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Agency/Board/Commission:	Underground Storage Tanks and Solid Waste Disposal Control Board
Division:	Solid Waste Management
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
0400-12-01	Hazardous Waste Management
Rule Number	Rule Title
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-12-01
Hazardous Waste Management

Amendments

Subparagraph (a) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting the definitions "hazardous secondary material acceptance plan," "verified intermediate facility," and "verified reclamation facility." The remaining definitions shall remain in alphabetical order.

~~"Hazardous secondary material acceptance plan" means the plan used by the verified reclaimer or the verified intermediate facility that identifies the physical and chemical data necessary to determine if a hazardous secondary material is being legitimately reclaimed.~~

~~"Verified intermediate facility" means an intermediate facility located in the United States that:~~

- ~~1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and~~
- ~~2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.~~

~~"Verified reclamation facility" means a reclamation facility located in the United States that:~~

- ~~1. If located in the state of Tennessee, has been issued a Certificate to Operate by the Commissioner in accordance with part (4)(b)2 of this rule; and~~
- ~~2. If not located in the state of Tennessee, has been verified by EPA, in accordance with 40 CFR 260.30, 260.31(d) and 260.33, or verified by an EPA authorized state.~~

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

(4) Variances, ~~Certificates to Operate~~, and Procedures

(a) Requirements for General Variances

1. Any person may petition the Commissioner for a variance from any provision in these rules. This subparagraph sets forth general requirements which apply to all such petitions.
2. Each petition must be submitted to the Commissioner by certified mail and must include:
 - (i) The petitioner's name and address;
 - (ii) A statement of the petitioner's interest in the proposed action;
 - (iii) A description of the proposed action, including (where appropriate) suggested language; and
 - (iv) A written description of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(Note: See paragraph (9) of Rule 0400-12-01-.08 for the appropriate fee to be submitted along with the petition for a general variance.)

3. The Commissioner will make a tentative decision to grant or deny a petition and will notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner will give public notice of such tentative decision for written public comment. The public notice shall be published by the petitioner as required by the Commissioner.
 4. Upon the written request of any interested person, the Commissioner may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commissioner may in any case decide on his own motion to hold an informal public hearing. Notice of the public hearing shall be published by the petitioner as required by the Commissioner.
 5. After evaluating all public comments the Commissioner will make a final decision to either grant or deny the petition, and will give a public notice of such decision. The petitioner shall publish this public notice as required by the Commissioner.
 6. Any variance granted pursuant to this subparagraph may be rescinded if it is discovered and determined by the Commissioner that:
 - (i) The variance has resulted or may result in a significant hazard to public health or the environment;
 - (ii) The factual basis for which the variance was granted has significantly changed;
 - (iii) The regulations, as amended, no longer support the variance;
 - (iv) The conditions issued by the Commissioner for the variance's approval have been violated; or
 - (v) The variance threatens program authorization with EPA.
 7. Any variance granted pursuant to this subparagraph shall remain valid as specified by the Commissioner, not to exceed five (5) years, or until rescinded in accordance with part 6 of this subparagraph.
 8. Any person with a valid variance granted in accordance with this subparagraph shall submit to the Commissioner:
 - (i) No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
 - (ii) Within thirty (30) days of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.
- (b) Non-waste determinations, and variances from classification as a solid waste ~~and Certificates to Operate for a hazardous secondary material reclamation facility or intermediate facility~~ [40 CFR 260.30]

~~4~~In accordance with the standards and criteria in subparagraphs (c) and (e) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- ~~(i)~~1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Rule 0400-12-01-.02(1)(a)3(viii));
- ~~(ii)~~2. Materials that are reclaimed and then reused within the original production process in which they were generated;
- ~~(iii)~~3. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;
- ~~(iv)~~4. Hazardous secondary materials that are reclaimed in a continuous industrial process; and
- ~~(v)~~5. Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

~~2. In accordance with the standards and criteria in subparagraph (f) of this paragraph and the procedures in subparagraph (g) of this paragraph, the Commissioner may, on a case-by-case basis, issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.~~

(c) Standards and Criteria for Variances from Classification as a Solid Waste [40 CFR 260.31]

1. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Commissioner's decision will be based on the following criteria:
 - (i) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
 - (ii) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;
 - (iii) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
 - (iv) The extent to which the material is handled to minimize loss; and
 - (v) Other relevant factors.
2. The Commissioner may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on a description of the reclamation operation and the following criteria:
 - (i) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
 - (ii) The extent to which the material is handled before reclamation to minimize loss;

- (iii) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
- (iv) The location of the reclamation operation in relation to the production process;
- (v) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- (vi) Whether the person who generates the material also reclaims it; and
- (vii) Other relevant factors.

