative Procedures Act, then the latter shall govern.

(f) If any section, subsection, sentence, clause, phrase, or words of this part are for any reason held to be invalid, such decree shall not affect the validity of any remaining portion of this part.

(g) Nothing whatsoever in this part shall be so construed as applying to any agricultural or forestry activity or the activities necessary to the conduct and operations thereof or to any lands devoted to the production of any agricultural or forestry products, unless there is a point source discharge from a discernible, confined, and discrete water conveyance.

(h) The passage of the Water Quality Control Act of 1977 shall grant no new authority over non-point sources to the department, which was not previously established by the Water Quality Control Act of 1971. In all cases of conflict between this part and *§§ 68-221-101* — *68-221-108*, the Sanitary Engineering Law, this part shall take precedence.

History

Acts 1971, ch. 164, § 19; 1977, ch. 366, §§ 1, 3; T.C.A., § 70-342; *Acts 1992, ch. 693, § 1*.

Annotations

Notes

Compiler's Notes.

The Water Quality Control Act of 1971, referred to in this section, was enacted by Acts 1971, ch. 164 and compiled as former §§ 70-324 — 70-342 as they existed prior to the enactment of Acts 1977, ch. 366.

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Tenn. Code Ann. § 69-3-121

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-121. Continuation of rules and regulations, permits, contracts and agreements.

(a) The rules and regulations previously promulgated under the Water Quality Control Act of 1971 shall remain in effect as the rules and regulations under this part. Any of these rules or regulations that may conflict with a statutory provision of this part are hereby rendered void, but shall not affect the validity of the remaining rules and regulations.

(b) All permits and temporary permits issued under the Water Quality Control Act of 1971 shall remain in effect under this part until such time as they expire or are revoked or modified pursuant to this part.

(c) Any contracts, agreements, plans or any other documents developed under the Water Quality Control Act of 1971 shall remain in effect under this part.

History

Acts 1977, ch. 366, § 2; T.C.A., § 70-343.

Annotations

Notes

Compiler's Notes.

The Water Quality Control Act of 1971, referred to in this section, was enacted by Acts 1971, ch. 164 and compiled as former §§ 70-324 — 70-342 as they existed prior to the enactment of Acts 1977, ch. 366.

69-3-121. Continuation of rules and regulations, permits, contracts and agreements.

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Tenn. Code Ann. § 69-3-122

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-122. Sewerage system contractors or operators — Bonds or security — Noncomplying or abandoned facilities.

(a) No person shall construct, operate or hold out to the public as proposing to construct or operate a sewerage system unless such person first provides a bond or other financial security to the department, and has received approval of the same.

(b) The board may by regulation establish the amount and form of such bond or financial security for various sizes and types of facilities. In no case shall the amount of the bond or financial security exceed seventy-five thousand dollars ($75,000). The purpose of the bond or financial security shall be the protection of the public health, welfare, and the environment of the state.

(c) The commissioner may petition the chancery court of the county in which the facility is located for forfeiture of the bond or other financial security, if the department determines that:

(1) The continued operation or lack of operation of a facility covered by this section represents a threat to the health of the public or is causing or will cause violations of classified water uses that the board has established;

(2) All reasonable and practical efforts under the circumstances have been made to obtain corrective actions from persons responsible for the facility; and

(3) It does not appear that corrective actions can or will be taken within an appropriate time or it appears that the facility has been abandoned.

(d) The proceeds of such forfeiture shall be paid into the court and, pursuant to the order of the court, used in combination with any remedy provided by law or equity that will correct or mitigate the noncompliance of such facility.

(e) If the court finds that a facility covered by this section has been abandoned or that services of the facility have been terminated, the court may enter such orders regarding the continued operations of such facility as it deems necessary to protect the public.

(f) This section does not apply to the following:

(1) Facilities owned or operated by a governmental entity or agency; or

(2) Facilities in operation prior to May 25, 1984.

History

69-3-122. Sewerage system contractors or operators — Bonds or security — Noncomplying or abandoned facilities.

Acts 1984, ch. 804, § 12.

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Tenn. Code Ann. § 69-3-123

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-123. Pretreatment enforcement — Procedure — Complaints — Orders.

(a)

(1) Whenever the local administrative officer of any pretreatment agency has reason to believe that a violation of any provision of the pretreatment program of the pretreatment agency or orders of the local hearing authority issued pursuant thereto has occurred, is occurring, or is about to occur, the local administrative officer may cause a written complaint to be served upon the alleged violator or violators.

(2) The complaint shall specify the provision or provisions of the pretreatment program or order alleged to be violated or about to be violated and the facts alleged to constitute a violation thereof, may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the local hearing authority.

(3) Any such order shall become final and not subject to review unless the person or persons named in the order request by written petition a hearing before the local hearing authority as provided in *§ 69-3-124*, no later than thirty (30) days after the date such order is served; provided, that the local hearing authority may review such final order on the same grounds upon which a court of the state may review default judgments.

(b)

(1) Whenever the local administrative officer finds that an emergency exists imperatively requiring immediate action to protect the public health, safety, or welfare, the health of animals, fish or aquatic life, a public water supply, or the facilities of the publicly owned treatment works of the pretreatment agency, the local administrative officer may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the local administrative officer deems necessary to meet the emergency.

(2) If the violator fails to respond or is unable to respond to the local administrative officer's order, the local administrative officer may take such emergency action as the local administrative officer deems necessary, or contract with a qualified person or persons to carry out the emergency measures. The local administrative officer may assess the person or persons responsible for the emergency condition for actual costs incurred by the local administrative officer in meeting the emergency.

(c) Except as otherwise expressly provided, any notice, complaint, order or other instrument issued by or under authority of this part may be served on any person affected thereby personally, by the local administrative officer or any person designated by the local administrative officer, or such service may be made in accordance with Tennessee statutes authorizing service of process in a civil action. Proof of service shall be filed in the office of the local administrative officer.

History

Acts 1987, ch. 111, § 2.

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Tenn. Code Ann. § 69-3-124

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-124. Pretreatment enforcement — Hearings.

(a) Any hearing or rehearing brought before the local hearing authority shall be conducted in accordance with the following:

(1) Upon receipt of a written petition from the alleged violator pursuant to this section, the local administrative officer shall give the petitioner thirty (30) days' written notice of the time and place of the hearing, but in no case shall such hearing be held more than sixty (60) days from the receipt of the written petition, unless the local administrative officer and the petitioner agree to a postponement;

(2) The hearing provided for in this section may be conducted by the local hearing authority at a regular or special meeting. A quorum of the local hearing authority must be present at the regular or special meeting in order to conduct the hearing provided for in this section;

(3) A verbatim record of the proceedings of such hearings shall be taken and filed with the local hearing authority, together with the findings of fact and conclusions of law made pursuant to subdivision (a)(6). The transcript so recorded shall be made available to the petitioner or any party to a hearing upon payment of a charge set by the local administrative officer to cover the costs of preparation;

(4) In connection with the hearing, the chair shall issue subpoenas in response to any reasonable request by any party to the hearing requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the chancery court of the county in which the pretreatment agency is located shall have jurisdiction upon the application of the local hearing authority or the local administrative officer to issue an order requiring such person to appear and testify or produce evidence as the case may require, and any failure to obey such order of the court may be punished by such court as contempt;

(5) Any member of the local hearing authority may administer oaths and examine witnesses;

(6) On the basis of the evidence produced at the hearing, the local hearing authority shall make findings of fact and conclusions of law and enter such decisions and orders as, in its opinion, will best further the purposes of the pretreatment program and shall give written notice of such decisions and orders to the alleged violator. The order issued under this subsection (a) shall be issued no later than thirty (30) days following the close of the hearing by the person or persons designated by the chair;

(7) The decision of the local hearing authority shall become final and binding on all parties unless appealed to the courts as provided in subsection (b); and

(8) Any person to whom an emergency order is directed pursuant to *§ 69-3-123* shall comply with the emergency order immediately, but on petition to the local hearing authority shall be afforded a hearing

as soon as possible, but in no case shall such hearing be held later than three (3) days from the receipt of such petition by the local hearing authority.

(b) An appeal may be taken from any final order or other final determination of the local hearing authority by any party, including the pretreatment agency, who is or may be adversely affected thereby, to the chancery court pursuant to the common law writ of certiorari set out in *§ 27-8-101*, within sixty (60) days from the date such order or determination is made.

History

Acts 1987, ch. 111, § 3.

Annotations

Research References & Practice Aids

Cross-References.

Contempt of court, title 29, ch. 9.

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Tenn. Code Ann. § 69-3-125

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-125. Pretreatment enforcement — Violations — Civil penalty.

(a)

(1) Any person, including, but not limited to, industrial users, who does any of the following acts or omissions shall be subject to a civil penalty of up to ten thousand dollars ($10,000) per day for each day during which the act or omission continues or occurs:

(A) Violates an effluent standard or limitation imposed by a pretreatment program;

(B) Violates the terms or conditions of a permit issued pursuant to a pretreatment program;

(C) Fails to complete a filing requirement of a pretreatment program;

(D) Fails to allow or perform an entry, inspection, monitoring or reporting requirement of a pretreatment program;

(E) Fails to pay user or cost recovery charges imposed by a pretreatment program; or

(F) Violates a final determination or order of the local hearing authority or the local administrative officer.

(2) Any civil penalty shall be assessed in the following manner:

(A) The local administrative officer may issue an assessment against any person or industrial user responsible for the violation;

(B) Any person or industrial user against whom an assessment has been issued may secure a review of such assessment by filing with the local administrative officer a written petition setting forth the grounds and reasons for the violator's objections and asking for a hearing in the matter involved before the local hearing authority and, if a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(C) Whenever any assessment has become final because of a person's failure to appeal the local administrative officer's assessment, the local administrative officer may apply to the appropriate court for a judgment and seek execution of such judgment and the court, in such proceedings, shall treat a failure to appeal such assessment as a confession of judgment in the amount of the assessment;

(D) In assessing the civil penalty, the local administrative officer may consider the following factors:

(i) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;

(ii) Damages to the pretreatment agency, including compensation for the damage or destruction of the facilities of the publicly owned treatment works, and also including any penalties, costs and attorneys' fees incurred by the pretreatment agency as the result of the illegal activity, as well as the expenses involved in enforcing this section and the costs involved in rectifying any damages;

(iii) Cause of the discharge or violation;

(iv) The severity of the discharge and its effect upon the facilities of the publicly owned treatment works and upon the quality and quantity of the receiving waters;

(v) Effectiveness of action taken by the violator to cease the violation;

(vi) The technical and economic reasonableness of reducing or eliminating the discharge; and

(vii) The economic benefit gained by the violator; and

(E) The local administrative officer may institute proceedings for assessment in the chancery court of the county in which all or part of the pollution or violation occurred, in the name of the pretreatment agency.

(3) The local hearing authority may establish by regulation a schedule of the amount of civil penalty that can be assessed by the local administrative officer for certain specific violations or categories of violations.

(b) Any civil penalty assessed to a violator pursuant to this section may be in addition to any civil penalty assessed by the commissioner for violations of *§ 69-3-115(a)(1)(F)*. However, the sum of penalties imposed by this section and by *§ 69-3-115(a)* shall not exceed ten thousand dollars ($10,000) per day for each day during which the act or omission continues or occurs. The state's share of any additional costs of this section shall be funded in accordance with *§ 9-4-5303*, from the increase in state imposed taxes that are earmarked to counties and that are not designated by such counties for a particular purpose.

History

Acts 1987, ch. 111, § 4.

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Tenn. Code Ann. § 69-3-126

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-126. Pretreatment enforcement — Assessment for noncompliance with program permits or orders.

(a) The local administrative officer may assess the liability of any polluter or violator for damages to the pretreatment agency resulting from any person's or industrial user's pollution or violation, failure, or neglect in complying with any permits or orders issued pursuant to the pretreatment program or *§ 69-3-123*, *§ 69-3-124*, or *§ 69-3-125*.

(b) If an appeal from such assessment is not made to the local hearing authority by the polluter or violator within thirty (30) days of notification of such assessment, the polluter or violator shall be deemed to have consented to the assessment, and it shall become final.

(c) Damages may include any expenses incurred in investigating and enforcing the pretreatment program or *§§ 69-3-123* — *69-3-129*, in removing, correcting, and terminating any pollution, and also compensation for any actual damages caused by the pollution or violation.

(d) Whenever any assessment has become final because of a person's failure to appeal within the time provided, the local administrative officer may apply to the appropriate court for a judgment, and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

History

Acts 1987, ch. 111, § 5.

Annotations

Case Notes

NOTES TO DECISIONS

1. Damages.

Metropolitan wastewater hearing authority did not exceed its authority under *T.C.A. § 69-3-126(a)* by assessing costs to a business for replacing a damaged sewer line; the record contained sufficient evidence showing that the wastewater from the electroplating business caused the damage to the sewer line. *Leonard Plating Co. v. Metro. Gov't of Nashville & Davidson County, 213 S.W.3d 898, 2006 Tenn. App. LEXIS 471 (Tenn. Ct. App. 2006)*, appeal denied, *Leonard Plating Co. v. Metro. Gov't, — S.W.3d —, 2006 Tenn. LEXIS 1219 (Tenn. 2006)*.

