



UNDERGROUND STORAGE TANKS  
AND  
SOLID WASTE DISPOSAL CONTROL BOARD

BOARD ORIENTATION MANUAL

Last Revised February 2017

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Tab 1



# Underground Storage Tanks and Solid Waste Disposal Control Board

## Board Characteristics:

Fourteen (14) members: twelve appointed by the Governor for four-year terms upon expiration of initial appointments; two ex officio non-voting members.

## Members include:

- one person engaged in a field directly related to agriculture;
- one person employed by, or is the owner of, a private petroleum concern with at least ten (10) years of experience owning or operating a wholesale or retail gasoline business with management responsibility for at least 15 underground storage tanks;
- one person who is employed by a private manufacturing concern in Tennessee who shall have a college degree in engineering or the equivalent and at least eight (8) years of combined technical training and experience in permit compliance and management of solid wastes or hazardous wastes;
- one person employed by a private manufacturing concern in Tennessee who shall have a college degree in engineering or the equivalent and at least eight (8) years of combined technical training and experience in the management of petroleum underground storage tanks and hazardous materials;
- one person who is a registered engineer, geologist, or qualified land surveyor with knowledge of management of solid wastes, hazardous materials, or the management of underground storage tanks, from the faculty of an institution of higher learning;
- one person knowledgeable of the management of solid wastes, hazardous materials, or underground storage tanks to represent environmental interests;
- one representative of county governments;
- one representative of municipal governments;
- one person who is a small generator of solid wastes or hazardous materials representing automotive interests;
- one person employed by a private petroleum concern with experience in the management of petroleum;
- one person engaged in the business of management of solid wastes or hazardous materials;
- one person who is employed by, or is the owner of, a private petroleum concern with at least five (5) years of experience owning or operating a wholesale or retail gasoline business with management responsibility for no more than five (5) underground storage tanks;
- Commissioners of Economic and Community Development and Environment and Conservation (or their designees).

Commissioned under Tenn. Code Ann. Section 68-211-111.

The statute authorizing this board expires June 30, 2018 and the one-year wind-down period begins.

# Board Members

Member	Term Expires	Representation
Marty Calloway	9-30-2018	Petroleum Business with at least 15 Underground Storage Tanks
Stacey Cothran	9-30-2019	Solid/Hazardous Waste Management Industry
Kenneth Donaldson	9-30-2020	Municipal Government
Chuck Head	Ex-Officio	Commissioner's Designee, Dept. of Environment & Conservation
Dr. George Hyfantis, Jr.	9-30-2018	Institution of Higher Learning
Ric Morris	9-30-2020	Single Facility with less than 5 Underground Storage Tanks
Alan Leiserson	9-30-2019	Environmental Interests
Jared Lynn	9-30-2017	Manufacturing experienced with Solid/Hazardous Waste
David Martin	9-30-2017	Working in a field related to Agriculture
Beverly Philpot	9-30-2018	Manufacturing, experienced with Underground Storage Tanks/Hazardous Materials
DeAnne Redman	9-30-2017	Petroleum Management Business
Honorable Howard R. Bradley	9-30-2019	County Government
Jimmy West	Ex-Officio	Commissioner's Designee, Economic & Community Development
Mark Williams	9-20-2020	Small Generator of Solid/Hazardous Materials representing Automotive Interests

Tab 2



## Office of General Counsel Points of Contact

<b>Division of Solid &amp; Hazardous Waste</b>	<b>OVERALL</b>	<b>Katherine Barnes</b>	<b>Ellery Richardson</b>	<b>Karen Stevenson Simo/Wayne Gregory</b>
	Areas of Expertise			
	Hazardous Waste	Ellery Richardson	Katherine Barnes	Wayne Gregory
	Toxic Substances	Ellery Richardson	Ashley Ball	
<b>Division of Underground Storage Tanks</b>	<b>OVERALL</b>	<b>Ashley Ball</b>	<b>George Bell</b>	<b>Bill Miller</b>
<b>Public Records Requests</b>	<b>OVERALL</b>	<b>Melanie Stanley</b>	<b>Joe Sanders</b>	<b>Lauran Sturm</b>

General Counsel: Jenny Howard

Senior Legal Advisor: Joseph Sanders

**OGC PERSONNEL--Contact Information**

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## Tab 3

# 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 beginning 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: "Is 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.

## Undeatable Motions

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

## Deatable 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 (11<sup>th</sup> 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.

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

# *Parliamentary Motions Guide*

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

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

<b>YOU WANT TO:</b>	<b>YOU SAY:</b>	<b>INTERRUPT?</b>	<b>2<sup>ND</sup>?</b>	<b>DEBATE?</b>	<b>AMEND?</b>	<b>VOTE?</b>
§23 Enforce rules	<b>Point of order</b>	Yes	No	No	No	None
§24 Submit matter to assembly	<b>I appeal</b> from the decision of the chair	Yes	Yes	Varies	No	Majority
§25 Suspend rules	I move to <b>suspend the rules</b> which ...	No	Yes	No	No	2/3
§26 Avoid main motion altogether	<b>I object to the consideration</b> of the question	Yes	No	No	No	2/3
§27 Divide motion	I move to <b>divide the question</b>	No	Yes	No	Yes	Majority
§29 Demand rising vote	I call for a <b>division</b>	Yes	No	No	No	None
§33 Parliamentary law question	<b>Parliamentary inquiry</b>	Yes (if urgent)	No	No	No	None
§33 Request information	<b>Request for information</b>	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 <b>take from the table</b> ...	No	Yes	No	No	Majority
§35 Cancel or change previous action	I move to <b>rescind/ amend something previously adopted...</b>	No	Yes	Yes	Yes	2/3 or maj. w/ notice
§37 Reconsider motion	I move to <b>reconsider</b> the vote ...	No	Yes	Varies	No	Majority

Tab 4



# **Conflict of Interest**

## **Tennessee Code Annotated Section 68-211-11**

### **Underground storage tanks and solid waste disposal control board; membership**

(i) No member of the board shall participate in making any decision of 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.

**ETHICS AND CONFLICT OF INTEREST STATEMENT  
FOR  
MEMBERS OF THE UNDERGROUND STORAGE TANKS AND SOLID WASTE DISPOSAL  
CONTROL BOARD**

1. Pursuant to T.C.A. §68-211-111(i), “[N]o member of the board shall participate in making any decision of 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.”
2. Each board member shall read and comply with all applicable portions of Executive Order No. 20, *An Order Concerning Ethics Policy and Disclosures by the Executive Branch*, issued August 31, 2012 (attached), and any subsequent applicable Executive Order concerning ethics or conflicts of interest.
3. Each board member shall avoid all known applicable conflicts of interest, and to the extent the board member becomes aware of such a conflict of interest in connection with any matter brought before the board, the board member shall disclose such conflict to the other board members, Administrative Law Judge, and/or other appropriate person(s) and shall further recuse him or herself from participating in any consideration of the matter.
4. No board member will participate in discrete decisions or actions specifically impacting individuals in his or her immediate family, individuals in their capacity as an employee of the board member or the board member’s personal business.
5. A conflict of interest for purposes of this Statement is a conflict on the part of a board member between his or her private interests and the official responsibilities inherent in membership on a board, an office of public trust. It is recognized that the composition of the board is statutorily mandated to include representatives of specified groups in order to assure that views and interests of the specified groups are represented. Therefore, an applicable conflict of interest does not exist when a board member participates in the discharge of his or her official duties, including participation in the promulgation of rules, if such participation will not substantially affect a direct or indirect financial interest, as described in Executive Order No. 20 or any subsequent applicable Executive Order, of the board member, or an entity with which he or she is associated, in a manner different from the manner in which it affects the other members of the class to which he or she, or the associated entity, belongs.
6. 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 Commissioner of Environment and Conservation or the Commissioner’s designee, which will be one or more persons impartial to the interpretation issue in question.
7. All members of the board must annually:
  - (a) Review the Ethics and Conflict of Interest Statement; and
  - (b) Submit a signed and dated Ethics and Conflict of Interest Statement Acknowledgement to the Technical Secretary.

**THIS ETHICS AND CONFLICT OF INTEREST STATEMENT DATED AUGUST 20, 2014 REPLACES AND SUPERSEDES ANY PREVIOUS SUCH STATEMENTS PROVIDED TO OR EXECUTED BY BOARD MEMBERS.**

**UNDERGROUND STORAGE TANKS AND SOLID WASTE DISPOSAL CONTROL BOARD**

**ACKNOWLEDGEMENT  
OF  
ETHICS AND CONFLICT OF INTEREST STATEMENT**

The member has received and read a copy of the attached ETHICS AND CONFLICT OF INTEREST STATEMENT dated August 20, 2014. The member affirms that he/she understands that the Governor considers compliance with the STATEMENT a condition of service.

\_\_\_\_\_  
Signature of Board Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name

Tenn. Op. Atty. Gen. No. 86-021 (Tenn.A.G.), 1986 WL 222654

**\*1 Office of the Attorney General**

State of Tennessee  
Opinion No. 86-021  
January 30, 1986

**CLAIMS COMMISSION:**

Eligibility of appointed members of boards and commissions authorized to issue debt, for status as state employees for purposes of tort liability and worker's compensation benefits; Appointed members of regulatory boards, advisory boards and commissions as state employees for purposes of tort liability and worker's compensation benefits; County health directors and officers as state employees; Eligibility of highway patrolmen and Public Service Commission enforcement officers who have permanent vehicle assignments and official duty stations in their homes, for worker's compensation benefits. [T.C.A. §§ 4-31-103, 8-42-101, 9-8-307, 13-23-107, -109, 50-6-102, 56-1-307, 63-10-101, 68-2-601, -603.](#)

**COUNTIES: Health Departments:**

Eligibility of appointed members of boards and commissions authorized to issue debt, for status as state employees for purposes of tort liability and worker's compensation benefits; Appointed members of regulatory boards, advisory boards and commissions as state employees for purposes of tort liability and worker's compensation benefits; County health directors and officers as state employees; Eligibility of highway patrolmen and Public Service Commission enforcement officers who have permanent vehicle assignments and official duty stations in their homes, for worker's compensation benefits. [T.C.A. §§ 4-31-103, 8-42-101, 9-8-307, 13-23-107, -109, 50-6-102, 56-1-307, 63-10-101, 68-2-601, -603.](#)

**LICENSES: Boards: State Licensing Board:**

Eligibility of appointed members of boards and commissions authorized to issue debt, for status as state employees for purposes of tort liability and worker's compensation benefits; Appointed members of regulatory boards, advisory boards and commissions as state employees for purposes of tort liability and worker's compensation benefits; County health directors and officers as state employees; Eligibility of highway patrolmen and Public Service Commission enforcement officers who have permanent vehicle assignments and official duty stations in their homes, for worker's compensation benefits. [T.C.A. §§ 4-31-103, 8-42-101, 9-8-307, 13-23-107, -109, 50-6-102, 56-1-307, 63-10-101, 68-2-601, -603.](#)

**PUBLIC OFFICERS AND EMPLOYEES: Compensation: Eligibility/Status:**

Eligibility of appointed members of boards and commissions authorized to issue debt, for status as state employees for purposes of tort liability and worker's compensation benefits; Appointed members of regulatory boards, advisory boards and commissions as state employees for purposes of tort liability and worker's compensation benefits; County health directors and officers as state employees; Eligibility of highway patrolmen and Public Service Commission enforcement officers who have permanent vehicle assignments and official duty stations in their homes, for worker's compensation benefits. [T.C.A. §§ 4-31-103, 8-42-101, 9-8-307, 13-23-107, -109, 50-6-102, 56-1-307, 63-10-101, 68-2-601, -603.](#)

**\*2 REGULATORY BOARDS:**

Eligibility of appointed members of boards and commissions authorized to issue debt, for status as state employees for purposes of tort liability and worker's compensation benefits; Appointed members of regulatory boards, advisory boards and commissions as state employees for purposes of tort liability and worker's compensation benefits; County health directors and officers as state employees; Eligibility of highway patrolmen and Public Service Commission enforcement

officers who have permanent vehicle assignments and official duty stations in their homes, for worker's compensation benefits. T.C.A. §§ 4-31-103, 8-42-101, 9-8-307, 13-23-107, -109, 50-6-102, 56-1-307, 63-10-101, 68-2-601, -603.

#### **WORKER'S COMPENSATION:**

Eligibility of appointed members of boards and commissions authorized to issue debt, for status as state employees for purposes of tort liability and worker's compensation benefits; Appointed members of regulatory boards, advisory boards and commissions as state employees for purposes of tort liability and worker's compensation benefits; County health directors and officers as state employees; Eligibility of highway patrolmen and Public Service Commission enforcement officers who have permanent vehicle assignments and official duty stations in their homes, for worker's compensation benefits. T.C.A. §§ 4-31-103, 8-42-101, 9-8-307, 13-23-107, -109, 50-6-102, 56-1-307, 63-10-101, 68-2-601, -603.

Honorable Harlan Mathews  
State Treasurer  
State Capitol Building  
Nashville, Tennessee 37219

Dear Mr. Mathews:

You have requested an opinion from this office on the following questions regarding the Claims Commission Act of 1984:

#### **QUESTIONS**

1. Are the appointed members of boards and commissions which are authorized to issue debt, such as the Tennessee Housing Development Agency and Tennessee Local Development Authority, State employees for the purposes of (a) tort liability and (b) Workers' Compensation benefits?
2. Are the appointed members of various state regulatory licensing and advisory boards and commissions state employees for the purposes of (a) tort liability (b) Worker's Compensation benefits?
3. Are County Health Directors and County Health Officers state employees even though they perform duties or functions of a political subdivision?
4. At what point are Highway Patrolmen and Public Service Commission enforcement officers who have permanent vehicle assignments and whose official duty stations are their homes entitled to Workers' Compensation benefits?

#### **OPINIONS**

1. (a) Appointed members of the Tennessee Housing Development Agency and Tennessee Local Development Authority are state employees for tort liability purposes. (b) They are not eligible for Workers' Compensation benefits.
2. (a) Members of state regulatory, licensing and advisory boards and commissions who are appointed pursuant to state law are state employees for tort liability purposes. (b) Appointed members who receive compensation and economic gain are eligible for Workers' Compensation benefits.
- \*3 3. County Health Directors and County Health Officers are state employees even though they perform duties of political subdivisions.
4. Workers' Compensation benefits for Highway Patrolmen and Public Service Commission enforcement officers are provided to those officers on 24 hour call when they are actually engaged in their official capacity as police officers.

## ANALYSIS

1. (a) For purposes of the Claim's Commission, the General Assembly has adopted the definition of "state employee" found in [T.C.A. § 8-42-101\(a\)\(3\)](#). [T.C.A. § 9-8-307\(h\)](#). Included within this definition is "any person who is a state official ..." [T.C.A. § 8-42-101\(a\)\(3\)](#). In [Sitton v. Fulton](#), 566 S.W.2d 887, 889 (Tenn.App.1978), the Court of Appeals defined public officer or official:

"Public officer" has been defined as an incumbent of a public office; an individual who has been appointed or elected in a manner prescribed by law, who has a designation or title given him by law, and who exercises the functions concerning the public assigned to him by law.

Since the members of the Tennessee Housing Development Agency and Tennessee Local Development Authority are appointed pursuant to [T.C.A. § 13-23-107\(a\)](#) and [§ 4-31-103](#), respectively, they are "state officials", and thus "state employees". Therefore, they fall within the purview of T.C.A. Title 9, Chapter 8 for tort liability purposes.

(b) Tennessee [Code Annotated § 50-6-102](#) sets forth the formula under which Workers' Compensation benefits are paid to injured state employees through [T.C.A. § 9-8-307\(a\)\(11\)](#). The formula is based upon the "average weekly wages" which the worker is paid. "The earnings of an employee include anything received by him under the terms of his employment contract from which he realizes economic gain." [P & L Construction Co., Inc. v. Lankford](#), 559 S.W.2d 793, 795 (Tenn.1978). These board members are not eligible for Workers' Compensation benefits because they receive no compensation for their services. They are not eligible for Workers' Compensation benefits because they are only reimbursed for travel expenses pursuant to [T.C.A. §§ 13-23-109](#) and [4-31-103](#).

In cases where board members receive a per diem, they become eligible for Workers' Compensation. A per diem is considered an economic gain.

2. (a) Appointed members of state regulatory, licensing and advisory boards and commissions are state employees under the analysis of Question (1)(a). They are appointed pursuant to state statute that controls their respective boards. For example, the State Board of Pharmacy is appointed pursuant to [T.C.A. § 63-10-101](#). Thus, these Board members are state employees for the purposes of tort liability.

(b) Similarly, members of the various boards who receive compensation or realize economic gain are eligible for Workers' Compensation benefits under the analysis of Question 1(b). For example, members of the State Board of Pharmacy receive compensation pursuant to [T.C.A. § 56-1-307](#) and are accordingly eligible for Workers' Compensation benefits.

\*4 3. [Tennessee Code Annotated § 68-2-603](#) provides for the establishment of county health departments. Each county is required to establish a county health department which is under the immediate direction of a county health director who is appointed by the commissioner of the Department of Health and Environment. [T.C.A. § 68-2-603\(a\)](#). The salary of the county health director is paid, all or in part, by the Department of Health and Environment. *Id.*

The county health director "... shall act as the administrative officer of the County Health Department and shall take actions and make determinations necessary to properly execute the Department of Health and Environment's programs and adequately enforce the rules and regulations established by the commissioner and the County Board of Health." *Id.* The county health director also has the duty to enforce the regulations of the county board of health and the Department of Health and Environment in counties which fail to establish a board of health. [T.C.A. § 68-2-603\(b\)](#).

Similarly, the commissioner of the Department of Health and Environment may appoint a county health officer who shall have his compensation paid, all or in part, by the Department of Health and Environment. The county health officer is "... responsible for providing medical direction including medical enforcement actions." [T.C.A. § 68-2-603\(c\)](#).

The county health director and the county health officer serve as ex officio members to the County Board of Health. [T.C.A. § 68-2-601\(a\)\(7\)](#). Among other things, it is the duty of the county boards of health to govern the policies of full-time county health departments. Further, the county boards of health are to enforce through the county health director and/or the county health officer the rules and regulations as may be prescribed by the commissioner of the Department of Health and Environment essential to the control of preventable diseases and the promotion and maintenance of general health in the county. [T.C.A. § 68-2-601\(f\)\(1\) and \(2\)](#).

Thus, in their respective capacities, the county health directors and officers do perform duties which obviously benefit both the state and political subdivisions. However, pursuant to the analysis of Quesiton 1(a) such duly appointed officials are state employees. The fact that they may perform functions which directly benefit a political subdivision does not alter their status as state employees.

4. In order for a worker to receive Workers' Compensation benefits, the courts require that the injury arise out of and in the course of his employment. [Woods v. Warren](#), 548 S.W.2d 651, 652, (Tenn.1977). The general rule of eligibility for Workers' Compensation is that an employee is not in a compensable status until he has reached his station or place of employment ready to begin his employer's activities. [Travelers Indemnity Co. v. Charvis](#), 428 S.W.2d 797, 799 (Tenn.1968); [Smith v. Camel Mfg. Co.](#), 192 Tenn. 670, 241 S.W.2d 771 (1951). Therefore an injury received by an employee on his way to and from his work, or away from his employer's premises, does not arise out of his employment and is, therefore, not compensable. [Potts v. Heil-Quaker Corp.](#), 482 S.W.2d 135, 137 (Tenn.1972).

\*5 In order to avoid the application of the general rule of nonliability for an injury sustained en route to or from work, the employee must show that: (a) at the time of the injury he was using a route required or furnished by the employer; and such route was on the premises of the employer, and (b) the use of the required route subjects the employee to a definite special hazard, or (c) that the risks of travel are directly incident to the employment itself. [Woods](#), 548 S.W.2d at 655. If an employee's duty requires travel, then the risks of travel are directly incident to the employment itself and any resulting injuries are the proper subjects of compensation. [Martin v. Free Service Tire Co.](#), 189 Tenn. 327, 225 S.W.2d 249, 250 (1949).

Highway Patrolmen and Public Service Commission enforcement officers are in a unique situation because the State in some instances requires them to use their homes as work stations and provides them with vehicles. If an officer is on 24-hour call, any time he is required or called to be on duty he is in the course of employment and covered by Workers' Compensation benefits. See [Mayor & Alderman of Town of Tullahoma v. Ward](#), 114 S.W.2d 804 (Tenn.1938). Although the officer's duty station is his house, Workers' Compensation benefits cover only those injuries work related and those received while actually on duty. Therefore since he is on twenty-four hour call, his benefits would cover any injury that occurred in his home when he is engaged in his official capacity as a law enforcement officer.

Sincerely,

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Attorney General and Reporter  
John Knox Walkup  
Chief Deputy Attorney General  
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Assistant Attorney General

Tenn. Op. Atty. Gen. No. 86-021 (Tenn.A.G.), 1986 WL 222654

Tenn. Op. Atty. Gen. No. 06-034 (Tenn.A.G.), 2006 WL 853271

Office of the Attorney General

State of Tennessee  
Opinion No. 06-034  
February 14, 2006

### Liability of TRICOR Board Members

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### QUESTIONS

1. In general, what is the extent of personal liability of members of the Board of the Tennessee Rehabilitative Initiative in Correction (TRICOR) for their acts/omissions as Board members?
2. How would it affect the personal liability of Board members if the Board submits a revised set of personnel practices to the Commissioner of Personnel under the authority of [TCA § 41-22-407\(d\)](#), and these guidelines are approved by the Commissioner?
3. How would it affect the personal liability of Board members if the General Assembly granted the Board statutory authority to develop its own personnel practices without the approval of the Commissioner of the Department of Personnel?

### OPINIONS

1. Board members, as state employees, are immune from liability for state law claims within the scope of their office provided they do not act willfully, maliciously, criminally or for personal gain. Depending on the circumstances, Board members may have qualified immunity for federal law claims. If sued personally, board members can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment.
2. Compliance with [Tenn. Code Ann. § 41-22-407\(d\)](#) would not affect this analysis.
3. Receipt of statutory authority to develop TRICOR personnel practices independent of the Commissioner of Personnel would not affect this analysis.

### ANALYSIS

For personal liability purposes, members of the TRICOR board are deemed to be state employees. The statutory definition of state employee includes “any person designated by a department or agency head as a participant in a volunteer program authorized by the department or agency head.” [Tenn. Code Ann. § 8-42-101\(3\)\(B\)](#). According to [Tenn. Code Ann. § 41-22-412](#), TRICOR board members are deemed “participant[s] in a volunteer program as referenced in [§ 8-42-101](#).”

As state employees, Board members are immune from state law claims as provided in [Tenn. Code Ann. § 9-8-307\(h\)](#) for acts or omissions within the scope of their duties as Board members. The State of Tennessee immunizes state employees as defined by [Tenn. Code Ann. § 8-42-101\(3\)](#) from liability for acts or omissions within the scope of the officer's or employee's office or employment, except for willful, malicious, or criminal acts or omissions or for acts or omissions done for personal gain. [Tenn. Code Ann. § 9-8-307\(h\)](#). Instead, the State of Tennessee assumes liability for their negligence in the Claims Commission subject to certain limitations. [Tenn. Code Ann. § 9-8-307](#).

State employees can be held individually liable for federal law violations as the immunity of [§ 9-8-307\(h\)](#) does not apply. However, depending on the circumstances, qualified immunity from liability may be available. Qualified immunity protects public officials carrying out executive or administrative functions from liability for money damages “insofar as their conduct does not violate clearly established [federal] statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). If sued personally, board members can request legal representation at the expense of the State of Tennessee and reimbursement of any judgment. [Tenn. Code Ann. §§ 8-42-103, 9-8-112\(h\)](#).

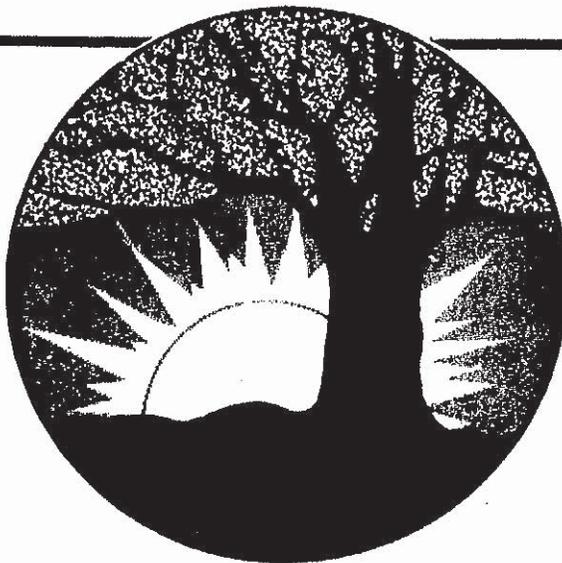
\*2 Compliance with [Tenn. Code Ann. § 41-22-407\(d\)](#) or receipt of statutory authority to develop TRICOR personnel practices would not affect this analysis in the absence of any change to the definition of Board members in [Tenn. Code Ann. § 41-22-412](#) as “participant[s] in a volunteer program as referenced in [§ 8-42-101](#).”

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Tenn. Op. Atty. Gen. No. 06-034 (Tenn.A.G.), 2006 WL 853271

# PERFORMANCE AUDIT

Department of Environment and Conservation  
and  
Related Environmental Boards  
January 2012



Justin P. Wilson  
Comptroller of the Treasury



State of Tennessee  
Comptroller of the Treasury  
Department of Audit  
Division of State Audit

*Signature*  
K. C. H. O.

frequency for Class I landfills for the 2010 calendar year. Based on information in the database and the hard-copy inspection forms, the division failed to inspect 14 of 34 Class I facilities (41%) monthly; 3 of the 14 facilities were inspected 12 or more times per year but not each month as required by policy (page 25).

#### **Negative Response Inspection Forms Provide Inadequate Information for Oversight Activities**

The initial intent of auditors' review discussed in Findings 1 and 2 was not only to determine data reliability and inspection timeliness, but also to assess whether inspectors were inspecting landfills to ensure that landfills are being operated within the rules and regulations, and policies and procedures governing landfills. However, the current negative response inspection forms prevented an assessment of this nature. Negative response forms require documentation only when there is a problem notation or violation. As such, the forms lacked information needed for auditor review of this area. Consequently, the same dilemma also exists for management (page 26).

#### **The Department Is Still Not Meeting All the Established Minimum Requirements for Subcontract Monitoring; in Addition, the Division of Internal Audit Failed to Submit an Accurate Monitoring Plan to the Department of Finance and Administration for Fiscal Year 2011 and Did Not Adequately Document the Changes**

Auditors' follow-up to the prior finding cited in the January 2010 performance audit report found that the Department of Environment and Conservation is still not monitoring the minimum number and dollar amounts of its subrecipient contracts as required by the Department of Finance and

Administration. Furthermore, the Division of Internal Audit submitted an annual Policy 22 monitoring plan for fiscal year 2010-2011 that did not accurately reflect the correct total dollar amount or the correct number of contracts chosen in the sample population. However, in accordance with recommended actions listed in the prior audit, the department has developed formal, written policies and procedures regarding Policy 22; has instituted mechanisms for better and more efficient use of resources—including formal approval of contract selection by the Internal Audit Director; and has taken into consideration both risk-level and recency of review during annual, subcontract population sampling (page 28).

#### **Several Environmental Boards Do Not Have Signed Conflict-of-Interest Forms From All of Their Current Members; the Department Needs a Policy Mandating That Environmental Board Members Complete Annual Conflict-of-Interest Statements**

The Department of Environment and Conservation lacks a written policy mandating annual disclosure by board members to acknowledge financial interests, other possible conflicts of interest, and general acknowledgement of any conflict-of-interest policies in place for each entity.