3. The Commissioner may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on whether all of the following decision criteria are satisfied:

- (i) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
- (ii) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
- (iii) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
- (iv) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and
- (v) Whether the partially-reclaimed material is handled to minimize loss.

(d) Variance to be classified as a boiler [40 CFR 260.32]

In accordance with the standards and criteria in subparagraph (2)(a) of this rule (definition of "boiler") and the procedures in subparagraph (g) of this paragraph, the Commissioner may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in subparagraph (2)(a) of this rule, after considering the following criteria:

- 1. The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
- 2. The extent to which the combustion chamber and energy recovery equipment are of integral design; and
- 3. The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
- 4. The extent to which exported energy is utilized; and
- 5. The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

6. Other factors, as appropriate.
- (e) Standards and criteria for non-waste determinations [40 CFR 260.34]
1. An applicant may apply to the Commissioner for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in parts 2 and 3 of this subparagraph, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under subparagraph (c) of this paragraph).
 2. The Commissioner may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:
 - (i) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;
 - (ii) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
 - (iii) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and
 - (iv) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.
 3. The Commissioner may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in subparagraph (5)(d) of this rule and on the following criteria:
 - (i) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);
 - (ii) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;
 - (iii) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
 - (iv) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher

levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

- (v) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under subparagraph (1)(b) or (d) of Rule 0400-12-01-.02.
- (f) ~~Reserved. This subparagraph shall not be effective until July 2, 2018. The Commissioner may issue a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or the interim status standards of Rule 0400-12-01-.05.~~

~~1. The Commissioner's decision will be based on the following criteria:~~

- ~~(i) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to subparagraph (5)(d) of this rule and its hazardous secondary material acceptance plan;~~
- ~~(ii) The reclamation facility or intermediate facility must satisfy the financial assurance condition in subitem (1)(d)1(xxiv)(VI)VI of Rule 0400-12-01-.02;~~
- ~~(iii) The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under Rule Chapter 0400-12-01 or RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;~~
- ~~(iv) The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of Rule 0400-12-01-.02;~~
- ~~(v) If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and~~
- ~~(vi) The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures, and must include consideration of potential cumulative risks from other nearby potential stressors.~~

~~2. To evaluate the criteria of subpart 1(vi) of this subparagraph, the Commissioner will require the petitioner to comply with subparts (i) and (ii) of this part.~~

- ~~(i) Prior to applying for a Certificate to Operate, the petitioner must hold at least one meeting with the public in order to solicit questions from the community and~~

inform the community of proposed hazardous secondary material management activities.

~~(I) At the meeting, the petitioner must:~~

~~I. Post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses; and~~

~~II. Provide a community impact statement that includes the following:~~

~~A. A description of the hazardous secondary materials to be received at the facility, including quantities and methods of management;~~

~~B. A description of security procedures proposed for the facility;~~

~~C. Information on hazard prevention and preparedness, including a summary of the arrangements with local emergency authorities;~~

~~D. A description of procedures, structures or equipment used to prevent employee exposure, hazards during unloading, runoff from handling areas, and contamination of water supplies;~~

~~E. A description of traffic patterns, traffic volume and control, condition of access roads, and the adequacy of traffic control signals; and~~

~~F. A description of the facility location information relative to flood plain and seismic activity.~~

~~(II) The petitioner must submit documentation to the Commissioner of the public notices, the community impact statement, a summary of the meeting, along with the list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting.~~

~~(III) The owner or operator must provide public notice of the community meeting at least thirty (30) days prior to the meeting.~~

~~(IV) The public notice required by item (III) of this subpart must contain language approved by the Commissioner and published in a manner specified by the Commissioner.~~

~~(ii) The petitioner must describe how the facility is designed, constructed, operated and maintained to ensure protection of human health and the environment. Protection of human health and the environment includes, but is not limited to:~~

~~(I) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the ground water or subsurface environment, considering:~~

~~I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility, including its potential for migration through soil, liners, or other containing structures;~~