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Tenn. Code Ann. § 69-3-127

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-127. Pretreatment enforcement — Judicial proceedings and relief.

The local administrative officer may initiate proceedings in the chancery court of the county in which the activities occurred against any person or industrial user who is alleged to have violated or is about to violate the pretreatment program, *§§ 69-3-123* — *69-3-129*, or orders of the local hearing authority or local administrative officer. In such action, the local administrative officer may seek, and the court may grant, injunctive relief and any other relief available in law or equity.

History

Acts 1987, ch. 111, § 6.

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Tenn. Code Ann. § 69-3-128

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-128. Pretreatment enforcement.

Any net increase in expenditures after subtracting out net gains from penalties and damage payments received by a local governmental entity pursuant to *§§ 69-3-123* — *69-3-129* shall be borne equally by the local governmental entity and by the department. The local governmental entity shall document and verify its expenditures before receiving reimbursement from the department.

History

Acts 1987, ch. 111, § 8; *1992, ch. 693, § 1*.

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Tenn. Code Ann. § 69-3-129

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-129. Disposition of damage payments and penalties — Special fund.

All damages or penalties, or both, assessed and collected under *§§ 69-3-123* — *69-3-128* shall be placed in a special fund by the pretreatment agency and allocated and appropriated to the pretreatment agency for the administration of its pretreatment program.

History

Acts 1987, ch. 111, § 7.

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Tenn. Code Ann. § 69-3-130

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-130. Ditch construction.

(a)

(1) Ditch construction, the purpose of which is either to:

(A) Restore swamped-out bottomland hardwoods to bottomland hardwoods; or

(B) Restore swamped-out cropland to cropland or to bottomland hardwoods;

is permitted in any waters of this state, under general permit and without requirement of an individual permit; provided, that it is done in accordance with all terms and conditions of this section.

(2) The following conditions apply to all ditch construction conducted under this section:

(A) Written notification to the department shall be made at least thirty (30) days prior to beginning construction, and shall include:

(i) Aerial photographs showing existing conditions, or in the case of land used for pasture, documentation from a state or federal agency establishing prior usage as pasture;

(ii) A simple sketch showing approximate dimensions of the proposed ditch and anticipated affected area; and

(iii) Documentation that the area is either swamped-out hardwoods or swamped-out cropland;

(B) All construction shall be accomplished during periods of dry weather;

(C) Construction shall be by blasting, if feasible, although construction by other means is permissible if blasting is not practicable under the circumstances; and

(D) Construction may commence after thirty (30) days notification to the department unless the commissioner notifies the applicant that:

(i) The documentation regarding the qualification of the property as swamped-out bottomland hardwoods or swamped-out cropland is inadequate;

(ii) The proposed ditch will drain adjacent wetlands beyond the swamped-out cropland or swamped-out bottomland; or

(iii) The department's review of the proposal will require an additional time period not to exceed sixty (60) days.

(b)

(1) As used in this subsection (b), “ditch maintenance” means the physical maintenance of the original, as built, configuration of a ditch, including the removal of sediment, debris or obstruction, the purpose of which is to:

(A) Maintain bottomland hardwoods or cropland;

(B) Restore swamped-out bottomland hardwoods to bottomland hardwoods; or

(C) Restore swamped-out croplands to cropland or to bottomland hardwoods.

(2) Ditch maintenance is permitted under general permit and without requirement of an individual permit in any water of the state under the following conditions:

(A) All construction shall be accomplished during periods of dry weather;

(B) The ditch maintenance activity shall not alter any other waters of the state; and

(C) The ditch maintenance activity shall not result in the extension of the ditch in length, width or depth from its original dimensions.

(c) Ditch construction that is for the purpose of maintaining existing bottomland hardwoods or cropland, and that requires a permit under § 404 of the federal Clean Water Act (*33 U.S.C. § 1344*), is permitted under general permit and without requirement of individual permit in any water of the state under the following conditions:

(1) Written notification to the department shall be made at least thirty (30) days prior to beginning construction, and shall include:

(A) A copy of the § 404 permit; and

(B) A simple sketch showing approximate dimensions of the proposed ditch and anticipated affected area;

(2) All construction shall be accomplished during periods of dry weather;

(3) Construction should be by blasting, if feasible, although construction by other means is permissible if blasting is not practicable under the circumstances; and

(4) Construction may commence after thirty (30) days notification to the department unless the commissioner notifies the applicant that:

(A) The documentation is inadequate;

(B) The proposed ditch will drain adjacent wetlands beyond the affected cropland or bottomland; or

(C) The department's review of the proposed construction will require an additional time period not to exceed sixty (60) days.

(d) If ditch construction or ditch maintenance exceeds the permit specifications, then the owner of the property upon which the ditch is constructed shall be required to restore the ditch to the specifications of the permit. The owner of the property upon which the ditch is constructed shall be required to pay all costs of ditch restoration.

(e) The general permits granted by this section shall not be subject to the durational limit set forth in *§ 69-3-108*.

(f) The establishment of the general permit granted by this section shall not preclude application for individual permit for ditch construction or ditch maintenance in cropland or bottomland hardwoods swamped-out prior to 1970.

(g) This section shall not be construed as requiring a permit for any activity not requiring a permit under the federal Clean Water Act or the Federal Water Pollution Control Act (*33 U.S.C. § 1251 et seq.*).

History

Acts 1991, ch. 123, § 2.

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Tenn. Code Ann. § 69-3-131

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-131. Rules and regulations.

The board shall promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, which rules and regulations shall govern the manner in which emergency repairs made in accordance with *§ 69-3-108(n)* must be made. The department shall send a copy of such rules and regulations to each county highway department in the state.

History

Acts 1993, ch. 155, § 2.

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Tenn. Code Ann. § 69-3-132

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-132. Advisory committee to assist removal of debris from streams and stabilization of stream banks.

There is hereby created an advisory committee to the division of water pollution control to advise and assist the division on procedures and policies concerning the application of this part to the removal of debris from streams and stabilization of stream banks. The members of the committee shall serve without compensation and shall be appointed by the commissioner to include representatives from local government, farmers, the natural resource conservation service, the University of Tennessee extension, and environmental groups. Meetings of this committee shall be held in counties with a large number of situations where these activities are needed.

History

Acts 1998, ch. 659, § 3; *2004, ch. 517, § 14*.

Annotations

Notes

Compiler's Notes.

Acts 2004, ch. 517, § 15 provided that the University of Tennessee extension service shall spend no funds beyond those currently budgeted to accelerate the replacement of signs, letterhead, and business cards on account of the provisions of the act.

69-3-132. Advisory committee to assist removal of debris from streams and stabilization of stream banks.

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Tenn. Code Ann. § 69-3-133

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-133. Stop work order.

When certain silvicultural activities have polluted waters of the state as a result of an operator's failure or refusal to use forestry best management practices, the commissioner of environment and conservation may issue a stop work order to the operator. If the owner is different than the operator, the commissioner shall at the same time notify the owner that a stop work order has been issued to the operator by delivering a copy of the stop work order to the owner. The stop work order requires that the operator must cease part or all of the silvicultural activities on site that are contributing to such pollution. The stop work order will remain in effect until the operator installs forestry best management practices that eliminate and prevent further pollution associated with the silvicultural activities. No stop work order may be issued or suspended without consultation with the commissioner of agriculture.

History

Acts 2000, ch. 680, § 2.

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Tenn. Code Ann. § 69-3-134

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-134. Written notice of conduct violation.

No operator who at any time within the previous two (2) years has been found to have violated this part in the conduct of silvicultural activities, such finding of violation not having been overturned or reversed on appeal, shall start any silvicultural activities, unless the operator, at least ten (10) days prior to the start of any silvicultural activities has filed a written notification, with the commissioner of agriculture and the commissioner of environment and conservation, including the following information:

(1) The name and address of the operator and, if different than the owner, the name and address of the owner;

(2) The location of the silvicultural activities and estimated acreage; and

(3) The anticipated beginning date and anticipated length of the silvicultural activities.

History

Acts 2000, ch. 680, § 3.

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Tenn. Code Ann. § 69-3-135

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-135. Request for hearing.

A written request for a hearing before the board of water quality, oil and gas on the stop work order must be filed by the operator with the commissioner of environment and conservation within thirty (30) days of receipt of notice. If a hearing is requested, the operator shall also be afforded the opportunity to meet with the commissioner of environment and conservation or, at the commissioner's option, the deputy or assistant commissioner, within three (3) working days after the hearing request is filed to discuss the alleged violation and show cause why a stop work order should not have been issued. Any modification or revocation of the stop work order shall be in writing. If the commissioner or such designee upholds the stop work order, it shall remain in effect until resolution of the appeal or the operator comes into compliance. If no request for hearing is made within thirty (30) days of the receipt of notice, the stop work order becomes final and not subject to review.

History

Acts 2000, ch. 680, § 4.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

69-3-135. Request for hearing.

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Tenn. Code Ann. § 69-3-136

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-136. Failure to give notice — Failure to comply with stop work order.

Failure of an operator to give the notice required by *§ 69-3-134* or to comply with a stop work order issued pursuant to *§§ 69-3-133* and *69-3-135* shall subject the operator to the penalties in *§ 69-3-115(a)(1)(E)*.

History

Acts 2000, ch. 680, § 5.

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Tenn. Code Ann. § 69-3-137

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-137. Pollution notification form.

(a) The department of environment and conservation and the department of agriculture shall devise a form to be used to notify the departments of a situation in which a person alleges that pollution has resulted or will result from a forestry operation that may have violated the Water Quality Control Act, compiled in this chapter.

(b) This form, together with instructions and information concerning the preferred method and locations for filing such notices, shall be prominently displayed and maintained in a downloadable form on the internet websites maintained by each department. The form and instructions shall be simple and informative and shall avoid the use of technical terms. Any toll-free number available to accept public inquiries or complaints concerning pollution from silvicultural activity shall also be displayed.

(c) The departments shall continue to accept notifications and requests for investigation of silvicultural activities by telephone, in writing, and when feasible by electronic mail. Nothing in this section shall be construed to require that any notice or requests for investigation of a silvicultural activity must be on the form that is prepared pursuant to this section or that any notice to a department or any complaint must meet any technical requirement.

History

Acts 2000, ch. 849, § 1.

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Tenn. Code Ann. § 69-3-138

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-138. Timber harvesting.

(a)

(1) Whenever a person contracts in writing with a master logger to conduct any type of timber harvesting on the person's property, the master logger shall assume sole liability for compliance with this chapter for a period of one (1) year after the timber harvest is completed; provided, that the master logger gives written certification to the person that the master logger has designed a plan of best management practices (BMPs) to ensure compliance with all applicable water pollution control laws and that the master logger will install, maintain and adhere to established BMPs to ensure erosion and sediment controls to protect waters of the state in all harvesting activities on the property.

(2) The master logger shall not be responsible for the negligent or intentional acts of the landowner or any third party when such actions are the cause of a water quality violation. Actions and appeals resulting from a violation issued by the department shall be heard by the board of water quality, oil and gas established in *§ 69-3-104*, in accordance with the procedures established by the board and in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) As used in this section, “master logger” means a person who is identified by the division of forestry of the department of agriculture as having completed all requirements of the Tennessee master logger program or a master logger program of substantially equal rigor provided in another state, including, but not limited to, maintaining all current continuing education requirements.

History

Acts 2005, ch. 268, § 1.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-3-139

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-139. Stop work orders for coal surface mining operations.

(a) The commissioner is authorized to issue stop work orders for coal surface mining operations in accordance with subsections (b) and (c).

(b) When certain coal surface mining activities have polluted waters of the state as a result of an operator's failure or refusal to comply with permit conditions, the commissioner may issue a stop work order to the operator. The stop work order shall specify those parts of the coal surface mining activities on site that are contributing to the pollution that must stop. The stop work order shall remain in effect until the department determines that the operator has installed or repaired all necessary measures to comply with the permit so that further pollution associated with the surface mining activities will not occur.

(c) A written request for a hearing before the board of water quality, gas, and oil on the stop work order must be filed by the operator to the commissioner within thirty (30) days of receipt of notice. If the operator files that request and also makes a specific request for an informal meeting with the commissioner to show cause why the stop work order should not have been issued, then the commissioner or, at the commissioner's option, the deputy or assistant commissioner, shall meet with the operator within three (3) working days after the hearing request is filed. Any modification or revocation of the stop work order shall be in writing. If the commissioner or the commissioner's designee upholds the stop work order, it shall remain in effect until resolution of the appeal or until the operator comes into compliance. If no request for hearing is made within thirty (30) days of the receipt of notice, the stop work order becomes final and not subject to review.

(d) Failure of an operator to comply with a stop work order issued pursuant to this section shall subject the operator to the penalties in *§ 69-3-115*.

History

Acts 2006, ch. 594, § 1.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil, and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-3-140

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-140. Collection of water samples — Report.

(a)

(1) In collecting water samples drawn to test the water quality of the Pigeon River at the time the river enters Tennessee from Haywood County, North Carolina, the department shall draw samples from the river within one quarter (¼) mile of the border separating Tennessee and North Carolina in the center of the river. The samples shall be drawn at a time when any power plant that emits discharges into the Pigeon River and that is located within one (1) mile of the state border is running at least one (1) generator. The samples shall be drawn in addition to collecting samples at any other location the department deems appropriate to test the water quality of the river.