A review of the six environmental boards covered in this audit found that only one board had conflict-of-interest forms from current board members signed in 2011. There is an inherent risk of conflicts of interest because state law dictates that many board members represent special interest groups. Requiring annual signed disclosures not only causes board member acknowledgement of these inherent conflicts and facilitates an understanding of the department's policy but also alerts department personnel involved with board

proceedings of any potential conflicts to help ensure board members recuse themselves as necessary (page 33).

**The Compliance Advisory Panel, First Required by Federal Law in 1995, Was Finally Established in 2009 But Still Has Not Held a Meeting Other Than One Informational Meeting via Conference Call in December 2010, at Which No Voting Took Place; and the Panel Still Lacked Two Member Appointments as of November 2011**

The 2005 performance audit found the department had not established the federally

mandated Compliance Advisory Panel. The January 2010 performance audit found that the Compliance Advisory Panel had been established but lacked four member appointments. As of November 2011, the panel still lacks two of the federally required seven members (page 36).

#### **OBSERVATIONS AND COMMENTS**

The audit also discusses the following issues: solid waste reduction efforts, inspections of closed landfills, the Underground Storage Tank Division's inspection process, and the Ground Water Protection Division's activities and staffing (page 38).

ways to streamline the process to shorten the amount of time required for each review, obtaining assistance in performing some of the monitoring activities from program staff in the divisions, and widespread implementation of the online grant management database to enhance the division's reviewing abilities to facilitate closer alignment with Policy 22 requirements.

- B. We concur that the Division of Internal Audit failed to submit an accurate monitoring plan to the Department of Finance and Administration for fiscal year 2011 and did not adequately document the changes.

DIA submitted the 2011 Policy 22 Monitoring Plan for the federal fiscal year ending September 30, 2011, to F&A on September 27, 2010. Subsequently, F&A requested DIA to add all ARRA subrecipients to Schedule A and Schedule B of the plan. These revised schedules were submitted to F&A in November of 2010.

On December 20, 2011, the 2011 monitoring plan was amended one more time to include an additional 20 non-ARRA SRF loan recipients to the total population in Schedule A. The revised 2011 Subrecipient Monitoring Plan has been adequately documented<sup>7</sup> in the DIA work paper file for review or audit.

In the future, DIA will strive to ensure that all subrecipients, ARRA subrecipients, and SRF loan recipients are included in the annual Policy 22 Monitoring Plans.

- 
- 5. Several environmental boards do not have signed conflict-of-interest forms from all of their current members; the department needs a policy mandating that environmental board members complete annual conflict-of-interest statements**

#### Finding

The Department of Environment and Conservation (TDEC) lacks a written policy mandating annual disclosure by board members to acknowledge financial interests, other possible conflicts of interest, and general acknowledgement of any conflict-of-interest policies in place for each entity.

Three of TDEC's environmental boards reviewed have provisions in statute related to conflicts of interest, and one has provisions in rule, but no statute, rule, or policy exists requiring annual disclosures of conflicts of interest. The Petroleum Underground Storage Tank Board has provisions in Section 68-215-113(e), *Tennessee Code Annotated*, stating,

No member of the board shall participate in making any decision on a case in which the municipality or firm, which that member represents, or by which the

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<sup>7</sup> Per the Tennessee Subrecipient Contract Monitoring Manual (June 2004), any changes made to the monitoring plan following approval by F&A should be documented by the agency and maintained with the approved plan.

member is employed, or in which that member has a direct substantial financial interest, is involved.

The Solid Waste Disposal Control Board has a provision in Section 68-211-111(i), *Tennessee Code Annotated*, stating,

No member of the board shall participate in making any decision of 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.

The Water Quality Control Board has the most extensive requirement, stating in Section 69-3-104(b) that

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...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.

In Air Pollution Control Board Rule 1200-3-17-.02, a conflict of interest is defined as occurring "...when a Board member or the Technical Secretary takes an action in the performance of their duties that singularly benefits a source when the Board member or the Technical Secretary has a significant portion of their personal income derived from the operations of said source." Furthermore, the rule stipulates that before the issuance of a permit, variance, or an enforcement order requiring board action, the member must declare any conflict of interest and must abstain from voting on the matter.

Conflicts of interest have long been an issue in public-sector service. Former Governor Phil Bredesen issued Executive Order Number 3 related to annual disclosures, and most recently Governor Haslam issued Executive Order Number 1 requiring certain members of his cabinet to annually disclose certain statutorily required information upon appointment to an office.

A review of the six environmental boards covered in this audit found that only the Ground Water Management Board has conflict-of-interest forms from current board members signed in 2011. The Petroleum Underground Storage Tank Board has eight signed forms: one signed in 2005 and seven in 2011, with one vacancy filled on August 19, 2011, that occurred after our review of meeting minutes. The Solid Waste Disposal Control Board has 11 signed forms: one signed in 2005, three in 2006, one in 2007, three in 2008, one in 2009, and two in 2010. The Water Quality Control Board has four signed forms: one signed in 2005, one in 2006, one in 2007, and one in 2008. The Air Pollution Control Board has six signed forms: five signed in 2005 and one in 2007. The Compliance Advisory Panel still lacks all the member

appointments needed to be fully functional (see Finding 6), and therefore has not yet had members complete forms. Overall, the majority of forms in current board member files are three to six years old. (See Table 10.)

**Table 10**  
**Environmental Boards**  
**Board Member Conflict-of-Interest Form Summary**  
**As of July 2011**

Board	Total Members Required by Statute	Signed Conflict-of-Interest Forms							Members Missing Signed Forms	Vacant Positions
		2005	2006	2007	2008	2009	2010	2011		
Ground Water Management Board	5	0	0	0	0	0	0	5	0	0
Petroleum Underground Storage Tank Board*	9	1	0	0	0	0	0	7	0	1**
Solid Waste Disposal Control Board*	11	1	3	1	3	1	2	0	0	0
Water Quality Control Board*	10	1	1	1	1	0	0	0	6	0
Air Pollution Control Board*	14	5	0	1	0	0	0	0	8	0
Compliance Advisory Panel	7	0	0	0	0	0	0	0	5	2

\* Has requirement in statute or rule regarding conflict of interest.

\*\* Vacancy was filled as of August 19, 2011, after we had completed our reviews of meeting minutes and member attendance. The new member has completed a conflict-of-interest form.

According to the department's General Counsel, board members also receive annual training and/or training documentation regarding conflicts of interest, but there is no requirement that members acknowledge they understand their responsibilities.

There is an inherent risk of conflicts of interest because state law dictates that many board members represent special interest groups. Requiring annual signed disclosures not only causes board member acknowledgement of these inherent conflicts and facilitates an understanding of the department's policy but also alerts department personnel involved with board proceedings of any potential conflicts to help ensure board members recuse themselves as necessary.

### Recommendation

The department should develop and implement a written policy mandating annual conflict-of-interest disclosure and prompt updates whenever new conflicts arise, especially in those instances when state law requires abstention when certain financial interests exist. The policy should also provide for a mechanism to regularly review forms to ensure they are up-to-date. This will not only ensure that board members acknowledge the policy but also make staff aware of board member interests, thereby aiding in identification of conflicts as they arise. We also recommend the department develop and implement a written policy requiring all board members to complete a signed conflict-of-interest form upon appointment and that all board members complete orientation and training currently offered by the department.

### Management's Comment

The department concurs in part. The department agrees that all persons serving on environmental boards should be fully informed of all statutory and regulatory provisions concerning conflicts of interest. As noted in the audit findings, board members are currently offered annual training that includes information about applicable statutory and regulatory conflict-of-interest provisions. The department has also worked with each board to develop a conflict-of-interest policy statement. As suggested, the department will develop and implement a written policy to annually request that each board member (current and new) review conflict-of-interest policy statements. The department will also request that each board member acknowledge that they have been given copies of these policy statements and that they have been given information about applicable laws and regulations concerning conflicts of interest. The department does not have the legal authority to require board members to sign acknowledgements or other disclosure statements. However, the department is not aware of any board member ever refusing when so requested.

- 
6. **The Compliance Advisory Panel, first required by federal law in 1995, was finally established in 2009 but still has not held a meeting other than one informational meeting via conference call in December 2010, at which no voting took place; and the panel still lacked two member appointments as of November 2011**

### Finding

Pursuant to Title V, Section 507, of the federal Clean Air Act Amendments of 1990, the department was to establish a Compliance Advisory Panel as part of Tennessee's revised State Implementation Plan effective July 1995. The panel, to be established as part of the state's Small Business Environmental Assistance Program, has the following responsibilities:

- to render advisory opinions about the technical assistance program, difficulties encountered, and the degree and severity of enforcement;

**Department of Environment and Conservation  
and  
Related Environmental Boards**

**March 2000**

**Park Boundary Survey Efforts Can Be Improved**

The Division of Real Property is responsible for identifying and marking boundary lines for parks, natural areas, and historical and archaeological sites owned by the state and for documenting encroachments of those boundaries. According to staff of the division, 32 out of 52 state parks have unmarked boundaries. Surveys could identify possible encroachments. Encroachments occur when individuals or companies use state land as if it belonged to them (page 32).

**All Indirect Costs Are Not Allocated to State Parks and Food Costs Need Monitoring**

Administrative costs of the Division of State Parks central office and costs for major maintenance are not included in the total costs of the parks (page 36).

**More Could Be Done to Address the Public Interest**

The department does not have guidelines stipulating how to weigh economic benefit against environmental concerns. In addition, the related environmental boards do not require members to submit conflict-of-interest statements disclosing financial, personal, and professional interests that might conflict with board responsibilities. Also, three boards lack public members and a State Compliance Advisory Panel to assist small businesses with the federal Clean Air Act has not been established (page 39).

**OBSERVATIONS AND COMMENTS**

Observations and Comments from the August 1997 Sunset audit have been updated and included in this audit. They address the Environmental Protection Fund, the department's oversight of the Department of Energy's cleanup activities, Superfund Cleanup Standards, the Superfund Voluntary Program, a computerized reservation system for state parks, and the State Parks Foundation (page 8).

**PRIOR AUDIT FINDINGS**

The audit discusses the resolution of the following findings from the August 1997 audit: using case information to improve regulatory programs, coordinating division enforcement orders, department response to an environmental advocacy report, protecting the public interest, calculating the economic benefit of noncompliance, the state parks' maintenance system, management of state parks, coordination of public education efforts, and the Division of Internal Audit (page 12).

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"Audit Highlights" is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

Comptroller of the Treasury, Division of State Audit  
1500 James K. Polk Building, Nashville, TN 37243-0264  
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Department is considering legislation to obtain changes in purchasing procedures for the upcoming session.

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## **7. More could be done to address the public interest**

### **Finding**

The prior audit reported that department and environmental boards could do more to protect the public interest. The audit recommended that the department (1) establish guidelines to help staff members find a proper balance between environmental protection and economic development, (2) complete corrective actions resulting from the report of Save Our Cumberland Mountains (SOCM), (3) revise conflict-of-interest policies, and (4) establish the State Compliance Advisory Panel. The audit also recommended that the General Assembly evaluate the membership of environmental boards. The department has implemented or is in the process of implementing changes resulting from the SOCM report. (See Follow-up of Prior Audit Findings section.) The other recommendations have not been implemented or have been only partially implemented. Also, the General Assembly has not changed the boards' representation requirements.

#### Environmental Protection Versus Economic Development

We found that the department has not established guidelines stipulating how to weigh economic benefit against environmental concerns. However, it has resolved the disagreement between the Division of Air Pollution Control and the U.S. Department of Interior on the air quality standards in the Great Smoky Mountains National Park, a problem cited as an example in the 1997 report illustrating the need for such guidelines. In April 1999 the State of Tennessee, the U.S. Department of Interior, U.S. Department of Agriculture, and the State of North Carolina signed an agreement to address air quality standards in the Southern Appalachian Mountains. The agreement stipulates that Tennessee, through the Air Pollution Control Board, provides state and federal air quality guidelines to any business that is expanding or relocating in the area. The business is also encouraged to contact the Federal Land Manager ( a U.S. Department of Interior or U.S. Department of Agriculture staff person) for input regarding air quality standards. The agreement requires the business to conduct a study of the potential impact of the expansion or relocation on air pollution. Based on the results of that study, the department's Division of Air Pollution Control may or may not issue permits allowing the business to begin operations.

#### Conflict-of-Interest Policies

The August 1997 performance audit found that although the department and three environmental boards attached to the department had conflict-of-interest standards in either statute or policies, the standards did not require initial or periodic disclosure of financial, personal, and professional interests that might conflict with job and board responsibilities. The

department changed its policy for staff, but the five environmental boards in this audit do not require members to submit written conflict-of-interest statements.

The department amended its policy for staff in December 1997 to include a disclosure statement that is completed and signed upon employment. The department also has a committee that reviews employee disclosure statements. However, the disclosure statements are not periodically updated.

Conflict-of-interest policies are intended to ensure that the public interest is protected and that board members are independent of the entities they regulate. No statute requires written disclosure, and nothing came to our attention during the scope of the audit to indicate any personal, professional, or financial interests influenced board member decisions. However, disclosure of conflicting interests could alert the board to potential conflicts that could be discussed and resolved before the conflicts have an impact on decisions.

#### Public and Conservation Interests in Board Membership

The 1997 performance audit recommended that the General Assembly consider making statutory changes to ensure that the boards have a balance of public, conservation, and industry interests. Because this change has not been implemented, the overall status of the board composition remains the same as it was during the prior audit. The following chart illustrates the composition of board membership.

#### Environmental Board Membership by Group Representation April 1999

Board	State Ex Officio	Business/ Agriculture	Local Gov't.	Consumer/ Public	Academic/ Professional	Conservation	Totals
Air Pollution Control	2 (14%)	5 (36%)	2 (14%)	-	3 (21%)	2 (14%)	14 (100%)
Water Quality Control	3 (30%)	3 (30%)	2 (20%)	1 (10%)	-	1 (10%)	10 (100%)
Solid Waste Disposal Control	2 (18%)	5 (45%)	2 (18%)	-	1 (9%)	1 (9%)	11 (100%)
Petroleum Underground Storage Tanks	1 (11%)	4 (44%)	1 (11%)	2 (22%)	-	1 (11%)	9 (100%)
Ground Water Management	2 (40%)	3 (60%)	-	-	-	-	5 (100%)
Totals	10 (20%)	20 (41%)	7 (14%)	4 (8%)	4 (8%)	5 (10%)	49 (100%)

**STATE OIL AND GAS BOARD**  
**AUGUST 1996**

State of Tennessee

# Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit  
State Oil and Gas Board  
August 1996

## AUDIT OBJECTIVES

The objectives of the audit were to review the board's legislative mandate and the extent to which the board and the Department of Environment and Conservation have carried out that mandate efficiently and effectively, and to make recommendations that might result in more efficient and effective regulation of the oil and gas industry.

## FINDINGS

### **The State Has Not Developed a Program to Deal with Abandoned Wells**

Oil and gas wells that have been abandoned and not properly plugged are a potential source of underground water contamination. In 1986, Division of Geology staff reviewed its records on 9,916 wells and estimated that as many as 4,048 wells might have to be plugged. Staff also conducted a limited survey of oil and gas wells in four counties and presented that information (including recommendations for further study and possible funding sources) to the General Assembly in February 1988. Since that time, the state has not attempted to plug any of the abandoned wells. In addition, Oil and Gas Program staff have not completed or updated the original review of oil and gas wells to better determine the extent of the problem and the cost of plugging the wells (page 9).

### **Oil and Gas Program Staff Did Not Adequately Follow Up Citations**

For ten of twenty citations issued between March 1992 and October 1995, the files contained no evidence that the operators had either paid the penalty or corrected the problem (in which case the penalty would not be assessed). Without proper follow-up (and documentation of that follow-up), the Oil and Gas Supervisor cannot tell whether the operator has corrected the problem within the specified period or whether the operator needs to pay the penalty. Correction of the problem is particularly important when an oil spill, with potential contamination of ground and/or surface water sources could result, e.g., if the operator's well pits or tanks are not adequate. Six of the ten citations were issued because the operator failed to provide adequate pits or tanks (page 11).

### **Submission of Required Well Data and Samples Is Not Adequately Monitored**

A review of the files for 25 wells indicated that well operators should have received 40 citations for violations of the Oil and Gas Program rules and regulations on the filing of well data and reports. However, the files did not contain any evidence that a citation was sent to well operators for failure to submit the required reports and samples in a timely manner. Failure to monitor the submission of required information and to assess appropriate citations and penalties deprives program staff of information needed to regulate the oil and gas industry, weakens the regulatory process, and may result in lost income to the state (page 12).

### **The Board Lacks Formal Conflict-of-Interest Procedures**

Representatives from the oil and gas and mineral industries and oil and gas property owners serve on the State Oil and Gas Board. Even though the board contains members from the regulated industry, the State Oil and Gas Board does not have formal procedures to ensure the board members' potential conflicts of interest are identified and resolved before those conflicts can affect decisions (page 15).

### **Oil and Gas Field Inspectors Do Not Submit Detailed Monthly Reports**

Oil and gas program inspectors' monthly reports, overall, do not provide detailed information concerning well site-visits or inspections. More detailed and uniform information would aid the Oil and Gas Program Supervisor and board members in monitoring the oil and gas industry and evaluating inspectors' workloads. In addition, information detailing the field inspector's activity could be very useful when an operator challenges the inspector's method of inspecting the well and well site or when the operator is cited for a specific violation of the rules and regulations (page 16).

### **The Oil and Gas Program and the Division of Geology Appear to Duplicate Paper Work and Services**

In July 1992, the Oil and Gas Program was transferred from the Division of Geology to the Division of Water Supply. However, the Division of Geology continues to perform services that are closely tied to the oil and gas industry (e.g., classifying wells, processing well drilling samples, and maintaining production records and geophysical logs). In addition, the division maintains a file on each permitted well—information that is also maintained in the Oil and Gas Program files (page 17).

## **OBSERVATIONS AND COMMENTS**

The audit also discusses the following issues that affect the state's Oil and Gas Program and the citizens of Tennessee: (1) water sources at well sites are not monitored for possible contamination from the drilling process, and (2) the program's expenditures have exceeded appropriations in the last three fiscal years (page 7).

RECOMMENDATION:

The Oil and Gas Program Supervisor should complete the project to automate well information and use the database to routinely monitor whether well operators are submitting well reports and well drilling samples within the required time. Well operators who have not submitted this information should receive notices of noncompliance. Operators who do not comply promptly should be assessed monetary penalties.

MANAGEMENT'S COMMENT:

We concur. Current staff will review the files and determine which operators have failed to submit the required information. Deadlines and citations will be issued for submission of the required information. Program staff will work to establish an in-house database for tracking this information on future permits.

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THE BOARD LACKS FORMAL CONFLICT-OF-INTEREST PROCEDURES

4. FINDING:

Representatives from the oil and gas and mineral industries and oil and gas property owners serve on the State Oil and Gas Board. Even though the board contains members from the regulated industry, the State Oil and Gas Board does not have formal procedures to ensure the board members' potential conflicts of interest are identified and resolved before those conflicts can affect decisions.

On at least one occasion, a board member voluntarily excused himself from voting on an item before the board because of personal interest. However, Oil and Gas Board rules and regulations do not contain any written procedures requiring board members to complete and periodically update forms disclosing personal and professional interests such as financial interests, partnerships, prior employment, and other matters that have the potential to influence their decisions.

No statute requires written disclosure, and nothing came to the auditor's attention during this audit to indicate that board members were influenced by personal or professional conflicts of interest. However, without a means of identifying potential conflicts of interest and discussing and resolving them before they have an impact on decisions, board members could be subject to questions concerning impartiality and independence.

RECOMMENDATION:

The board should adopt a formal, written policy for determining whether a board member has a conflict of interest and for documenting that determination. The policy should address direct or indirect interests in businesses that the board regulates, ownership interest in a corporation or firm that the board regulates, prior or current employment of the individual or an immediate family member, and other matters that may influence or appear to influence a board member's decisions.

The board should adopt procedures for discussing and resolving potential conflicts. Board members should complete disclosure statements at the beginning of their terms and should update disclosure statements regularly as part of the public record.

MANAGEMENT'S COMMENT:

We concur. Staff will research this issue and prepare a conflict-of-interest procedure for the board's review and consideration.

---

OIL AND GAS FIELD INSPECTORS DO NOT SUBMIT  
DETAILED MONTHLY REPORTS

5. FINDING:

Oil and gas program inspectors' monthly reports, overall, do not provide detailed information concerning well site-visits or inspections. The reports submitted by two of the three inspectors usually indicated which sites were visited but did not provide any details concerning problems observed and/or inspections conducted. More detailed and uniform information, similar to that provided by the third inspector, would aid the Oil and Gas Program Supervisor and board members in monitoring the oil and gas industry and evaluating inspectors' workloads. In addition, information detailing the field inspector's activity could be very useful when an operator challenges the inspector's method of inspecting the well and well site or when the operator is cited for a specific violation of the rules and regulations.

The review of the field inspectors' monthly reports indicated that the three inspectors uniformly perform the following activities: inspect pits and locations prior to issuing drilling permits, inspect the cementing of surface casings, inspect plugging of wells being abandoned, inspect oil spill sites and conduct follow-up inspections, check on well locations, and respond to requests for help (e.g., domestic gas wells, problems with water wells). However, one of the field inspector's reports contained a better description of his



Tab 5



## **Board Orientation Session**

### **Powers and duties of the Commissioner and Board**

The legislature has given both the Board and the Commissioner certain authority and duties under the Act.

There is a clear dichotomy between the powers and duties of the Boards and the Powers and duties of the Commissioner.

This dichotomy of powers and duties stems from the constructional separation of powers between the legislative branch of government and the executive branch of government.

If you have ever had a "civics" or "government" course, and even if you did not, you likely know that we have three branches of government - judicial, legislative, and executive- each had separate and distinct powers and duties.

The legislature makes laws and the executive carries out the law.

Similarly, the boards make rules (which have the force of law) and the Department carries out the rules

The primary duties of the Board include the:

- (1) promulgation of rules,
- (2) interpretation of regulations; and,
- (3) hearing appeals of permitting and enforcement actions pursuant to the Solid Waste Management Act and the Underground Storage Tank Act and the regulations promulgated under each of these Acts.

The primary duty of the Commissioner and the Department is implementation of these Acts and regulations: This includes:

1. Inspections or site investigations for regulatory purposes
2. Conduct monitoring, collection of samples and testing, records review
3. Conduct emergency response actions, cleanup, or other remedial actions
4. Take enforcement actions, including issuance of orders for collection of civil penalties and for correcting violations.

What is a "Policy" and what is a "Rule"? Below are the definitions found in the Uniform Administrative Procedures Act.

T. C. A. § 4-5-102

§ 4-5-102. Definitions

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

- (10) "Policy" means a set of decisions, procedures and practices pertaining to the internal operation or actions of an agency;
- (12) "Rule" means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" 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 issued pursuant to § 4-5-223;
  - (C) Intra-agency memoranda;
  - (D) General policy statements that are substantially repetitious of existing law;
  - (E) Agency statements that:
    - (i) Relate to the use of the highways and are made known to the public by means of signs or signals; or
    - (ii) Relate to the curriculum of individual state supported institutions of postsecondary education or to the admission or graduation of students of such individual institutions but not to the discipline or housing of students;
  - (F) Rate filings pursuant to title 56, chapters 5 and 6; or
  - (G) Statements concerning inmates of a correctional or detention facility;

## Definitions

- “Policy” means a set of decisions, procedures and practices pertaining to the internal operation or actions of an agency. These include: Standard Operating Procedures (SOPs), Good Practice Guidelines (GxP), Checklists, etc.
- “Rule” means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. “Rule” includes the amendment or repeal of a prior rule, but does *not* include:
  - Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;
  - Declaratory orders issued pursuant to § 4-5-223;
  - Intra-agency memoranda;
  - General policy statements that are substantially repetitious of existing law;
- “Guidance” means a non-binding agency statement that explains the objective of rules or regulatory requirements and provides advice on compliance with the rule. These include: Compliance Guides, Regulatory Interpretive Memorandum, etc.
  - DISCLAIMER for guidance documents: This document is guidance only and does not affect legal rights or obligations. Agency decisions in any particular case will be made applying applicable laws and regulations to the specific facts. Mention of trade names or commercial products does not constitute an endorsement or recommendation for use.

Tenn. Op. Atty. Gen. No. 00-079 (Tenn.A.G.), 2000 WL 623172

Office of the Attorney General

State of Tennessee  
Opinion No. 00-079  
May 1, 2000

**Zero Tolerance Policy of the Department of Human Services**

\*1 Honorable Lois DeBerry  
Speaker Pro Tempore  
Suite 15 Legislative Plaza  
Nashville, TN 37243-0191

**QUESTION**

Whether the Zero Tolerance Policy and Procedures memorandum (“zero tolerance policy”) of the Department of Human Services (“Department”) regarding enforcement of child care statutes and regulations must be promulgated as a rule under the Uniform Administrative Procedures Act (“UAPA”).

**OPINION**

No. The zero tolerance policy is not required to be promulgated as a rule under the UAPA.

**ANALYSIS**

The zero tolerance policy describes how the Department will internally manage a violation of the Department's rules applicable to child welfare agencies, including child care centers, which has “seriously jeopardized the health, safety, or welfare of a child(ren).”<sup>1</sup> It states that “[p]otentially, any violation that places children at serious and immediate risk of harm may be subject to the policy, but the specific circumstances of each case will ultimately decide the course of action.” The policy sets out various examples where the Department has summarily suspended a child care center's license. The policy directs Department licensing staff to “gather the factual information necessary to make an initial determination” on whether a serious violation has occurred. The policy further directs the staff on how to organize and communicate information to the Department's area attorney. The policy states that the information conveyed to the area attorney should outline exactly what rules have been violated, the factual observations or first hand information which confirm the rule violation and why it is necessary to suspend the license immediately. The policy further describes what the staff must do after the Order of Summary Suspension is served on the agency, what may happen at the informal hearing following the summary suspension and the responsibilities of licensing staff if the Department files a Notice of Revocation of the agency's license.

You have asked us whether the zero tolerance policy must be promulgated as a rule. The UAPA prescribes the procedures for an agency to adopt “rules.” [Tenn. Code Ann. § 4-5-201](#) et seq. [Tenn. Code Ann. § 4-5-102\(10\)](#) defines a “rule” as: each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. “Rule” 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;**

\*2 (B) Declaratory orders issued pursuant to § 4-5-223;

(C) Intra-agency memoranda;

(D) General policy statements which are substantially repetitious of existing law; or

...

[Tenn. Code Ann. § 4-5-102\(10\)](#) (emphasis added). Because the “zero tolerance policy” fits within the exceptions described in [Tenn. Code Ann. § 4-5-102\(10\)\(A\)](#) and [\(C\)](#), it is not required to be adopted as a “rule” under the UAPA.

The Department has promulgated a rule concerning summary suspension of child welfare agency licenses. Tenn. Comp. R. & Regs. ch. 1240-5-11-.05. The rule provides that “[i]f the Department finds that the circumstances existing at the child welfare agency imperatively require emergency action due to their effect on the health, safety, or welfare of the children in care, it may summarily suspend the agency's license.” The rule further prescribes the process which will be provided to a licensee once its license is summarily suspended. An agency must have proper statutory authority to promulgate a rule or it will not be approved for legality by the Attorney General and Reporter. [Tenn. Code Ann. § 4-5-211](#).