- ~~II. The hydrologic and geologic characteristics of the management units at the facility and the surrounding area;~~
 - ~~III. The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground water;~~
 - ~~IV. The quantity and direction of ground water flow;~~
 - ~~V. The proximity to and withdrawal rates of current and potential ground water users;~~
 - ~~VI. The patterns of land use in the region;~~
 - ~~VII. The potential for deposition or migration of hazardous constituents into subsurface physical structures, and into the root zone of food chain crops and other vegetation;~~
 - ~~VIII. The potential for health risks caused by human exposure to hazardous constituents; and~~
 - ~~IX. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.~~
- ~~(II) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in surface water, or wetlands, or on the soil surface considering:~~
- ~~I. The volume and physical and chemical characteristics of the hazardous secondary material to be managed at the facility;~~
 - ~~II. The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;~~
 - ~~III. The hydrologic characteristics of the facility and the surrounding area, including the topography of the land around the facility;~~
 - ~~IV. The patterns of precipitation in the region;~~
 - ~~V. The quantity, quality, and direction of ground water flow;~~
 - ~~VI. The proximity of the unit to surface waters;~~
 - ~~VII. The current and potential uses of nearby surface waters and any water quality standards established for those surface waters;~~
 - ~~VIII. The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils;~~
 - ~~IX. The patterns of land use in the region;~~
 - ~~X. The potential for health risks caused by human exposure to hazardous constituents; and~~
 - ~~XI. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.~~

~~(III) Prevention of any releases that may have adverse effects on human health or the environment due to migration of hazardous constituents in the air, considering:~~

~~I. The volume and physical and chemical characteristics of the hazardous secondary materials to be managed at the facility, including its potential for the emission and dispersal of gases, aerosols and particulates;~~

~~II. The effectiveness and reliability of systems and structures to reduce or prevent emissions of hazardous constituents to the air;~~

~~III. The operating characteristics of the units managing hazardous secondary materials;~~

~~IV. The atmospheric, meteorologic, and topographic characteristics of the units to be managing hazardous secondary materials at the facility and the surrounding area;~~

~~V. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;~~

~~VI. The potential for health risks caused by human exposure to hazardous constituents; and~~

~~VII. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to hazardous constituents.~~

(g) ~~This subparagraph shall not be effective until July 2, 2018, in so far as it relates to the issuance of Certificates to Operate. Procedures for variances from classification as a solid waste, for issuing a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility, for variances to be classified as a boiler, and for non-waste determinations [40 CFR 260.33]~~

The Commissioner will use the following procedures in evaluating applications for variances from classification as a waste, ~~applications for obtaining a Certificate to Operate for a hazardous secondary material reclamation facility or intermediate facility,~~ applications to classify particular enclosed controlled flame combustion devices as boilers, and applications for non-waste determinations.

1. The applicant must apply to the Commissioner for the variance, ~~the Certificate to Operate~~ or non-waste determination. The application must address the relevant criteria contained in subparagraph (c), (d), or (e) ~~or (f)~~ of this paragraph, as applicable.
2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such tentative decision for written public comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement or radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for thirty (30) days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).

3. ~~(i) — Except for the change described in subpart (ii) of this part. In~~ the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria contained in subparagraph (c), (d), ~~or~~ (e) ~~or (f)~~ of this paragraph upon which a variance, ~~Certificate to Operate~~ or non-waste determination has been based, the applicant must send a description of the change in circumstances to the Commissioner. The Commissioner may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance, ~~Certificate to Operate~~, or non-waste determination or may require the facility to re-apply for the variance, ~~Certificate to Operate~~ or non-waste determination.

~~(ii) — Any change made to the hazardous secondary material acceptance plan required under item (4)(d)1(xxiv)(VI)VIII of Rule 0400-12-01-.02 must be approved and the Certificate to Operate modified by the Commissioner after considering the applicable criteria of subparagraph (f) of this paragraph and following the procedures of this subparagraph prior to the change being implemented.~~
4. Variances, ~~Certificates to Operate~~ and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance, ~~Certificate to Operate~~, or non-waste determination. If a facility re-applies for a variance, ~~Certificate to Operate~~, or non-waste determination within six (6) months, the facility may continue to operate under an expired variance, ~~Certificate to Operate~~ or non-waste determination until receiving a decision on the facility's re-application from the Commissioner.
5. Facilities receiving a variance, ~~Certificate to Operate~~ or non-waste determination must provide notification as required by subparagraph (5)(c) of this rule.