(2) The results of water samples drawn pursuant to subdivision (a)(1) shall be reported independently of any other water samples drawn to test the quality of the Pigeon River and shall be incorporated by the department in any analysis of the river's water quality. The samples shall at a minimum be analyzed for apparent and true color in accordance with United States environmental protection agency methods and evaluated against Tennessee water quality standards approved by the United States environmental protection agency.

(b) The department is authorized to obtain a generation schedule from the power plant in order to facilitate timing the drawing of samples and may contract with local rafting entities for transportation services related to the taking of samples pursuant to subsection (a).

History

Acts 2008, ch. 767, § 1.

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Tenn. Code Ann. § 69-3-141

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69-3-141. Bill of rights for permit applicants.

(a) The general assembly finds and adopts as a matter of public policy, the following statements:

(1) The permitting process under this chapter should be a predictable, ordinary process for the benefit of the commissioner and permit applicants alike;

(2) As with all governmental regulatory activity, the permitting process under this chapter should be susceptible to easy public review and scrutiny;

(3) The permitting process under this chapter should afford applicants basic due process, including notice of application defects, timely review of applications, and prompt and meaningful administrative and judicial review of permitting decisions;

(4) The permitting process under this chapter should reflect an appropriate balance between enforcement of the state's environmental laws and the rights of persons seeking to comply voluntarily with those same laws, in order to safeguard our state's environment and develop our state's economy;

(5) To further these goals, to protect the rights of applicants, and to promote efficient, effective resolution of permit applications by the commissioner, the general assembly enacts this bill of rights for permit applicants under this chapter; and

(6) Construction stormwater permitting required pursuant to *§ 69-3-108* should be based on the activities described in the permit application and conditions that exist at the time the permit application is under consideration, rather than possible future conditions unrelated to the activities for which the permit is sought as identified in the application; this subdivision (a)(6) does not apply to or impact permitting relating to any other activities described in *§ 69-3-108(b)*, and only applies to construction stormwater permitting.

(b) The commissioner shall afford each applicant for a permit under this chapter the following rights under this bill of rights for permit applicants:

(1) Permit applicants shall have the right to assistance from the department in understanding regulatory and permit requirements;

(2) Permit applicants shall have the right to know the projected fees for review of applications, and how any costs will be determined and billed;

(3) Permit applicants shall have the right to access, on the department's website, complete and clearly written guidance documents, office of general counsel opinions, and department policies that explain the department's regulatory jurisdiction and requirements. The commissioner shall publish, on the department's website, a list of all information required in a permit application and the criteria used to determine whether the submitted information is adequate;

(4) Permit applicants shall have the right to timely completeness determinations for their applications. Permit applicants shall have the right to know exactly how their applications are incomplete and what further information is needed to make their applications complete. Absent extraordinary circumstances, the commissioner shall notify the applicant within thirty (30) days of any permit application deficiencies, or determine that the application is complete;

(5) Permit applicants shall have the right to a timely decision on their permit application. The following time limits shall apply:

(A) Aquatic resource alteration permits (ARAPs) shall be issued or denied within ninety (90) days of the date the department determines an application is complete. If a public hearing is scheduled in response to a request from interested parties, an additional ninety (90) days shall be added to the allowable time limit. The ninety-day time limit may be extended by written mutual agreement between the commissioner and the permit applicant;

(B) Applications for the reissuance of national pollutant discharge elimination system (NPDES) permits shall be issued or denied within one hundred eighty (180) days of the date the department determines an application is complete. If a public hearing is scheduled, in response to comments by interested parties, additional time is requested by the applicant, or additional time is requested by the EPA, an additional ninety (90) days shall be added to the allowable time limit;

(C) Applications for new or modified NPDES permits shall be issued or denied within three hundred sixty-five (365) days of the date the department determines an application is complete. If a public hearing is scheduled, in response to comments by interested parties or additional time is requested by the EPA, an additional ninety (90) days shall be added to the allowable time limit. No other extension shall be granted, except by written mutual agreement between the commissioner and the permit applicant;

(6) Permit applicants shall have the right to appeal to the board any permit review time limits that have been violated without good cause. Through this appeal, applicants may obtain a set date for a decision on their permit and, where the board finds good cause, appropriate relief, including, but not limited to, a refund of all application fees;

(7) Permit applicants shall have the right to know who will be reviewing their application and the time required to complete the full review process; and

(8) Construction stormwater permit applicants shall have the right to have their permit applications considered based on the activities described in the permit application and conditions that exist at the time the permit application is under consideration, rather than possible future conditions unrelated to the activities for which the permit is sought as identified in the application.

(c) If the only factor that disqualifies an applicant for an aquatic resource alteration permit (ARAP) for wetland impacts from having the activities for which a permit is sought covered under a general permit is the size of the wetland that the permit will apply to, the department shall exempt from compensatory mitigation an amount of wetland equal in size to the area for which mitigation would not be required if the permit applicant qualified for coverage under a general permit.

History

Acts 2008, ch. 854, § 1; *2023, ch. 169, §§ 1*, 2; *2023, ch. 170, § 1*.

Annotations

Notes

Amendments.

The 2023 amendment by ch. 169 added (a)(6) and (b)(8).

The 2023 amendment by ch. 170 added (c).

Effective Dates.

Acts 2023, ch. 169, § 3. January 1, 2024.

Acts 2023, ch. 170, § 2. January 1, 2024.

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Tenn. Code Ann. § 69-3-142

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-142. Annual reports by commissioner.

(a) The commissioner shall submit by January 31 of each year to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives the following information:

(1) The number of enforcement orders, including directors' orders and commissioner's orders, issued pursuant to *§ 69-3-109(a)(1)* and (2) during the prior year, listed by the county in which the violation occurred;

(2) The number of orders that become final pursuant to *§ 69-3-109(a)(3)* during the prior year, including the average civil penalties and damages assessed by the department from these orders;

(3) The number of final orders and consent orders by the board that become final pursuant to *§ 69-3-110(c)*, including the average civil penalties and damages assessed by the department from these decisions during the prior year; and

(4) The number of complaints filed in any chancery court of this state appealing a decision by the board, pursuant to *§ 69-3-111*, and any judicial proceedings initiated by the commissioner and the attorney general and reporter, pursuant to *§ 69-3-117*, during the prior year.

(b) The commissioner shall submit by January 31 of each year to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives the following information:

(1) The number of individual permit applications made during the prior year, listed by county in which the activity sought to be permitted was to occur;

(2) The average length of time, in days, between date of individual permit application and the date permit applications are deemed complete by the department during the prior year; and

(3) The average length of time, in days, between date of individual permit application and the date the department grants or denies the permit application during the prior year.

(c) For purposes of this section, “permit application” and “permit applications” shall be defined to include applications for individual permits issued pursuant to *§ 69-3-108*.

(d) The commissioner shall submit by January 31 of each year to the chair of the energy, agriculture and natural resources committee of the senate and the chair of the agriculture and natural resources committee of the house of representatives a brief report on the status of the implementation of a secure web portal for the submittal of online permit applications. This service for electronic submittal of permit applications will comply with the federal guidelines contained in 40 CFR Ch. I, Subch. A, Part 3, Cross-Media Electronic

Reporting Rule (CROMERR). This reporting requirement will terminate after a secure online permit application submittal system is implemented.

History

Acts 2008, ch. 1014, § 1; *2012, ch. 604, § 19*; *2013, ch. 236, § 10*.

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Tenn. Code Ann. § 69-3-143

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69-3-143. Rock harvesting operations.

Sections 69-3-143— *69-3-147* shall govern rock harvesting operations as defined in *§ 69-3-144*.

History

Acts 2011, ch. 341, § 3.

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Tenn. Code Ann. § 69-3-144

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-144. Definitions for *§§ 69-3-143* — *69-3-147*. [Effective until July 1, 2024. See the version effective on July 1, 2024.]

As used in *§§ 69-3-143* — *69-3-147*, unless the context otherwise requires:

(1) As used for the purposes of rock harvesting under *§§ 69-3-143* — *69-3-147* only, "mineral" means dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade and marble, but does not include any other "mineral" as defined in *§ 59-8-202*;

(2) "Operator" means any person engaged in rock harvesting who disturbs or intends to disturb one (1) acre or more of land or removes or intends to remove more than one hundred (100) tons of minerals as defined in subdivision (1). Any operator who has obtained a permit and otherwise complied with this part may subcontract any part or all of the rock harvesting area covered by the permit to the extent that such subcontractors meet all the qualifications and requirements of this part; and

(3) "Rock harvesting" means the removal of minerals, as defined in subdivision (1), by an operator with or without machinery.

History

Acts 2011, ch. 341, § 3.

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Tenn. Code Ann. § 69-3-144

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-144. Definitions for *§§ 69-3-143* — *69-3-147*. [Effective on July 1, 2024. See the version effective until July 1, 2024.]

As used in *§§ 69-3-143* — *69-3-147*, unless the context otherwise requires:

(1) As used for the purposes of rock harvesting under *§§ 69-3-143* — *69-3-147* only, "mineral" means dimension stone, flagstone, fieldstone, landscaping stone, drystack stone, façade and marble, but does not include any other "mineral" as defined in *§ 59-8-202*;

(2) "Operator" means any person engaged in rock harvesting who disturbs or intends to disturb one (1) acre or more of land or removes or intends to remove more than one hundred (100) tons of minerals as defined in subdivision (1). Any operator who has obtained a permit and otherwise complied with this part may subcontract any part or all of the rock harvesting area covered by the permit to the extent that such subcontractors meet all the qualifications and requirements of this part; and

(3) "Rock harvesting":

(A) Means the removal of minerals, as defined in subdivision (1), by an operator with or without machinery; and

(B) Does not include activity that is exempt from this part under *§ 69-3-120(g)*.

History

Acts 2011, ch. 341, § 3; *2024, ch. 939, § 1*.

Annotations

Notes

Amendments.

The 2024 amendment rewrote (3), which read: "'Rock harvesting' means the removal of minerals, as defined in subdivision (1), by an operator with or without machinery."

Effective Dates.

Acts 2024, ch. 939, § 2. July 1, 2024.

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Tenn. Code Ann. § 69-3-145

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-145. Required permit or notice of coverage under a general permit — Construction regarding adjudication of property rights disputes.

(a) No operator shall engage in rock harvesting without having first obtained from the commissioner a permit or notice of coverage under a general permit as required in *§ 69-3-108* and the regulations promulgated pursuant thereto. At least thirty (30) days prior to engaging in rock harvesting on any land in which the right to engage in rock harvesting has been severed from the ownership of the land surface, the operator shall send the owner of the surface, by certified mail, return receipt required, a copy of the permit or notice of coverage from the department. The operator shall forward copies of all records relating to the certified mailing to the department. All costs associated with the certified mailing and transmission of records to the department shall be borne by the operator.

(b) The granting of a permit shall be subject to payment by the operator of the fee prescribed in title 68, chapter 203, and upon submission to the department of the following information:

(1) Evidence of the operator's legal right to harvest the minerals on the land affected by the permit;

(2) Proof of general liability and, if applicable, workers' compensation insurance coverage. The general liability policy shall be in an amount of no less than one million dollars ($1,000,000). Proof of coverage shall be provided to the department prior to issuance of the permit;

(3) Proof of the registration with the department of revenue of the operator and any subcontractors;

(4) All application forms, maps, calculations and narratives required to satisfy *§ 69-3-108* and the regulations issued pursuant thereto; and

(5) A reclamation/stabilization plan which addresses backfilling, grading and revegetation of the site. The reclamation plan will be followed as operations proceed with the overburden and waste materials from succeeding cuts being utilized in the reclamation of preceding cuts. The overburden and waste material from the first cut may be utilized for access road construction. The plan shall provide for returning the affected area as close as is reasonable in the circumstances to its preharvesting state, considering the available overburden and other factors.

(c) Nothing in this section shall be construed to authorize the commissioner to adjudicate property rights disputes.

History

Acts 2011, ch. 341, § 3.

69-3-145. Required permit or notice of coverage under a general permit — Construction regarding adjudication of property rights disputes.

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Tenn. Code Ann. § 69-3-146

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-146. Stop-work order for rock harvesting operations.

(a) The commissioner is authorized to issue stop-work orders for rock harvesting operations in accordance with this section.

(b) When rock harvesting activities have polluted waters of the state as a result of an operator's knowing violation of permit conditions, or an operator has failed or refused to obtain permit coverage as required in *§ 69-3-145*, the commissioner may issue a stop-work order to the operator. The stop-work order shall specify those parts of the rock harvesting activities on site that are contributing to the pollution or require ceasing work until permit coverage is obtained. The stop-work order shall remain in effect until the department determines that the operator has obtained permit coverage and/or has taken all necessary measures to comply with the permit so that further pollution associated with the rock harvesting operations will not occur.

(c) A written request for a hearing before the board of water quality, oil and gas on the stop-work order shall be filed by the operator with the commissioner within thirty (30) days of the receipt of notice. If the operator files the request and also makes a specific request for an informal meeting with the commissioner to show cause why the stop-work order should not have been issued, the commissioner or the commissioner's designee shall meet with the operator within three (3) working days after the hearing request is filed. Any modification or revocation of the stop-work order shall be in writing. If the commissioner or the commissioner's designee upholds the stop-work order, it shall remain in effect until resolution of the appeal or until the operator comes into compliance. If no request for a hearing is made within thirty (30) days of the receipt of notice, the stop-work order shall be final and shall not be subject to review. In such case, the operator shall stabilize the site within sixty (60) days of the receipt of notice.