Tenn. Comp. R. & Regs. ch. 1240-5-11-.05 is authorized by [Tenn. Code Ann. § 4-5-320\(c\)](#) which applies to proceedings affecting licenses and provides, in pertinent part:

If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.

[Tenn. Code Ann. § 4-5-320\(c\)](#). Tenn. Comp. R. & Regs. ch. 1240-5-11-.05 is also authorized under [Tenn. Code Ann. § 71-1-105\(12\)](#) (the Department's general rulemaking authority) and [Tenn. Code Ann. § 71-3-501](#) et seq. (statutes concerning child welfare agencies.) Besides its summary suspension authority under [Tenn. Code Ann. § 4-5-320\(c\)](#), the Department also has the authority to revoke a child welfare agency's license upon 90 days notice to the licensee. [Tenn. Code Ann. § 71-3-506\(a\)](#); § 71-3-509. A licensing action taken by the Department may be reviewed by the Child Welfare Agency Board of Review, created by [Tenn. Code Ann. § 71-3-510](#), if a licensee timely and properly requests a hearing.

The authority for the Department to summarily suspend a child welfare agency's license is [Tenn. Code Ann. § 4-5-320\(c\)](#), not the zero tolerance policy. The zero tolerance policy is an intra-agency memorandum of the Department which describes how the Department will internally process a violation of the Department's rules which has “seriously jeopardized the health, safety, or welfare of a child(ren)” and thus fits within [Tenn. Code Ann. § 4-5-320\(c\)](#). The zero tolerance policy does not affect private rights, privileges or procedures available to the public. The rights, privileges and procedures available to the public after a summary suspension of a license are set out at [Tenn. Code Ann. § 4-5-320\(c\) and \(d\)](#). The Department has promulgated rules based on [Tenn. Code Ann. § 4-5-320\(c\) and \(d\)](#) which are found at Tenn. Comp. R. & Regs. ch. 1240-5-11-.05. Thus, we conclude that the zero tolerance policy is not required to be promulgated as a rule under the UAPA.<sup>2</sup>

\*3 Paul G. Summers  
Attorney General and Reporter  
Michael E. Moore  
Solicitor General  
Michelle Hohnke Joss

Assistant Attorney General

Footnotes

- 1 We note that the version of the “Zero Tolerance Policy Procedures” which was attached to your request was amended by the Department on April 17, 2000. This opinion will address whether the “Zero Tolerance Policy Procedures” memorandum, dated April 17, 2000, must be promulgated as a rule under the Uniform Administrative Procedures Act.
- 2 We note that the Davidson Chancery Court has upheld this position in recent litigation stating, “The [zero tolerance] policy is an internal memorandum circulated by the Department to its employees. The document does not have the force of law.” Memorandum and Order, entered February 16, 2000, American Child Care, Inc. v. State of Tennessee Department of Human Services and Natasha Metcalf, No. 00-413-III.

Tenn. Op. Atty. Gen. No. 00-079 (Tenn.A.G.), 2000 WL 623172

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Tab 6



# **Title 68. Health, Safety and Environmental Protection**

## **Chapter 211. Solid Waste Disposal**

### **Part 1. Tennessee Solid Waste Disposal Act**

#### **68-211-101. Short title**

This part shall be known and may be cited as the “Tennessee Solid Waste Disposal Act.”

#### **68-211-102. Public policy**

- (a) In order to protect the public health, safety and welfare, prevent the spread of disease and creation of nuisances, conserve our natural resources, enhance the beauty and quality of our environment and provide a coordinated statewide solid waste disposal program, it is declared to be the public policy of the state of Tennessee to regulate solid waste disposal to:
- (1) Provide for safe and sanitary processing and disposal of solid wastes;
  - (2) Develop long-range plans for adequate solid waste disposal systems to meet future demands;
  - (3) Provide a coordinated statewide program of control of solid waste processing and disposal in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and land pollution; and
  - (4) Encourage efficient and economical solid waste disposal systems.
- (b) The general assembly declares that it is the policy of this state to ensure that no hazardous waste, as regulated under chapter 212 of this title, is disposed of in a solid waste disposal facility. Therefore, subject to the appropriation of funds in the general appropriations act for such purposes, the department shall develop an inspection program for all permitted facilities, including landfills and processing facilities, that provides for frequent, thorough and regular inspections. Further, subject to the appropriation of funds in the general appropriations act for such purposes, the department shall inspect waste streams, baled waste and special waste generators and transporters to prevent the introduction of hazardous waste into solid waste disposal facilities.

#### **68-211-103. Definitions**

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

- (1) “Baled waste” means all waste that has been mechanically compacted to achieve high density per unit volume and strapped to retain its form as a bale. Not included is compaction which has occurred only in collection vehicles as an incidental part of the wastes collected from individual generators and stationary or self-contained compactors which compact waste but do not produce a strapped bale unit;
- (2) “Board” means, unless otherwise indicated, the underground storage tanks and solid waste disposal control board created in § 68-211-111;
- (3) “Commissioner” means the commissioner of environment and conservation or the commissioner's authorized representative;
- (4) “Department” means the department of environment and conservation;
- (5) “Health officer” means the director of a city, county, or district health department having jurisdiction over the community health in a specific area, or the director's authorized representative;
- (6) “Person” means any and all persons, natural or artificial, including any individual, firm or association, and municipal or private corporation organized or existing under the laws of this state or any other state, and any governmental agency or county of this state and any department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government;
- (7) “Registration” means a process by which a solid waste disposal or processing operation is granted a permit to operate. In this part, the words “registration” and “permit” are synonymous and may be used interchangeably;
- (8) (A) “Solid waste” means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal;

(B) “Solid waste” does not include:

  - (i) Solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, codified in 33 U.S.C. § 1342; or
  - (ii) Steel slag or mill scale that is an intended output or intended result of the use of an electric arc furnace to make steel; provided, that such steel slag or mill scale is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity

and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal;

- (9) “Solid waste disposal” means the process of permanently or indefinitely placing, confining, compacting, or covering solid waste; and
- (10) “Solid waste processing” means any process that modifies the characteristics or properties of solid waste, including, but not limited to, treatment, incineration, composting, separation, grinding, shredding, and volume reduction; provided, that it does not include the grinding or shredding of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch or other useful products.

**68-211-104. Unlawful methods of disposal.**

It is unlawful to:

- (1) Place or deposit any solid waste into the waters of the state except in a manner approved by the department or the Tennessee board of water quality, oil and gas;
- (2) Burn solid wastes except in a manner and under conditions prescribed by the department and the Tennessee air pollution control board;
- (3) Construct, alter, or operate a solid waste processing or disposal facility or site in violation of the rules, regulations, or orders of the commissioner or in such a manner as to create a public nuisance; or
- (4) Transport, process or dispose of solid waste in violation of this chapter, the rules and regulations established under this chapter or in violation of the orders of the commissioner or board.

**68-211-105. Supervision over construction of disposal facilities.**

- (a) The department shall exercise general supervision over the construction of solid waste processing facilities and disposal facilities or sites throughout the state. Such general supervision shall apply to all features of construction of solid waste processing facilities and disposal facilities or sites which do or may affect the public health and safety or the quality of the environment, and which do or may affect the proper processing or disposal of solid wastes.
- (b) No new construction shall be initiated nor shall any change be made in any solid waste processing facility or disposal facility or site until the plans for such new construction or change have been submitted to and approved by the department. Records of construction or plans for existing facilities or sites shall be made available to the department upon request of the commissioner. In granting approval of such plans, the department may specify such modifications, conditions, and regulations as may be required to fulfill the purposes of this part.

- (c) The board is empowered to adopt and enforce rules and regulations for the construction of new facilities and sites and the alteration of existing facilities and sites.
- (d) The commissioner is authorized to investigate solid waste processing facilities and disposal facilities or sites throughout the state as often as the commissioner deems necessary.
- (e) When the commissioner disapproves plans for the construction of, or change in, any solid waste processing facility or disposal facility or site, the commissioner shall notify in writing the person having submitted such plans, and state the grounds for the commissioner's disapproval.
- (f) Actions taken by the department, commissioner, or board in accordance with this part shall be conducted in accordance with title 13, chapter 18 when the action involves a major energy project, as defined in § 13-18-102.
- (g) The commissioner shall not approve any plans submitted in accordance with subsection (b), unless the applicant has submitted:
  - (i) A comprehensive environmental site assessment that includes an evaluation of the quality of groundwater beneath the proposed facility. At a minimum, the applicant shall provide analytical information for all constituents specified in regulations adopted by the board. The requirement for a comprehensive environmental site assessment shall apply only to new sites for proposed solid waste disposal facilities and does not include expansions, modifications, or new units for existing permitted facilities or sites; and
  - (ii) Proof satisfactory to the commissioner that the geological formation of the proposed site and the design of the proposed facility are capable of containing the disposed wastes, so that ground water protection standards are not exceeded.
- (h) The commissioner shall not review or approve any construction for any new landfill for solid waste disposal or for solid waste processing in any county or municipality which has adopted §§ 68-211-701--68-211-704 and § 68-211-707 until such construction has been approved in accordance with such sections.

**68-211-106. Registration -- Variances, waivers, and exemptions -- Permits-by-rule -- Public notice -- Denial of permit -- Liability or obligation for cleanup or remediation.**

- (a) (1) No solid waste processing facility or disposal facility or site in any political subdivision of the state shall be operated or maintained by any person unless such person has registered with the commissioner in the name of such person for the specified facility or site. All registrations, including those of persons who dispose of only their own wastes on their own land, except as set out in § 68-211-110, shall be with the commissioner. The board is authorized to specify procedures for

registration by means of rules and regulations duly promulgated under the authority of this part. Such rules and regulations shall include provisions for public notice and an opportunity for a public hearing on permit applications.

- (2) After public notice and an opportunity for comment, the commissioner may, to the extent allowed in regulations adopted by the board, grant variances and waivers for persons; and the board may, through the rulemaking process, establish exemptions from the requirements of this part and permits-by-rule for classes of activities subject to the requirements of this part; provided, that it is demonstrated to a reasonable degree of certainty that design or operating practices will prevent degradation of the environment and will adequately protect the public health, safety and environment.
- (b) Disposal or processing facilities or sites currently registered with the department shall not need a new permit unless and until their current registration must be amended to encompass any process modifications or expansions of operations currently allowed.
- (c) Other program approval, prior to the issuance of a solid waste permit, may be fulfilled by a certification from the applicable program stating the extent of application to that program or that an application for a permit has been submitted to the applicable program. The division of solid and hazardous waste management using technical support and advice, to the extent available, from the bureau of environment shall evaluate the proposed application in order to determine that water quality standards have been adequately addressed to prevent pollution of the waters of the state.
- (d) The commissioner may deny or revoke any registration if the commissioner finds that the applicant or registrant has failed to comply with this part or the rules promulgated pursuant hereto.
- (e) Actions taken by the department, commissioner or board in accordance with this section shall be conducted in accordance with title 13, chapter 18, when the action involves a major energy project, as defined in § 13-18-102.
- (f) (1) In order to inform interested persons in the area of solid waste disposal of the proposed facility and its tentative approval, public notice shall be circulated within the geographical area of the proposed facility by any of the following means:

  - (A) Posting in the post office and public places of the municipality nearest the site under consideration; or
  - (B) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation.
- (2) Public notice of a proposed site approval shall include the following:

- (A) Name, address, and telephone number of the solid waste management division;
  - (B) Name and address of the site owner and/or operator;
  - (C) Location and size of the proposed site;
  - (D) Brief description of the type of operation to be operated at the site and the type of waste that will be accepted;
  - (E) A description of the time frame and procedures for making a final determination on the facility application approval or disapproval; and
  - (F) Address and telephone number of the premises at which persons may obtain further information, request copies of data on the site, and inspect this data.
- (3) A copy of the public notice and fact sheet shall be sent to any person who specifically requests one. The commissioner shall send a copy of each notice of application and fact sheet within the state or a certain geographical area thereof to those persons who have requested the addition of their names to a mailing list. The commissioner may annually purge the mailing list of those persons who do not renew their request.
- (4) Interested persons may submit written comments on the tentative determinations within thirty (30) days of the public notice or such greater period as the commissioner allows. All written comments submitted shall be retained and made available to the board in its final determination of registration of the proposed site.
- (5) Interested persons may request in writing that the commissioner hold a public hearing on any proposed solid waste management facility registration. The request must be filed within the period allowed for public comment and must indicate the interest of the party filing it and the reason why a hearing is warranted. If there is a significant public interest in having a hearing, the commissioner shall hold one in the geographical area of the proposed site. Instances of doubt should be resolved in favor of holding a hearing. The commissioner shall transcribe or record the comments made at the hearing to assist the commissioner in the commissioner's final determination of registration of the proposed site.
- (6) No less than fifteen (15) days in advance of the hearing, public notice of it shall be circulated at least as widely as was the notice of the proposed site approval and registration. Procedure for circulation of public notice for the hearing shall include the following:

- (A) Publication in a newspaper of general circulation within the geographical area of the site; and
  - (B) Sending notice to all persons who received a copy of the notice or fact sheet for the site registration and any person who specifically requests a copy of the notice of the hearing.
- (7) Each notice of a public hearing shall include at least the following contents:
- (A) Name, address and telephone number of the solid waste management division;
  - (B) Name and address of each site and site owner or operator that will be heard at the hearing;
  - (C) A description of the type of facility that will be located on the site;
  - (D) A brief reference to the public notice issued for each proposed site;
  - (E) Information regarding the time and location for the hearing;
  - (F) The purpose of the hearing;
  - (G) A concise statement of the issues raised by the persons requesting the hearing;
  - (H) Address and telephone number of the premises at which interested persons may obtain further information, request a copy of each draft permit, request a copy of each fact sheet, and inspect and copy forms and related documents; and
  - (I) A brief description of the nature of the hearing, including the rules and procedures to be followed.
- (g) (1) Any person applying for a registration for a solid waste processing facility or disposal facility or site for which a core drilling is required shall notify the department at least forty-five (45) days in advance of the time, date and location at which such drilling is to be conducted. At least thirty (30) days in advance of such drilling, the applicant shall give public notice of such drilling. Such notice shall include the time, date and location at which the drilling is to be conducted, the name and address of the applicant, the name and address of the owner of the property on which the drilling is to be conducted, and a brief description of the type of operation to be operated at the proposed site and the type of waste that will be accepted. Such notice shall be published in a daily newspaper of general circulation in the area in which the drilling is to occur.

- (2) The person applying for a registration shall include a copy of the newspaper notice required pursuant to subdivision (g)(1), if core drilling is required as part of the application. The application of any person who fails to meet the requirements of this subsection (g) shall be denied.
- (3) This subsection (g) only applies in counties having a population of not less than nine thousand six hundred fifty (9,650) nor more than nine thousand seven hundred fifty (9,750) and not less than thirty-four thousand seventy-five (34,075) nor more than thirty-four thousand one hundred seventy-five (34,175), according to the 1980 federal census or any subsequent federal census.
- (h) (1) As used in this subsection (h), unless the context otherwise requires:

  - (A) “Applicant” means any person, as defined in § 68-211-103 of the Tennessee Solid Waste Disposal Act, making application for the approval of a permit pursuant to the Solid Waste Disposal Act;
  - (B) “Compliance history” means a record of operation or ownership of a facility subject to the Tennessee Solid Waste Disposal Act, compiled in this chapter, or the Tennessee Hazardous Waste Management Act, compiled in chapter 212 of this title;
  - (C) “Responsible party” means:

    - (i) Any individual who is an applicant, an officer or director of a corporation, partnership, or business association that is an applicant, or person with overall responsibility for operations of the site of a waste management unit subject to the Solid Waste Disposal Act; or
    - (ii) Any official or management committee member of the state or political subdivision thereof that is an applicant;
  - (D) “Solid Waste Disposal Act” means this chapter; and
  - (E) “Tennessee Hazardous Waste Management Act” means chapter 212 of this title.
- (2) Subject to the requirements of subdivision (h)(3), the commissioner may refuse to issue or renew a permit issued pursuant to the Solid Waste Disposal Act if the commissioner finds that the applicant or a responsible party has:

  - (A) Intentionally misrepresented or concealed any material fact which would have resulted in the denial of the application submitted to the department;

- (B) Obtained a permit from the department by intentional misrepresentation or concealment of a material fact which would have resulted in the permit being denied;
  - (C) Been convicted of, or incarcerated for, a felony environmental criminal offense within three (3) years preceding the application for a permit for any violation of the Solid Waste Disposal Act, the Hazardous Waste Management Act or § 39-14-408; or, in the case of an applicant with less than three (3) years of compliance history in Tennessee, has been convicted of, or incarcerated for, a felony environmental criminal offense in another jurisdiction;
  - (D) Been adjudicated in contempt of any order of any court of this state enforcing the Solid Waste Disposal Act or the Hazardous Waste Management Act or has been incarcerated for such contempt within the three (3) years preceding the application for a permit or, in the case of an applicant with less than three (3) years of compliance history in Tennessee, has been adjudicated in contempt of any order of any court enforcing a federal or state solid or hazardous waste management law; or
  - (E) Been convicted of a violation of either state or federal racketeer influenced and corrupt organization (RICO) statutes;
- (3) (A) An applicant that has three (3) or more years of compliance history in Tennessee shall submit, at the time of application, a statement to the effect that neither the applicant nor any responsible party has been convicted of a felony, been incarcerated or been adjudicated in contempt of court as described in subdivision (h)(2)(C), or (h)(2)(D), (h)(2)(E) or alternatively list any applicable conviction, term or incarceration, or adjudication of contempt. The applicant may submit information or documentation related to such convictions, incarcerations, or adjudications, including evidence regarding one (1) or more of the facts enumerated in subdivision (h)(4).
- (B) An applicant with less than three (3) years of compliance history in Tennessee shall submit, at the time of application, a compliance history disclosure form prepared by the commissioner. The form shall include the information required for applicants with three (3) or more years of compliance history in Tennessee, and additionally require a listing of the names, social security numbers, taxpayer identification numbers and business addresses of the responsible parties for the regulated activities of the applicant, along with a description of any offenses identified in subdivisions (h)(2)(C), (D) and (E).
- (4) In making the decision to issue, renew or deny any such permit, the commissioner shall determine pursuant to subdivisions (h)(2) and (3), as applicable, whether any such material misrepresentation, concealment, conviction or adjudication

demonstrates a disregard for environmental regulations or a pattern of prohibited conduct. In making any finding under this subdivision (h)(4), the commissioner shall consider the following factors and the applicant may submit information or documentation related to the following:

- (A) The nature and seriousness of the offense;
  - (B) The circumstances in which the offense occurred;
  - (C) The date of the offense;
  - (D) Whether the offense was an isolated offense or part of a series of related incidents;
  - (E) The applicant's environmental record and history of compliance regarding waste management in this state;
  - (F) The number and types of facilities operated by the applicant;
  - (G) Any evidence that the applicant reported or investigated the offense itself and took action to halt or mitigate the offense;
  - (H) Disassociation from any persons convicted of felony environmental criminal activity;
  - (I) The payment by a party convicted of felony environmental criminal activity of restitution to any victims of such criminal activity, remediation of any damages to natural resources and the payment of any fines or penalties imposed for such conduct;
  - (J) Other corrective actions the applicant has undertaken to prevent a recurrence of the offense, including, but not limited to, the establishment and implementation of internal management controls; and
  - (K) The need for the permit in advancing the state's welfare, health, and safety, including, but not limited to, the role of the facility in any solid waste region's approved plan.
- (5) This subsection (h) shall not apply to permits-by-rule that are issued pursuant to rules adopted by the board in accordance with subdivision (a)(2).
- (i) Nothing in this chapter shall be construed as imposing liability or any obligation for cleanup or remediation of any solid waste, as defined in § 68-211-103, or baled waste as defined in § 68-211-103, or any solid waste or baled waste facility or site as defined by rules promulgated by the department of environment and conservation, on any person who, without participating in the management of the solid waste facility or site, holds

indicia of ownership in such facility or site primarily to protect a security interest in the facility or site.

- (i) The commissioner shall not issue a permit under this section for the disposal of coal ash or for the expansion of an existing coal ash disposal facility unless the plans for the disposal facility include a liner and a final cap; however, this subsection (j) shall not apply to the use of coal ash for fill, to any agricultural use, to any engineered uses as a feedstock for the production of a product, to wastewater treatment units or to the disposal of coal ash in connection with any of these uses, as authorized by the department pursuant to this part.

#### **68-211-107. Supervision over operation and maintenance**

- (a) The department shall exercise general supervision over the operation and maintenance of solid waste processing facilities and disposal facilities or sites. Such general supervision shall apply to all the features of operation and maintenance which do or may affect the public health and safety or the quality of the environment and which do or may affect the proper processing and disposal of solid wastes. The board is empowered to adopt and enforce rules and regulations governing the operation and maintenance of such facilities, operations, and sites. Municipalities, cities, towns, and local boards of health may adopt and enforce such rules, ordinances and regulations equal to or exceeding those adopted by the commissioner, and consistent with the purposes of this part. For exercising such general supervision, the commissioner is authorized to investigate such facilities, operations and sites as often as the commissioner deems necessary.
- (b) Actions taken by the department, commissioner or board in accordance with this section shall be conducted in accordance with title 13, chapter 18, when the action involves a major energy project, as defined in § 13-18-102.
- (c) The department shall require all solid waste disposal facilities to have a groundwater monitoring program and report sampling results to the department at least once each year. If sampling results indicate that ground water protection standards are exceeded, the owner or operator of the facility shall commence an assessment monitoring program, in accordance with regulations adopted by the board and carry out all corrective measures specified by the commissioner.

#### **68-211-108. Local health officers**

The commissioner and board are authorized to delegate the duties and responsibilities granted to them by this part to local health officers to the extent deemed necessary by the commissioner and board to implement this part.

#### **68-211-109. Grants; loans**

The department is authorized to review and approve grants and loans from the federal government and other sources to counties, cities, towns, municipalities, or any combination

thereof, to assist them in designing, acquiring, constructing, altering, or operating solid waste processing facilities and disposal facilities or sites. The department is authorized further to accept and consider only those applications for grants from counties, cities, towns and municipalities which have officially adopted a plan for a solid waste disposal system or which are included in an officially adopted plan for a solid waste disposal system which covers two (2) or more such jurisdictions. The department is authorized to approve or disapprove such plans in accordance with the purposes of this part.

#### **68-211-110. Applicability**

This part does not apply to any private, natural person disposing waste generated in such natural person's own household upon land owned by such natural person; provided, that such disposal does not create a public nuisance or a hazard to the public health; however, further provided, that after January 1, 2005, this section shall not exempt a private natural person from this part if that person deposits such household waste in a sinkhole.

#### **68-211-111. Underground storage tanks and solid waste disposal control board; membership**

- (a) (1)(A) There is created an underground storage tanks and solid waste disposal control board that shall be composed of fourteen (14) members appointed by the governor as follows:
- (i) One (1) person engaged in a field directly related to agriculture, who may be appointed from lists of qualified persons submitted by interested farm business groups including, but not limited to, the Tennessee Farm Bureau;
  - (ii) One (1) person who is employed by, or is the owner of, a private petroleum concern, with at least ten (10) years of experience owning or operating a wholesale or retail gasoline business with management responsibility for at least fifteen (15) underground storage tanks, who may be appointed from a list of qualified persons submitted by interested wholesale or retail gasoline business groups including, but not limited to, the Tennessee Fuel and Convenience Store Association. Such person shall have demonstrated leadership in the industry by membership and involvement in a trade association representing fuel distributors and convenience store owners;
  - (iii) One (1) person who is employed by a private manufacturing concern in Tennessee, who shall have a college degree in engineering or the equivalent and at least eight (8) years of combined technical training and experience in permit compliance and management of solid wastes or hazardous waste, who may be appointed from a list of qualified persons submitted by interested business groups including, but not limited to, the Tennessee Chamber of Commerce and Industry;

- (iv) One (1) person employed by a private manufacturing concern in Tennessee, who shall have a college degree in engineering or the equivalent and at least eight (8) years of combined technical training and experience in the management of petroleum underground storage tanks and hazardous materials. This person may be appointed from a list of qualified persons submitted by business groups including, but not limited to, the Tennessee Chamber of Commerce and Industry;
- (v) One (1) person who is a registered engineer or geologist or qualified land surveyor with knowledge of management of solid wastes or hazardous materials or the management of underground storage tanks from the faculty of an institution of higher learning, who may be appointed from a list of four (4) persons, two (2) of whom may be nominated by the board of trustees of the University of Tennessee system and two (2) of whom may be nominated by the board of regents of the state university and community college system;
- (vi) One (1) person with knowledge of management of solid wastes, hazardous materials, or underground storage tanks to represent environmental interests, who may be appointed from a list of qualified persons submitted by environmental groups including, but not limited to, the Tennessee Environmental Council;
- (vii) One (1) representative of county governments, who may be appointed from lists of qualified persons submitted by interested county services groups including, but not limited to, the County Services Association;
- (viii) One (1) representative of municipal governments, who may be appointed from lists of qualified persons submitted by interested municipal groups including, but not limited to, the Tennessee Municipal League;
- (ix) One (1) person shall be a small generator of solid wastes or hazardous materials, who may be appointed from lists of qualified persons submitted by interested automotive groups including, but not limited to, a list of three (3) persons that shall be submitted by the Tennessee Automotive Association;
- (x) One (1) person employed by a private petroleum concern with experience in the management of petroleum, who may be appointed from lists of qualified persons submitted by interested petroleum groups including, but not limited to, the Tennessee Petroleum Council;
- (xi) One (1) person engaged in the business of management of solid wastes or hazardous materials;

(xii) One (1) person who is employed by, or is the owner of, a private petroleum concern, with at least five (5) years of experience owning or operating a wholesale or retail gasoline business with management responsibility for no more than five (5) underground storage tanks; and

(xiii) The commissioner of economic and community development or the commissioner's designee, and the commissioner of environment and conservation or the commissioner's designee, who shall be ex officio voting members.

(B) The governor shall consult with the interested groups described in subdivision (a)(1)(A) to determine qualified persons to fill the positions on the board.

(2) The director of the division of solid and hazardous waste management or the director's designee shall serve as the technical secretary of the board but shall have no vote at board meetings.

(b) In making the initial appointments to the board, three (3) members shall be appointed for a term of one (1) year, three (3) members shall be appointed for a term of two (2) years, three (3) members shall be appointed for a term of three (3) years, and three (3) members shall be appointed for a term of four (4) years. Upon expiration of these terms, members shall be appointed by the governor for a term of four (4) years. Vacancies resulting for reasons other than the expiration of the term shall be filled by the governor for the remainder of the term. 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 at least sixty (60) years of age and that at least one (1) person appointed to serve on the board is a member of a racial minority.

(c) (1) All vacancies in appointed positions shall be filled by the original appointing authority to serve the remainder of the unexpired term.

(2) 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 sufficient information is provided 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 government operations committees of the senate and the house of representatives why such vacancies have not been filled.

(3) If more than one half (  $\frac{1}{2}$  ) 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. A board that is terminated pursuant to this subsection (c) shall be reviewed by the evaluation committees pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter

5, before ceasing all its activities. Nothing in this section shall prohibit the general assembly from continuing, restructuring, or re-establishing the board.

- (d) (1) It is the duty of the board to adopt, modify, repeal, promulgate after due notice and enforce rules and regulations which the board deems necessary for the proper administration of this part. Prior to promulgating, adopting, modifying or repealing rules and regulations, the board shall conduct, or cause to be conducted, public hearings in connection therewith. All such acts relative to rules and regulations shall be in accordance with the Uniform Administrative Procedures Act.