~~(h) — Causes for Termination of the Certificate to Operate~~

~~This subparagraph shall not be effective until July 2, 2018.~~

- ~~1. — Failure of the owner or operator to comply with any condition of the Certificate to Operate;~~
- ~~2. — The owner or operator's failure in the application or during the issuance process to disclose fully all relevant facts, or the owner or operator's misrepresentation of any relevant facts at any time;~~
- ~~3. — A determination by the Commissioner that continuing the authorized activity endangers human health or the environment;~~
- ~~4. — Failure of the owner or operator to timely pay the annual maintenance fees in accordance with Rule 0400-12-01-.08; or~~
- ~~5. — At the request of the owner or operator, provided all hazardous secondary materials and residues have been removed to the satisfaction of the Commissioner.~~

~~(i) — Duty to Comply with the Certificate to Operate~~

~~This subparagraph shall not be effective until July 2, 2018.~~

- ~~1. — The owner or operator of the hazardous secondary material reclamation or intermediate facility shall comply with the conditions of the Certificate to Operate as determined necessary by the Commissioner.~~
- ~~2. — Failure to comply with the conditions of the Certificate to Operate issued by the Commissioner shall subject the owner or operator of the hazardous secondary material reclamation or intermediate facility to an enforcement action, including, if applicable, operating a hazardous waste treatment, storage or disposal facility without a permit.~~

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (c) of paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (c) Notification requirement for hazardous secondary materials. [40 CFR 260.42]
1. Facilities managing hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Commissioner using forms provided by the department that include the following information:
 - (i) The name, address, and EPA ID number (if applicable) of the facility;
 - (ii) The name and telephone number of a contact person;
 - (iii) The NAICS code of the facility;
 - (iv) The regulation under which the hazardous secondary materials will be managed;
 - (v) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with subpart (1)(d)1(xxiv) of Rule 0400-12-01-.02, whether the reclaimer or intermediate facility has financial assurance.
 - ~~(vi)~~ (vi) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
 - ~~(vii)~~ (vii) A list of hazardous secondary materials that will be managed according to the regulation (reported as hazardous waste codes that would apply if the hazardous secondary materials were managed as hazardous wastes);
 - ~~(viii)~~ (viii) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
 - ~~(ix)~~ (ix) The quantity of each hazardous secondary material to be managed annually; and
 - ~~(x)~~ (x) The certification (included in the forms provided by the department) signed and dated by an authorized representative of the facility.
 2. If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 the facility must notify the Commissioner within thirty (30) days using forms provided by the department. For purposes of this part, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under subparagraph (4)(b) of this rule, or subpart (1)(d)1(xxiii), (xxiv) or (xxvii) of Rule 0400-12-01-.02 and does not expect to manage any amount of hazardous secondary materials for at least one (1) year.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (d) Legitimate recycling of hazardous secondary materials [40 CFR 260.43]
1. Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous

secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, all persons must address all the requirements of this part 2 of this subparagraph and persons regulated under part (4)(c)3 and subparagraph (4)(e) of this rule and subparts (1)(d)1(xxiii) and (xxiv) of rule 0400-12-01-.02 must address the requirements of part 3 of this subparagraph.

2. Requirements that must be addressed by all persons recycling hazardous secondary materials:

- (i) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:
 - (I) Contributes valuable ingredients to a product or intermediate; or
 - (II) Replaces a catalyst or carrier in the recycling process; or
 - (III) Is the source of a valuable constituent recovered in the recycling process; or
 - (IV) Is recovered or regenerated by the recycling process; or
 - (V) Is used as an effective substitute for a commercial product.
- (ii) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:
 - (I) Sold to a third party; or
 - (II) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.
- (iii) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

3. Requirements that must be addressed by persons regulated under part (4)(c)3 and subparagraph (4)(e) of this rule and subparts (1)(d)1(xxiii) and (xxiv) of Rule 0400-12-01-.02.

~~(iv)(i) This subpart shall not be effective until July 2, 2018, in so far as it is applied through part (1)(b)7 of Rule 0400-12-01-.02.~~ The product of the recycling process must be comparable to a legitimate product or intermediate:

- (I) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - I. The product of the recycling process does not exhibit a hazardous characteristic (as defined in paragraph (3) of Rule 0400-12-01-.02) that analogous products do not exhibit, and
 - II. The concentrations of any hazardous constituents found in appendix VIII of paragraph (30) of Rule 0400-12-01-.02 that are

in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(II) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

I. The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(Note: For specialty products such as specialty batch chemicals or specialty metal alloys, customer specifications would be sufficient.)