(d) Failure of an operator to comply with a stop-work order issued pursuant to this section shall subject the operator to another violation of this part in addition to any other violations the operator has committed that is subject to the penalties prescribed in *§ 69-3-115*. The commissioner may also institute proceedings for the confiscation and forfeiture of equipment used in any rock harvesting operation to which a stop-work order has been issued. Such proceedings may be instituted in the chancery court of Davidson County, or in the chancery court of the county in which all or part of the rock harvesting operation is located.

History

Acts 2011, ch. 341, § 3.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-3-147

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-147. Rock harvesting governance.

Except where a specific provision of *§§ 69-3-143* — *69-3-147* is applicable, rock harvesting is subject to and shall be governed by this part.

History

Acts 2011, ch. 341, § 3.

Annotations

Notes

Compiler's Notes.

Acts 2011, ch. 341, § 4 provided that notwithstanding any law to the contrary, where an owner of surface and mineral rights to real property enters into a contract for the conveyance of mineral rights in such property resulting in a severance of such interests, the parties to such conveyance shall identify the specific mineral interests to be conveyed to the purchaser of the mineral rights. The purchaser of the mineral interests shall identify such interests purchased by providing a deed reference number in accordance with *§ 67-5-804(c)* for the mineral interest with the property assessor in the county in which the interests are located as prescribed in this section. For the purposes of this section, “specific mineral interests” means only those minerals listed in the deed as contemplated by the parties. All rights to minerals not described in the deed shall remain with the surface owner. The provisions of this section shall apply to all contracts entered into on or after July 1, 2011, and shall not impair the obligation of any existing contract or be construed to direct courts in determining the intent of the parties who entered into a contract prior to such date.

69-3-147. Rock harvesting governance.

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Tenn. Code Ann. § 69-3-148

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-3-148. Municipal separate storm sewer systems becoming qualified local programs.

(a) The department may establish a program under which municipal separate storm sewer systems may become qualified local programs allowing for the streamlining of permits for construction activity as provided in this section.

(b) The department may review and approve applications from municipal separate storm sewer systems to become qualified local programs. The requirements for being a qualified local program shall be those required by federal regulation together with a system acceptable to the department for sharing information as to the construction sites authorized by the qualified local program.

(c) The department may incorporate by reference the requirements of a qualified local program for construction activity in its general permit.

(d) An operator of a construction site located within the jurisdiction of a qualified local program under subsection (b) who has obtained a notice of coverage from such program shall be authorized under the department's general permit for storm water associated with construction activity for that site and shall not have to submit any of the following to the department:

(1) Notice of intent to seek coverage under a storm water construction permit;

(2) Storm water pollution prevention plan;

(3) Storm water construction permit fee; or

(4) Notice of termination.

History

Acts 2012, ch. 1019, § 2.

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Tenn. Code Ann. § 69-7-201

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-201. Short title.

This part shall be known as the “Inter-basin Water Transfer Act.”

History

Acts 2000, ch. 854, § 2; T.C.A. § 69-8-201.

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Tenn. Code Ann. § 69-7-202

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-202. Legislative findings — Purpose.

The general assembly finds that as the population and demand for water resources grow, it is prudent to engage in planning for the future and to have an explicit mechanism in place to regulate proposals for the diversion of water from one river basin to another. By removing water from rivers, such inter-basin transfers raise issues of the protection of the public health, safety, welfare and the environment as the water is no longer available for use in the original stream. The primary purpose of this part is to allow regulation on the basis of the quantity of water in river basins. Although the common law addresses some of these concerns, it relies on after-the-fact litigation rather than a modern regulatory system. As this is remedial and police power legislation, all sections of this part shall be liberally construed to effectuate its purpose.

History

Acts 2000, ch. 854, § 3; T.C.A. § 69-8-202.

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Tenn. Code Ann. § 69-7-203

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-203. Definition of basin and river basin.

For purposes of this part, “basin” or “river basin” refers to the entire topographic extent of the following ten (10) watersheds and combinations of watersheds:

(1) The Mississippi River and all of its tributaries west of the Tennessee River Valley;

(2) The Duck River, the Elk River, and the western Tennessee River Valley;

(3) The lower Cumberland River to the downstream point of the mouth of the Caney Fork River, the Harpeth and the Stones rivers;

(4) The tributaries of the Barren River;

(5) The upper Cumberland River, the Caney Fork, the Obed, and the Big South Fork of the Cumberland River;

(6) The lower Tennessee River in East Tennessee up to and including the Hiawassee River;

(7) The Conasauga River;

(8) The Upper Tennessee River in East Tennessee upstream of the Hiawassee, the Little Tennessee, the Clinch, and the Emory rivers;

(9) The French Broad River and the Nolichuckey River; and

(10) The Holston River and the Watauga River.

History

Acts 2000, ch. 854, § 4; T.C.A. § 69-8-203.

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Tenn. Code Ann. § 69-7-204

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-204. Acquisition of permit — Determination of amount of existing inter-basin transfer.

(a) All persons or entities:

(1) That have been granted powers by the state to acquire water, water rights and associated property by eminent domain or condemnation; or

(2) That acquire or supply water for the use or benefit of public water supply systems as defined in *§ 68-221-703*,

shall, when proposing a new or increased withdrawal of surface water or ground water for the purpose of transferring or diverting, or both, some or all of it out of a river basin either directly or through one (1) or more intermediaries, first apply for and obtain a permit from the commissioner of environment and conservation, or the commissioner's designee, prior to such diversion or transfer; provided, that in the case of ground water withdrawal, this section shall only apply if the loss of the ground water has a significant potential to adversely affect the flow of a Tennessee surface water.

(b) For purposes of determining the amount of an existing inter-basin transfer under this section, it is the average daily amount calculated for the highest continuous 90-day period between January 1, 1997, and December 31, 1999; provided, that nothing whatsoever in this section shall apply to existing withdrawals by entities described above except that such persons or entities shall be subject to this section when proposing to:

(1) Increase the amount of water withdrawn, when some or all of the water will be transferred to a different river basin; or

(2) Locate a new intake for withdrawal, when some or all of the water will be transferred to a different river basin.

(c) All persons or entities that are issued a permit under subsection (a) shall operate the withdrawal activity in accordance with all terms and conditions of the permit.

History

Acts 2000, ch. 854, § 5; T.C.A. § 69-8-204.

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Tenn. Code Ann. § 69-7-205

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-205. Powers of commissioner of environment and conservation.

In addition to powers under all other statutes, including, but not limited to, the Water Quality Control Act, compiled in chapter 3, part 1 of this title, and the Safe Drinking Water Act, compiled in title 68, chapter 221, part 7, the commissioner of environment and conservation, or the commissioner's designee, shall have the following powers and duties under this part:

(1) To issue and to deny inter-basin transfer permits in accordance with *§ 69-7-206*;

(2) To issue civil penalty assessments in accordance with *§ 69-7-208*;

(3) To conduct inspections and investigations;

(4) To bring suit in the name of the department for any violation of this part, including seeking any remedy available under this part as well as under any other statutory or common law remedy related to water availability and supply;

(5) To require the submission of plans, specifications, technical reports, and any other information the commissioner deems necessary to carry out this part;

(6) To delegate any of the commissioner's duties to the director of the appropriate division under the commissioner's supervision; and

(7) To be the primary administrative agent in carrying out this part.

History

Acts 2000, ch. 854, § 6; T.C.A. § 69-8-205.

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Tenn. Code Ann. § 69-7-206

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-206. Issuance and denial of permit.

(a) The commissioner shall issue or deny any permit applied for pursuant to *§ 69-7-204* in accordance with this part and the rules adopted by the board of water quality, oil and gas under *§ 69-7-207* and any applicable provisions of the Water Quality Control Act, compiled in chapter 3, part 1 of this title, and rules under that act. Such permits shall be issued for a renewal term of five (5) years and contain necessary and appropriate conditions to accomplish the purposes of the same part and rules.

(b) The commissioner shall, to the maximum extent feasible, combine the permit application and issuance processes for a withdrawal activity that requires permits under this part and the Water Quality Control Act.

(c) The commissioner may revoke, suspend, or modify any permit for the following reasons:

(1) A violation of any terms or conditions of the permit or of any provision of this part;

(2) Obtaining the permit by misrepresentation or failing to disclose fully all relevant facts; or

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted inter-basin transfer because of reasonably likely adverse impacts to downstream users or the environment.

(d) Any person aggrieved by the issuance or denial of a permit by the commissioner under this part may appeal such matter to the board of water quality, oil and gas solely in accordance with *§ 69-7-207(3)*.

History

Acts 2000, ch. 854, § 7; T.C.A. § 69-8-206; *Acts 2005, ch. 325, § 1*.

Annotations

Notes

Compiler's Notes.

Acts 2005, ch. 325, § 3 provided that the amendment of subsection (d) shall only apply to permit applications filed after June 7, 2005.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-7-207

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-207. Duties and powers of board of water quality, oil and gas.

In addition to powers under all other statutes, including, but not limited to, the Water Quality Control Act, compiled in chapter 3, part 1 of this title, and the Safe Drinking Water Act, compiled in title 68, chapter 221, part 7, the board of water quality, oil and gas, created by *§ 69-3-104*, has the following powers and duties under this part:

(1) To promulgate rules to be effective by October 1, 2000, to effectuate the purposes of this part including, but not limited to:

(A) Defining necessary terms;

(B) Setting criteria for permit issuance and denial as well as for permit conditions, taking into account all appropriate factors including, but not limited to, existing uses downstream of a proposed withdrawal, low flow conditions, classified uses of the stream under the Water Quality Control Act, climatic conditions, alternatives to the proposed withdrawal, the number of downstream river miles from which water will be diverted as a result of the transfer, quantity of a proposed withdrawal, and quantity and location of water returned;

(C) Establishing procedures for permit issuance, including application fees for permits under this part, categories of withdrawals for which general permits would be appropriate, requirements for public notice, including notice to potentially affected communities and water users and notice to the public of receipt of a permit application within thirty (30) days of receipt, and opportunity for public comment and public hearings;

(2) To hear appeals from assessments of civil penalty assessments; and

(3) To hold a contested case hearing concerning the commissioner's issuance or denial of a permit, upon receiving a petition for permit appeal. During this hearing, the board shall review the commissioner's permit decision and may reverse or modify the decision upon finding that it does not comply with any provisions of this part. A petition for permit appeal may be filed pursuant to this subdivision (3) by the permit applicant, or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing, whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application. Any petition for permit appeal under this subdivision (3) shall be filed with the board within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit. Notwithstanding *§§ 4-5-223* or *69-3-118(a)*, or any other law to the contrary, this subdivision (3) shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit.

History

Acts 2000, ch. 854, § 8; T.C.A. § 69-8-207; *Acts 2005, ch. 325, § 2*.

Annotations

Notes

Compiler's Notes.

Acts 2005, ch. 325, § 3 provided that the amendment of subdivision (3) shall only apply to permit applications filed after June 7, 2005.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-7-208

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-208. Assessment of civil penalties.

(a) The commissioner may assess civil penalties for any violation of this part of up to ten thousand dollars ($10,000) per day per violation. In making such assessments, the commissioner shall consider all appropriate factors including, without limitation, whether the violation was knowing or intentional, any actual harm to people or the environment resulting from the violation or activity, the potential for harm to people or the environment posed by the violation or activity.

(b) Any civil penalty shall be assessed in the following manner:

(1) The commissioner may issue an assessment against any person or entity responsible for the violation; and

(2) Any person or entity against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections, and asking for a hearing on the matter involved before the board. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final.

(c) All fees and penalties assessed and collected under this part shall be administered in the same manner as provided in the Environmental Protection Fund, compiled at title 68, chapter 203.

History

Acts 2000, ch. 854, § 9; T.C.A. § 69-8-208.

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Tenn. Code Ann. § 69-7-209

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-209. Exercise of grants of power.

Any exercise of the state's grants of power to acquire water, water rights, and associated property by eminent domain or condemnation, and for the use or benefit of public water supply, shall not be made in a manner that conflicts with the Water Quality Control Act, compiled in chapter 3, part 1 of this title, or this part and the regulations under this part.

History

Acts 2000, ch. 854, § 10; T.C.A. § 69-8-209.

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Tenn. Code Ann. § 69-7-210

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69-7-210. Designation of protected areas.

The board of water quality, oil and gas may, from time to time after giving due notice and conducting a public hearing, determine and delineate such basins or portions of basins where the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage and any such areas may be designated as “protected areas.” The water quality control board, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such termination.

History

Acts 2000, ch. 854, § 12; T.C.A. § 69-8-210.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, §§ 26-28 amended *§ 69-3-104* to substitute “board of water quality, oil and gas” for “board of water quality control”.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-7-211

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-211. Submission of documents and records to commissioner of environment and conservation.

(a) Prior to October 1, 2000, all persons or entities subject to *§ 69-7-204(a)* that operate an existing inter-basin transfer shall submit flow or pumping records or other documentation that shows to the commissioner of environment and conservation's satisfaction the amount of such transfer. The commissioner shall respond in writing stating whether the documentation was sufficient or specifying any deficiency that shall promptly be corrected. Any failure to comply with this section will constitute a violation of this part.