(2) The board is authorized to promulgate rules and regulations to effectuate the purposes of parts 8 and 9 of this chapter. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act.
- (e) Notice of any 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 person who desires to be heard relative to petroleum underground storage tank or solid waste matters at any such public hearing shall give written notice thereof 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.
- (f) It is the duty of the board to act as a board of appeals as provided in [§ 68-211-113](#) and title 68, chapter 215.
- (g) The board shall hold at least four (4) regular meetings each calendar year at a place and time to be fixed by the board. The board has the authority of the municipal solid waste advisory committee. The board shall also meet at the request of the commissioner of environment and conservation, the chair of the board, or three (3) members of the board. Eight (8) members shall constitute a quorum, and a quorum may act for the board in all matters. The board shall select a chair from its members annually. The department of environment and conservation shall provide all necessary staff for the board.
- (h) Each member of the board other than the ex officio members 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 the 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 reimbursed in accordance with the comprehensive state travel regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.
- (i) No member of the board shall participate in making any decision of 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.

### **68-211-112. Correction orders**

When the commissioner finds, upon investigation, that any provisions of this part are not being carried out, and that effective measures are not being taken to comply with this part, the commissioner may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Such order shall be made by personal service or shall be sent by registered mail. Investigations made in accordance with this section may be made on the initiative of the commissioner. Prior to the issuance of any order or the execution of any other enforcement action, the commissioner may request the presence of an alleged violator of this part at a meeting of the staff of the division of solid waste management to show cause why enforcement action ought not to be taken by the department.

### **68-211-113. Appeal and review; complaints**

- (a) (1) Any person whose plans for the construction of, or change in, any solid waste processing facility or disposal facility are disapproved by the commissioner may secure a review of the commissioner's disapproval by filing with the commissioner a written petition setting forth the grounds and reasons for such person's objections to the commissioner's disapproval, and asking for a hearing before the board. Any disapproval of such plans shall become final and not subject to review unless such petition for a hearing before the board is filed no later than thirty (30) days after the notice of disapproval is served.
- (2) Any person against whom an order for correction is issued may secure a review of such order by filing with the commissioner a written petition setting forth the grounds and reasons for any objection to the order and asking for a hearing before the board. The order shall become final and not subject to review unless the person named in the order files a petition under this section no later than thirty (30) days after the date the order is served.
- (b) The hearing before the board on any petition filed under subsection (a) 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 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.

- (c) In the event the commissioner fails to take any action on plans for the construction of, or change in, a solid waste processing facility or disposal facility or site within forty-five (45) days after they are submitted to such commissioner, the person having submitted such plans may appeal to the board as though notice of disapproval were received at the expiration of such period; provided, that in lieu of setting forth the objections to the grounds for the commissioner's disapproval, the petition shall recite the failure of the commissioner to act on the plans.
- (d) A petition for permit appeal may be filed, pursuant to this subsection (d), by an aggrieved person who participated in the public comment period or gave testimony at a formal public hearing. The appeal shall be based upon one (1) or more 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 (d) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to issue or deny the final permit. Notwithstanding § 4-5-223 or any other law to the contrary, this subsection (d) shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit by such an aggrieved person, and its process shall be exhausted before judicial review may be sought.
- (e) Deleted by 2013 Pub. Acts, c. 181, § 5, eff. July 1, 2013.
- (f) Deleted by 2013 Pub. Acts, c. 181, § 5, eff. July 1, 2013.
- (g) The chancery court of Davidson County has exclusive original jurisdiction of all review proceedings instituted under the authority and provisions of this part. Appeals from

orders and decrees of the chancery court and proceedings brought under this part shall lie to the court of appeals despite the fact that controverted questions of fact may be involved therein.

- (h) 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 therein, promptly investigate the allegations contained therein, and notify the alleged violator of what action, if any, the commissioner will take. In all cases, the commissioner shall notify the complainant of such commissioner's action or determination within ninety (90) days from the date of such commissioner's receipt of the written complaint. 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 complainant or alleged violator may appeal to the board for a hearing. Such appeal must be made within thirty (30) days after receipt of the notification sent by the commissioner. If the commissioner fails to take the action stated in such commissioner's 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. The department shall not be obligated to assist a complainant in gathering information or making investigations or to provide counsel for the purpose of preparing such complainant's complaint. When such an appeal is timely filed, the procedure for conducting the contested case shall be in accordance with subsection (b).

#### **68-211-114. Crimes and offenses**

Any person willfully violating any of this part, or failing, neglecting or refusing to comply with any order of the commissioner or board lawfully issued, or who accepts solid waste for disposal in a landfill which does not have a permit pursuant to this part, except as provided in § 68-211-110, commits a Class B misdemeanor. Each day of continued violation is a separate offense.

#### **68-211-115. Injunctions**

In addition to the penalties herein provided, the commissioner may cause the enforcement of any orders, rules or regulations issued by such commissioner or orders issued by the board to carry out this part by instituting legal proceedings to enjoin the violation of this part, and the orders, rules or regulations of the commissioner or orders of the board in any court of competent jurisdiction, and such court may grant a temporary or permanent injunction restraining the violation thereof. The district attorney general in whose jurisdiction a violation of this part occurs or the attorney general and reporter shall institute and prosecute such suits when necessity therefor has been shown by those herein clothed with the power of investigation.

#### **68-211-116. Performance bonds; accounts and accounting**

- (a) To ensure the proper operation and closure of solid waste disposal and processing facilities, except as allowed in subsection (c), there shall be posted with the commissioner a performance bond. All funds from the forfeiture of bonds or other instruments required

pursuant to this section shall be placed in a special departmental account that shall not revert to the general fund. Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund. Such account shall be known as the "solid waste disposal site restoration fund." Moneys placed in the fund shall be used for the proper closure of solid waste disposal and processing facilities and, insofar as practicable, shall first be used to correct the problems at the facility for which the bond or other instrument was originally provided.

- (b) The performance bond required by this section shall be in the form and upon the terms specified by the board in regulations. Upon agreement of the parties, the terms may, in lieu of any specified forfeiture procedure, include a requirement for immediate payment to the department. At a minimum, the regulations shall provide for the following:

  - (1) A bond issued by a fidelity or surety company authorized to do business in this state;
  - (2) A corporate guarantee provided that the corporation passes any financial test specified by the board in regulations; and
  - (3) A personal bond supported by cash, securities, insurance policies, letters of credit or other collateral specified by the board in regulations.
- (c) A municipality or county may, in lieu of a performance bond, execute a contract of obligation with the commissioner. Such contract of obligation will be a binding agreement on the municipality or county, allowing the commissioner to collect not less than one thousand dollars (\$1,000) for each estimated acre or fraction thereof affected by the disposal operation from any funds being disbursed or to be disbursed from the state to the municipality or county on failure of the municipality or county to operate or to close the registered solid waste disposal operation properly. The amount of the contract of obligation shall be set by the commissioner. The contract shall be filed with the commissioner of finance and administration, who shall act on the terms of the contract on notice from the commissioner of environment and conservation of failure to operate or to close the disposal operation, after notice to the operator, as set out below.
- (d) The amount of the bond or contract of obligation shall be increased or decreased to take account of any change in the acreage covered by the registration, as set out in § 68-211-106. If any of the requirements of this part or rules and regulations adopted pursuant thereto or the orders of the commissioner have not been complied with within the time limits set by the commissioner or by this part, the commissioner shall cause a notice of noncompliance to be served upon the operator, or where found necessary, the commissioner shall order suspension of registration. Such notice or order shall be handed to the operator in person or served by certified mail addressed to the permanent address shown on the application for registration. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this part or the regulations or orders of the commissioner. If the operator has not reached an agreement with the commissioner or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within time limits set therein, the

registration may be revoked by order of the commissioner and the performance bond shall then be forfeited to the commissioner. When a bond is forfeited pursuant to this part, the commissioner shall give notice to the attorney general and reporter who shall collect the forfeiture.

**68-211-117. Civil penalties or damages**

**(a)**

- (1) Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) per day for each day of violation; provided, however, that if the violation involves the disposal of solid waste in a sinkhole, it shall be subject to a civil penalty of not less than seven hundred dollars (\$700) nor more than seven thousand dollars (\$7,000) per day for each day of violation because of the increased likelihood of harm to the environment and the public.
- (2) Each day such violation continues constitutes a separate violation. 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. Such person shall receive notice of the assessment by certified mail, return receipt requested;
- (2) Any person against whom an assessment has been issued may secure a review of the 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. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 68-211-113(b);
- (3) If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator is deemed to have consented to the assessment and it shall become final;
- (4) Whenever any assessment has become final because of a person's failure to appeal either the commissioner's assessment or the board's order, 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; and
- (5) The commissioner 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 violation or failure to comply occurred. Such court shall have venue over such actions, notwithstanding § 20-4-101 to the contrary.

- (c) In assessing a civil penalty, the following factors may be considered:
  - (1) The harm done to public health or the environment;
  - (2) The economic benefit gained by the violators;
  - (3) The amount of effort put forth by the violator to attain compliance; and
  - (4) Any unusual or extraordinary enforcement costs incurred by the commissioner.
- (d) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.

**68-211-118. Licenses and permits**

- (a) No permit to construct or operate a landfill for the disposal of solid or hazardous waste shall be granted if the location of such landfill would violate § 11-13-111.
- (b) Section 11-13-111 and this section do not apply to the expansion of any landfill for the disposal of solid wastes currently owned and operated by a county which holds a permit issued prior to May 1, 1990, and which is operating with a valid permit on May 22, 1991.

**68-211-119. Baled waste**

- (a) Baled waste may only be disposed of in a landfill that has received a permit pursuant to § 68-212-108, unless:
  - (1) The waste was baled at a location subject to inspection by the commissioner in accordance with a permit issued pursuant to regulations adopted by the board, specifying terms and conditions required for the issuance of all such permits, and the operator of the baling facility certifies on a form supplied by the commissioner that:
    - (A) The waste was visually inspected before baling;
    - (B) All waste which could not visually be determined to be of a type that may lawfully be accepted at the disposal or processing facility to which the waste will be transported was either:
      - (i) Sampled in accordance with a plan approved by the commissioner and determined to be lawfully acceptable under the destined facility's permit, this part and rules promulgated pursuant to this part; or

- (ii) Returned to the transporter as unacceptable;
  - (C) The baling facility, by processing such waste, did not violate this part; and
  - (D) The waste was properly manifested; or
- (2) Such bales are verified to contain only waste of the type that the receiving landfill is permitted to receive. If the waste is not baled in accordance with a permit issued pursuant to this part, such verification shall be made by the permittee of the receiving landfill on a form supplied by the commissioner and shall contain at least the following certifications:
- (A) The department was orally notified by the permittee of the receiving landfill of the intended disposal of baled waste at least twenty-four (24) hours prior to the landfill's receipt of such waste, so that the commissioner has an opportunity to inspect or supervise inspection of the waste by the permittee so as to comply with subdivisions (a)(2)(B) and (C);
  - (B) Each bale was physically opened, visually inspected and rebaled;
  - (C) All waste which could not visually be determined to be of a type which the facility is permitted to receive was either:
    - (i) Sampled in accordance with a plan approved by the commissioner and determined to be acceptable under the facility's permit and rules promulgated pursuant to this part; or
    - (ii) Returned to the transporter as unacceptable;
  - (D) The landfill, by accepting such waste, did not violate this part; and
  - (E) The waste was properly manifested.
- (b) The certifications required by subdivision (a)(1) shall be submitted to the department within thirty (30) days after the waste is baled. The certifications required by subdivision (a)(2) shall be submitted to the department within thirty (30) days after the disposal of the baled waste.

**68-211-120. Manifest; baled waste**

- (a) Persons who transport, treat, store and/or dispose of baled waste, except for those who bale waste at the site of disposal, shall utilize a manifest for such waste that contains all the following information:
  - (1) Names and addresses of the transporter;
  - (2) Name and address of the facility at which the waste was baled;

- (3) A description of the waste;
  - (4) The name and address of the destination of the waste; and
  - (5) Such other information specified in regulations promulgated by the board.
- (b) The manifest required by this section shall at all times accompany baled waste while it is in transit and shall be maintained at any facility that treats or disposes of such waste for a period of at least thirty (30) years.

**68-211-121. Inspections and inspectors**

To ensure that landfills and processing facilities receive only lawfully acceptable waste, the operator of each facility shall inspect waste received at the facility in accordance with a plan approved by the commissioner. Such plan shall provide for a level of inspection that is equivalent to that which is required for baled waste in § 68-211-119.

**68-211-122. Eminent domain power to establish landfill**

Notwithstanding any other law to the contrary, a municipality may exercise the power of eminent domain to establish a landfill for solid waste disposal outside its corporate boundaries only if the governing body of the area in which the landfill is to be located approves such action by a majority vote at two (2) consecutive, regularly scheduled meetings.

**68-211-123. No permits by rule for certain sites for sewage sludge composting**

The department of environment and conservation shall not issue a permit by rule for sewage sludge composting for a site that is greater than one (1) acre in size.

**68-211-124. Use of treated ash aggregate (TAA) as a building material**

- (a) The department may issue permits authorizing the use of treated ash aggregate as a building material in construction or site preparation applications in commercial and industrial settings.
- (b) “Treated ash aggregate” as used in this section means bottom ash or fly ash resulting from incineration of municipal solid waste as defined in § 68-211-802 that has been treated to assure that it is not a hazardous waste as defined in § 68-212-104, and rules thereunder.

# **Title 68, Health, Safety, and Environmental Protection**

## **Chapter 212 Hazardous Waste Management**

### **Part 1 Hazardous Waste Management Act of 1977**

#### **68-212-101. Short title.**

This part shall be known and may be cited as the "Tennessee Hazardous Waste Management Act."

#### **68-212-102. Public policy.**

In order to protect the public health, safety and welfare, to prevent degradation of the environment, conserve natural resources and provide a coordinated statewide hazardous waste management program, it is declared to be the public policy of the state of Tennessee to regulate hazardous waste management to:

- (1) Provide for safe storage, transportation, treatment and disposal of hazardous wastes;
- (2) Provide a coordinated statewide program of control of hazardous wastes in cooperation with federal, state and local agencies responsible for the prevention, control or abatement of air, water and land pollution, such that adequate control is achieved without unnecessary duplication of regulatory programs;
- (3) Develop long-range plans for adequate hazardous waste management systems to meet future demands; and
- (4) Promote efficient and economical hazardous waste management systems, the reuse or recycling of hazardous waste, and efforts to minimize the amounts of hazardous waste generated.

#### **68-212-103. Exemptions.**

Exempted from this part are:

- (1) Hazardous wastes which are generated within a residence and are incident to the operation of that residence; and
- (2) The following wastes generated within a farm and incident to the operation of that farm:
  - (A) Wastes from the growing and harvesting of agricultural crops or from the

raising of animals (including animal manures), which are returned to the soils as fertilizers; and

- (B) Waste pesticides, provided the farmer triple-rinses each emptied pesticide container (using a capable solvent) and disposes of the pesticide residues on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label.

**68-212-104. Part definitions.**

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

- (1) "Board" means the underground storage tanks and solid waste disposal control board as established by § 68-211-111, unless otherwise indicated;
- (2) "Commercial facility" means any hazardous waste management facility that stores, treats or disposes of hazardous waste generated off-site. However, a facility shall not be deemed to be a commercial facility if the only hazardous waste that it receives from off-site is either:
  - (A) Hazardous waste generated from material manufactured by a corporation, generated only at a site or sites owned or operated by the same manufacturing corporation, or subsidiaries of such corporation, or product distribution sites under contract to such corporation; provided, that the volume of hazardous waste received from such sites and placed in storage for more than thirty (30) days does not exceed ten percent (10%) of the permitted or interim status storage capacity at the facility; and provided further, that during no annual period may more than ten percent (10%) of the total hazardous waste treated or disposed at the facility be from such sites;
  - (B) Mixed hazardous waste (hazardous waste that is also regulated as a radioactive material) that is received for storage and treatment (but not disposal or incineration) pursuant to an order, compliance plan or similar plan or agreement in which such receipt for storage and treatment is specifically approved by the commissioner or board; provided, that any such order, compliance plan or similar plan or agreement also requires that the ultimate land disposal of such mixed hazardous waste or waste from its treatment be at a commercial facility permitted under this part or a properly authorized facility in another jurisdiction; or
  - (C) Hazardous wastes in the same waste codes and generated from the same industrial operations that a combustion facility was permitted to receive on July 1, 2001, notwithstanding any change of ownership of such operations since such date. The volume of such waste treated annually shall not

exceed ten percent (10%) of the combustion facility's July 1, 2001, permitted treatment capacity;

- (3) "Commissioner" means the commissioner of environment and conservation, the commissioner's authorized representatives, or, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;
- (4) "Department" means the department of environment and conservation;
- (5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land, water or air so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- (6) "Facility" means all contiguous land, and structures, other appurtenances and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units;
- (7) "Generation" means the act or process of producing hazardous wastes;
- (8) "Hazardous secondary material" means a secondary material, such as spent material, by-product or sludge, that when discarded would be identified as hazardous waste under the rules promulgated pursuant to this part;
- (9) "Hazardous waste" means waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
  - (A) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible illness or incapacitating reversible illness; or
  - (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;
- (10) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;
- (11) "Off-site" means any property that is not classified as on-site by subdivision (12);
- (12) "On-site" means on the site of generation. "On-site" further means the same or geographically contiguous property which may be divided by public or private right(s)-of-way. Noncontiguous property owned by the hazardous waste generator that is connected by a right-of-way which such hazardous waste generator

controls and to which the public does not have access is also considered on-site property;

- (13) "Permit" means the whole or part of any written authorization of the commissioner pursuant to regulations to own or operate a facility for the treatment, storage, or disposal of or transportation of hazardous waste;
- (14) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, and governmental agency of this state and any department, agency, or instrumentality of the executive, legislative and judicial branches of the federal government;
- (15) "Portable commercial unit" means any commercial facility, as defined by subdivision (2), which is transportable from site to site for the purpose of storage, treatment or disposal of hazardous waste;
- (16) "State" means the state of Tennessee;
- (17) "Storage" means the containment of hazardous waste in such a manner as not to constitute disposal of such hazardous waste;
- (18) "Transporter" means any person engaged in the transportation of hazardous waste;
- (19) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;
- (20) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, codified in 33 U.S.C. § 1342, as amended, 92 P.L. 500, or source, special nuclear, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, 83 P.L. 703, compiled in 42 U.S.C. § 2011 et seq.; and
- (21) "Waste management" means the orderly control of storage, transportation, treatment, and disposal of hazardous waste.

**68-212-105. Unlawful acts.**

It is unlawful to:

- (1) Place or deposit any hazardous waste into the waters of the state except in a manner approved by the department or the Tennessee board of water quality, oil and gas;
- (2) Burn hazardous waste except in a manner and under the conditions prescribed by the department or the air pollution control board;
- (3) Construct, alter, operate, own, close, or maintain after closure a hazardous waste treatment, storage, or disposal facility in violation of the rules and regulations established under this part or in violation of orders of the commissioner or board, or in such a manner as to create a public nuisance or a hazard to public health;
- (4) Store, containerize, label, transport, treat or dispose of hazardous waste or fail to provide information in violation of the rules, regulations, or orders of the commissioner or board, or in such a manner as to create a public nuisance or a hazard to the public health;
- (5) Refuse or fail to pay to the department fees assessed pursuant to this part and in violation of the rules, regulations, or orders of the commissioner or board; or
- (6) Site a new commercial hazardous waste facility less than one thousand five hundred feet (1,500') from residential, child care, church, park or school property.

**68-212-106. Criteria for determining hazardous wastes -- Notification regarding wastes generated -- Manifest systems -- Landfill disposal sites.**

- (a) (1) The board shall establish criteria for determining if a substance is a hazardous waste and will prepare a list of wastes which are considered hazardous in order to aid in determining the generators of hazardous waste in the state. However, such list shall not limit the regulatory authority over substances which meet established criteria for a hazardous waste.
- (2) Any person who is generating a waste which is considered hazardous by the established criteria or list shall notify the department in writing of the quantities and composition of wastes generated and the method by which such person intends to store, treat or dispose of such wastes.
- (3) All generators, transporters, and owners and operators of hazardous waste storage, treatment, and disposal facilities shall utilize a manifest system to assure that such hazardous waste transported off-site is stored, treated, or disposed of in storage, treatment, or disposal facilities in compliance with regulations promulgated pursuant to this part.

- (b) (1) The commissioner shall notify the register of deeds in each county in which a landfill disposal facility or site is located and currently being used for landfilling of hazardous waste of the precise location of such facility or site. Such notice shall include the following:
  - (A) The name of the person who owns the property upon which the disposal facility or site is located;
  - (B) The book and page number in which the deed to such property is recorded; and
  - (C) The hazardous wastes which are disposed of on such property.
- (2) The commissioner is authorized to require any person owning or operating a landfill disposal facility or site to provide such information prior to landfilling on such facility or site.
- (3) As used in this section:
  - (A) "Landfill disposal facility or site" includes any settlement pond or lagoon which is not regulated by the division of water quality control and also includes open dumping; and
  - (B) "Open dumping" means the depositing of solid wastes into a body or stream of water or onto the surface of the ground without compacting the wastes and covering with suitable material as prescribed in the regulations of the department.
- (4) This subsection (b) is to be administered by the division of solid and hazardous waste management.

**68-212-107. Powers and duties of commissioner, department, and board.**

- (a) The commissioner shall exercise general supervision over the construction, operation, maintenance, closure, and where applicable, post-closure care of hazardous waste storage facilities, treatment facilities, and disposal facilities throughout the state. Such general supervision shall apply to all features of construction, operation, maintenance, closure, and, where applicable, post-closure care of such facilities which do or may affect the public health and safety or the quality of the environment, and which do or may affect the proper storage, treatment, or disposal of hazardous wastes.
- (b) For the purpose of developing or enforcing any rule or regulation authorized by this part, or enforcing any requirement of this part or order issued by the commissioner or board pursuant to this part, the commissioner is authorized to at any reasonable time:

- (1) Enter any place where wastes (which the commissioner has reason to believe may be hazardous) are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled;
  - (2) Inspect and obtain samples of any waste (which the commissioner has reason to believe may be hazardous), samples of any containers or labeling for such wastes, and samples of ambient air, surface waters, and ground waters at the facility or site; and
  - (3) Inspect and copy any records, reports, test results, or other information relating to the purposes of this part.
- (c) The board is authorized to request the commissioner or the commissioner's representatives to investigate, inspect and obtain samples from hazardous waste storage, treatment, or disposal facilities throughout the state.
- (d) The board is empowered to promulgate and adopt, in accordance with the rulemaking requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, such rules and regulations as are required elsewhere in this part or are otherwise necessary or desirable to implement this part. Such rules and regulations shall include, but shall not necessarily be limited to:
- (1) Regulations setting out the criteria, lists, and any other necessary mechanisms for the determination of whether any substance is a hazardous waste for the purposes of this part;
  - (2) Regulations providing procedures and requirements for the use of a manifest during the transportation of hazardous waste;
  - (3) Regulations providing requirements for the location, design, construction, operation, maintenance, closure, and, where appropriate, post-closure care of hazardous waste treatment, storage, and disposal facilities as may be necessary or desirable for the safe storage, treatment, and disposal of hazardous wastes in the state;
  - (4) Regulations providing appropriate requirements (including joint and several liability for owners and operators and submission of plans and specifications) and procedures governing application for issuance, renewal, modification, suspension, revocation, or denial of permits for hazardous waste treatment, storage, and disposal facilities; which requirements and procedures shall be consistent with the Uniform Administrative Procedures Act, and shall include provisions for public notice and comment and an opportunity for a public hearing prior to permit determinations;

- (5) Regulations providing requirements for the transportation, containerization, and labeling of hazardous waste which shall be consistent with those issued by the United States department of transportation and the Tennessee department of safety, to include requirements and procedures governing application for and issuance, renewal, modification, suspension, renovation or denial of permits for hazardous waste transporters;
- (6) Regulations providing requirements and procedures for notification by generators of hazardous waste and for the establishment, maintenance, and reporting of other information as necessary or desirable to achieve the purposes of this part;
- (7) Regulations providing for the assessment and collection of fees as provided in § 68-212-110;
- (8) Regulations establishing a schedule of administrative penalty amounts as provided in § 68-212-114(c);
- (9) Regulations which prohibit the land disposal of certain hazardous wastes if the board determines that such a prohibition is required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account:

  - (A) The long-term uncertainties associated with land disposal;
  - (B) The goal of managing hazardous waste in an appropriate manner in the first instance; and
  - (C) The persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents;
- (10) (A) Regulations which shall establish conditions or criteria for the siting of commercial hazardous waste storage, treatment, and disposal facilities in this state. No permit may be issued for a proposed facility that does not conform to the conditions and criteria of those regulations. These conditions or criteria shall consider the differences between storage, treatment, and disposal facilities, and shall address, but not be limited to, the following:

  - (i) Siting in floodplains, wetlands, seismic risk zones, and in areas underlaid by mature karst formations;

- (ii) Depth to groundwater and seasonal high water tables;
- (iii) Distances from public and private drinking water supplies;
- (iv) Distances from occupied dwellings including, but not limited to, private residences, public schools and other buildings, and commercial buildings, and buildings not associated with the facility;
- (v) Distances from scenic, cultural and recreational areas;
- (vi) The adequacy of the transportation routes to accommodate any increased traffic;
- (vii) The adequacy of the emergency response capabilities; and
- (viii) The economic impacts on the local community and the surrounding communities.

(B) Regulations adopted pursuant to this subsection (d) shall not apply to any facility or site currently operating under authorization of the commissioner or to any facility permitted by the commissioner prior to adoption of such regulations; and

(11) Regulations implementing the distance restrictions established by § 68-212-105(6).

(e) The board is empowered and authorized to act as the board of appeals to review actions of the commissioner arising from the implementation of this part in accordance with § 68-212-113. For the purposes of this part, eight (8) members constitute a quorum, and a quorum may act for the board in all matters.

(f) The provisions of title 13, chapter 18, regarding major energy projects, as defined in § 13-18-102 do not apply to this part.

**68-212-108. Permits -- Bond -- Terminated facilities -- Perpetual care trust fund -- Hazardous waste trust fund.**

(a) (1) No person shall construct, substantially alter, or own or operate a hazardous waste

treatment, storage, or disposal facility, nor shall any person treat, store, or dispose of a hazardous waste, nor shall any hazardous waste transporter receive a hazardous waste from, or deliver a hazardous waste to, any location in the state, without first obtaining a permit from the commissioner for such facility or activity. No such permit shall be issued or otherwise authorized unless and until the person has complied with the requirements established by the board in regulations promulgated under this part. All permits for hazardous waste management facilities and transporters shall be issued by the commissioner. All such permits shall be issued according to procedures established by the board in regulations promulgated under this part.