II. The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(Note: There is no analogous product when the hazardous secondary material is recycled by being returned to the original production process or processes. Production process or processes includes those activities that tie directly into the manufacturing operation or those activities that are the primary operation at an establishment.)

(III) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per item (I) or (II) of this subpart, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the product made using recycled material does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Commissioner of this activity using forms provided by the department.

(Note: To comply with the requirements of this subpart, a generator of the hazardous secondary material, product or intermediate may use its knowledge of the materials it recycles and of the recycling process to make legitimacy determinations.)

(ii) Reserved.

(Note: A person who meets the specific provisions included in 0400-12-01-.02(1)(b)3 Table 1, 0400-12-01-.02(1)(b)5, 0400-12-01-.02(1)(d)1(vi) through (xxii), 0400-12-01-.02(1)(f)1(ii)(III) and (IV), and 0400-12-01-.02(1)(f)1(iii)(I), are presumed to conduct legitimate recycling, ~~except in those rare cases when it is necessary to document legitimacy in accordance with item 1(iv)(III) of this subparagraph. If, at any time, the Commissioner suspects that sham recycling may be occurring, in accordance with part (1)(b)6 of Rule 0400-12-01-.02, the Commissioner may require~~

~~a person to demonstrate that the recycling in question is legitimate in accordance with this subparagraph.)~~

~~2. Reserved~~

~~3. Reserved~~

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (xxiv) of part 1 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

- (xxiv) ~~This subpart shall not be effective until July 2, 2018.~~ Hazardous secondary material that is generated and then transferred to a ~~verified reclamation facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01,~~ person for the purpose of reclamation is not a solid waste, provided that:
- (I) The material is not speculatively accumulated, as defined in subpart (a)3(viii) of this paragraph;
 - (II) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than ten (10) days at a transfer facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;
 - (III) The material is not otherwise subject to material-specific management conditions under part 1 of this subparagraph when reclaimed, and it is not a spent lead-acid battery (see subparagraph (7)(a) of Rule 0400-12-01-.09 and subparagraph (1)(d) of Rule 0400-12-01-.12), ~~and it does not meet the listing description for K171 or K172 in subparagraph (4)(c) of this rule;~~
 - (IV) The reclamation of the material is legitimate, as specified under subparagraph (5)(d) of Rule 0400-12-01-.01;
 - (V) The hazardous secondary material generator satisfies all of the following conditions:
 - I. The material must be contained as defined in subparagraph (2)(a) of Rule 0400-12-01-.01. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.
 - II. ~~The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified~~ Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities), as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, in the United States or to a reclamation facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state, the hazardous secondary material generator must make reasonable efforts to ensure that each

reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment. If the hazardous secondary material will be passing through an intermediate facility, ~~the intermediate facility must be a verified intermediate facility, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, or where~~ the management of the hazardous secondary materials ~~at that facility must be~~ is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment. Reasonable efforts must be repeated at a minimum of every three (3) years for the hazardous secondary material generator to claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:

- A. Does the available information indicate that the reclamation process is legitimate pursuant to subparagraph (5)(d) of Rule 0400-12-01-.01? In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process. (By responding to this question, the hazardous secondary material generator has also satisfied its requirement in subparagraph (5)(d) of Rule 0400-12-01-.01 to be able to demonstrate that the recycling is legitimate).
- B. Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to subparagraph (5)(c) of Rule 0400-12-01-.01 and have they notified the appropriate authorities that the financial assurance condition is satisfied per item (VI)VI of this subpart? In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per subparagraph (5)(c) of Rule

0400-12-01-.01, including the requirement in subpart (5)(c)1(v) of Rule 0400-12-01-.01 to notify the appropriate authorities whether the reclaimer or intermediate facility has financial assurance.

C. Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three (3) years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C? In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the Department. If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three (3) years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly? In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the Department, or the facility itself that the facility has addressed the violations, taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials.

D. Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material? In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

E. If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the Department, or information provided by the facility itself.

III. The hazardous secondary material generator must maintain for a minimum of three (3) years documentation and certification that reasonable efforts were made for each reclamation facility and, if

applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05, or, if not in Tennessee, not addressed under a RCRA Part B permit or interim status standards in another state prior to transferring hazardous secondary material. Documentation and certification must be made available upon request by the Commissioner within seventy two (72) hours, or within a longer period of time as specified by the Commissioner. The certification statement must:

A. Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

B. Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with subitem (1)(d)1(xxiv)(V)II of Rule 0400-12-01-.02 to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."