(b) All such persons or entities shall, thereafter, either submit every October 1 a statement under oath certifying that there has been no increase in the inter-basin transfer, together with appropriate documentation, or a timely permit application for any increased inter-basin transfer as provided in *§ 69-7-204*.

History

Acts 2000, ch. 854, § 13; T.C.A. § 69-8-211.

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Tenn. Code Ann. § 69-7-212

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-212. Redesignation of personnel.

The department of environment and conservation may redesignate existing personnel to implement this chapter.

History

Acts 2000, ch. 854, §§ 14, 15; T.C.A. § 69-8-212.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 604, § 20 purported to amend subsection (b). Subsection (b) was deleted as obsolete by the code commission in 2012; therefore, the amendment was not given effect.

Commentary

Code Commission Notes.

69-7-212. Redesignation of personnel.

Former subsection (b), concerning the deadline for a report regarding implementation of this part, was deleted as obsolete by the code commission in 2012.

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Tenn. Code Ann. § 69-7-301

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

TN - Tennessee Code Annotated > Title 69 Waters, Waterways, Drains And Levees > Chapter 7 Water Management > Part 3 Tennessee Water Resources Information Act

69-7-301. Short title.

This part shall be known and may be cited as the “Tennessee Water Resources Information Act.”

History

Acts 2002, ch. 800, § 2; T.C.A. § 69-8-301.

Annotations

Research References & Practice Aids

Law Reviews.

Tennessee Water Law, You Never Miss the Water Till the Well Runs Dry (Vincent A. Sikora), 24 No. 5 Tenn. B.J. 12 (1988).

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Tenn. Code Ann. § 69-7-302

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-302. Legislative intent — System of registration.

The general assembly recognizes that in other states the withdrawal of ground water has caused the lowering of the ground water table and that there is potential for ground water or surface water withdrawals to impact water uses in Tennessee. Therefore, it is necessary and prudent to institute a system of registration so that adequate information is obtained to document current demand for water and to project growth in that demand as applicable to this part.

History

Acts 2002, ch. 800, § 3; T.C.A. § 69-8-302.

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Tenn. Code Ann. § 69-7-303

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-303. Part definitions.

As used in this part, unless the context otherwise requires:

(1) "Board" means the board of water quality, oil and gas established pursuant to *§ 69-3-104*;

(2) "Commissioner" means the commissioner of environment and conservation, the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation;

(3) "Person" means any individual, corporation, company, limited liability company, partnership, association, group, utility district, federal, state or local government agency, or any combination of them;

(4) "Source" means a location where surface or ground water is available, including, but not limited to, a water well, cave, spring, stream, river, lake, or impoundment; and

(5) "Withdraw" means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction. This does not include nonrecurring withdrawals, including, but not limited to, the filling of a swimming pool from a residential water well or accidental withdrawals caused by failure of pipes or equipment.

History

Acts 2002, ch. 800, § 4; T.C.A. § 69-8-303.

Annotations

Notes

Compiler's Notes.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

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Tenn. Code Ann. § 69-7-304

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-304. Registration of withdrawal from surface water or groundwater source — Exceptions.

(a) Except as provided in subsections (c) and (d), no person shall withdraw ten thousand (10,000) or more gallons of water per day from a surface water or a groundwater source unless the withdrawal is currently registered with the commissioner. The commissioner shall accept a recognized method of measuring the quantities of water withdrawn.

(b) Any person who causes such a withdrawal, or proposes such a withdrawal shall annually register such water withdrawal with the commissioner on forms provided for the purpose. For water wells drilled pursuant to *§ 69-10-101*, the initial withdrawal may be registered by the well driller, on behalf of the person causing or proposing the withdrawal, by providing the required information, including an estimate of the withdrawal amount, with the notification of the intent to drill a well and by verifying or modifying, or both, the information when the report of the well driller is delivered to the commissioner. Subsequent withdrawals from water wells shall be registered annually by the person who causes such a withdrawal, or proposes such a withdrawal.

(c) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided it is not done on a regular or recurring basis.

(d) A person may withdraw water for agricultural purposes without having registered the withdrawal. If a person withdraws water for agricultural purposes and another purpose, the water used for agriculture shall not count towards the calculation of whether the withdrawal exceeds ten thousand (10,000) gallons per day. For purposes of this part, “agricultural purposes” shall mean use in the production or harvesting of an agricultural product, including, but not limited to, irrigation of crops, nursery stock production as defined at *§ 43-1-112*, and watering of poultry or livestock.

History

Acts 2002, ch. 800, § 5; T.C.A. § 69-8-304.

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Tenn. Code Ann. § 69-7-305

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-305. Powers of commissioner.

The commissioner has the power to:

(1) Annually collect and compile water quantity data and other quantity information, including data and information on uses of water and well data, and to develop registration and other forms for these purposes. Additionally, if requested and if it is deemed necessary by the commissioner to protect trade secret information as defined in *§ 47-25-1702*, the commissioner shall keep such trade secret information confidential;

(2) Accept forms and data provided by a municipality that has adopted home rule pursuant to *article XI, § 9 of the Tennessee Constitution*,, or any county operating under a county charter form of government, as part of the annual registration or data collection process, or both;

(3) Pursuant to *§ 69-7-302*, make inspections and investigations, collect samples pursuant to a water quantity inspection or investigation, carry on research, or take such other action as may be necessary to carry out this part, rules and regulations issued pursuant to this part, and any orders that the commissioner may issue;

(4) Enter or authorize the commissioner's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this part;

(5) Bring suit in the name of the department for any violation of this part, rules and regulations, and orders of the commissioner seeking any remedy provided in this part, rules and regulations and orders of the commissioner, and any other statutory or common law remedy provided in statutory or common law;

(6) Assess civil penalties for violation of any provision of this part or any rule, regulation, standard adopted or order issued by the commissioner pursuant to this part;

(7) Issue orders as may be necessary to secure compliance with this part, as well as the rules and regulations adopted pursuant to this part; and

(8) Exercise general supervision over the administration and enforcement of this part and all rules and regulations promulgated under this part.

History

Acts 2002, ch. 800, § 6; T.C.A. § 69-8-305.

Annotations

Research References & Practice Aids

Cross-References.

Confidentiality of public records, *§ 10-7-504*.

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Tenn. Code Ann. § 69-7-306

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-306. Rules — Rulings in contested cases.

(a) The board has the authority to promulgate the rules, other than rules establishing fees, that it deems reasonable and necessary to effectuate the purposes of this part, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The board has the authority to conduct and make all rulings in contested cases under this part.

History

Acts 2002, ch. 800, § 7; T.C.A. § 69-8-306.

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Tenn. Code Ann. § 69-7-307

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-307. Violations — Orders — Penalties — Hearings — Injunction.

(a)

(1) Whenever the commissioner has reason to believe that a person is withdrawing water without having a valid registration, or has supplied false or materially misleading information to the department or has violated any order or rule promulgated pursuant to this part, the commissioner may cause a written administrative order to be delivered to the alleged violator. The order shall specify the provision of this part or rule or order alleged to be violated, the facts alleged to constitute a violation thereof, and may order that corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing.

(2) Any such order shall become final and not subject to review unless the person or persons named in the order request by written petition a hearing no later than thirty (30) days after the date such order is delivered; provided, that the board may review such final order on the same grounds upon which a court of the state may review default judgments.

(b) Except as otherwise expressly provided, any order issued by or under authority of this part may be served on any person by the commissioner or any person designated by the commissioner, by certified mail, or in accordance with Tennessee statutes authorizing service of process in civil actions.

(c) Any person who violates or fails to comply with any provision of this part, any order of the commissioner or board issued pursuant to this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than fifty dollars ($50.00) nor more than seven thousand five hundred dollars ($7,500) per day for each day of violation. Each day such violation continues is a separate violation.

(d) In addition to the commissioner bringing an action in any court of competent jurisdiction, a civil penalty may be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections and asking for a hearing before the board in the matter involved. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final;

(3) Whenever any order or assessment has become final because of a person's failure to appeal the commissioner's order or assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such order or assessment as a confession of judgment in the amount of the assessment; and

(4) In assessing a civil penalty, the following factors may be considered:

(A) The harm done or potential for harm to the public health or the environment;

(B) The harm done or potential for harm to the regulatory program by the violation;

(C) The economic benefit gained by the violator;

(D) The amount of effort put forth by the violator to avoid or to remedy the violation; and

(E) Any unusual or extraordinary enforcement costs incurred by the commissioner.

(e) Any hearing or rehearing brought before the board shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(f) The commissioner may also initiate an action in any court of competent jurisdiction seeking a judgment for any unpaid penalties.

(g) When there is reason to believe that a person has violated, or is about to violate, any of the provisions of this part or orders issued under this part, the commissioner may institute proceedings in the appropriate court for injunctive relief.

(h) Any person intentionally violating, or failing, neglecting, or refusing to comply with, any of the provisions of this part or rules or regulations commits a Class C misdemeanor. Each day upon which such violation occurs is a separate offense.

History

Acts 2002, ch. 800, § 8; T.C.A. § 69-8-307.

Annotations

Research References & Practice Aids

Cross-References.

Penalty for Class C misdemeanor, *§ 40-35-111*.

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Tenn. Code Ann. § 69-7-308

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69-7-308. Regional water planning — Models — Report.

The commissioner and the board shall encourage and support regional water planning whenever possible. In the future, if there is a specific appropriation of state or federal funds for regional water supply planning, the board may require regional water supply planning and may provide incentives to encourage such regional planning, using the rulemaking authority under this part for so long as such specific appropriation is in effect. Among other criteria, state agencies are authorized to consider regional planning and regionalization efforts when awarding grants, making loans or funding projects.

History

Acts 2002, ch. 800, § 9; T.C.A. § 69-8-308.

Annotations

Commentary

Code Commission Notes.

Former subsection (b), concerning the deadline for reporting on regional aquifer studies, was deleted as obsolete by the code commission in 2012.

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Tenn. Code Ann. § 69-7-309

Current through Chapter 1069, with the exception of Chapter 688 secs 79, 80, and 83 of the 2024 Regular Session. The commission may make editorial changes to this version and may relocate or redesignate text. Those changes will appear on Lexis Advance after the publication of the certified volumes and supplements. Pursuant to TCA sections 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code. Until the annual issuance of the certified volumes and supplements, references to the updates made by the most recent legislative session should be to the Public Chapter and not TCA.

69-7-309. Technical advisory committee.

From time to time, the commissioner may appoint a technical advisory committee that shall advise the commissioner on matters related to the state's water resources. The commissioner may determine the identity and number of committee members and the term during which the committee will operate. The committee may be composed of representatives of federal, state, and local agencies with relevant authority and representatives of appropriate private organizations, including not-for-profit organizations. No member of the committee is entitled to a salary for duties performed as a member of the committee. No member is entitled to reimbursement for travel or other necessary expenses incurred in the performance of the member's official duties.

History

Acts 2002, ch. 800, § 10; T.C.A. § 69-8-309; *Acts 2012, ch. 986, § 40*.

Annotations

Notes

Compiler's Notes.

Acts 2012, ch. 986, § 48 provided that all rules, regulations, orders, and decisions heretofore issued or promulgated by any of the boards or commissions, which the act terminates or merges into another board or commission, shall remain in full force and effect. In the case of the boards or commissions that are merged with another board or commission by the act, all final rules, regulations, orders, and decisions together with any matters that are pending on October 1, 2012, shall hereafter be administered, enforced, modified, or rescinded in accordance with the law applicable to the continuing board or commission.

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TAB 9

Uniform Administrative Procedures Act

Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 to -502

Title 4 State Government, Chapter 5 Uniform Administrative Procedures Act

Part 1 General Provisions

- 4-5-101. Short title.
- 4-5-102. Chapter definitions.
- 4-5-103. Construction of chapter.
- 4-5-104. Suspension of provisions when necessary to avoid loss of federal funds.
- 4-5-105. Informal settlements.
- 4-5-106. Application.
- 4-5-107. Majority needed to determine rules or contested cases — Exceptions.
- 4-5-108. Legislative proposals affecting administrative procedure — Prior study.
- 4-5-109 — 4-5-133. [Transferred or Repealed.]

Part 2 Rulemaking and Publications

- 4-5-201. Petitions for or against rules.
- 4-5-202. When hearings required.
- 4-5-203. Notice of hearing.
- 4-5-204. Conduct of hearings.
- 4-5-205. Consideration of arguments — Reasons given for agency action — Advisory committees.
- 4-5-206. Filing of rules.
- 4-5-207. Effective dates of rules.
- 4-5-208. Emergency rules.
- 4-5-209. Reference to public necessity rules deemed references to emergency rules.
- 4-5-210. Promulgation of rules relating to guides to practice.
- 4-5-211. Approval of rules by attorney general and reporter.
- 4-5-212. Remand of rule that may constitute potentially unreasonable restraint of trade.
- 4-5-213. [Reserved.]
- 4-5-214. Withdrawal of rules.
- 4-5-215. Stay of effective date of rules.
- 4-5-216. Invalidity of improperly adopted rules.
- 4-5-217. Rules of practice required.
- 4-5-218. Public inspection and copying of agency rules, final orders and decisions.
- 4-5-219. Model rules of procedure.
- 4-5-220. Publication of rules on the secretary of state's website — Contents of website.
- 4-5-221. Powers of secretary of state regarding publication — Certification of rules — Website and its contents prima facie evidence of regulatory law — Delegation of duties and powers.
- 4-5-222. Record of voting on policy or rule adoption.
- 4-5-223. Declaratory orders.
- 4-5-224. Declaratory order request — Notices.
- 4-5-225. Declaratory judgments.
- 4-5-226. Expiration of rules — Review by general assembly.
- 4-5-227. Designation of date for automatic termination of rule.
- 4-5-228. Statement by proposing agency projecting whether new rule or regulation to have financial impact on local governments.
- 4-5-229. Effective date of new fees or fee increases promulgated by state agency rule.