- (2) After public notice and an opportunity for comment, the commissioner may, to the extent allowed in regulations adopted by the board, grant variances and waivers for persons; and the board may through the rulemaking process establish exemptions from the requirements of this part and permits-by-rule for classes of activities subject to the requirements of this part; provided, that it is demonstrated to a reasonable degree of certainty that design or operating practices will prevent degradation of the environment and will adequately protect the public health, safety and environment; and provided further, that the commissioner shall not waive the requirement that a community impact statement be filed.
- (b) Each permit shall contain such terms and conditions as the commissioner deems necessary under the regulations promulgated under this part and shall be issued for a fixed period of time. A permit may be modified at any time for cause.
  - (c)
    - (1) The commissioner may require the posting of a bond by any applicant for permitting of a hazardous waste storage facility, treatment facility or disposal facility. Such bond shall be to assure the availability of funds to the state in the event of abandonment, insolvency, or other inability of the applicant to meet the requirements regarding a public health hazard created by the presence of hazardous waste at a site occupied by the applicant or formerly under its possession, ownership, or control. The amount of the bond will be established by the commissioner as a permit condition and based on the estimated costs of providing proper closure, or post-closure care to the facility. In establishing such requirements, the commissioner shall give due consideration to the probable extent of contamination, the amount of possible property damage, the costs of removal and disposal of hazardous waste used by the applicant, the costs of reclamation of the property in the event of abandonment, insolvency or other inability of the applicant to perform such services to the satisfaction of the commissioner.
    - (2) In the event it is determined that there is a reasonable probability that a permitted facility or site will eventually cease to operate while containing, storing, or otherwise treating hazardous wastes on the premises which will require continuing and perpetual care or surveillance over the facility or site to protect the public health, safety or welfare, the commissioner, for the commissioner's

respective area of permitting authority, may require for storage, treatment or disposal facilities, a sum to be deposited by the applicant, in addition to the posted bond, in such amounts and under such circumstances as the commissioner shall determine as necessary by rule, regulation, or order based upon such rule or regulation, in a trust fund maintained as the perpetual care trust fund in the name of the state. In establishing such additional requirements, the commissioner shall give due consideration to the nature of the hazardous waste material, the size and type of facility or site to be decommissioned, and the anticipated expenses of perpetual care and surveillance.

- (3) No private entity shall be precluded by reason of criteria established under subdivisions (c)(1) and (2) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of a specified hazardous waste.
- (4) An acceptable bond shall be issued by a fidelity or surety company authorized to do business in this state; a personal bond supported by such collateral as the commissioner shall deem to be satisfactory; or a cash bond in an amount to be determined by the commissioner. Acceptable forms of collateral shall be established by the board by regulation and shall include, but are not limited to, insurance policies, letters of credit or securities.
- (5) The bonds obtained by any applicant shall be payable to the state of Tennessee and shall remain effective until such time as the commissioner determines that the facility or site involved no longer presents a danger to the public health and welfare.
- (6) At any time during the life of a bond, the commissioner, for the commissioner's respective area of permitting authority, may order forfeiture of the bond of a storage, treatment, or disposal facility based upon the commissioner's determination of abandonment, insolvency or other inability of the applicant to perform to the satisfaction of the commissioner. The board shall promulgate regulations to ensure the applicant adequate notice and an opportunity to be heard on the matter of forfeiture. All forfeited bonds shall be deposited in a special account in the name of the state, entitled "the hazardous waste trust fund." All moneys deposited in the fund may be expended by the commissioner as the commissioner considers necessary to assure the protection of the public health, safety, or welfare. Following the detoxification, the removal and disposal of any hazardous waste, and the reclamation of the premises, any funds remaining from the forfeited bond shall accrue to the state and shall not be refundable to the applicant. Any unencumbered moneys and any unexpended balance of the fund, together with any interest accruing on investments and deposits of the fund, remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward and maintained in the fund until expended in accordance

with this part. The moneys which are deposited in the hazardous waste trust fund and the perpetual care trust fund shall not be used for normal operating expenses of the department, but shall be expended only for the detoxification, removal and disposal of any hazardous waste, reclamation of sites or facilities, and perpetual care and surveillance of sites or facilities where the applicant has abandoned, defaulted, or otherwise refused to perform the above services to the satisfaction of the commissioner. Moneys accumulated in the hazardous waste trust fund or the perpetual care trust fund may be transferred by the commissioner whenever it is determined by the commissioner that the transfer of such funds is required to provide services at abandoned, inoperative, decommissioned facilities or at contaminated sites to protect the public health, safety or welfare.

- (d) The commissioner may require any applicant for permitting of a hazardous waste storage facility, treatment facility, or disposal facility, and any such permittee, to have and maintain financial responsibility as may be necessary for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility. The board shall promulgate and adopt rules and regulations as necessary or desirable to implement this provision.
- (e) The commissioner may deny or revoke any permit of a storage, treatment or disposal facility if the commissioner finds that the applicant or permittee has failed to comply with any term or condition of the permit, this part, any order of the commissioner, or any rules, regulations or standards adopted pursuant hereto.
- (f)
  - (1) The department shall give public notice of an application for a permit for a commercial facility for the storage, treatment, or disposal of hazardous waste within thirty (30) days of its receipt. The commissioner shall hold a community meeting concerning such a permit application within forty-five (45) days of the publication of the public notice. This shall be in addition to the public notice and hearing given after a draft permit or denial is issued. The county legislative body of the county in which the facility is proposed, the governing body of the municipality, if any, in which the facility is proposed and the governing body of any municipality within one (1) mile of the proposed facility shall be represented at the community meeting. Failure to participate shall be deemed a waiver and shall not invalidate the meeting. The board shall prescribe in rules the procedures for such notices and meetings. The local governing bodies participating in the community meeting shall have the opportunity to prepare reports representing their interpretation of the concerns of the community, and shall submit such reports to the department within ninety (90) days after the community meeting. The report may include any summaries of issues that the local governing bodies feel appropriate.
  - (2) If a local governing body chooses to make such report, it shall include a decision to accept, reject, or modify the application. Such decision shall be based upon the application of the following criteria which shall consider the differences between storage, treatment and disposal facilities:

- (A) The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding area;
  - (B) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;
  - (C) The traffic patterns and the capacity of roads and bridges to or from the facility are so designed as to minimize the impact on existing traffic flows;
  - (D) An emergency response plan has been formulated by or for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;
  - (E) If the facility is to be located in a county where the county or municipality has adopted a hazardous or solid waste management plan and/or zoning plan, the facility is consistent with that plan;
  - (F) Distances from occupied dwellings, including, but not limited to, private residences, schools, churches, commercial buildings, and other buildings not associated with the facility, and scenic, cultural and recreational areas so as to minimize the adverse economic impacts on the local community and the surrounding communities;
  - (G) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
  - (H) The previous operating experience and past record of convictions relevant to the operation of a proposed facility, or admissions of violations, other than minimal nonwillful permit violations, of the applicant and any subsidiary or parent corporation operating in the field of solid or hazardous waste management; and
  - (I) The conditions or criteria provided for in § 68-212-107(d)(10).
- (3) Failure by any of the local governing bodies to submit such report within the ninety-day period shall be deemed a waiver of the right of such local governing body to submit such report. The department shall consider these reports in granting the permit. The commissioner may affirm the decision of the local governing body, if any, or may reverse or modify the decision if the decision is:
- (A) In violation of statutory provisions;
  - (B) In excess of the statutory authority of the agency or the local governing body;

- (C) Made upon unlawful procedure;
  - (D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;
  - (E) Unsupported by evidence which is both substantial and material in the application and report; or
  - (F) Contrary to the conditions or criteria set forth in § 68-212-107(d)(10).
- (4) The commissioner shall issue or deny the permit within ninety (90) days of the close of the public comment period on the draft permit. The applicant shall reimburse the department for the expense of all public notification. Failure to make such payment shall be grounds for denial of the permit.
- (g) If the ownership or operational control of a hazardous waste storage facility, treatment facility, disposal facility or commercial landfill facility for disposal of hazardous waste is sold, voluntarily or involuntarily transferred or in any other manner changed, then the permit shall be revoked; provided, that such permit may be reinstated within ninety (90) days if the commissioner determines that all original permit requirements and conditions will be met by the new owner or operator, and the commissioner may allow such facility to continue to operate during such ninety-day period. Any major modification of prior permitted operation shall require a new permit issuance process to be followed.
  - (h) The board shall establish criteria in regulations promulgated under this part for the consideration of the applicant's prior related business record and any civil or criminal liability for past ownership or operation of any facility which would be required to receive a permit to be operated in this state. Such record shall be considered by the commissioner prior to the issuance of any permit pursuant to this section.
  - (i) No permit for a hazardous waste storage facility, treatment facility or disposal facility shall be issued if any person who is the legal or beneficial owner of ten percent (10%) or more of the stock of the company or corporation applying for such permit has been convicted of any felony or has been convicted of a misdemeanor for the unlawful storage, treatment or disposal of hazardous wastes.
  - (j) Subsections (f)-(j) shall not apply to any facility currently operating under authorization of the commissioner.
  - (k) Permits issued after July 1, 1986, may require corrective action for all releases of hazardous waste and hazardous constituents from any waste management unit at a treatment, storage, or disposal facility seeking a permit under this part, regardless of the time at which such waste was placed in the facility. Permits shall also include schedules for compliance for such corrective action and assurances of financial responsibility for completing such corrective action.

- (l) The commissioner may refuse to issue a permit to a commercial facility for the storage, treatment, or disposal of hazardous waste if, at the time of permit issuance, the applicant or permittee is subject to an order for corrective action pursuant to this part; provided, that upon a determination by the commissioner that the public health, safety and environment will be adequately protected by the posting of a sufficient bond as security to ensure compliance with such order for correction, or by such other means approved by the commissioner, the commissioner may waive this subsection (l).
- (m) No new commercial hazardous waste permit applications received by the department after June 8, 1989, shall be considered, approved or denied by the commissioner until the board has complied with § 68-212-107(d)(10). This subsection (m) and the regulations adopted pursuant to § 68-212-107(d)(10) shall not apply to any application for a permit for a facility if the application was filed with the department, or if the planned facility was under review by the department in anticipation of the filing of the application, on or before July 1, 1989.
- (n) (1) No permit shall be issued or otherwise authorized for a portable commercial unit to store, treat or dispose of hazardous waste generated in a state other than Tennessee. The commissioner may deny or revoke any permit of a portable commercial unit which fails to comply with this subsection (n).
- (2) A permit issued to a unit which is subject to this subsection (n) may be modified at any time to comply with this subsection (n).
- (o) (1) Before submitting to the department the Part B permit application for a new hazardous waste treatment storage or disposal facility permit or for a permit renewal, the applicant shall hold at least one (1) meeting with the public in order to inform the community of proposed hazardous waste management activities and to solicit questions from the community. The applicant shall submit a summary of the meeting and copies of any written comments or materials submitted at the meeting to the department as a part of the permit application. The applicant must provide public notice of the preapplication community meeting at least thirty (30) days prior to the meeting. Public notice shall include, but shall not be limited to, a visible and accessible sign at or near the facility announcing the date, time and location of the meeting, and other information as required by the department.
- (2) At the preapplication community meeting the applicant must provide a community impact statement which shall also be maintained in the facility file. The community impact statement shall include the following:
- (A) A description of the facility (including a scale drawing or photograph of the facility) and the proposed hazardous waste management activities;
- (B) A description of security procedures at the facility;

- (C) Information on hazard prevention and preparedness, including a summary of the contingency plan and 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 compliance with flood plain requirements and with respect to any commercial applicant, seismic requirements.

**68-212-109. Confidentiality.**

The board shall establish procedures to ensure that information supplied to the department, as provided by this part, and defined as proprietary by regulation, is not revealed to any person without the consent of the person supplying such information. Proprietary information does not include the name and address of permit applicants. Proprietary information may be utilized by the commissioner, the board, the department, the United States environmental protection agency (EPA), or any authorized representative of the commissioner or the board in connection with the responsibilities of the department or board pursuant to this part or as necessary to comply with federal law. The court may assess against the department reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

**68-212-110. Fees -- Consequences of failure to pay.**

- (a) The board shall establish a schedule of fees for hazardous waste generators, hazardous waste transporters, operators of hazardous waste transfer facilities; applicants and holders of permits for the storage, reclamation, treatment or disposal of hazardous waste; and for the generation, storage, transportation, reclamation or treatment of those hazardous secondary materials that, if discarded, would be identified as spent materials, listed by-products or listed sludges. The board shall not establish fees for those hazardous secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process; provided, that only tank storage is involved and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance. To establish an incentive to minimize risk to public health and the environment, the board shall consider the following factors in establishing the fees:
  - (1) Off-site versus on-site facility;

- (2) Facility design capacity; and
  - (3) Storage or treatment operation versus disposal operation.
- (b) Expenditures of such fees collected shall be restricted to operations of the hazardous waste management program established pursuant to this part.
  - (c) Upon failure or refusal of an operator of a facility, transporter, or generator to pay a fee lawfully levied within a reasonable time allowed by the commissioner, the commissioner then may apply to a court of competent jurisdiction for a judgment and seek execution of such judgment.
  - (d) Failure of a permit applicant to pay the required fee shall constitute grounds for denial of a permit. Failure of a permittee to pay the required annual fee shall constitute grounds for revocation of the permittee's permit.
  - (e) If any part of any fee imposed under this part is not paid on or before its due date, a penalty of five percent (5%) of the amount due shall at once accrue and be added thereto. Thereafter, on the last day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional penalty of five percent (5%) of the then unpaid balance shall accrue and be added thereto; however, the total of the penalties and interest that accrue pursuant to this section shall not exceed three (3) times the amount of the original fee. At the commissioner's sole discretion, the commissioner may reduce the penalties that otherwise accrue pursuant to this section or chapter 203 of this title if, in the commissioner's opinion, the failure to pay fees was due to inadvertent error or excusable neglect; however, in no event shall the penalties be reduced to an amount less than ten percent (10%) per annum, plus statutory interest. Nothing in this section shall be construed as requiring the issuance of a commissioner's order for the payment of a fee or a late payment penalty.

**68-212-111. Order for correction of deficiencies.**

- (a) When the commissioner finds upon investigation that any provisions of this part are not being carried out, the commissioner may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Such order shall be served by personal service or shall be sent by certified mail, return receipt requested. Investigations made in accordance with this section may be made on the initiative of the commissioner or board. Prior to the issuance of any order or the execution of any other enforcement action, the commissioner may request the presence of the alleged violator of this part at a meeting to show cause why enforcement action ought not to be taken by the department.
- (b) Whenever the commissioner finds that any person is engaging in an unauthorized activity which is endangering or causing damage to the public health or environment, the commissioner may, without prior notice, issue an order reciting the existence of such

unauthorized activity and requiring that such action be taken as the commissioner deems necessary.

**68-212-112. [Reserved.]**

**68-212-113. Review of orders -- Judicial review.**

- (a) (1) Any person against whom an order is issued may secure a review of the necessity for or reasonableness of such order 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. Any such order shall become final and not subject to review unless the person or persons named therein shall file such petition for a hearing before the board no later than thirty (30) days after the date such order is served.
  
- (2) (A) Any person whose permit application for a hazardous waste transportation, storage, treatment or disposal facility is denied by the commissioner may secure a review of the commissioner's denial by filing with the commissioner a written petition setting forth the grounds and reasons for such person's objections to the commissioner's denial and requesting a hearing before the board. Any denial of a permit application shall become final and not subject to review unless such petition for a hearing before the board is filed no later than thirty (30) days after notice of denial is served.
  
- (B) A petition for permit appeal may be filed, pursuant to this subdivision (a)(2)(B), by an aggrieved person who participated in the public comment period or gave testimony at a formal public hearing. The appeal shall be based upon one (1) or more 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 subdivision (a)(2)(B) shall be filed with the commissioner within thirty (30) days after public notice of the commissioner's decision to issue or deny the final permit. Notwithstanding § 4-5-223 or any other law to the contrary, this subdivision (a)(2)(B) shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit by such an aggrieved person, and its process shall be exhausted before judicial review may be sought.
  
- (3) In the event the commissioner fails to take any action on a permit application or proposed amendment to a permit for a hazardous waste transportation, storage, treatment, or disposal facility within forty-five (45) days of submission to the

proper authority, the person having submitted such application may appeal to the board as though the application was denied. The petition shall recite the failure of the commissioner to act on the application. No permit shall be issued by the commissioner except in a manner pursuant to this part or regulations promulgated pursuant to this part.

- (b) The hearing before the board on any petition filed under subsection (a) 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; provided that in a petition filed under subdivision (a)(2)(B) the judge shall hold the hearing in the county where the facility or site is proposed to be located. 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 under § 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.
- (c) An appeal may be taken from any final order or other final determination of the board by any party, including the department, who is or may be adversely affected thereby to the chancery court of Davidson County. The chancery court of Davidson County shall have exclusive original jurisdiction of all review proceedings instituted under the authority and provisions of this part; provided, that the judicial review of any final decision of the

board shall be made pursuant to the procedures established and set forth in the Uniform Administrative Procedures Act.

**68-212-114. Violations -- Civil and criminal penalties.**

- (a)
  - (1) Any person violating any provision of this part, or failing, neglecting or refusing to comply with any order, or any term or condition of any permit, issued by the commissioner or board, commits a Class A misdemeanor. Each day upon which a violation occurs constitutes a separate punishable offense.
  - (2) Any person who knowingly disposes of hazardous waste in violation of this part, rules, regulations, the terms or conditions of a permit, or orders of the commissioner or board commits a Class C felony. Each day upon which such violation occurs constitutes a separate punishable offense.
  - (3) In addition to the penalties imposed under subdivisions (a)(1) and (2), the court, department or board may suspend the permit to store, transport, treat or dispose of hazardous waste for a period of up to ten (10) years of any person who has been convicted of two (2) such felonies within a two-year period. The court, department or board shall suspend the permit to store, transport, treat or dispose of hazardous waste for a period of ten (10) years of any person who has been convicted of three (3) such felonies within a two-year period. No person who has had such person's permit suspended pursuant to this subsection (a) shall be eligible to apply for any other permit issued pursuant to this part until the period of time for which the permit was suspended has expired. No succeeding person who has substantial factual or legal connections, continuity or identity with any person who has had such person's permit suspended pursuant to this subsection (a) shall be eligible to apply for any permit issued pursuant to this part until the period of time for which the permit was suspended has expired, but a succeeding person who is a good faith purchaser and who does not have substantial factual or legal connections, continuity or identity, may apply for a permit. Determination of factual or legal connection, continuity or identity under this subsection (a) shall be made by the chancellor of Davidson County upon request of the succeeding person. Nothing in this subsection (a) precludes the suspension, revocation or denial of a permit by the department or board when such action is otherwise authorized by law.
- (b)
  - (1) Any person who violates or fails to comply with any provision of this part, any order of the board or commissioner, the terms or conditions of any permit issued, or any rule, regulation or standard adopted pursuant to this part shall be subject to a civil penalty of up to fifty thousand dollars (\$50,000) per day for each day of violation. Each day upon which such violation occurs constitutes a separate punishable offense, and such person shall also be liable for any damages to the state resulting therefrom.
  - (2) Any civil penalty or damages shall be assessed in the following manner:

- (A) The commissioner may issue an assessment against any person responsible for the violation or damages. Such person shall receive notice of such assessment by certified mail, return receipt requested;
  - (B) Any person against whom an assessment has been issued may petition the board for a review of the assessment;
  - (C) The manner of review of an assessment shall be the same as that for an order as set out in § 68-212-113;
  - (D) 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
  - (E) The commissioner 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 violation or failure to comply occurred.
- (3) In assessing a civil penalty, the following factors may be considered:
- (A) The harm done to public health or the environment;
  - (B) The economic benefit gained by the violators;
  - (C) The amount of effort put forth by the violator to attain compliance; and
  - (D) Any unusual or extraordinary enforcement costs incurred by the commissioner.
- (4) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.
- (c) (1) Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to an administrative penalty not to exceed one thousand dollars (\$1,000) per violation, with each day such violation continues constituting a separate punishable offense.
- (2) The board shall promulgate and adopt rules and regulations establishing a schedule of administrative penalty amounts for certain specific non-discretion violations or categories of violations established by this part.
- (3) The commissioner may issue an assessment of administrative penalties against any person responsible for a nondiscretionary violation. Such person shall receive notice of such assessment by certified mail, return receipt requested.

- (4) Any person against whom an assessment of administrative penalties has been issued may petition the board for a review of the assessment. The manner of such review shall be the same as that for an order as set out in § 68-212-113. If a petition for review of an 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.
  - (5) The commissioner may issue an assessment of civil penalties pursuant to subsection (b) against any person who fails to comply with an assessment of administrative penalties lawfully issued in accordance with this subsection (c).
- (d) Any person qualified by law may intervene as a matter of right in any court action brought by the commissioner or board pursuant to this part.
- (e)
- (1) Whenever any order or assessment under § 68-212-113 or this section has become final, a notarized copy of the order or assessment may be filed in the office of the clerk of the chancery court of Davidson County.
  - (2) When filed in accordance with subdivision (e)(1), a final order or assessment shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited therein. Such judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of the judgment and the effect thereof shall be the same as provided in title 26, chapter 6.
  - (3)
    - (A) If the final order or assessment resulting in a judgment under subdivision (e)(2) is from the board, the judgment shall become final thirty (30) days after the date a summons has been served upon the defendant.
    - (B) If the final order or assessment resulting in a judgment under subdivision (e)(2) is from the commissioner, any citizen shall, within forty-five (45) days after entry of the judgment, have the right to intervene on the ground that the penalties or remedies provided are inadequate or are based on erroneous findings of facts. Upon receipt of a timely motion for intervention, the court shall determine whether it is duplicitous or frivolous, and shall notify the movant and the parties of its determination. If the motion is determined not to be duplicitous or frivolous, all parties shall be considered to have sought review of the final order or assessment, and the court shall proceed in accordance with § 4-5-322. If no timely motion for intervention is filed, or if any such motion is determined to be duplicitous or frivolous, the judgment shall become final forty-five (45) days after the date of entry.
  - (4) A final judgment under this subsection (e) has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state.

**68-212-115. Injunctions.**

In addition to the penalties provided elsewhere in this part, the commissioner may cause the enforcement of any orders, permits, rules or regulations issued by the commissioner or the board to carry out this part by instituting legal proceedings to enjoin the actual or threatened violations of this part, and the orders, permits, rules or regulations of the commissioner or orders of the board in the chancery court of Davidson County or in the chancery court of the county wherein all or a part of the actual or threatened violations has or is about to occur, in the name of the department, by a staff attorney and under the supervision of the attorney general and reporter. In such suits, the court may grant temporary or permanent injunctions or restraining orders. Such proceedings shall not be tried by jury.

**68-212-116. [Reserved.]**

**68-212-117. Complaints -- Procedure.**

- (a) Any person may file with the commissioner or board a signed complaint against any person allegedly violating any provisions of this part. Unless the commissioner or board determines that such complaint is duplicitous or frivolous, the commissioner or board shall immediately serve a copy of it upon the person or persons named therein, promptly investigate the allegations contained therein, and shall notify the alleged violator of what action, if any, the commissioner or board will take. In all cases, the commissioner or board shall notify the complainant of the commissioner's or board's action or determination within ninety (90) days from the date of the commissioner's or board's receipt of the written complaint. If either the complainant or the alleged violator believes that the commissioner's or board's action or determination is or will be inadequate or too severe, such person may appeal to the board for a hearing. Such appeal must be made within thirty (30) days after receipt of the notification sent by the commissioner or board. If the commissioner fails to take the action stated in such 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. When such an appeal is timely filed, the procedure for conducting the contested case shall be in accordance with § 68-212-113(b). 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 the complaint.
- (b) Where the complaint is upheld, the board may order the party named in the complaint to pay the attorney fees of the complainant, if there was an aggravated violation.
- (c) The board, department, its officials and employees acting in their official capacity shall not be considered "persons" pursuant to this section.

**68-212-118. Reports evaluating regulatory program.**

Annually, prior to January 7, the board and the commissioner shall submit a written report to the speaker of the senate and to the speaker of the house of representatives which shall evaluate all aspects of the performance of the hazardous waste regulatory program during the preceding year. The annual report shall include, but shall not necessarily be limited to, the following data:

- (1) The number and type of hazardous waste handlers permitted and/or registered by the commissioner;
- (2) A list of hazardous waste generators, transporters, and disposal facilities in Tennessee;
- (3) Fees due, paid, and past due by number and type of hazardous waste handlers;
- (4) The amount of hazardous waste, by type, generated, transported, treated, stored, and disposed of in Tennessee, including the amount shipped into Tennessee from other states and the amounts shipped from Tennessee to other states;
- (5) The number of permit applications received, granted, requested, and pending, by type;
- (6) The number and type of enforcement actions in process and initiated during the reporting period, and the results of such enforcement actions;
- (7) The board's plan for identifying unpermitted hazardous waste handlers in the state and the extent of accomplishment of goals and objectives; and
- (8) Recommendations of the board and the commissioner for legislative action to improve the hazardous waste regulatory program.

**68-212-119. Interstate agreements -- Governor's authority.**

Subject to any necessary appropriation by the general assembly, the governor is authorized to enter into one (1) or more interstate agreements governing the import and export of hazardous waste between this state and other states as may be required by the Comprehensive Environmental Response, Compensation and Liability Act, § 104(c)(9), which is codified in 42 U.S.C. § 9604(c)(9).

**68-212-120. No permits for landfills violating § 11-13-111.**

No permit to construct or operate a landfill for the disposal of solid or hazardous waste shall be granted if the location of such landfill would violate § 11-13-111.

**68-212-121. Employer's liability for employee's motor vehicle accidents involving hazardous wastes or substances.**

If any person who is driving on a Tennessee road, highway, interstate or other thoroughfare or rightfully in physical control of any motor vehicle containing a hazardous waste or hazardous substance as defined in § 68-131-102 is adjudicated to have been at fault in a court of competent jurisdiction for an accident resulting in a spill of such hazardous waste or hazardous substance, the employer of such person shall be jointly and severally responsible for damages incurred as a result of the spill, and any reasonable clean-up costs incurred by the governmental agency or the state or any political subdivision thereunder, which may result from the spill. In the event of a dispute concerning the reasonableness of assessed clean-up costs or damages, a court of competent jurisdiction shall determine the reasonableness of such costs and damages.

# **Title 68, Health, Safety, and Environmental Protection**

## **Chapter 212 Hazardous Waste Management**

### **Part 2 Hazardous Waste Management Act of 1977**

#### **68-212-201. Legislative intent.**

- (a) In order to protect the public health, safety and welfare, and to provide a coordinated statewide hazardous substance management program, it is declared to be the policy of the state of Tennessee to:
- (1) Provide a procedure for establishing appropriate sites for the treatment, storage and disposal of hazardous wastes; provided, that such procedures shall not be construed as a state override of local government jurisdiction;
  - (2) Provide funding for the operation of certain hazardous substance management programs by the state;
  - (3) Emphasize alternatives to land disposal of hazardous wastes, as is practicable;
  - (4) Provide for remedial action at certain inactive hazardous substance sites within the state; and
  - (5) Develop a comprehensive plan for hazardous substance site containment and clean up and to develop criteria for establishment of commercial facilities which qualify local governments to receive funds from the responsible waste disposal incentive fund.
- (b) The general assembly declares that it is the policy of this state that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should, in order of priority, be reduced at its source, recovered and reused, recycled, treated, or disposed of so as to minimize the present and future threat to human health and the environment.