~~III~~.IV. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:

- A. Name of the transporter and date of the shipment;
- B. Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent; and
- C. The type and quantity of hazardous secondary material in the shipment.

~~IV~~.V. The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);

~~V~~.VI. The hazardous secondary material generator must comply with the emergency preparedness and response conditions in paragraph (13) of this rule.

(VI) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and **verified** intermediate facilities, as defined in subparagraph (2)(a) of Rule 0400-12-01-.01, satisfy all of the following conditions:

I. The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:

A. Name of the transporter and date of the shipment;

B. Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

C. The type and quantity of hazardous secondary material in the shipment; and

D. For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

II. The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

III. The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials, within thirty (30) days of receipt. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

IV. The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

V. The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under paragraph (13) of this rule.

~~V.VI.~~ Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to paragraph (3) of this rule, or if they themselves are specifically listed in paragraph (4) of this rule, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of Rules 0400-12-01-.01 through 0400-12-01-.10.

~~V.VII.~~ The reclaimer and intermediate facility have financial assurance as required under paragraph (8) of this rule.

~~VII.~~ ~~The reclaimer and intermediate facility have been issued a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 or have a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials;~~

~~VIII.~~ ~~If not operating under a Part B permit issued under Rule 0400-12-01-.07 or interim status standards under Rule 0400-12-01-.05 that address the management of the hazardous secondary materials, the reclaimer and intermediate facility develops and maintains a hazardous secondary material acceptance plan. The reclaimer only accepts hazardous secondary materials for reclamation that comply with the hazardous waste acceptance plan as approved by the Commissioner under part (4)(b)2 of Rule 0400-12-01-.01; and~~

(VII) **All In addition, all** persons claiming the exclusion under this subpart **must** provide notification as required under subparagraph (5)(c) of Rule 0400-12-01-.01.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (13) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting it in its entirety and substituting instead the following:

(13) Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials [40 CFR 261 Subpart M]

(a) Applicability [40 CFR 261.400]

The requirements of this paragraph apply to those areas of an entity managing hazardous secondary materials excluded under subpart (1)(d)1(xxiii) and/or (xxiv) of this rule where hazardous secondary materials are generated or accumulated on site.

1. A generator of hazardous secondary material, or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01, excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ that accumulates 6000 kg or less of hazardous secondary material at any time must comply with subparagraphs (b) and (c) of this paragraph.
2. A generator of hazardous secondary material, or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ that accumulates more than 6000 kg of hazardous secondary material at any time must comply with subparagraphs (b) and (d) of this paragraph.

(b) Preparedness and prevention [40 CFR 261.410]

1. Maintenance and operation of facility

Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

2. Required equipment

All facilities generating or accumulating hazardous secondary material must be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

- (i) An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
- (ii) A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;
- (iii) Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
- (iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

3. Testing and maintenance of equipment

All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

4. Access to communications or alarm system

- (i) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under part 2 of this subparagraph.
- (ii) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under part 2 of this subparagraph.

5. Required aisle space

The hazardous secondary material generator or intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

6. Arrangements with local authorities

- (i) The hazardous secondary material generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:
 - (I) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;
 - (II) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;
 - (III) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and
 - (IV) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
 - (ii) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ must document the refusal in the operating record.
- (c) Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material [40 CFR 261.411]

A generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:

1. At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in part 4 of this subparagraph. This employee is the emergency coordinator.
2. The generator or intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ must post the following information next to the telephone:
 - (i) The name and telephone number of the emergency coordinator;
 - (ii) Location of fire extinguishers and spill control material, and, if present, fire alarm; and
 - (iii) The telephone number of the fire department, unless the facility has a direct alarm.
3. The generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ must ensure that all employees are thoroughly familiar

with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

4. The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

- (i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;
- (ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;
- (iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:
 - (I) The name, address, and U.S. EPA Identification Number of the facility;
 - (II) Date, time, and type of incident (e.g., spill or fire);
 - (III) Quantity and type of hazardous waste involved in the incident;
 - (IV) Extent of injuries, if any; and
 - (V) Estimated quantity and disposition of recovered materials, if any.