- 4-5-230. Submission of list of adopted policies.
- 4-5-231. Rules or policies that infringe on agency member's free speech prohibited — Power to remove member.

Part 3 Contested Cases
- 4-5-301. Conduct of contested cases.
- 4-5-302. Disqualification of judge, hearing officer, etc. — Substitutions.
- 4-5-303. Separation of functions.
- 4-5-304. Ex parte communications.
- 4-5-305. Representation.
- 4-5-306. Prehearing conferences.
- 4-5-307. Notice of hearing.
- 4-5-308. Filing pleadings, briefs, motions, etc. — Service.
- 4-5-309. Default.
- 4-5-310. Intervention.
- 4-5-311. Discovery — Subpoenas — Protective orders.
- 4-5-312. Procedure at hearing.
- 4-5-313. Rules of evidence — Affidavits — Official notice.
- 4-5-314. Final order — Initial order.
- 4-5-315. Review of initial order.
- 4-5-316. Stay.
- 4-5-317. Reconsideration.
- 4-5-318. Effectiveness of new order.
- 4-5-319. Agency record.
- 4-5-320. Proceedings affecting licenses.
- 4-5-321. Administrative procedures division — Manual of policies and procedures — Code of conduct.
- 4-5-322. Judicial review.
- 4-5-323. Appeals to court of appeals.
- 4-5-324. Training program for administrative judges or hearing officers.
- 4-5-325. Payment of costs to cited party.

Part 4 Regulatory Flexibility Act of 2007
- 4-5-401. Short title.
- 4-5-402. Analysis of impact on small business.
- 4-5-403. Preparation of economic impact statement.
- 4-5-404. Application.

Part 5 Right to Earn a Living Act
- 4-5-501. Part definitions.
- 4-5-502. Submission of entry regulations — Review — Disapproval.

TAB 10

Ex Parte Contact and Open Meetings Act

Ex Parte Communications

An ex parte communication is any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between (1) an interested person outside the Board (including such person's counsel) and (2) the administrative law judge handling that proceeding, a member of the Board, or a decisional employee.

During the pendency of any contested case proceeding, no interested person shall make an ex parte communication to a member of the Board, the administrative law judge, or a decisional employee (e.g., a staff member who assists the Board). A request for status of the proceeding does not constitute an ex parte communication.

Tenn. Code Ann. § 4-5-304

(a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

(b) Notwithstanding subsection (a), an administrative judge, hearing officer or agency member may communicate with agency members regarding a matter pending before the agency or may receive aid from staff assistants, members of the staff of the attorney general and reporter, or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative judge, hearing officer or agency members would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to a contested case, and no other person may communicate, directly or indirectly, in connection with any issue in that proceeding, while the proceeding is pending, with any person serving as an administrative judge, hearing officer or agency member without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as an administrative judge, hearing officer or agency member in a contested case, a person receives an ex parte communication of a type that may not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

(f) An administrative judge, hearing officer or agency member who receives an ex parte communication in violation of this section may be disqualified if necessary to eliminate the effect of the communication.

(g) The agency shall, and any party may, report any willful violation of this section to appropriate authorities for any disciplinary proceedings provided by law. In addition, each agency by rule may provide for appropriate sanctions, including default, for any violations of this section.

Tennessee Open Meetings Law

The Tennessee General Assembly has declared "that the formation of public policy and decisions is public business and shall not be conducted in secret." Tenn. Code Ann. § 8-44-101(a). Laws passed in furtherance of this aim are generally referred to as the "Sunshine Law" or the "Tennessee Open Meetings Act." The Sunshine Law requires that "[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee." Tenn. Code Ann. § 8-44-102(a). A "governing body" means "[t]he members of any public body . . . with the authority to make decisions for or recommendations to a public body on policy or administration[.]" Tenn. Code Ann. § 8-44-102(b)(1)(A). The Tennessee Supreme Court has refined the definition of a "governing body" to include:

> [A]ny board, commission, committee, agency, authority or any other body, by whatever name, whose origin and authority may be traced to State, City or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.

Dorrier v. Dark, 537 S.W.2d 888, 892 (Tenn. 1976). Therefore, the Board qualifies as a governing body and is subject to Sunshine Law. This means the Board is required to give adequate public notice of its meetings,[1] record minutes, and make its operations open to public inspection. Tenn. Code Ann. § 8-44-103. Although the Sunshine Law does not explicitly define "adequate public notice," the Tennessee Supreme Court has held that it means "adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public." M*emphis Publishing Co. v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974). In an unpublished opinion, the Tennessee Court of Appeals provided additional guidance:

> First, the notice must be posted in a location where a member of the community could become aware of such notice. Second, the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken. And, third, the notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting.

Englewood Citizens for Alternate B v. Town of Englewood, 1999 WL 419710, at *2 (Tenn. Ct. App. June 24, 1999).

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[1] Under the Sunshine Law, a "meeting" means "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." Tenn. Code Ann. § 8-44-102(b)(2). In *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson Cty.*, 842 S.W.2d 611, 618 (Tenn. Ct. App. 1992), the Tennessee Court of Appeals held that a group of city officials assembled in a mayor's office to discuss the city's procurement of goods and services—absent a required quorum—was not a "meeting" under the Sunshine Law.

Notice requirements are less stringent for meetings not expected to be of interest to the general public. *See UT Guidance Regarding Open Meetings Act Compliance*, County Technical Assistance Service, https://www.tn.gov/content/dam/tn/agriculture/documents/landwaterstewardship/SCD_R03.pdf. For example, adequate public notice was found when a city council posted notice for a meeting reviewing a police officer's dismissal inside city hall (where water bills were paid), the police department, and post office. *Kinser v. Town of Oliver Springs*, 80 S.W.2d 681 (Tenn. Ct. App. 1994). However, the same court found that the issue of clustering students in the same grade by learning level at one school was of "pervasive importance" and notice was held to have been inadequate under the circumstances because the public was not notified that clustering would be discussed. *Neese v. Paris Special School District*, 813 S.W.2d 432 (Tenn. Ct. App. 1990).

As a matter of practice, the Board's notices (including agendas and supporting documents) are posted by TDEC staff on the Board's website:

https://www.tn.gov/environment/about-tdec/boards-and-commissions/board-tennessee-board-of-water-quality--oil-and-gas.html

Tenn. Code Ann. § 8-44-101

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-101. Policy — Construction.

(a) The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

(b) This part shall not be construed to limit any of the rights and privileges contained in the *Constitution of Tennessee, Article I, § 19*.

History

Acts 1974, ch. 442, §§ 1, 8; T.C.A., § 8-4401.

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Tenn. Code Ann. § 8-44-102

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-102. Open meetings — “Governing body” defined — “Meeting” defined.

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(b)

(1) “Governing body” means:

(A) The members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration and also means a private nonprofit community organization eligible to receive funds from the community services block grant program under *42 U.S.C. §§ 9901* - *9926*. Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have designated itself as a negotiation committee for collective bargaining purposes, and strategy sessions of a governing body under such circumstances shall be open to the public at all times;

(B) The board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public; provided, that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation. Except such meetings of the board of directors of such nonprofit corporation that are called solely to discuss matters involving confidential doctor-patient relationships, personnel matters or matters required to be kept confidential by federal or state law or by federal or state regulation shall not be covered under this chapter, and no other matter shall be discussed at such meetings;

(C) The board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to title 7, chapter 54 or 58. This subdivision (b)(1)(C) shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more, according to the 1980 federal census or any subsequent federal census;

(D) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, with heat, steam or incineration of refuse;

(E)

(i) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a)

Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b)

Receives dues, service fees or any other income from local government officials or such

local governments that constitute at least thirty percent (30%) of its total annual income; and

(c)

Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(ii) This subdivision (b)(1)(E) shall not be construed to require the disclosure of a trade secret or proprietary information held or used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(iii) As used in this subdivision (b)(1)(E):

(a)

“Proprietary information” means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which if known to a person or entity outside the association or corporation would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

(b)

“Trade secret” means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(2) “Meeting” means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. “Meeting” does not include any on-site inspection of any project or program.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

History

Acts 1974, ch. 442, § 2; 1979, ch. 411, §§ 1, 2; T.C.A., § 8-4402; Acts 1985, ch. 290, § 1, 2; 1986, ch. 594, § 1; 1988, ch. 908, §§ 3, 5; *1997, ch. 346, § 1*; *1998, ch. 1102, §§ 1*, 3; *2018, ch. 545, § 1*.

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Tenn. Code Ann. § 8-44-103

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-103. Notice of public meetings.

(a) Notice of Regular Meetings. Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) Notice of Special Meetings. Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

History

Acts 1974, ch. 442, § 3; T.C.A., § 8-4403.

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Tenn. Code Ann. § 8-44-104

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-104. Minutes recorded and open to public — Secret votes prohibited.

(a) The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include, but not be limited to, a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in the event of roll call.

(b) All votes of any such governmental body shall be by public vote or public ballot or public roll call. No secret votes, or secret ballots, or secret roll calls shall be allowed. As used in this chapter, “public vote” means a vote in which the “aye” faction vocally expresses its will in unison and in which the “nay” faction, subsequently, vocally expresses its will in unison.

History

Acts 1974, ch. 442, § 4; T.C.A., § 8-4404; Acts 1980, ch. 800, § 1.

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Tenn. Code Ann. § 8-44-105

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-105. Action nullified — Exception.

Any action taken at a meeting in violation of this part shall be void and of no effect; provided, that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.

History

Acts 1974, ch. 442, § 5; T.C.A., § 8-4405.

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Tenn. Code Ann. § 8-44-106

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-106. Enforcement — Jurisdiction.

(a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this part upon application of any citizen of this state.

(b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.

(c) The court shall permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.

(d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.

History

Acts 1974, ch. 442, § 6; T.C.A., § 8-4406.

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Tenn. Code Ann. § 8-44-107

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-107. Board of directors of Performing Arts Center Management Corporation.

The board of directors of the Tennessee Performing Arts Center Management Corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter.

History

Acts 1981, ch. 375, § 1.

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Tenn. Code Ann. § 8-44-108

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-108. Participation by electronic or other means.

(a) As used in this section, unless the context otherwise requires:

(1) "Electronic means of communication" means communication by video conference or audio conference and may include the use of an internet-based platform, but does not include email;

(2) "Governing body" means the governing body of a board, agency, or commission of state government, including state debt issuers;

(3) "Meeting" has the same definition as defined in *§ 8-44-102*;

(4) "Necessity" means that the matters to be considered by the governing body at that meeting require timely action by the body, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by electronic or other means of communication is necessary; and

(5) "State debt issuers" means the Tennessee state funding board, Tennessee local development authority, Tennessee housing development agency, and Tennessee state school bond authority, and any of their committees.

(b)

(1) A governing body may, but is not required to, allow participation by electronic or other means of communication for the benefit of the public and the governing body in connection with any meeting authorized by law; provided, that a physical quorum is present at the location specified in the notice of the meeting as the location of the meeting.

(2) If a physical quorum is not present at the location of a meeting of a governing body, then in order for a quorum of members to participate by electronic or other means of communication, the governing body must make a determination that a necessity exists. Such determination, and a recitation of the facts and circumstances on which it was based, must be included in the minutes of the meeting.

(3) If a physical quorum is not present at the location of a meeting of a governing body other than a state debt issuer, the governing body other than a state debt issuer must file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of secretary of state no later than two (2) working days after the meeting. The secretary of state shall report, no less than annually, to the general assembly as to the filings of the determinations of necessity. This subdivision (b)(3) does not apply to the board of regents, the board of trustees of the University of Tennessee, the Tennessee higher education commission, a state university board, or an advisory board for a University of Tennessee system if the advisory board has had a physical quorum present at the location of the advisory board meeting at least one (1) time in the previous twelve (12) months.

(4) Nothing in this section shall prohibit a governing body from complying with *§ 8-44-109*.

(c)

(1) Any meeting held pursuant to the terms of this section shall comply with the requirements of the Open Meetings Law, codified in this part, and shall not circumvent the spirit or requirements of that law.

(2) If a meeting will be conducted permitting participation by members by electronic means of communication, then the governing body shall allow members of the public who are not in attendance at the physical location of the meeting to:

(A)

(i) View and listen to the meeting by electronic means in real time, if the meeting is conducted using video conference; or

(ii) Listen to the meeting by electronic means in real time, if the meeting is conducted with audio only with no video; and

(B) Participate or provide comment by electronic means of communication, if participation or public comment would normally be allowed at the meeting.