#### **68-212-202. Part definitions.**

- (a) As used in this part, unless the context otherwise requires:
- (1) "Brownfield project" means the screening, investigation, monitoring, control and/or remediation of any abandoned, idled, under-utilized, or other property whose re-use, growth, enhancement or redevelopment is complicated by real or perceived adverse environmental conditions. Brownfield projects may address sites contaminated by hazardous substances, solid waste, or any other pollutant;

- (2) "Hazardous substance" is as defined in § 101 of Public Law 96-510, codified in 42 U.S.C. § 9601;
- (3) "Hazardous substance site" means any site or area where hazardous substance disposal has occurred; and
- (4) "Liable party" means:
  - (A) The owner or operator of an inactive hazardous substance site;
  - (B) Any person who at the time of disposal was the owner or operator of an inactive hazardous substance site;
  - (C) Any generator of hazardous substance who at the time of disposal caused such substance to be disposed of at an inactive hazardous substance site;
  - (D) Any transporter of hazardous substance which is disposed of at an inactive hazardous substance site who, at the time of disposal, selected the site of disposal of such substance;
  - (E)
    - (i) "Liable party" does not include a unit of state or local government which becomes an owner or operator of an inactive hazardous substance site by acquiring ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign, unless such governmental entity has caused or contributed to the release or threatened release of a hazardous substance from the facility;
    - (ii) "Liable party," as provided for in part 4 of this chapter, does not include a person who, without participating in the management of the hazardous substance site, holds indicia of ownership primarily to protect a security interest in the site;
    - (iii) "Liable party" does not include a person who is excluded from liability under the Superfund Recycling Equity Act, codified at 42 U.S.C. § 9627;
    - (iv) This subdivision (a)(4)(E) shall apply to any site currently listed or listed at any time in the future as a superfund site through rules promulgated by the board, unless liability has otherwise been established through administrative or judicial action; and
  - (F)
    - (i) As used in this subdivision (a)(4), "owner or operator" does not include a person who establishes, by a preponderance of the evidence, that:

- (a) Such person acquired the title to the hazardous substance site after the disposal or placement of the hazardous substance on, in, or at the site;
  - (b) At the time the person acquired title to the hazardous substance site, such person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the site; and
  - (c) The person exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances;
- (ii) To establish that such person had no reason to know, as provided in subdivision (a)(4)(F)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For the purpose of the preceding sentence, the court, presiding authority, or the department of environment and conservation shall take into account any specialized knowledge or experience on the part of such person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or a likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection. The good faith performance of a Transaction Screen Process in material compliance with the version of the ASTM Practice E 1528 in effect at the time of the acquisition, or any successive replacement standard, or a Phase I Environmental Site Assessment in substantial and material compliance with the version of the ASTM E-1527 Guideline for Environmental Site Assessments in effect at the time of acquisition, or any successive replacement standard (collectively the "Assessment Standard"), that appropriately concludes that no further investigation is required, shall create a presumption that the person ordering or authorized to use the Transaction Screen Process or the Phase I Environmental Site Assessment has conducted "all appropriate inquiry" under this subdivision (a)(4).

(b) All other terms used in this part are defined as such terms are defined in § 68-212-104.

**68-212-203. Remedial action fees.**

- (a) In addition to any other fees assessed by law, there is levied a remedial action fee on the generation and management of hazardous waste. The amounts of the fees are to be set for different categories of activities in a rule promulgated by the underground storage tanks and solid waste disposal control board; however, none of the fees may exceed the following maximum amounts:
- (1) Annual fees on the generation of hazardous waste: thirty-three thousand dollars (\$33,000); and
  - (2) Additional fees on the off-site shipment of hazardous waste, including the shipment of the waste to Tennessee facilities from out of state: seventy-five thousand dollars (\$75,000).
- (b) For the purposes of determining the amount of hazardous waste subject to the fees levied under subsection (a), the following shall be excluded:
- (1) Waste which is exempted from regulation or otherwise exempted from assessment of fees in rules adopted by the board including, but not limited to, Tenn. Comp. R. & Regs. R. 0400-12-01-.02(1)(d)(3), Tenn. Comp. R. & Regs. R. 0400-12-01-.01(3)(c), Tenn. Comp. R. & Regs. R. 0400-12-01-.02(1)(a) and Tenn. Comp. R. & Regs. R. 0400-12-01-.04(1)(a)(4)(ii);
  - (2) Waste which is discharged directly to any publicly owned treatment works or any wastewater treatment facility permitted pursuant to § 402 of the federal Clean Water Act, codified in 33 U.S.C. § 1342, as amended (P.L. No. 92-500), or the Tennessee Water Quality Control Act, compiled in title 69, chapter 3. However, hazardous wastewater shipped off-site to a commercial facility which discharges to a publicly owned treatment works or a permitted wastewater treatment facility is not excluded from the original generator's waste volume;
  - (3) Sludge from publicly owned treatment works located in the state;
  - (4) Bottom boiler ash and flyash from incinerators which process solely municipal waste;
  - (5) Hazardous wastes generated from remediation or corrective actions required by the Tennessee Hazardous Waste Management Acts of 1977 and 1983, compiled in part 1 of this chapter; the Resource Conservation and Recovery Act (RCRA), compiled in 42 U.S.C. § 6901 et seq.; and the Comprehensive Environmental Response, Compensation and Liability Act, compiled in 42 U.S.C. § 9601 et seq.;
  - (6) Hazardous waste or hazardous waste sludges produced as a result of on-site treatment of hazardous waste. However, if the waste itself is excluded, the sludge resulting from treatment of such waste cannot be excluded;

- (7) Wastes which have been recycled on-site or transported off-site to be recycled, as "recycled" is defined at 40 CFR 261.2, including, but not limited to, fuel blending, solvent recovery and metals recovery;
  - (8) Hazardous waste resulting from a spill of hazardous waste or other material which, when spilled, becomes a hazardous waste; and
  - (9) Hazardous wastes resulting from the removal and associated cleanup of an underground storage tank that previously contained a hazardous waste or other material which when discarded, leaked or spilled becomes a hazardous waste.
- (c) The board shall adopt rules and regulations governing the collection of fees levied under this section, and the records to be maintained in accordance with this part. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.
  - (d) The payment of fees levied under this section shall be made to the department and deposited solely to the credit of the hazardous waste remedial action fund created in § 68-212-204.
  - (e) For each fiscal year, there is appropriated from the state's general fund to the hazardous waste remedial action fund the sum of at least one million dollars (\$1,000,000). This contribution must be paid to this fund in total in a new recurring appropriation each year, and shall not include any funds contributed in previous years which have not been expended. Despite any other law to the contrary, if the general assembly fails to authorize this appropriation in any given fiscal year, the maximum generator fee in that fiscal year shall be seven thousand five hundred dollars (\$7,500) calculated at the rate of fourteen cents (14cent(s)) per kilogram, the maximum off-site shipment fee shall be seven dollars (\$7.00) per ton for hazardous waste, there shall be no fee for hazardous wastewaters, and the maximum transporter fee shall be two hundred seventy-five dollars (\$275).
  - (f) At no time shall the maximum unobligated balance in the hazardous waste remedial action fund exceed ten million dollars (\$10,000,000). Fees shall be adjusted downward so that this level is not exceeded.

**68-212-204. Hazardous waste remedial action fund.**

- (a) There is established within the general fund a special agency account to be known as the "hazardous waste remedial action fund," hereinafter referred to as the "fund."
- (b) Any unencumbered funds and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this part.
- (c) Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund.

- (d) All fees, civil penalties and fines collected pursuant to this part shall be deposited in the fund; provided, that no fees collected pursuant to § 68-212-110 shall be deposited in the fund.
- (e) All funds received by the state pursuant to § 3012 of the Resource Conservation and Recovery Act (RCRA), codified in 42 U.S.C. § 6933, shall be deposited in the fund.

**68-212-205. Uses of fund.**

- (a) The fund shall be available to the board and the commissioner for the purposes of identifying and investigating inactive hazardous substance sites for consideration for placement on the list described in § 68-212-206(e), and for investigating and reasonably and safely containing, cleaning up, monitoring and maintaining such sites as provided in this part and as set forth in § 68-212-224.
- (b) The commissioner may enter into such contracts and use the fund for those purposes directly associated with identification, investigation, containment and cleanup, including monitoring and maintenance prescribed above, including:
  - (1) Hiring of consultants and personnel;
  - (2) Purchase, lease or rental of necessary equipment; and/or
  - (3) Other necessary expenses.
- (c) Such fund may also be used for matching the funds of any federal agency, pursuant to § 104(c) of Public Law 96-510, codified in 42 U.S.C. § 9604, to enable the state to receive federal funds to clean up hazardous substance sites, or providing for state financed clean up.
- (d) (1) Such fund may also be used for any of the following activities:
  - (A) Provide free, voluntary, confidential, on-site technical assistance to hazardous waste generators to assist them in evaluating their hazardous waste generation and to identify opportunities to reduce generation of hazardous waste and to recycle and reuse that which is generated;
  - (B) Promote all aspects of the state's waste reduction and pollution prevention program;
  - (C) Operate the waste reduction information clearinghouse, utilizing existing clearinghouses as much as possible, to provide free information to Tennessee hazardous waste generators about proven measures to reduce hazardous waste generation;

- (D) Coordinate an annual governor's award program for companies utilizing innovative and exemplary approaches to reducing hazardous waste generation;
  - (E) Conduct training sessions and workshops and publish reports targeted toward specific segments of industry and business in Tennessee to transfer information concerning hazardous waste reduction measures;
  - (F) Prepare an annual report to the general assembly;
  - (G) Accept, receive and administer grants, gifts or other funds made available from any source for the purposes of this part;
  - (H) Provide grants, not to exceed one hundred thousand dollars (\$100,000) in the aggregate for any single fiscal year, to generators of hazardous waste to provide seed money to encourage firms to adopt and adapt to more appropriate technologies that provide for a reduction or better treatment of hazardous waste;
  - (I) Notwithstanding subsection (b), provide research grants in the aggregate amount not to exceed one hundred thousand dollars (\$100,000) annually to encourage the development of new technology for the reduction or better treatment of hazardous waste; and
  - (J) Review waste reduction plans prepared pursuant to this chapter.
- (2) Grants made pursuant to this subsection (d) shall be made on a competitive basis with appropriate criteria for such competition to be established by the commissioner. Such grants shall only be made from interest accruing on investments and deposits of the fund.

**68-212-206. Powers and duties of commissioner.**

- (a) In order to effectuate the purposes of this part, the commissioner is authorized to:
- (1) Request any liable or potentially liable party to investigate and identify possible inactive hazardous substance sites, and furnish information relating to possible hazardous substances;
  - (2) Issue an order to any liable or potentially liable party requiring such party to investigate and identify inactive hazardous substance sites;
  - (3) Issue an order to any liable or potentially liable party requiring such party to contain, clean up, monitor and maintain inactive hazardous substance sites;

- (4) Inspect and copy at reasonable times any records, reports, test results, or other information relating to inactive hazardous substance sites;
  - (5) Enter, pursuant to § 68-212-216, any place where hazardous substance or substances which the commissioner has reason to believe may be hazardous, are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled;
  - (6) Inspect and obtain samples of any substance which the commissioner has reason to believe may be hazardous, samples of any containers or labeling for such hazardous substance, and samples of ambient air, waters, or soil at the hazardous substance site or at any other property which must be entered in order to reach the hazardous substance site;
  - (7) Perform or cause to be performed all other actions necessary to carry out this part; and
  - (8) Delegate to the director of the division of superfund any of the powers, duties, and responsibilities of the commissioner under this part.
- (b) In the event that any identified liable party or parties are unable or unwilling to provide for the investigation, identification, or for the reasonable and safe containment and clean up, including monitoring and maintenance, pursuant to an order issued under this section, or no such liable party can reasonably be identified by the commissioner, the commissioner may provide for such actions whether or not the site has been listed pursuant to subsection (e).
- (c) If, at any time, the commissioner, after investigation, finds that an inactive hazardous waste substance site constitutes an imminent, substantial danger to the public health, safety or environment, the commissioner may undertake such actions as are necessary to abate the imminent and substantial danger. Such actions may be taken whether or not the site has been listed pursuant to subsection (e).
- (d) (1) In selecting containment and clean up actions, including monitoring and maintenance, under this section, the commissioner shall evaluate reasonable alternatives and select those actions which the commissioner determines are necessary to protect public health, safety, and the environment. The goal of any such action shall be clean up and containment of the site through the elimination of the threat to the public health, safety, and the environment posed by the hazardous substance. In choosing the necessary actions at each site, the commissioner shall consider the following factors:
- (A) The technological feasibility of each alternative;
  - (B) The cost-effectiveness of each alternative;

- (C) The nature of the danger to the public health, safety, and the environment posed by the hazardous substance at the site; and
  - (D) The extent to which each alternative would achieve the goal of this subsection (d).
- (2) To the extent practicable, any such containment and clean up, including monitoring and maintenance, shall be consistent with the national contingency plan promulgated pursuant to § 105 of Public Law 96-510, 42 U.S.C. § 9605.
- (e) Whenever necessary to protect the public health, safety, or the environment, but at least annually, the commissioner shall propose and the board shall promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any necessary revisions to the list of those inactive hazardous substance sites within the state that are eligible for investigation, identification, containment, and clean up, including monitoring and maintenance, and that pose or may reasonably be anticipated to pose a danger to public health, safety or the environment. An inactive hazardous substance site which has been identified as a solid waste management unit and is subjected to a requirement for investigation and/or for corrective action pursuant to § 3004(u) of the Resource Conservation and Recovery Act (RCRA), codified in 42 U.S.C. § 6924(u), and which requirements are included in a facility permit issued pursuant to RCRA shall not be proposed by the commissioner for addition to the list of sites eligible for investigation, identification, containment and clean up under this part. An inactive hazardous substance site listed under this part which subsequently becomes subject to a requirement, as previously described under § 3004(u), codified in 42 U.S.C. § 6924(u), shall be removed from the list by the board pursuant to a proposal which shall be made by the commissioner.
- (f) A program of waste reduction and pollution prevention is established in the office of the commissioner to encourage hazardous waste generators to reduce the volume and toxicity of hazardous waste generated in Tennessee. The commissioner is authorized to carry out the functions of § 68-212-205(d).

**68-212-207. Liability for costs, expenditures, and damages.**

- (a) Whenever a hazardous substance site is placed on the list of hazardous substance sites pursuant to § 68-212-206(e), or whenever the commissioner otherwise begins to expend money for the investigation, identification, containment or clean-up of a particular site under this part, the commissioner may issue an order to any liable party assessing that party's apportioned share of all costs expended or to be expended.
- (b) (1) In assessing a party's apportioned share, the commissioner may consider equitable factors, including, but not limited to, the following:
  - (A) Any monetary or other benefit accruing to each liable party from the disposal of hazardous substances upon the site;

- (B) The culpability of each liable party in placing hazardous substances upon the site;
  - (C) Efforts of each liable party to restore the land, water, air and all other aspects of the site to its natural condition;
  - (D) Any expenditures required by this part made by a liable party shall be credited toward that party's share of the cost;
  - (E) The party's portion of the total volume of hazardous substances at the hazardous substance site;
  - (F) The monetary benefit accruing to an owner as a result of the clean up of the site if, at the time of acquisition of the site, such owner knew or should have known that hazardous substances were previously disposed of at the site; and
  - (G) The monetary benefit accruing to an owner as a result of the clean-up of the site if such owner was the owner at the time hazardous substances were disposed of on the property and knew or should have known of such disposal.
- (2) Any person against whom an assessment is issued may secure a review of the propriety or amount of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the underground storage tanks and solid waste disposal control board. Any such assessment shall become final and not subject to review unless the person named therein files such a petition within thirty (30) days after it is received.
  - (3) In no event shall the total moneys recovered from the liable party or parties exceed the total expenditure from the fund for such site, except that the commissioner may recover punitive damages as provided in subsection (c).
  - (4) Any party found liable for any costs or expenditures recoverable under this part who establishes by a preponderance of the evidence that only a portion of such costs or expenditures are attributable to such party's actions shall be required to pay only for such portion.
  - (5) The fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section. All moneys recovered from liable parties pursuant to this section shall be deposited in the fund.
- (c) Any liable party who fails without sufficient cause to properly provide for removal of hazardous substances or remedial action upon order of the commissioner pursuant to this

part may be liable to the state for punitive damages in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the fund as a result of such failure to take proper action. The commissioner shall recover the punitive damages in an action commenced under subsection (b) or in a separate civil action, and such punitive damages shall be in addition to any costs recovered from such liable party pursuant to this part. Any punitive damages awarded pursuant to this subsection (c) shall be deposited in the fund.

- (d) No person shall be liable under this part for damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice at the direction of an on-scene coordinator appointed by the commissioner, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or the threat thereof. This subsection (d) shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct constitutes gross negligence.
- (e) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the federal government and the state government shall be subject to, and comply with, this part in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under this section.
- (f) No person, including the state, may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, compiled in 7 U.S.C. § 135 et seq.

**68-212-208. Authority of counties.**

- (a) The county mayor and four (4) members of the county legislative body appointed by the county mayor of the county in which any commercial facility is located may accompany the department upon any site investigation or monitoring inspection.
- (b) The county legislative body of the county in which any commercial facility is located may, by a majority vote of the members to which it is entitled, require that independent monitoring tests be conducted. Such tests shall be conducted by a laboratory which is certified to conduct tests for safe drinking water by the department or the federal environmental protection agency (EPA) under the authority of the Safe Drinking Water Act. All such tests shall be paid for by such county.

**68-212-209. Liens on property.**

- (a) Whenever a hazardous substance site is placed on the list of hazardous substance sites pursuant to § 68-212-206(e), or whenever the commissioner otherwise begins to expend money for investigation, identification, containment or cleanup of a particular site under

this part, the commissioner may file a notice with the office of the register of deeds of the county in which the property lies.

- (b)
  - (1) Whenever the commissioner expends money to investigate, identify, contain, monitor, maintain or clean up a hazardous substance site pursuant to this part, the commissioner may file a statement of the funds expended in the office of the register of deeds for the county(ies) in which the property lies, which statement shall perfect the lien on the property arising from the notice filed under subsection (a).
  - (2) The lien shall not exceed the lesser of:
    - (A) The actual amount expended at the site from the hazardous waste remedial action fund; or
    - (B) The apportioned share of all costs expended (as determined pursuant to § 68-212-207) of the owner of the property, after giving full credit for all expenditures by property owner(s).
  - (3) The lien shall be satisfied and discharged upon payment of the amount of such apportioned share.
- (c) If the property owner is aggrieved by the amount of the lien filed under subsection (a), the property owner may cause another appraisal to be performed by an independent appraiser and may submit the matter to the chancery court of the county in which the property is located to determine the appropriate amount of the lien. A decision of that court may be appealed according to the Tennessee Rules of Appellate Procedure.
- (d) The lien provided in this section shall be entered in the records of the register of deeds of the county in which the property lies. Such statements shall constitute a lien upon such property as of the date notice is filed pursuant to subsection (a) and shall have priority from the date of such filing of such notice, but shall not affect, or have priority over, any valid lien, right, or interest in the property duly recorded, or duly perfected by filing, prior to the filing of such notice and shall not have priority over any real estate tax liens, whether attaching on the property before or after the filing of the notice. Such a lien shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership, and if the lien is not fully satisfied at the time of transfer, it shall remain a lien on the property until it is fully satisfied.
- (e) A form of notice substantially as follows is sufficient to comply with subsection (a):

**NOTICE OF LIEN UNDER HAZARDOUS WASTE MANAGEMENT ACT OF 1983**

Name of titleholder(s) \_\_\_\_\_

Property address \_\_\_\_\_

Description of property subject to possible lien sufficient to identify such property  
\_\_\_\_\_

Date, signature, and address of the commissioner or the commissioner's  
authorized designee \_\_\_\_\_

The register of deeds shall note the date and time of filing, and an appropriate registration number, and shall record the notice in the lien book in the office of the register.

- (f) The effective date of all prior liens claimed under this chapter shall be unaffected by the 1986 amendment to this section if a notice is filed in accordance with subsection (a) on or before December 31, 1986, which notice shall set forth, in addition to the information required by subsection (e), the claimed effective date of the lien if earlier than the date of the filing of the notice. After December 31, 1986, all claimed liens shall be effective as of the date the notice is filed pursuant to subsection (a).

**68-212-210. Funds for responsible waste disposal.**

- (a) The board shall promulgate rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to establish eligibility requirements for a local government to receive funds, if any, appropriated by the general assembly in the general appropriations act to encourage responsible waste disposal.
- (b) At a minimum, for a local government to be eligible to receive such funds, the commercial facility must be located within the jurisdiction of such local government, such facility must have a permit to operate pursuant to § 68-212-108, such facility must be constructed and operational and the following standards must be met:
- (1) The facility is multi-purpose with both land disposal capability and facilities for advanced technology, high-temperature thermal treatment;
  - (2) The facility has a minimum design capacity to operate for twenty (20) years;
  - (3) The facility is operated pursuant to part 1 of this chapter; and
  - (4) The local government with jurisdiction over the facility does not have any zoning requirement, subdivision regulation, ordinance, regulation or other provision of law which is more stringent than state law regarding the location and operation of the facility.
- (c) If the facility is located in the jurisdiction of more than one (1) local government, the money shall be apportioned between the eligible governments.

- (d) Twenty-five percent (25%) of the funds distributed to the local government shall be earmarked for conducting tests pursuant to § 68-212-208 and for monitoring, assessing, and abating health risks and hazards associated with the commercial facility.

**68-212-211. Local government fees -- State hazardous waste management fee.**

- (a) Any local government which has received the funds deposited in the responsible waste disposal incentive fund pursuant to § 68-212-210 may levy an additional fee on the disposal of hazardous wastes disposed of at the facility within its jurisdiction not to exceed the following:
  - (1) Five dollars (\$5.00) per ton on the land disposal of hazardous wastes; and
  - (2) Two dollars and fifty cents (\$2.50) per ton on the treatment of such wastes.
- (b) In addition to such local government fees, the board shall levy a state hazardous waste management fee on such commercial facility in a sum sufficient to replace the fees levied and appropriations made pursuant to § 68-212-203. Such fees shall be structured to encourage the treatment, reduction and reclamation of hazardous wastes. At such time as such state fees are levied, all fees levied pursuant to § 68-212-203 shall be rescinded and the obligation to pay such fees shall cease to exist.
- (c) All fees levied pursuant to this section shall be paid quarterly by the owner or operator of the commercial facility to the department of revenue. Such department shall remit the local government fee to the county in which such facility is located and shall deposit the state fee in the fund. The board shall adopt rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governing the collection of such fees and the records required to be maintained by such facility.

**68-212-212. Annual reports -- Public hearings -- Toll-free number -- Notice to register of deeds regarding sites, containment and cleanup.**

- (a) On October 1 of every year, the commissioner shall submit to the speakers of both houses of the general assembly and to the state library and archives a report documenting the expenditure of all funds expended from the hazardous waste remedial action fund during the preceding twelve (12) months.
- (b) The department shall conduct a public hearing in each grand division of the state annually to receive comments from the public regarding expenditures from the hazardous waste remedial action fund.
- (c) The department shall maintain a toll-free number which may be utilized by citizens living anywhere in the state to report to the commissioner any problems caused by hazardous substances.

- (d) The commissioner shall notify the register of deeds in each county in which property has been placed on the list of inactive hazardous substance sites. The register shall record a notice that the property has been so listed. If the commissioner later determines that no further investigation, containment or cleanup is indicated at a listed site, the commissioner shall file a statement of this determination in the office of the register of deeds of the county in which the property lies. Upon receipt of any such statement, the register shall record the same. If containment or cleanup of hazardous substances occurs on a listed site, the commissioner shall notify the register of deeds of such containment and cleanup and the register shall record the same.

**68-212-213. Violations -- Criminal and civil penalties.**

- (a) Any person who:

- (1) Fails, neglects, or refuses to comply with a land use restriction filed pursuant to § 68-212-225;
- (2) Fails to pay the fees authorized by this part;
- (3) Fails to file any reports, records or documents required pursuant to this part;
- (4) Fails, neglects, or refuses to comply with any provision of this part, a regulation promulgated under this part or an order issued pursuant to this part;
- (5) Fails to provide information requested by the commissioner in the administration of this part; or
- (6) Knowingly gives or causes to be given any false information in any reports, records, or documents required pursuant to this part;

commits a Class B misdemeanor. In addition, such person shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) and, if appropriate, the original fee plus interest. Each day such violation continues constitutes a separate offense.

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

- (1) The harm done to the public health or the environment;
- (2) The economic benefit gained by the violators;
- (3) The amount of effort put forth by the violator to obtain compliance; and
- (4) Any unusual or extraordinary enforcement costs incurred by the commissioner.

**68-212-214. Jurisdiction for civil proceedings.**

The jurisdiction for all civil proceedings under this part shall be in the chancery court of Davidson County.

**68-212-215. Enforcement.**

- (a) The commissioner shall exercise general supervision over the administration and enforcement of this part.
- (b) The commissioner is authorized in administering this part, to utilize enumerated powers in chapter 211 of this title and part 1 of this chapter, to investigate, identify, and provide for reasonable and safe containment and clean up, including monitoring and maintenance, of inactive hazardous substance sites.
- (c) If any provision of this part is not being carried out, or if effective measures are not being taken to comply with this part, the commissioner may issue an order for correction to the appropriate person, and this order shall be complied with within the time limit specified in the order. Such order shall be made by personal service or shall be sent by registered mail. Additionally, an order requiring the filing of land use restrictions, issued pursuant to § 68-212-225, may be constructively served on unidentified or unknown owners by publication of a notice of the order in a newspaper in general circulation in the county in which the property subject to the order is located
- (d) Any person against whom an order is issued may secure a review in accordance with § 68-212-113 and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. Any person failing, neglecting, or refusing to comply with any order of the commissioner or the board shall be subject to the civil and criminal penalties provided in § 68-212-213.
- (e) In addition to any other enumerated powers in chapter 211 of this title and part 1 of this chapter, the board is empowered to adopt and enforce rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this part, to hear appeals as provided in § 68-212-113 from orders or assessments issued by the commissioner pursuant to this part, and to issue orders for enforcement of this part.
- (f)
  - (1) Whenever any order or assessment under this section has become final, a notarized copy of the order or assessment may be filed in the office of the clerk of the chancery court of Davidson County.
  - (2) When filed in accordance with subdivision (f)(1), a final order or assessment shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited therein. Such judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of

the judgment and the effect thereof shall be the same as provided in title 26, chapter 6.

- (3) (A) A judgment under subdivision (f)(2) shall become final on the date of entry, if the final order or assessment resulting in the judgment is from the board.
  - (B) If the final order or assessment resulting in the judgment under subdivision (f)(2) is from the commissioner, within forty-five (45) days after entry of the judgment, any citizen shall have the right to intervene on the ground that the penalties or remedies provided are inadequate or are based on erroneous findings of facts. Upon receipt of a timely motion for intervention, the court shall determine whether it is duplicitous or frivolous, and shall notify the movant and the parties of its determination. If the motion is determined not to be duplicitous or frivolous, all parties shall be considered to have sought review of the final order or assessment, and the court shall proceed in accordance with § 4-5-322. If no timely motion for intervention is filed, or if any such motion is determined to be duplicitous or frivolous, the judgment shall become final forty-five (45) days after the date of entry.
- (4) A final judgment under this subsection (f) has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state.

**68-212-216. Right of entry by commissioner -- Penalties.**

- (a) The commissioner or the commissioner's designee has the right to enter any place where hazardous substances or substances which may be hazardous are, or may have been generated, stored, transported, treated, disposed of, or otherwise handled. The commissioner has the right to enter any other property which must be entered in order to reach the hazardous substance site.
- (b) Any entry by the commissioner for activities authorized in this section shall be construed as an exercise of police power and shall not be construed as an act of condemnation of property or of trespass.
- (c) Any person who refuses entry to the commissioner for activities authorized in this section shall be subject to a fine of up to one thousand dollars (\$1,000). In addition, such person shall be subject to a civil penalty of up to ten thousand dollars (\$10,000), as described in § 68-212-213.
- (d) Each refusal of entry or act preventing sample collection shall constitute a separate offense.