(d) Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material [40 CFR 261.420]

A generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:

1. Purpose and implementation of contingency plan

- (i) Each generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.01 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.
- (ii) The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

2. Content of contingency plan

- (i) The contingency plan must describe the actions facility personnel must take to comply with parts 1 and 6 of this subparagraph in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.
- (ii) If the generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.04 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR part 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this rule. The hazardous secondary material generator or an intermediate or reclamation facility ~~operating under a Certificate to Operate under part (4)(b)2 of Rule 0400-12-01-.04 excluded from regulation under subpart (1)(d)1(xxiv) of this rule~~ may develop one contingency plan which meets all regulatory requirements. The Department recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-Rule Chapter 0400-12-01 provisions in an integrated contingency plan, the changes do not trigger the need for a permit modification under Rule 0400-12-01-.07.
- (iii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services, pursuant to part (b)6 of this paragraph.
- (iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see part 5 of this subparagraph), and this list must be kept up-to-date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
- (v) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
- (vi) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

3. Copies of contingency plan

A copy of the contingency plan and all revisions to the plan must be:

- (i) Maintained at the facility; and
- (ii) Submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

4. Amendment of contingency plan

The contingency plan must be reviewed, and immediately amended, if necessary,

whenever:

- (i) Applicable rules are revised;
- (ii) The plan fails in an emergency;
- (iii) The facility changes--in its design, construction, operation, maintenance, or other circumstances--in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;
- (iv) The list of emergency coordinators changes; or
- (v) The list of emergency equipment changes.

5. Emergency coordinator

At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in part 6 of this subparagraph. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

6. Emergency procedures

- (i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:
 - (I) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - (II) Notify appropriate state or local agencies with designated response roles if their help is needed.
- (ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.
- (iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).
- (iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:
 - (I) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He

must be available to help appropriate officials decide whether local areas should be evacuated; and

- (II) He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:
 - I. Name and telephone number of reporter;
 - II. Name and address of facility;
 - III. Time and type of incident (e.g., release, fire);
 - IV. Name and quantity of material(s) involved, to the extent known;
 - V. The extent of injuries, if any; and
 - VI. The possible hazards to human health, or the environment, outside the facility.

- (v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

- (vi) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

- (vii) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with part (1)(c)3 or part (1)(c)4 of this rule, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rules 0400-12-01-.03, 0400-12-01-.04 and 0400-12-01-.05.

- (viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:
 - (I) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and
 - (ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

- (ix) The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Commissioner. The report must include:
 - (I) Name, address, and telephone number of the hazardous secondary material generator;
 - (II) Name, address, and telephone number of the facility;

- (III) Date, time, and type of incident (e.g., fire, explosion);
- (IV) Name and quantity of material(s) involved;
- (V) The extent of injuries, if any;
- (VI) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
- (VII) Estimated quantity and disposition of recovered material that resulted from the incident.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-208

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)					
Stacey Cothran (Solid/Hazardous Waste Management Industry)					
Kenneth L. Donaldson (Municipal Government)					
Dr. George Hyfantis, Jr. (Institution of Higher Learning)					
Richard "Ric" Morris (Single Facility with less than 5 Underground Storage Tanks)					
Alan M. Leiserson Environmental Interests					
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)					
David Martin (Working in a field related to Agriculture)					
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)					
DeAnne Redman (Petroleum Management Business)					
Mayor Howard Bradley (County Government)					
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)					
Chuck Head Commissioner's Designee, Dept. of Environment and Conservation					
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tanks and Solid Waste Disposal Control Board on 02/07/2018, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/06/17

Rulemaking Hearing(s) Conducted on: (add more dates). 01/30/18

Date: February 7, 2018

Signature: _____

Name of Officer: Jared L. Lynn

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: Underground Storage Tanks and Solid Waste Disposal Control Board

Rule Chapter Number(s): 0400-12-01

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

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

Comment: Two commenters were very complimentary of the Department's efforts to work with the Board and all involved to find a solution to these rules complicated by the federal court's ruling.

Response: The Board appreciates the recognition of the efforts by all involved to move these important amends forward.

Comment: A commenter suggested that the term "EPA" as used in the last sentence of section (1)(d)1(xxiv)(V)II B be changed to "the appropriate authorities" to be consistent with its usage in other sentences in the section and to avoid confusion.

Response: The Board agrees and has made the substitution in the cited section.