(3) A notice required by this part or other law and the agenda for the meeting must:

(A) State that the meeting will include members of the governing body who are participating by electronic means of communication;

(B) Contain information necessary for members of the public to access the meeting by electronic means to view or listen; and

(C) Contain instructions on how to provide public comment by electronic means of communication, which may include contacting the governing body or registering in advance to receive information enabling a person to provide public comment by electronic means. This subdivision (c)(3)(C) does not require a governing body to allow public comment as part of its meetings or alter its rules for public comment or public participation in a meeting.

(4) A governing body that conducts a meeting allowing participation by electronic means of communication shall make a recording of the meeting, and post the recording or a link to the recording on its website that contains information about the governing body and its meetings. The governing body shall post the recording or link to the recording as soon as possible but no later than three (3) business days after the meeting. The governing body shall retain the recording or link for at least three (3) years after the recording was created.

(5) Each part of a meeting required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting. Any member participating in such fashion shall identify the persons present in the location from which the member is participating.

(6) Any member of a governing body not physically present at a meeting shall be provided, before the meeting, with any documents that will be discussed at the meeting, with substantially the same content as those documents actually presented.

(7) All votes taken during a meeting held pursuant to the terms of this section shall be by roll call vote.

(8) A member participating in a meeting by this means is deemed to be present in person at the meeting for purposes of voting, but not for purposes of determining per diem eligibility. However, a member may be reimbursed expenses of such electronic communication or other means of participation.

(d) Notwithstanding this chapter to the contrary, members of an emergency communications district board of directors may participate in meetings by any electronic means approved by such board. A board member who participates in a meeting electronically under this subsection (d) is present for purposes of creating a quorum and voting on matters presented to the board for consideration during the meeting to the same

extent as a board member who is physically present at the meeting. Subdivisions (c)(1)-(6) apply to meetings held pursuant to this subsection (d).

History

Acts 1990, ch. 815, § 1; *1999, ch. 490, § 1*; *2005, ch. 82, § 1*; *2008, ch. 923, § 1*; *2012, ch. 1054, § 3*; *2017, ch. 217, § 2*; *2020, ch. 692, § 2*; *2022, ch. 856, §§ 1-4*.

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Tenn. Code Ann. § 8-44-109

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-109. Electronic communication via Internet forum.

(a) A governing body may, but is not required to, allow electronic communication between members by means of a forum over the Internet only if the governing body:

(1) Ensures that the forum through which the electronic communications are conducted is available to the public at all times other than that necessary for technical maintenance or unforeseen technical limitations;

(2) Provides adequate public notice of the governing body's intended use of the electronic communication forum;

(3) Controls who may communicate through the forum;

(4) Controls the archiving of the electronic communications to ensure that the electronic communications are publicly available for at least one (1) year after the date of the communication; provided, that access to the archived electronic communications is user-friendly for the public; and

(5) Provides reasonable access for members of the public to view the forum at the local public library, the building where the governing body meets or other public building.

(b) Electronic communications posted to a forum shall not substitute for decision making by the governing body in a meeting held in accordance with this part. Communications between members of a governing body posted to a forum complying with this section shall be deemed to be in compliance with the open meetings laws compiled in this part.

(c) Prior to a governing body initially utilizing a forum to allow electronic communications by its members that meets the requirements of this section, including the public notice required in subsection (a), the governing body shall file a plan with the office of open records counsel. The plan shall describe how the governing body will ensure compliance with subsection (a). Within thirty (30) days of receipt of the plan, the office of open records counsel shall acknowledge receipt of the plan and shall report whether or not the plan and the proposed actions comply with subsection (a). If the office determines that compliance with subsection (a) has not been met, the office shall provide written comments regarding the plan to the governing body. Until such time as the governing body complies with the written comments provided by the office and the office issues a report of compliance, the governing body shall not be allowed to establish or utilize such forum. This subsection (c) shall not apply to any governing body that had established a forum pursuant to this section prior to May 7, 2009.

(d) No member participating in an electronic communication pursuant to this section is deemed to be eligible for per diem for such participation.

(e) As used in this section, “governing body” means the elected governing body of a county, city, metropolitan form of government or school board.

History

Acts 2008, ch. 923, § 2; *2009, ch. 175, § 2*.

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Tenn. Code Ann. § 8-44-110

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-110. Public accessibility of legislative body agenda — Withholding items prohibited — Posting on website.

(a)

(1) At least forty-eight (48) hours prior to a meeting, a local government legislative body shall make available to the public, at no charge, the agenda for the upcoming meeting in a place accessible to the public. The agenda must reasonably describe the matters to be deliberated or acted upon during the public meeting.

(2) A local government legislative body may deliberate or act upon matters not listed on the agenda if the local government legislative body follows its bylaws or properly adopted rules and procedures and complies with all other applicable state laws.

(b) A local government legislative body shall not circumvent the spirit or requirements of this section by withholding items from an agenda for the purpose of avoiding public disclosure of business to be considered by the legislative body.

(c) A local government legislative body that maintains a website may make an agenda available to the public through the website. The local government legislative body's website is considered a place that is accessible to the public for purposes of compliance with subsection (a).

(d) As used in this section, “local government” means an incorporated city or town, metropolitan government, or county.

History

Acts 2023, ch. 213, § 1.

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Tenn. Code Ann. § 8-44-111

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-111. Open meetings — Development of educational program required — Materials.

(a) The municipal technical advisory service (MTAS) for municipalities and the county technical assistance service (CTAS) for counties, in order to provide guidance and direction, shall develop a program for educating their respective public officials about the open meetings laws codified in this chapter, and how to remain in compliance with such laws.

(b) The Tennessee school board association shall develop a program for educating elected school board members about the open meetings laws and how to remain in compliance with such laws.

(c) The Tennessee board of utility regulation shall develop a program for members of the governing bodies of utility systems under the board's jurisdiction to educate the board members about the open meetings laws and how to remain in compliance with such laws.

(d) The state emergency communications board created by *§ 7-86-302* shall develop a program for educating emergency communications district board members about the open meetings laws and how to remain in compliance with such laws.

(e) The office of open records counsel established in chapter 4, part 6 of this title shall establish educational programs and materials regarding open meetings laws in this state, to be made available to the public and to public officials.

History

Acts 2008, ch. 1179, § 5; *2023, ch. 463, § 26*.

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Tenn. Code Ann. § 8-44-112

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 1 General Provisions

8-44-112. Reserved period for public comment — Reasonable restrictions allowed — Notice to public commenters — Applicability.

(a) A governing body shall, for each public meeting, reserve a period for public comment to provide the public with the opportunity to comment on matters that are germane to the items on the agenda for the meeting.

(b) The governing body may put reasonable restrictions on the period for public comment, such as the length of the period, the number of speakers, and the length of time that each speaker will be allowed to provide comment. The governing body may require a person to give notice in advance of the desire to offer comments at a meeting. The governing body shall take all practicable steps to ensure that opposing viewpoints are represented fairly, if any.

(c) A notice for a public meeting shall indicate the manner in which a person may indicate the person's desire to provide public comment at the meeting.

(d) This section does not apply to:

(1) A meeting of a governing body, or a portion thereof, where the governing body is conducting a disciplinary hearing for a member of the governing body or a person whose profession or activities fall within the jurisdiction of the governing body; or

(2) A meeting for which there are no actionable items on the agenda.

History

Acts 2023, ch. 300, § 1.

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Tenn. Code Ann. § 8-44-201

Current through 2023 Legislative Session.

TN - Tennessee Code Annotated > Title 8 Public Officers And Employees > Chapter 44 Public Meetings > Part 2 Labor Negotiations

8-44-201. Labor negotiations between public employee union and state or local government.

(a) Notwithstanding any other Tennessee law to the contrary, labor negotiations between representatives of public employee unions or associations and representatives of a state or local governmental entity shall be open to the public, whether or not the negotiations by the state or local governmental entity are under the direction of the legislative, executive or judicial branch of government.

(b) Nothing contained in this section shall be construed to require that planning or strategy sessions of either the union committee or the governmental entity committee, meeting separately or with the entity it represents, be open to the public.

(c) Nothing contained in this section shall be construed to grant recognition rights of any sort.

(d) Both sides shall decide jointly and announce in advance of any such labor negotiations where such meetings shall be held.

History

Acts 1979, ch. 41, § 1; T.C.A., § 8-4421; *Acts 2009, ch. 293, § 1*.

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TAB 11

Supplemental Environmental Projects Policy

TN Department of Environment & Conservation

BOE – P – 04 – 040220

ACCEPTING SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN LIEU OF ASSESSED CIVIL PENALTIES

DISCLAIMER: This document is policy only and does not create legal rights or obligations. It is intended to provide the Department's Bureau of Environment staff guidance on how to apply decisions, procedures and practices pertaining to the internal operation or actions of the division. Decisions affecting the public, including the regulated community, in any particular case will be made applying applicable laws and regulations to the specific facts.

EFFECTIVE DATE: APRIL 2, 2020

SIGNATURES:

Greg Young, Deputy Commissioner

E. Joseph Sanders, Senior Legal Advisor, Drafter

PURPOSE

The purpose of this policy is to provide guidelines for TDEC Bureau of Environment staff on the acceptance of Supplemental Environmental Projects in lieu of assessed civil penalties.

DEFINITION OF A SUPPLEMENTAL ENVIRONMENTAL PROJECT

A Supplemental Environmental Project (SEP) is an environmentally beneficial project, which a violator agrees to implement as part of a settlement of an enforcement action, however, the violator is *not otherwise legally obligated to perform the project activity.*

Components of the definition of Supplement Environmental Project:

(1) Environmentally beneficial: means the project must improve, protect, or reduce risks to public health or the environment.

(2) Not obligated to perform: means the violator is not required to implement the project activity by any federal, state or local law or regulation, the activity is not required by contract, as part of a settlement of a private law suit, or as a result of injunctive relief or a court order.

TN Department of Environment & Conservation

BOE – P – 04 – 040220

ACCEPTING SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN LIEU OF ASSESSED CIVIL PENALTIES

REQUISITES FOR A SUPPLEMENTAL ENVIRONMENTAL PROJECT

- The project meets the definition of a supplemental environmental project.
- The violator is not otherwise obligated to perform the project.
- The violator is not required to implement the project by a state, federal or, local agency.
- If the violator publicizes the project, he/she must include in the publicity medium, in a prominent location and manner, that the project is the result of an enforcement action.
- The Department may, but is not required to, reduce a civil penalty based on the actual cost or value of the SEP: the reduction for the SEP is not usually dollar-for-dollar; and, typically the penalty reduction to SEP value is a 2 for 1 ratio ($2.00 SEP for $1.00 assessed penalty).
- The SEP must usually address the same general type of harm caused by the underlying violations, the same media impacted by the violations, and the same geographical area as the violations.

TYPES OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS (THIS IS NOT A COMPLETE LIST)

1. **Pollution Prevention Project** - a project that reduces the generation of pollution through source reduction [there must be an overall decrease in the amount and/or toxicity of pollution released into the environment, not just a transfer of pollution among media].

2. **Pollution Reduction** - a project which reduces the amount of a pollutant, if it has been generated and introduced into the environment, such as recycling, treatment, containment or disposal techniques which the violator is not otherwise required to implement.

3. **Restoration and Protection Project** - a project which implements remedial activity that extends beyond repairing the harm caused by the violation and actually enhances the condition of the ecosystem or the geographical area, i.e., restoration of a wetland, purchase and manage land in the watershed, clean up an abandoned dump in the immediate vicinity.

4. **Environmental Compliance Promotion** - a project that provides education, training or technical support to other members of the regulated community, or the general public to: 1.) identify, achieve and maintain compliance with environmental statues; 2.) avoid the commission of violations of similar nature; or 3.) reduce the generation and the release of pollutants.

BOE – P – 04 – 040220

ACCEPTING SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN LIEU OF ASSESSED CIVIL PENALTIES

Revision History Table

Revision Number	Date	Brief Summary of Change
0	1-27-99	New Policy
1	9-19-00	Minor update & Current Commissioner
2	1-18-03	Minor update & Current Commissioner
3	8-24-04	Minor update & Current Commissioner
4	12-4-06	Minor update & Current Commissioner
5	4-2-2020	Minor update & Current Commissioner

TAB 12

Natural Resource Damage Assessment for Surface Waters Policy

Department of Environment & Conservation

DWR-CE-P-01-NRD Assessment-05152019

Natural Resource Damage Assessment for Surface Waters

DISCLAIMER: This document is policy only and does not create legal rights or obligations. Agency decisions in any particular case will be made applying applicable laws and regulations to the specific facts.

1) **EFFECTIVE DATE:** OCTOBER 4, 2022

2) **SIGNATURES:**

Debbie Duren (Oct 4, 2022 14:43 EDT)

Debbie Duren, Natural Resource Trustee Program Manager, Preparer

Stephanie Durman (Oct 5, 2022 06:06 CDT)

Stephanie Durman, Deputy General Counsel, Reviewer

Jennifer Dodd (Oct 25, 2022 19:38 CDT)

Jennifer Dodd, Director, Division of Water Resources

Natural Resource Damage Assessment (NRDA) is applied in the context of formal enforcement to compensate for injury to Tennessee's natural resources. These funds are then applied to restoration projects to offset natural resource damages. NRDA matrices are intended to assist the department in determining a monetary value for these damages. This matrix is focused on injury caused by illicit activities affecting surface waters of the State, including both streams and wetlands.