**68-212-217. Landfill permits -- Public hearings.**

The board, by rules and regulations promulgated pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall develop a procedure for public hearings and comment to be conducted in conjunction with the granting of permits pursuant to § 68-212-108 for a commercial landfill facility for the disposal of hazardous wastes. Information concerning facilities to be permitted shall be available to the public upon request if not designated as proprietary pursuant to § 68-212-109. The information and testimony presented by the public shall be considered by the commissioner and the board prior to granting a permit.

**68-212-218. Landfill permits -- Denial for past convictions.**

No permit for a commercial landfill facility for disposal of hazardous wastes shall be issued pursuant to § 68-212-108 if:

- (1) Any person who is the legal or beneficial owner of ten percent (10%) or more of the stock of the company or corporation applying for such permit has been convicted of any felony or has been convicted of a misdemeanor for the unlawful storage, treatment or disposal of hazardous wastes; or
- (2) Any employee of the company or corporation applying for such permit has been convicted of any felony or has been convicted of a misdemeanor for the unlawful storage, treatment or disposal of hazardous wastes.

**68-212-219, 68-212-220. [Reserved.]**

**68-212-221. Fees additional to other fees and taxes.**

The fees levied by this part shall be in addition to all other taxes or fees, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

**68-212-222. Permit exemption -- On site clean-up activities.**

No state or local permits shall be required for clean-up activities which are conducted entirely on site and in accordance with this part; provided, that such clean-up activities meet the standards that would apply if such permits were required.

**68-212-223. No permits for landfills violating § 11-13-111.**

No permit to construct or operate a landfill for the disposal of solid or hazardous waste shall be granted if the location of such landfill would violate § 11-13-111.

**68-212-224. Brownfield projects voluntary cleanup oversight and assistance program.**

- (a) (1) There is established a voluntary cleanup oversight and assistance program for the

voluntary cleanup of brownfield projects. The commissioner may enter into voluntary agreements or consent orders for the investigation and/or remediation of such sites or projects with any willing and able person; provided, however, that a voluntary agreement may not be employed with a person who generated, transported or released contamination that is to be addressed at the site.

- (2) A person entering into a voluntary agreement or consent order shall submit to the commissioner a summary description of all known existing environmental investigations, studies, reports or documents concerning the site's environmental condition. Such summary description shall include, but shall not be limited to:
  - (A) Date of the material;
  - (B) Title of the material;
  - (C) Person or entity that produced the material;
  - (D) Results or conclusions contained in the material;
  - (E) Any remedial action recommended including any monitoring and/or maintenance; and
  - (F) Other information which could reasonably be construed to be material to the commissioner's decision to enter into a voluntary agreement or consent order.
- (3) The voluntary agreements or consent orders shall outline the agreed upon investigation, remediation, monitoring, and/or maintenance, and shall be consistent with § 68-212-201. Such voluntary agreements or consent orders shall address public notice and public input. All activities shall be subject to any otherwise applicable and appropriate zoning, land use regulations and cleanup standards, including without limitation all provisions regarding public notice and opportunity for public input. All such voluntary agreements or consent orders may provide for the reimbursement of the department's oversight costs. These agreements shall not limit liability for contamination of a site occurring after the date of the voluntary agreement or consent order or for contamination not identified and addressed in the voluntary agreement or consent order.
- (4) No voluntary agreement or consent order shall be entered into concerning a site listed on the federal National Priorities List, or after a site has been proposed for such listing, without the concurrence of the United States environmental protection agency (EPA). Sites that the EPA has identified and advised the commissioner as eligible to be proposed for listing on the federal National Priorities List will be managed in a cooperative process with the EPA.

- (5) For inactive hazardous substance sites, the commissioner has the discretion and is authorized to establish an apportionment of liability consistent with § 68-212-207(b) in a voluntary agreement or consent order. Further, the commissioner may limit the liability of the participant in any voluntary agreement or consent order entered into pursuant to this section. Such a voluntary agreement or consent order may limit the participant's liability to the obligations set forth therein and exempt the participant from any further liability under any statute administered by the department, for investigation, remediation, monitoring and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. The commissioner may extend this liability protection to successors in interest or in title to the participant, contractors conducting response actions at the site, developers, future owners, tenants, and lenders, fiduciaries or insurers, conditioned upon performance of the voluntary agreement or consent order and compliance with any land use restrictions required thereby; provided, that such liability protection to other persons does not apply to liability that arose prior to the voluntary agreement or consent order. Nothing in this section shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by the voluntary agreements or consent orders.
- (6) A person who enters into a voluntary agreement or consent order with the commissioner that contains an apportionment or limitation of liability, pursuant to this section, shall not be liable to third parties for contribution regarding matters addressed in the voluntary agreement or consent order; provided, that the third party was given actual or constructive notice of the voluntary agreement or consent order, and the third party had an actual or constructive opportunity to comment upon the voluntary agreement or consent order. Constructive notice may be accomplished by, among other means, publishing a summary of the voluntary agreement or consent order in a newspaper of general circulation within the geographical area of the site or project at least thirty (30) days prior to the effective date of the agreement or order. For inactive hazardous substance sites, such voluntary agreements or consent orders shall, to the extent provided therein, constitute an approved administrative settlement pursuant to 42 U.S.C. § 9613(f).
- (7) Except in an action to enforce a voluntary agreement or consent order, such agreement or order shall not be admissible as evidence in any suit, hearing or other proceeding against a person who received liability protection pursuant to this section. Voluntary agreements and consent orders are not admissible as evidence of comparative fault in any third party tort suit, hearing or other proceeding.
- (b) There is levied a fee of five thousand dollars (\$5,000) for participation in this program. This fee shall be in addition to and not in lieu of any moneys expended from the remedial action fund and shall be in addition to any other fee assessed pursuant to this part. The commissioner may waive any part, or all, of this fee if the commissioner determines that such waiver serves the public welfare.

- (c) (1) The participation fees shall be used to establish a voluntary cleanup oversight and assistance fund. The purpose of this fund is to pay for state oversight of any cleanup efforts.

(2) Any unencumbered funds and any unexpended balance of this fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this part.

(3) Interest accruing on investments and deposits of the voluntary cleanup oversight and assistance fund shall be returned to this fund and remain a part of this fund.
- (d) (1) Moneys expended from the remedial action fund for investigation prior to a party's participation in this program shall be recovered and deposited to that fund.

(2) Once a consent order has been entered, the commissioner has the discretion and is authorized to expend moneys from the remedial action fund to pay that portion of the investigation, cleanup, monitoring, maintenance and oversight of an inactive hazardous substance site to the extent such expenditures are not allocated under the consent order to the potentially liable party conducting the investigation and cleanup of the inactive hazardous substance site pursuant to this program. The commissioner is authorized to seek recovery of such expenditures from the remedial action fund from other liable parties in the full amount of their respective allocated share of liability by any legal remedy through the exercise of the commissioner's powers and duties as established by this part; provided, that if the consent order establishes an allocation of liability for the potentially liable party participating in the voluntary program, the commissioner may not assess the participant for a share of liability greater than the allocation established in the consent order.
- (e) The criteria for selecting containment and cleanup actions, including monitoring and maintenance options to be followed under the voluntary cleanup and oversight assistance program, shall be those specified in § 68-212-206(d).
- (f) In the event a person does not fulfill all the requirements established in a voluntary agreement or consent order, the commissioner may seek to enforce the voluntary agreement or consent order through any legal remedy.
- (g) Upon completion of all terms and conditions of a voluntary agreement or consent order under this program, the commissioner shall issue a letter to the participant stating that the obligations under the voluntary agreement or consent order have been completed and, if appropriate, that no further action will be required of the participant. Upon reasonable request of the participant, the commissioner shall issue from time to time interim letters stating what specific obligations remain to achieve completion.
- (h) Any consent order, voluntary agreement, the creation or removal of deed restrictions, and any other final agency action is subject to review pursuant to the Uniform Administrative

Procedures Act, compiled in title 4, chapter 5. When public notice is required to be given pursuant to this section, at a minimum, notice shall be sent by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties.

**68-212-225. Notice of land use restrictions -- Voluntary land use restrictions for protection of streams and wetlands.**

- (a) Upon a determination by the commissioner that land use restrictions are the appropriate remedial action at any remediation, contamination, cleanup, closure or brownfield project, the commissioner shall either:
  - (1) Order the owner or owners of the site to file or permit the filing of, or
  - (2) With the consent of the owner or owners of the site, or upon an order issued pursuant to subdivision (a)(1) becoming final, file or cause to be filed, a notice of land use restrictions in the register of deeds office in the appropriate county. A copy of this notice shall be mailed to all local governments having jurisdiction over any part of the subject property.
- (b) Such notice shall be entitled "Notice of Land Use Restrictions," and shall:
  - (1) Include a legal description of the site that would be sufficient as a description of the property in an instrument of conveyance;
  - (2) Identify the location and dimensions of the areas of potential environmental concern with respect to surveyed, permanent benchmarks. Where a site encompasses more than one (1) parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded;
  - (3) Identify generally the type, location, and quantity of regulated hazardous substances and regulated substances known to exist on the site; and
  - (4) Identify specific restrictions on the current or future use of the site.
- (c) Land use restrictions may apply to activities on, over, or under the land, including, but not limited to, use of property, use of groundwater, building, filling, grading, excavating, and mining.
- (d) The register of deeds shall record the notice and index it in the grantor index under the names of the owners of the land.
- (e) After public notice and an opportunity for public input, a notice of land use restrictions filed pursuant to this section may be made less stringent or canceled by the commissioner if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The department shall notify all owners

of adjoining properties of any proposed changes to present land use restrictions. Such notice shall be sent by certified mail, return receipt requested. Notice of such changes shall be mailed to all local governments having jurisdiction over any part of the subject property. If the commissioner determines that the restrictive land use controls can be made less stringent or cancelled, then the commissioner shall send to the register of deeds of each county where the notice is recorded a statement that the hazards have changed or been eliminated. The commissioner's statement shall contain the names of the owners of the land as shown in the notice and reference the plat book and page where the notice is recorded. The register of deeds shall record the commissioner's statement in the deed books and index it on the grantor index in the names of the owners of the land as shown in the notice of land use restrictions and on the grantee index in the name "Commissioner of the Department of Environment and Conservation."

(f) Any land use restriction filed pursuant to this section may be enforced by any owner of the land. The commissioner, through issuance of an order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the restriction, may also enforce any such land use restriction. A land use restriction may also be enforced by any unit of local government having jurisdiction over any part of the subject property, by means of a civil action without the unit of local government having first exhausted any available administrative remedy. Any person eligible for liability protection under an agreement entered into pursuant to this part may also enforce a land use restriction. A land use restriction shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land use restriction under this section shall abide by the land use restriction.

(g) In addition to any other law concerning the establishment of conservation easements, upon approval by the commissioner, a property owner may voluntarily establish land use restrictions for the protection of streams and wetlands, or for other environmental conservation purposes by filing a notice of land use restriction pursuant to this section. The notice shall include the applicable portions of subsection (b), shall be filed as provided in subsection (d) and shall be enforceable as provided in subsection (f).

**68-212-226. Grants or loans from federal or matching funds -- Tax increment financing.**

(a) From any federal funds available to the department and any state funds used as a match to obtain those federal funds, the commissioner may, in the commissioner's discretion, provide grants and/or loans to municipalities, counties and/or other governmental instrumentalities to conduct screening, investigation, remediation, containment, cleanup and/or closure of inactive hazardous substance sites, solid waste disposal sites or brownfield projects under the authority of any statute administered by the department.

(b) A brownfield project shall be deemed to be within the term "project" as that term is defined in § 7-53-101. Any local government having jurisdiction over any part of a brownfield project is authorized to use tax increment financing for such project pursuant to § 13-20-205.

**68-212-227. Injunctions or restraining orders to enforce orders, rules or regulations.**

In addition to the penalties provided elsewhere in this part, the commissioner may cause the enforcement of any orders, rules or regulations issued by the commissioner or the board to carry out this part by instituting legal proceedings to enjoin the actual or threatened violations of this part, and the orders, rules or regulations of the commissioner or orders of the board in the chancery court of Davidson County or in the chancery court of the county in which all or a part of the actual or threatened violations has or is about to occur, in the name of the department. In those suits, the court may grant temporary or permanent injunctions or restraining orders. The proceedings shall not be tried by jury.

# **Title 68, Health, Safety, and Environmental Protection**

## **Chapter 215 Tennessee Petroleum Underground Storage Tank Act**

### **Part 1 General Provisions**

#### **68-215-101. Short title.**

This chapter shall be known and may be cited as the "Tennessee Petroleum Underground Storage Tank Act."

#### **68-215-102. Legislative intent.**

- (a) In order to protect the public health, safety and welfare, to prevent degradation of the environment, conserve natural resources and provide a coordinated statewide underground storage tank program, it is declared to be the public policy of the state of Tennessee to regulate underground storage tanks and to:
- (1) Provide safe storage for petroleum products;
  - (2) Provide a coordinated statewide program for petroleum products stored in underground storage tanks in cooperation with federal, state, and local agencies responsible for the prevention, control, or abatement of air, water, and land pollution such that adequate control is achieved without unnecessary duplication of regulatory programs;
  - (3) Develop long range plans for adequate petroleum underground storage tank systems to meet future demands;
  - (4) Provide a mechanism for the remediation of environmental pollution due to releases from petroleum underground storage tank systems; and
  - (5) Provide a comprehensive investigation and clean-up fund to address the problems caused by releases from petroleum underground storage tanks, including remediation of imminent and substantial threats to public health and/or the environment, and to provide a mechanism to assist the financial responsibility requirements for owners/operators of petroleum underground storage tanks.
- (b) It is the intent of this legislation to enable the state to obtain primacy for the petroleum underground storage tank program from the United States environmental protection agency (EPA).

- (c) It is the intent of the general assembly that this chapter shall not apply retroactively to releases or other events that occurred prior to July 1, 1988.

**68-215-103. Chapter definitions in addition to the definitions in § 68-215-201.**

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

- (1) "Board" means the underground storage tanks and solid waste disposal control board created pursuant to § 68-211-111;
- (2) "Commissioner" means the commissioner of environment and conservation, the commissioner's authorized representatives, or in the event of the commissioner's absence or a vacancy in the commissioner's office, the deputy commissioner;
- (3) "Department" means the department of environment and conservation;
- (4) "Flow through process tank" means a tank whose principal use is not for storage but is primarily used in the manufacture of a product or in a treatment process;
- (5) "Inactive petroleum site" means a site that is no longer in operation, is abandoned, or the responsible party has filed a bankruptcy petition;
- (6) "Local government agency" means a government agency as defined by § 67-3-103 other than agencies of state or federal governments;
- (7) "Notification form" means the petroleum underground storage tank notification form completed by the owner for the petroleum underground storage tanks at each facility and required by this chapter;
- (8) "Occurrence" means the discovery of environmental contamination at a specific time and date, due to the release of petroleum products from petroleum underground storage tanks;
- (9) "Operator" means any person in control of, or having responsibility for, the daily operation of the petroleum underground storage tank;
- (10) "Owner" means:
  - (A) For petroleum storage tanks in use or brought into use on or after November 8, 1984, any person who owns a petroleum underground storage tank used for the storage, use, or dispensing of petroleum products;
  - (B) For petroleum underground storage tanks used prior to November 8, 1984, but no longer in use after that date, the person who last owned the

petroleum underground storage tank used for storage, use, or dispensing of petroleum immediately before discontinuation of its use;

- (11) "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;
- (12) "Petroleum" means crude oil or any fraction of crude oil which is a liquid at standard temperature and pressure (sixty degrees Fahrenheit (60 degrees F) and fourteen and seven tenths pounds per square inch (14.7 p.s.i.) absolute);
- (13) "Petroleum site" means any site or area where a petroleum underground storage tank is located;
- (14) "Petroleum underground storage tank" means any one (1) or combination of tanks (including the underground lines connected thereto) which are used or have been used to contain an accumulation of petroleum substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. "Petroleum underground storage tank" does not include any tank exempted from this chapter pursuant to § 68-215-124;
- (15) "Petroleum underground storage tank fund" means the fund established by this chapter to provide for the cleanup of releases from petroleum underground storage tanks and assist with the financial responsibilities of owners/operators of petroleum underground storage tanks;
- (16) "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from a petroleum underground storage tank or its associated piping into groundwater, surface water, or subsurface soils;
- (17) (A) "Responsible party" means:
  - (i) The owner and/or operator of a petroleum site;
  - (ii) Any person who at the time of the release which caused the contamination was an owner and/or operator of a petroleum underground storage tank;
  - (iii) Any person whose intentional actions directly cause the release of petroleum at a petroleum site; or

(iv) Any person other than an employee, officer, director, principal, or shareholder of the owner or operator of the underground storage tank system or of the owner of the petroleum site, whose negligent actions directly cause the release of petroleum at a petroleum site; or

(B) A responsible party does not include a unit of state or local government which becomes an owner or operator of a petroleum site by acquiring ownership or control through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless such governmental entity has otherwise owned or operated a petroleum underground storage tank on the site or has caused or contributed to the release or threatened release from such a tank;

(18) "State" means the state of Tennessee; and

(19) "Tank" means a stationary device, designed to contain an accumulation of petroleum substances which is constructed primarily of non-earthen materials (e.g. wood, concrete, steel, fiberglass) which provide structural support.

**68-215-104. Unlawful actions.**

It is unlawful to:

- (1) Cause or permit the release of a petroleum substance from a petroleum underground storage tank into the environment;
- (2) Construct, alter or operate a petroleum underground storage tank in violation of this chapter or the rules or regulations established pursuant thereto;
- (3) Refuse or fail to pay to the department fees assessed pursuant to this chapter and in violation of the rules, regulations, or orders of the commissioner or board;
- (4) Receive, or to attempt to receive reimbursement from the petroleum underground storage tank fund in a fraudulent manner;
- (5) Refuse or fail to comply with any order of the commissioner or the board that has become final;
- (6) Install petroleum underground storage tanks that do not meet the minimum standards pursuant to this chapter; or
- (7) Submit to the department any document, in written or electronic format, known to be false or known to contain any materially false, fictitious or fraudulent statement or entry; knowingly make any materially false, fictitious, or fraudulent

statement or representation; or knowingly falsify, conceal, or cover up a material fact.

**68-215-105. Minimum requirements for tanks.**

All petroleum underground storage tanks shall at a minimum:

- (1) Prevent releases due to structural failure for the operational life of the tank;
- (2) Be cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or the threatened release of any petroleum substance; and
- (3) The material used in construction or lining of the tank shall have compatibility between the substance stored in the petroleum underground storage tank and the interior of the petroleum underground storage tank.

**68-215-106. Notification as to tanks in use and tanks taken out of operation -- Authorized actions of commissioner upon failure to pay fees or penalties or for violation of rules -- Penalty for removal of affixed notice or tag -- Unlawful use of tanks identified or not identified by notice or tag.**

- (a) (1) Within one (1) year after the enactment of this chapter, each owner of a petroleum underground storage tank in use on July 1, 1988, shall notify the commissioner of the existence of such tank, specifying the age, size, type, location, and uses of such tank. The commissioner shall accept as formal notification the United States environmental protection agency (EPA) underground storage tank notification form filed with the department by the owner of the petroleum underground storage tank before July 1, 1988.
- (2) For each petroleum underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall within one (1) year after July 1, 1988, notify the commissioner of the existence of such tanks, unless the owner knows such tanks were removed from the ground. The owner of petroleum underground storage tanks taken out of operation on or before January 1, 1974, shall not be required to notify the commissioner. The commissioner shall accept as formal notification the EPA underground storage tank notification form filed with the department by the owner of the petroleum underground storage tank before July 1, 1988.
- (3) Notice under subdivision (a)(2) shall specify to the extent known to the owner:
  - (A) The date the tank was taken out of operation;
  - (B) The age of the tank on the date taken out of operation;

- (C) The size, type and location of the tank; and
  - (D) The type and quantity of petroleum substances left stored in such tank on the date taken out of operation.
- (4) Any owner who brings into use petroleum underground storage tanks after the initial notification period specified under subdivision (a)(1) shall notify the commissioner at least fifteen (15) days in advance of the date the tank is installed for storage of petroleum substances, specifying the age, size, type, location, and uses of such tank.
  - (5) Subdivisions (a)(1)-(3) shall not apply to tanks for which notice was given pursuant to § 103(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, codified in 42 U.S.C. § 9603(c).
  - (6) Beginning thirty (30) days after the commissioner prescribes the form of notice pursuant to subdivision (b)(2) and for twelve (12) months thereafter, any person who deposits petroleum substances into a petroleum underground storage tank shall reasonably notify the owner or operator of such tank of the owner's notification requirements pursuant to this subsection (a).
  - (7) Beginning thirty (30) days after the board promulgates new tank performance standards pursuant to this chapter, any person who sells a tank intended to be used as a petroleum underground storage tank in Tennessee shall notify the purchaser of such tank of the owner's notification requirements pursuant to this subsection (a).
- (b)
    - (1) Within ninety (90) days after July 1, 1988, the commissioner shall designate the appropriate division within the department to receive the notification required by subdivision (a)(1), (a)(2) or (a)(3).
    - (2) Within ninety (90) days after July 1, 1988, the commissioner, in consultation with state officials designated pursuant to subdivision (b)(1), and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notification under subdivision (a)(1), (a)(2) or (a)(3).
    - (3) Any change in the status of the tanks at a petroleum underground storage tank facility must be reported within thirty (30) days of such change. This includes, but is not limited to, changes of ownership, upgrading or replacement of tanks and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller must submit the amended notification form and must also inform the buyer of the notification requirement.
- (c) For any petroleum underground storage tank for which any annual fees or penalties have not been paid when due or that is in violation of requirements of the rules as evidenced

by an order issued pursuant to this part that has become final, the commissioner may take one (1) or more of the following actions:

- (1) Affix a notice to a dispenser;
  - (2) Affix a tag to a fill port; or
  - (3) Give notice on the department web site.
- (d) Removal of the notice or tag affixed pursuant to subsection (c) shall be a Class C misdemeanor.
- (e) It is unlawful for any person to place, or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a tank that has either had a physical notice or tag placed on the dispenser or fill port or has had a notice placed on the department web site pursuant to subsection (c).
- (f) It is unlawful for any person to place, or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a petroleum underground storage tank when the owner of the tank is required to notify the commissioner under subsection (a) or (b) and the owner has not notified the commissioner of the existence or ownership of the tank. This subsection (f) applies even if no physical notice or tag is placed on the dispenser or fill port or no notice is placed on the department web site pursuant to subsection (c).

**68-215-107. Supervision, inspection, and enforcement responsibilities.**

- (a) The commissioner shall exercise general supervision over the placement and storage of petroleum substances in petroleum underground storage tanks, release prevention, release detection, release correction, closure, and, where applicable, post-closure care of petroleum underground storage tanks throughout the state. The supervision shall apply to all features of the installation of the petroleum underground storage tanks, the standards for permissible petroleum underground storage tanks, petroleum delivery requirements, release prevention requirements, release detection requirements, release correction requirements, facility financial responsibility requirements, facility closure requirements, and facility post-closure requirements which do or may affect the public health, safety or quality of the environment and which do or may affect the proper storage of petroleum substances.
- (b) The commissioner is authorized to issue an order to any responsible party requiring such party to investigate, identify, contain and clean up, including monitoring and maintenance, any petroleum substance sites which pose or may pose a danger to public health, safety, or the environment because of release or threatened release of petroleum substances. Any person failing, neglecting or refusing to comply with any final order after a hearing shall be subject to the penalties provided in this chapter.

- (c) In the event that any identified responsible party or parties are unable or unwilling to provide for the investigation, identification, or for the reasonable and safe containment and cleanup, including monitoring and maintenance, pursuant to an order issued under this section, or no such liable party can reasonably be identified by the commissioner, the commissioner may provide for such actions.
- (d) If, at any time, the commissioner, after investigation, finds that a petroleum site constitutes an imminent, substantial danger to the public health, safety or environment, the commissioner may undertake such actions as are necessary to abate the imminent and substantial danger.
- (e) For the purpose of developing or enforcing any rule or regulation authorized by this chapter, or enforcing any requirement of this chapter or order issued by the commissioner or board pursuant to this chapter, the commissioner or the commissioner's agent is authorized to:
  - (1) Enter at reasonable times any establishment or other place where a petroleum underground storage tank is located or where petroleum contamination is or may be present for the purpose of conducting investigations or remediating the contamination caused by a release from a petroleum underground storage tank;
  - (2) Inspect and obtain samples of any petroleum substance contained in such tank and allow for testing of samples by both the commissioner or the commissioner's agent and the owner/operator;
  - (3) Conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or groundwater;
  - (4) Require the owner/operator of a petroleum underground storage tank to prove the petroleum underground storage tank is not leaking, if there has been the release of petroleum substances in the area, including tightness testing of the petroleum underground storage tank, if deemed necessary;
  - (5) Issue subpoenas to compel attendance of witnesses or production of documents or data; and
  - (6) Bring suit in the name of the department for:
    - (A) Any violation of this chapter, rules established pursuant to this chapter, and orders of the commissioner or board seeking any remedy as provided in this chapter, such rule, or order; and
    - (B) Any other statutory or common law remedy available.
- (f) The board may promulgate and adopt such rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are required

elsewhere in this chapter or are otherwise necessary or desirable to implement this chapter. Such rules and regulations shall include, but not be limited to:

- (1) Requirements for maintaining a leak detection system, an inventory control system, together with tank testing, including a tank tightness testing certification program if deemed necessary, or a comparable system or method designated to identify releases in a manner consistent with the protection of human health and environment;
- (2) Requirements for maintaining records of petroleum delivery or of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
- (3) Requirements for reporting releases and corrective actions taken in response to a release from a petroleum underground storage tank;
- (4) Requirements for taking corrective action in response to a release from a petroleum underground storage tank;
- (5) Requirements for the closure of petroleum underground storage tanks to prevent future releases of petroleum substances into the environment;
- (6) Requirements that new petroleum underground storage tanks meet design standards promulgated by the board before such tanks may be installed;
- (7) Requirements that existing petroleum underground storage tanks either be retrofitted to meet new petroleum tank standards or replaced with new petroleum tanks over a scheduled time period;
- (8)
  - (A) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operation of a petroleum underground storage tank, the mechanism by which the fund may provide relief of third party damages incurred by the petroleum site owner or the owner and/or operator at a petroleum site, and the mechanism by which the fund may provide relief for the costs of corrective action at fund eligible sites exceeding the financial responsibility requirements of the petroleum site owner or the owner and/or operator at the petroleum site; and
  - (B) Requirements to authorize any class or category of petroleum underground storage tank owners and/or operators to petition for changes in the foregoing financial responsibility requirements pursuant to § 4-5-201. In ruling on any request, the board may not allow the financial responsibility requirements to be less stringent than the federal financial responsibility requirements for enforcement;

- (9) Requirements providing for the assessment and collection of fees as provided in this chapter;
  - (10) Provisions exempting certain classes of petroleum underground storage tanks from certain parts of the regulations; provided, that such exemptions do not make the regulations less stringent than federal law and regulation; and
  - (11) Requirements for two (2) certification programs, one (1) for installers of and service providers for tank systems and one (1) for owners or operators of tanks, including, but not limited to, the qualifications, the testing procedure, any continuing education requirements, sanctions for failing to comply with the programs, and fees adequate to support the programs.
- (g) (1) The commissioner or board shall approve the clean-up plan only if it assures that implementation of the plan will provide adequate protection of human health, safety, and the environment. In making this determination, the commissioner or board shall consider:
- (A) The physical and chemical characteristics of petroleum, including its toxicity, persistence, and potential for migration;
  - (B) The hydrogeologic characteristics of the petroleum site and the surrounding land;
  - (C) The proximity, quality, and current and future uses of groundwater;
  - (D) An exposure assessment; and
  - (E) The proximity, quality, and current and future uses of surface waters.
- (2) Upon approval of the clean-up plan, the owners and/or operators shall implement the plan and monitor, evaluate, and report the results of implementation, as required by the commissioner or board.