Regulatory Flexibility Addendum

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

On July 7, 2017, the United States Court of Appeals, District of Columbia Circuit, ruled that 40 CFR § 260.43(a)(4) (commonly referred to as Factor 4 of the “legitimacy test”) is unreasonable insofar as it applies to all hazardous secondary materials via § 261.2(g) (sham recycling definition) and rejected parts of the Verified Recycler Exclusion. The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) adopted equivalent rules on December 2, 2015. These rules were filed with the Secretary of State on May 9, 2017, with an original effective date of August 7, 2017. In light of the Court’s opinion and order the Joint Government Operations Committee stayed these rules for 75 days. The Board voted to stay these rules for an additional 75 days resulting in a new effective date of January 4, 2018. Prior to January 4, 2018, pursuant to Tenn. Code Ann. § 4-5-208(a)(2), the Board adopted and filed with the Secretary of State an emergency rule that delayed the effective date of the rules believed to be most impacted by the Court’s July 7, 2017, opinion and order. The Board is amending the rules with the delayed effective date through this rulemaking, so these amended rules will conform to the Court’s July 7, 2017, opinion and order by:

- Deleting the definitions of “hazardous secondary material acceptance plan,” “verified intermediate facility,” and “verified reclamation facility” since these terms will no longer be used by the amended rules.
- Deleting all references to “certificates to operate” since issuing certificates to operate to verified reclamation facilities and verified intermediate facilities would be inconsistent with the federal court’s ruling and opinion.
- Amending the off-site transfer exclusion to be consistent with the federal court’s ruling and opinion.
- Amending the recycling legitimacy criteria by limiting the applicability of what is known as factor 4 to partial reclamation variance, non-waste determinations, reclamation under the control of the generator exemption, and the off-site transfer reclamation exemption so that, as amended, factor 4 will not be applied through the definition of sham recycling.

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

The Department estimates that 546 businesses generating hazardous waste have the greatest potential to recycle hazardous waste or hazardous secondary material in compliance with the variances, exclusions, or exemptions provided by the rules. The Department estimates that about 173 of those businesses will attempt to benefit from the available variances, exclusions, and exemptions. Approximately 60 of those 173 businesses are believed to be small businesses. The variances, exclusions, and exemptions are not mandatory and do not impose additional costs on small businesses.

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

These amendments do not mandate any additional reporting, recordkeeping or administrative costs.

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

These amendments make available an additional exemption that could result in significant savings for qualified generators and recyclers and conserve valuable resources.

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

These amendments do not mandate any additional requirements.

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

These amendments will make Tennessee’s program comparable to the federal program and relative to states that do not adopt recycling exemptions, those states will be more stringent than necessary to protect public health and the environment.

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

These amendments do not mandate any additional requirements on small businesses.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments from this rulemaking.

Additional Information Required by Joint Government Operations Committee

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

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

On July 7, 2017, the United States Court of Appeals, District of Columbia Circuit, ruled that 40 CFR § 260.43(a)(4) (commonly referred to as Factor 4 of the “legitimacy test”) is unreasonable insofar as it applies to all hazardous secondary materials via § 261.2(g) (sham recycling definition) and rejected parts of the Verified Recycler Exclusion. The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) adopted equivalent rules on December 2, 2015. These rules were filed with the Secretary of State on May 9, 2017, with an original effective date of August 7, 2017. In light of the Court’s opinion and order the Joint Government Operations Committee stayed these rules for 75 days. The Board voted to stay these rules for an additional 75 days resulting in a new effective date of January 4, 2018. Prior to January 4, 2018, pursuant to Tenn. Code Ann. § 4-5-208(a)(2), the Board adopted and filed with the Secretary of State an emergency rule that delayed the effective date of the rules believed to be most impacted by the Court’s July 7, 2017, opinion and order. The Board is amending the rules with the delayed effective date through this rulemaking, so these amended rules will conform to the Court’s July 7, 2017, opinion and order by:

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- Amending the off-site transfer exclusion to be consistent with the federal court’s ruling and opinion.
- Amending the recycling legitimacy criteria by limiting the applicability of what is known as factor 4 to the partial reclamation variance, non-waste determinations, reclamation under the control of the generator exemption, and the off-site transfer reclamation exemption so that, as amended, factor 4 will not be applied through the definition of sham recycling.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are being promulgated under the authority of Tenn. Code Ann. Title 68, Chapter 212, and § 4-5-208. The federal requirements adopted are compiled in 40 CFR Parts 260 and 261.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All generators and recyclers of hazardous waste and hazardous secondary materials are directly affected by this rulemaking.

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

American Petroleum Institute v. EPA, 862 F.3d 50 (D.C. Cir. 2017)

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

There will be no fiscal impact resulting from this rulemaking.

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

Wayne Gregory
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Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 253-5420
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- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Emily Urban
Assistant General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Emily.Urban@tn.gov

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

The Department is not aware of any additional relevant information requested by the committee.