Once an injury to surface water occurs and has been initially investigated, a decision is made by the appropriate Division of Water Resources staff, after consultation with the natural resource trustee program manager and OGC, on whether or not to pursue NRD. In making this decision, staff will follow the process outlined in the NRDA flow chart, and submit a completed NRDA checklist with any Enforcement Action Request.

If NRD is to be pursued, department staff will identify all injured stream reaches and/or wetlands and will determine appropriate inputs for the four matrix elements needed to calculate damage amounts.

For linear watercourses, the first step is to determine whether the watercourse was a stream prior to impact. Where feasible, this is done by applying the hydrologic determination methodology set out in Department rules within that water feature. Sometimes, the hydrologic determination may need to be conducted immediately upstream or downstream of the impacted area if the damage to the water feature is extensive.

For wetlands that have been severely impacted, determinations of the wetland status can be made based on digging pits to find hydric soils, by evaluating adjacent or nearby wetland features, through soil mapping, and other means.

Streams that have suffered injury should be divided into distinct reaches having a similar degree of injury from the activity, and similar resource quality (i.e., common matrix element input variables). For each stream reach, inputs to the matrix will yield a per functional-foot NRD value based on the department's current estimation of per functional-foot cost to replace lost resource value.[1] The per functional-foot value is then multiplied by the number of feet in the injured reach to determine the NRD for that particular segment. Finally, the values for all injured stream reaches are summed for the total stream NRD.

Wetlands that have suffered injury should be evaluated individually. For each wetland a mitigation ratio of 2:1 will be applied to determine the credits needed to offset injury. Inputs to the matrix will yield a per credit NRD value based on the department's estimation of the current per acre cost to perform wetland mitigation sufficient to replace lost resource value . The per acre value is then multiplied by the number of acres needed to offset injury to determine the NRD for that particular wetland. Finally, the values for all injured wetlands are summed for the total wetland NRD. If there are both stream and wetland impacts, those two subtotals are added to determine the total NRD.

ELEMENTS

A. Gravity

The gravity of injury is a composite element which classifies the degree of injury to the resource by assigning it to one of three injury categories. The gravity of injury is derived through a combination of direct measurement and observation of the injury, in conjunction with pre-existing knowledge of the specific natural resource affected and the area (*e.g.*, soil types, gradient, climate, ecoregion-based stream functions, etc). In cases where Tennessee Department of Environment and Conservation (TDEC) staff were not able to measure and observe the injury soon after it occurred, staff will determine gravity using best professional judgment based on factors such as those listed in this section.

[1] If corrective action is taking place, 3% per year will be used to calculate temporal loss.

The three gravity of injury categories are:

Minor
Observable and/or measurable increase in sediment depositional features[2] from a sediment release, physical alteration, or other pollution that has or is likely to adversely affect ecological services when compared with pre-injury baseline conditions.

Moderate
Measurable increase in sediment depositional features from a sediment or other pollutant release, or physical alteration sufficient to cause significant impairment of ecological services including, but not limited to, a reduction in abundance, diversity, or population balance of the native aquatic biota.

Severe
Overwhelming increase in sediment depositional features from a sediment or other pollutant release, or physical alteration that has caused a catastrophic loss of ecological services.

Methodologies used in the observation, documentation, and measurement of sediment or other pollution injury to affected stream reaches or wetlands may vary due to the diversity of stream or wetland types in Tennessee, and the range of injury scenarios. The methodologies used should be appropriate to the resource and incident and be well-documented.

Factors for assigning a gravity category may include, but are not limited to, the following:

- total quantities of sediment or other pollutant released in consideration of the size of receiving waters;
- effects upon instream/wetland habitat quality, including the degree of embeddedness of natural substrate; the extent of pool deposition;
- extent of fill or the depth, width, and length of sediment bars resulting from the activity;
- changes in flow status, patterns and stability due to the activity;
- change in wetlands area, function or hydrology; and
- impacts to the quantity and diversity of aquatic life due to the activity.

[2] Examples of depositional features include center and point bars, benches, pool deposition, and substrate embeddedness.

B. Duration

The duration of injury is the actual or estimated length of time it will take the injured resource to fully recover to pre-impact conditions, including the reestablishment of faunal populations. If pre-impact conditions are unknown, the department will use an appropriate reference reach or conservatively assume the water body was fully supporting prior to the injury.

Estimates of recovery duration are based upon the best professional judgment of department staff. Factors for assigning a duration category may include, but are not limited to the following:

- the initial severity and geographic scale of the injury;
- remediation efforts that have taken place;
- geomorphic nature of the injured resource, including channel size, gradient, sinuosity, and floodplain characteristics;
- hydrologic nature of the injured resource, including size of upstream drainage basin, annual flow regime, instream velocities, and local precipitation patterns; and
- impediments to faunal recolonization, such as location in the watershed, barriers to migration, rarity[3] of pre-injury species.

Four categories have been established for purposes of this matrix:
>1 year, but ≤5 years
>5 years, but ≤10 years
>10 years, but ≤30 years
>30 years

This matrix allows for input of an estimated value to predict duration of injury. However, long-term monitoring of resource recovery may be performed by the department or other agency, or may be required of the violator in some cases. As with the gravity element, methodologies used in the monitoring of injury duration, or documentation of resource recovery may vary due to the diversity of stream or wetland types in Tennessee, and the range of injury scenarios. The methodologies used should be appropriate to the resource and activity and be well-documented.

[3] State or federal status

In many cases, the person(s) responsible for the natural resource damages will be required to restore the impacted waterbody to pre-impact conditions. This determination is typically made by evaluating whether the activity would have been likely to qualify for permit coverage, whether the injury is so severe that restoration is not possible or there is a high risk of additional injury that may result from attempting corrective actions.

C. Resource Quality

The measure of resource quality is based upon the current formal assessment of the injured resource (as reflected in the DWR Assessment Database), or an evaluation of an appropriate reference resource. In the absence of sufficient pre-injury data or an appropriate reference, the department will assume the injured water body was fully supporting of its classified uses prior to the activity.

The formal designation categories are:
Outstanding Natural Resource Waters
Exceptional Tennessee Waters
Fully Supporting *
Not Supporting *

* Note: For sediment NRDA purposes, waterbodies may exceed the pathogen criterion and still be considered Fully Supporting, if all other uses are supported.

D. Reach Length and Wetland Acreage

For each injured stream reach, a total linear length should be directly measured, or closely approximated using appropriately scaled maps. For each injured wetland, a total acreage should be determined.

MATRIX

Each resource quality category has an individual matrix table. Duration is represented on the vertical axis, gravity on the horizontal axis. The tables are used to generate a per functional-foot NRD value for each injured stream reach and a per acre NRD value for each injured wetland.[4] At this time, the department estimates a per functional-foot cost for replacement of stream resource value of $1,750 and a per acre cost for replacement of wetland resource value of $45,000.[5]

(Note: the value of x equals the current per functional-foot stream replacement cost or the current per acre wetland replacement cost.)

Stream Tables

For ONRW

	minor	moderate	severe
>1≤5 yrs	0.05x	0.10x	0.18x
>5≤10 yrs	0.10x	0.18x	0.36x
>10≤30 yrs	0.18x	0.36x	0.72x
>30 yrs		0.60x	1.20x

For Exceptional Tennessee Waters

	minor	moderate	severe
>1≤5 yrs	0.04x	0.08x	0.15x
>5≤10 yrs	0.08x	0.15x	0.30x
>10≤30 yrs	0.15x	0.30x	0.60x
>30 yrs		0.50x	1.00x

[4] Alternatively, if corrective action is taking place, or has taken place, 3% per year may be used to calculate temporal loss. This valuation may also be used when damages have been naturally attenuated.

[5] Replacement costs are average costs determined at least biennially by the department, in part through review of the current costs for third-party stream and wetland mitigation credits in Tennessee.

For Fully Supporting

	minor	moderate	severe
>1≤5 yrs	0.02x	0.05x	0.09x
>5≤10 yrs	0.05x	0.09x	0.18x
>10≤30 yrs	0.09x	0.18x	0.36x
>30 yrs		0.30x	0.60x

For Not Supporting

	minor	moderate	severe
>1≤5 yrs	0.02x	0.03x	0.06x
>5≤10 yrs	0.03x	0.06x	0.12x
>10≤30 yrs	0.06x	0.12x	0.24x
>30 yrs		0.24x	0.40x

Wetland Tables

For ONRW

	minor	moderate	severe
>1≤5 yrs	0.06x	0.12x	0.23x
>5≤10 yrs	0.12x	0.23x	0.45x
>10≤30 yrs	0.23x	0.45x	0.90x
>30 yrs		0.75x	1.50x

For Exceptional Tennessee Waters

	minor	moderate	severe
>1≤5 yrs	0.05x	0.09x	0.19x
>5≤10 yrs	0.09x	0.19x	0.38x
>10≤30 yrs	0.19x	0.38x	0.75x
>30 yrs		0.63x	1.25x

For Fully Supporting

	minor	moderate	severe
>1≤5 yrs	0.04x	0.08x	0.15x
>5≤10 yrs	0.08x	0.15x	0.30x
>10≤30 yrs	0.15x	0.30x	0.60x
>30 yrs		0.50x	1.00x

For Not Supporting

	minor	moderate	severe
>1≤5 yrs	0.03x	0.06x	0.11x
>5≤10 yrs	0.06x	0.11x	0.23x
>10≤30 yrs	0.11x	0.23x	0.45x
>30 yrs		0.38x	0.75x

Revision Number	Date	Brief Summary of Change
1	10/04/22	Updated variables for consistency and accuracy. Informed stream resource quality variable using TN SQT. Updated stream replacement for stream resource value from a linear-foot to functional-foot cost.
0	05/24/19	Initial issuance of the policy

TAB 13

Public Comment at TDEC Board and Commission Meetings Policy

Public Comment at TDEC Board and Commission Meetings Office of General Counsel		**Policy Number: OGC-01-Public Comment** **Effective Date:** July 1, 2024
Supersedes (if applicable): N/A		**Review Frequency:** Five-years
Drafted By:	**Name** Stephanie A. Durman, Deputy General Counsel	**Signature** Stephanie Durman
Approved By:	**Name** David W. Salyers, P.E., Commissioner	**Signature**
Point of Contact:	**Name** Stephanie A. Durman, Deputy General Counsel	**Email** stephanie.durman@tn.gov
Summary of Policy (2-3 Sentences): This policy implements Public Chapter 300 (2023), which requires a public comment period at meetings of governing bodies subject to Tennessee Code Annotated Title 8, Chapter 44, Part 1 that include actionable agenda items. Public Chapter 300 authorizes reasonable restrictions on this public comment period, which are described in this policy. This policy applies to meetings of governing bodies supported by the Department of Environment and Conservation.		
Number(s) and Name(s) of Referenced Files (forms, templates, etc.): N/A		

I. JUSTIFICATION OR AUTHORITY

This policy is adopted in accordance with Public Chapter 300 (2023), codified at Tennessee Code Annotated section 8-44-112.

II. PURPOSE

This Policy establishes reasonable restrictions on public comments at meetings of governing bodies supported by the Department of Environment and Conservation (Department).

III. DISCLAIMER

The guidelines under this policy are a basis for internal administrative review and guidance only. They are not intended to, do not, and may not be relied upon to create any substantive or procedural rights.

IV. SCOPE

This policy applies to all open meetings of governing bodies supported by the Department of Environment and Conservation. This policy does not apply to public hearings conducted by the

Department, such as permit hearings or rulemaking hearings, because such hearings do not constitute meetings of governing bodies.

V. POLICY

The Department is committed to facilitating a meaningful, full, and fair opportunity for the public to comment at meetings of government boards, while also ensuring the orderly conduct of such meetings.

Accordingly, when supporting its governing bodies, the Department will apply the following policy:

1. The agenda for any open meeting that includes actionable items will reserve one or more opportunities for public comment. Agendas for meetings that do not include actionable items may, but are not required to, include a public comment period or periods. Agendas should provide information about obtaining access to language interpretation.
2. "Actionable items" are agenda items that require a vote, except for procedural votes such as adopting minutes, adopting a determination of necessity, or voting to adjourn. Reports, updates, and disciplinary matters do not constitute "actionable items."
3. Members of the public should be given the opportunity to comment in advance of a vote on that item.
4. Members of the public may indicate their desire to comment by filling out a form at the meeting if they are present in-person, or by indicating that intent through the videoconferencing platform used for that meeting, if applicable. Specific instructions will be provided in advance of each meeting.
5. Comments are limited to three minutes per person. Commenters may not yield time to each other to extend this period. Commenters should identify themselves at the beginning of their allotted time, including their affiliation if applicable.
6. Commenters should conduct themselves in a respectful manner. The chair has the discretion to end a speaker's time if speakers are disruptive or off-topic.
7. The time period for public comment may be extended by majority vote of the governing body.
8. The public comment period provides the public with an opportunity to speak about items appearing on meeting agendas. However, this public comment period does not allow for discussion between board members and the speaker, nor a time for obtaining either answers to questions raised or responses to requests made for information or action.