**68-215-108. Proprietary information.**

The board shall establish procedures to ensure that information supplied to the department as required by this chapter, and as defined as proprietary by regulation, is not revealed to any person, except as provided in this section. Proprietary information shall not include the name and address of the owner and/or operator of petroleum underground storage tanks. Proprietary information may be utilized by the commissioner, the board, the department, the United States environmental protection agency (EPA), or any authorized representative of the commissioner or board in connection with the responsibilities of the department or board pursuant to this chapter or as necessary to comply with federal law.

**68-215-109. Annual fees -- Failure to pay -- Petition for reduction of penalties -- Petition for refund of annual fee.**

- (a) The board shall levy and collect annual fees from the owners or operators of petroleum underground storage tanks containing petroleum substances. Subject to this section, the board is authorized to promulgate rules establishing the following:
- (1) Which petroleum underground storage tanks are subject to annual fees;
  - (2) The amount or amounts of such fees, the fee due date, and the basis on which such fees are assessed; and
  - (3) A system of incentives to provide for reduced annual tank fees, in order to encourage tank owners to use technologies or management practices that go beyond the minimum requirements related to release detection and prevention for tanks and piping. Such technologies or practices must be found by the board to be proven methods of significantly enhancing prevention of releases or reducing the detection time frame for releases.
- (b) (1) The annual fee shall be:
- (A) Two hundred fifty dollars (\$250) per tank per year for noncompartmentalized petroleum underground storage tanks;
  - (B) Two hundred fifty dollars (\$250) per tank compartment per year for compartmentalized petroleum underground storage tanks.
- (2) Pursuant to subsection (a), the board may promulgate rules raising these tank fees up to a maximum level of three hundred dollars (\$300) per tank per year for noncompartmentalized tanks and three hundred dollars (\$300) per tank compartment per year for compartmentalized tanks. In addition, the board is authorized to promulgate rules lowering or suspending these tank fees if the board determines that the condition of the fund warrants it.
- (c) The tank fees authorized in this section shall be paid by or on behalf of the petroleum underground storage tank owner or operator.
- (d) Upon failure or refusal of any person to pay a fee assessed under this part within a reasonable time allowed by the commissioner, the commissioner may proceed in the chancery court of Davidson County to obtain judgment and seek execution of such judgment.
- (e) If a lawfully levied fee or any part of that fee is not paid by its due date, there shall be assessed against the tank owner or operator a penalty of five percent (5%) of the amount due, which shall accrue on the first day of the delinquency and be added thereto.

Thereafter, on the last day of each month during which any part of any fee or any prior accrued penalty remains unpaid, an additional five percent (5%) of the then unpaid balance shall accrue and be added thereto; however, the total of the penalties and interest that accrue pursuant to this section shall not exceed three (3) times the amount of the original fee. Nothing in this section shall be construed as requiring the issuance of a commissioner's order for the payment of a fee or a late payment penalty.

- (f) The tank owner or operator may file with the commissioner a written petition requesting a reduction in the penalties assessed under this section, setting forth in the petition the grounds and reasons for such a request. At the commissioner's sole discretion, the commissioner may reduce the penalties that otherwise accrue pursuant to this section if, in the commissioner's opinion, the failure to pay fees was due to inadvertent error or excusable neglect; however, in no event shall the penalties be reduced to an amount less than ten percent (10%) per annum, plus statutory interest.
- (g) (1) The tank owner or operator may file with the commissioner a written petition requesting a refund of the annual fee paid for the current annual billing cycle or a waiver or reduction of the penalties associated with such annual fee that would otherwise accrue pursuant to this section, or both. At the commissioner's sole discretion, the commissioner may refund the annual fee or waive or reduce penalties associated with such fee, or both, if:
  - (A) The annual fee notice was issued to the tank owner or operator subsequent to approval of an application for permanent closure of underground storage tanks by the commissioner;
  - (B) In the commissioner's opinion the refund is in the best interest of the state; and
  - (C) The tank was:
    - (i) Empty for temporary closure as defined by the board from the beginning of the applicable annual billing cycle until permanent closure; and
    - (ii) Permanently closed during the applicable annual billing cycle.
- (2) This subsection (g) does not authorize the commissioner to refund annual fees other than the annual fee paid for the current annual billing cycle as provided in this subsection (g) or to waive or reduce penalties associated with any unpaid annual fee except as provided in subsection (f) and this subsection (g).

**68-215-110. Petroleum underground storage tank fund -- Environmental assurance fee.**

- (a) There is established within the general fund a special agency account to be known as the "petroleum underground storage tank fund" referred to in this chapter as the "fund."

- (b) All fees, civil penalties, and damages collected pursuant to this chapter shall be deposited in the fund. Damages, costs, restitution awards, and other recoveries collected or received by this state related to or arising from claims under this chapter, shall also be deposited into the fund to the extent that such recoveries represent the restoration of amounts disbursed from the fund, including any costs charged to the fund in pursuing such claims. Any deposits to the fund that would result in the unobligated balance of the fund exceeding fifty million dollars (\$50,000,000) shall be transferred to the highway fund.
- (c) No part of the fund shall revert to the general fund, but shall be carried forward until expended in accordance with this chapter.
- (d) Interest accruing on investments and deposits of the fund shall be returned to the fund and remain a part of the fund.
- (e) The board shall, when adjusting underground storage tank fees by rule as provided in § 68-215-109, consider all reasonably anticipated current and future liabilities and income of the petroleum underground storage tank fund, and, adjust underground storage tank fees, using an equitable and fiscally sound approach to sustain the long-term viability of the fund, to levels that are intended to result in sufficient funding of the current obligations, and actuarially determined obligations, after taking into account projected revenues that are reasonably expected to be available to fund these obligations as they become due, up to an unobligated maximum balance of fifty million dollars (\$50,000,000) in the fund. The board shall not consider lowering or suspending the fees to a level that will result in a failure to maintain a balance above an amount sufficient to cover the then projected annual amount of claims against the fund, as well as, anticipated administrative expenses for the year. After consideration of all relevant information, including information requested by the board from the department and any additional information provided by the department, the board shall choose the process, timing and assumptions to be used in the board's determinations of the obligations, anticipated income, and appropriate fund balance.
- (f) For each fiscal year there is appropriated a sum sufficient from the fund to provide for the administrative costs of the underground storage tank program.
- (g) Moneys in the account shall be invested by the state treasurer for the benefit of the fund pursuant to § 9-4-603. The fund shall be administered by the commissioner.
- (h) (1) To provide for the stability of the petroleum underground storage tank fund, there is levied, in addition to all other fees or taxes, an environmental assurance fee of four tenths of one cent (0.4cent(s)) per gallon on each gallon of petroleum products imported into this state and petroleum products manufactured in this state. For the purpose of this levy, petroleum products are those defined in § 67-3-103.

- (2) The environmental assurance fee is for the purpose of assuring sufficient funding of emergency, preventive, or corrective actions necessary when public health or safety is, or potentially may be, threatened from any release of regulated substances from an underground storage tank or the use and service thereof.
- (3) (A) Such environmental assurance fee shall be paid and remitted to the department of revenue on a monthly basis at the same time and in the same manner that the special tax on petroleum products is paid and remitted pursuant to § 67-3-203. Such tax collections are appropriated, and are to be allocated and expended on an annual basis only in the following order of priority:
- (i) First to the Tennessee local development authority, referred to in this section as the "authority," a sum sufficient to make debt service payments on the authority's bonds or notes, both currently outstanding and those reasonably anticipated to be issued during the fiscal year, issued pursuant to the Tennessee Local Development Authority Leaking Underground Storage Funding Act of 1997, compiled in title 4, chapter 31, part 9, the proceeds of which have been or will be distributed to the board pursuant to a funding agreement, plus any amounts necessary to maintain a fully funded debt reserve or other reserve intended to secure the principal and interest on the bonds or notes as may be required by resolution, or other agreement of the authority, and to pay reasonable administrative costs directly related thereto; and
  - (ii) Second, for a period of three (3) years starting July 1, 2009, the state shall credit an amount not to exceed three million dollars (\$3,000,000) to the general fund annually, if the annual general appropriations act so provides, and the remainder shall be credited to the petroleum underground storage tank fund. On July 1, 2012, and thereafter, all of the funds received from this fee shall be credited to the petroleum underground storage tank fund.
- (B) Prior to the start of each fiscal year, and to the extent necessary during the fiscal year, the following certifications shall be made and delivered to the authority:
- (i) The commissioner of finance and administration, the actual expenditures of the fund;
  - (ii) The commissioner of revenue, the actual collections made pursuant to subdivision (h)(1);
  - (iii) The commissioner of environment and conservation, the amount of anticipated expenditures and claims against the fund, excluding

payments in subdivision (h)(3)(A)(i), and the amount of anticipated tank fees collected pursuant to § 68-215-109; and

- (iv) The authority, the amount reasonably anticipated to be necessary to make such payments as provided in subdivision (h)(3)(A)(i).

**68-215-111. Use of fund.**

- (a) The fund shall be available to the board and the commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance, of petroleum sites and locations from which underground storage tank systems have been removed within the state as provided in this chapter.
- (b) The fund may also be used by the commissioner as a source of federal matching funds for the state in the petroleum underground storage tank program.
- (c) The commissioner may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment and cleanup, including monitoring and maintenance prescribed above, including:
  - (1) Hiring consultants and personnel;
  - (2) Purchase, lease or rental of necessary equipment; and
  - (3) Other necessary expenses.
- (d) The fund may be used for the administrative costs of the underground storage tank program and be included in the department's annual budget request to the general assembly.
- (e) The fund may be used to provide a mechanism to meet the financial responsibility requirements for owners or operators, or both, of petroleum underground storage tanks for cleanup of contamination and third-party claims due to bodily injury or property damage, or both, caused by releases from petroleum underground storage tanks.
- (f)
  - (1) The fund may be used to provide for cleanup of contamination in accordance with conditions for eligibility and coverage of releases established in this part and in rules of the board.
  - (2) Petroleum underground storage tanks for which notification has been received by the commissioner are eligible for reimbursement from the fund for the costs of cleanup of contamination caused by releases from the tanks; however, before costs related to a particular release may be reimbursed, all of the applicable requirements of this part and the rules must be met.

- (3) The board is authorized to promulgate rules that establish the following:
- (A) The amount of the deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site at the time of corrective action before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund. Notwithstanding this authority, in no event shall the board set the amount of this required deductible at a level greater than thirty thousand dollars (\$30,000) per occurrence; and
  - (B) A system of incentives to provide for reduced required deductible amounts in order to encourage tank owners to use technologies or management practices that go beyond the minimum requirements related to release detection and prevention for tanks and piping. In order to qualify for the incentives, the technologies or management practices must be found by the board to be proven methods of significantly enhancing prevention of releases or reducing the detection timeframe for releases.
- (4) The amount of the deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site, before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund for an occurrence reported to the department on or after July 1, 2005, shall be twenty thousand dollars (\$20,000) per occurrence; provided, however, that, pursuant to subdivision (f)(2)(A), the board may promulgate rules raising the amount of the deductible to a maximum of thirty thousand dollars (\$30,000) per occurrence. In addition, the board is authorized to set the required deductible at lower amounts, if the board determines that the condition of the fund warrants setting it at lower amounts.
- (5) (A) The fund shall be responsible for up to a maximum of one million dollars (\$1,000,000) of cleanup costs. The sum of the deductible and the maximum reimbursement shall not exceed one million dollars (\$1,000,000). The fund shall be responsible for cleanup of contamination due to releases from petroleum underground storage tanks on a per site per occurrence basis.
- (B) Notwithstanding subdivision (f)(4)(A), the fund shall be responsible for up to a maximum of two million dollars (\$2,000,000) of cleanup costs for sites still undergoing corrective action on July 1, 2015, and releases that occur on or after July 1, 2015. The sum of the deductible and the maximum reimbursement shall not exceed two million dollars (\$2,000,000). The fund shall be responsible for cleanup of contamination due to releases from petroleum underground storage tanks on a per-site, per-occurrence basis.
- (6) Unless it has been determined by the commissioner that the expenditure of fund dollars for removal, replacement, or repair of property improvements, including,

but not limited to, petroleum dispensing equipment, canopies, signage, buildings and out buildings would result in a reduction of the total cost of cleanup activities at a petroleum site from what would be required otherwise, neither the fund nor the deductible for cleanup shall be used for the repair, replacement, or maintenance of petroleum underground storage tanks or property improvement on which the petroleum underground storage tanks are located, including, but not limited to:

- (A) Underground storage tank repair;
  - (B) Underground storage tank replacement;
  - (C) Repair or maintenance of associated lines; and
  - (D) Replacement of asphalt or concrete.
- (7) (A) If there is evidence of a suspected or a confirmed release on or after July 1, 2004, in order for the tank owner, tank operator or petroleum site owner to receive reimbursement from the fund, an application for fund eligibility shall be filed:
- (i) Within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with the rules promulgated pursuant to this part; or
  - (ii) Within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release stated in the rules promulgated pursuant to this part.
- (B) The tank owner or tank operator shall send notification to the petroleum site owner by certified mail, return receipt requested, within seven (7) days of confirmation of a release. Failure to comply with the applicable deadline of subdivision (f)(7)(A)(i) or (f)(7)(A)(ii) shall make the release ineligible for reimbursement from the fund.
- (8) On or after July 1, 2004, all applications for payment of costs of cleanup shall be received by the division within one (1) year of the performance of the task or tasks covered by that application in order to be eligible for payment from the fund.
- (g) (1) Petroleum underground storage tanks for which notification has been received by the commissioner are eligible for reimbursement from the fund for third-party claims involving bodily injury or property damage caused by releases from

petroleum underground storage tanks; however, before payment for the claims related to a particular release may be paid, all of the applicable requirements of this part and the rules promulgated by the board must be met.

- (2) The board is authorized to promulgate rules that establish the amount of the deductible for third-party claims for bodily injury or property damage that must be incurred by either the tank owner or operator or the owner of the petroleum site subject to the claim, before the amount of the claim in excess of the deductible may be paid by the fund. Notwithstanding this authority, in no event shall the board set the amount of this required deductible at a level greater than thirty thousand dollars (\$30,000) per occurrence.
- (3) The amount of the deductible for the third-party claims for the tank owner or operator or the owner of any petroleum site for an occurrence reported to the department on or after July 1, 2005, shall be twenty thousand dollars (\$20,000); provided, however, that, pursuant to subdivision (g)(1), the board may promulgate rules setting the amounts of financial responsibility at greater amounts, up to a maximum of thirty thousand dollars (\$30,000) per occurrence. In addition, the board is authorized to set the required deductible at lower amounts, if the board determines that the condition of the fund warrants setting it at lower amounts.
- (4) The fund shall be responsible for court awards involving third-party claims up to a maximum of one million dollars (\$1,000,000). The sum of the deductible and the maximum reimbursement shall not exceed one million dollars (\$1,000,000). The fund shall be responsible for third-party claims involving bodily injury or property damage, or both, caused by releases from petroleum underground storage tanks on a per site per occurrence basis. All claims against the fund for third-party damages must have been awarded in a court of suitable jurisdiction.
- (h) All claims against the fund are clearly obligations only of the fund and not of the state, and any amounts required to be paid under this part are subject to the availability of sufficient moneys in the fund. The full faith and credit of the state shall not in any way be pledged or considered to be available to guarantee payment from such fund.
- (i) Notwithstanding any provision of this part, tanks that are owned by the state of Tennessee are not eligible for reimbursement for either cleanup costs or third party claims.

**68-215-112. [Repealed.]**

**68-215-113. [Repealed.]**

**68-215-114. Order for correction -- Liability.**

- (a) When the commissioner finds upon investigation that any provisions of this chapter are not being carried out, and that effective measures are not being taken to comply with this

chapter, the commissioner may issue an order for correction to the responsible party, and this order shall be complied with within the time limit specified in the order. The commissioner may issue an order to a responsible party to close the UST system under its ownership or control or use the petroleum underground storage tank fund to permanently close the UST system and seek cost recovery if the commissioner determines:

- (1) That the tank system has not been brought into compliance within six (6) months of being prohibited from receiving petroleum pursuant to § 68-215-106(c); or
  - (2) That all fees, penalties, and interest have not been paid on a tank at the time tank fees for the following year are payable.
- (b) Such order shall be made by personal service or shall be sent by certified mail. Investigations made in accordance with this section may be made on the initiative of the commissioner, including any violation of this chapter or regulations promulgated pursuant to this chapter. Prior to the issuance of any order or the execution of any other enforcement action, the commissioner may request the presence of an alleged violator of this chapter to a meeting to show cause why enforcement action ought not be taken by the department. Any person may request a meeting with the department to discuss matters pertaining to petroleum underground storage tanks.
- (c) Responsible parties shall be liable to the state for costs of investigation, identification, containment and cleanup, including monitoring and maintenance, as provided in this chapter. Owners and/or operators of petroleum underground storage tanks with respect to releases eligible for fund reimbursement shall be liable for all costs not covered by the fund. Petroleum site owners with respect to releases eligible for fund reimbursement shall be secondarily liable for all costs not covered by the fund. All other owners and/or operators of petroleum underground storage tanks and petroleum site owners shall be liable for all costs, as provided in this chapter. Notwithstanding the foregoing, nothing in this section shall prevent the reimbursement of expenditures for investigation, identification, containment and cleanup, including monitoring and maintenance incurred by tank owners and operators or petroleum site owners pursuant to § 68-215-111.

**68-215-115. Recovery of costs by state -- Apportionment of liability.**

- (a) Whenever the commissioner expends money for the investigation, identification, containment or cleanup of a particular site under this part, the commissioner may issue an order to any responsible party, other than an owner or operator of an underground storage tank system or a petroleum site owner if the release at such system or site is covered by the fund, to recover the amount expended or to assess that party's apportioned share of all costs expended or to be expended. Notwithstanding the commissioner's rights under this section, nothing herein shall prevent the reimbursement of expenditures for investigation, identification, containment and cleanup, including monitoring and maintenance incurred by tank owners and operators or petroleum site owners pursuant to § 68-215-111. Service of such an order shall be made by either personally serving the responsible party or by certified mail.

- (b) (1) In assessing a responsible party's apportioned share, the commissioner may consider equitable factors, including, but not limited to, the following:
- (A) Any monetary or other benefit accruing to each responsible party from the release of petroleum at the site;
  - (B) The culpability of each responsible party in regard to the release of petroleum at the site;
  - (C) Efforts of each responsible party to remediate the land, water, or other aspects of the site and any other affected property and to cooperate with the department in its work to investigate, contain or clean up the release of petroleum at the site; and
  - (D) Any expenditures required by this part made by a responsible party shall be credited toward that party's share of the cost.
- (2) Any person against whom an assessment is issued may secure a review of the propriety or amount of the assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objection and asking for a hearing before the board. Any such assessment shall become final and not subject to review unless the person named therein files the petition within thirty (30) days after the assessment is received. When the petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 68-215-119(b).
- (3) In no event shall the total monies recovered from the responsible party or parties exceed the total expenditure from the fund for such site, except that the commissioner may assess civil penalties as provided in § 68-215-121. No tank owners and operators or petroleum site owners that are eligible to be reimbursed expenses pursuant to § 68-215-111 shall be liable to any other responsible party for contribution or cost recovery actions, related to any amounts recovered by the commissioner pursuant to this section under any law, including any common law claim, or for other similar third-party claims.
- (4) The fund shall pay any portion of the total expenditure in excess of the aggregate amount of costs or expenditures apportioned pursuant to this section. All monies recovered from the responsible parties pursuant to this section shall be deposited in the fund.

**68-215-116. Failure to take proper action.**

Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the fund as a result of such failure to take proper action. The commissioner may recover this penalty in an action commenced under § 68-215-115 or in a

separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter. Any penalty awarded pursuant to this section shall be deposited into the fund.

**68-215-117. Immunity from liability -- Exceptions.**

No person shall be liable under this chapter for damages as a result of actions taken or omitted in the course of rendering care, assistance or advice at the direction of an on-scene coordinator appointed by the commissioner, with respect to an incident creating a danger to the public health or welfare or the environment as a result of any release of petroleum substances or the threat thereof. This section shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person or for reckless, willful, or wanton misconduct.

**68-215-118. Compliance by governmental entities.**

Each department, agency or instrumentality of the executive, legislative, and judicial branches of the federal government and the state government shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity, including liability under §§ 68-215-114 -- 68-215-117.

**68-215-119. Review of orders.**

- (a) Any person against whom an order is issued may secure a review of such order 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. Any such order shall become final and not subject to review unless the person or persons therein file such petition for hearing before the board no later than thirty (30) days after the date such order is served.
- (b) Hearings before the board shall be conducted as contested cases 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 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; provided, however, that in other matters before the board, it may be considered but shall not be binding on the board.

- (c) An appeal may be taken from any final order or other final determination of the board by any party, including the department, who is or may be adversely affected thereby to the chancery court of Davidson County. The chancery court of Davidson County shall have exclusive original jurisdiction of all review proceedings instituted under the authority and provisions of this chapter; provided, that the judicial review of any final decision of the board shall be made pursuant to the procedures established and set forth in the Uniform Administrative Procedures Act.

**68-215-120. Criminal penalties.**

- (a) Any person violating, failing to, neglecting to, or refusing to comply with any of § 68 215-104, commits a Class C misdemeanor. Each day upon which such violation occurs constitutes a separate offense.
- (b) Any person who knowingly tampers with or disables a release detection or prevention device associated with an underground storage tank, or who knowingly causes or allows a release of petroleum into the environment in violation of this chapter, rules, regulations or orders of the commissioner or board commits a Class E felony; provided, however, that, if such release results in an expenditure for cleanup by any other person or from the fund, the offense shall be graded for such expenditure in the same manner as theft under § 39-14-105(a)(2)-(5).

**68-215-121. Civil penalty -- Assessment.**

- (a) Any person who violates or fails to comply with any provision of this chapter, any order of the commissioner or board, any rule, regulation, or standard pursuant to this chapter shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000) per day for each day of violation. This civil penalty may be assessed by the commissioner, the board or the court. Each day such violation continues constitutes a separate punishable offense, and such person is also liable for any damages to the state resulting therefrom. In deciding whether to assess a civil penalty and determining the amount of such

assessment, the commissioner, board, or court may consider all of the circumstances surrounding the violation, including the past compliance history of the violator, the degree of risk posed to the environment by the violation, as well as the factors enumerated in subsection (c).

**(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. Such person shall receive notice of such assessment by certified mail, return receipt requested;
- (2)** Any person against whom an assessment has been issued may petition the board for a review of the assessment;
- (3)** The manner of review for an assessment shall be the same as that for an order as set out in § 68-215-119;
- (4)** 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;
- (5)** Whenever any assessment has become final because of a person's failure to appeal either the commissioner's assessment or the board's order, the commissioner may apply to the appropriate court for a judgment and seek execution on such judgment in a summary proceeding. The court, in such proceedings, shall treat the failure to appeal such assessment as confession of judgment in the amount of the assessment; and
- (6)** The commissioner 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 violation or failure to comply occurred.

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

- (1)** The harm done to the public health and/or the environment;
- (2)** The economic benefit gained by the violator through noncompliance;
- (3)** The amount of effort put forth by the violator to obtain compliance; and
- (4)** Any unusual or extraordinary enforcement costs incurred by the commissioner, including compensation for loss or destruction of wildlife, fish, and any aquatic life resulting from the violation.

**(d)** Damages to the state may include any reasonable expenses incurred in investigating and

enforcing violations of this chapter and in restoring the air, water, land, and other property, including the replacement of animal, plant, and aquatic life destroyed due to the violation.

- (e) Any person qualified under the Tennessee Rules of Civil Procedure may intervene in any court action brought by the commissioner or board pursuant to this chapter.

#### **68-215-122. Injunctions.**

In addition to the penalties provided elsewhere in this chapter, the commissioner may cause the enforcement of any orders, rules, or regulations issued by the commissioner or the board to carry out this chapter by instituting legal proceedings to enjoin the actual or threatened violation of this chapter, and the order, and regulations of the commissioner or orders of the board in the chancery court of Davidson County or in the county where all or part of the violation has or is about to occur, in the name of the department, by a staff attorney and under the supervision of the attorney general and reporter. In such suits, the court may grant temporary or permanent injunctions or restraining orders. Such proceedings will not be tried by jury.

#### **68-215-123. Complaints -- Hearings -- Appeals.**

- (a)
  - (1) Any person may file with the commissioner or board a signed sworn complaint against any person allegedly violating any provisions of this chapter. Unless the commissioner or board determines that such complaint is duplicitous or frivolous, the commissioner or board shall immediately serve a copy of it upon the person or persons named therein, promptly investigate the allegations contained therein and shall notify the alleged violator what action, if any, the commissioner or board will take. In all cases, the commissioner or board shall notify the complainant of the commissioner's or board's action or determination within ninety (90) days from the date of the commissioner's or board's receipt of the written complaint.
  - (2) If either the complainant or the alleged violator believes the commissioner's or board's action or determination is or will be inadequate or too severe, such complainant or alleged violator may appeal to the board for a hearing by filing a petition for review. Such appeal must be made within thirty (30) days after receipt of the notification sent by the commissioner or board. When such a petition is timely filed, the procedure for conducting the contested case shall be in accordance with § 68-215-119(b).
  - (3) If the commissioner fails to take the action stated in the commissioner's 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 the complainant's complaint.

- (b) The board, department, its officials and employees acting in their official capacity shall not be considered "persons" pursuant to this section.

**68-215-124. Exemptions.**

Exempted from this chapter are:

- (1) Septic tanks;
- (2) Farm or residential tanks of one thousand one hundred gallons (1,100 gal.) or less used for storing motor fuel for noncommercial purposes;
- (3) Tanks used for storing heating oil for consumption on the premises where stored;
- (4) Pipeline facilities (including gathering lines) regulated under:
  - (A) The Natural Gas Pipeline Safety Act of 1968, compiled in 49 U.S.C. Appx. § 60101 et seq.;
  - (B) The Hazardous Liquid Pipeline Safety Act of 1979, compiled in 49 U.S.C. Appx. § 60101 et seq.; or
  - (C) State laws comparable to the law referred to in subdivision (4)(A) or (4)(B), if it is an intrastate pipeline;
- (5) Surface impoundments, pits, ponds, or lagoons;
- (6) Storm water or waste water collection systems;
- (7) Flow-through process tanks;
- (8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;
- (9) Petroleum storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor; and
- (10) Pipes or connections connected to exempted tanks.

**68-215-125. Fund not deemed to be insurance.**

Notwithstanding any other law to the contrary, the petroleum underground storage tank fund shall not be considered an insurance company or insurer under the laws of this state and shall not

be a member of or be entitled to claim against the Tennessee insurance guaranty association created under title 56, chapter 12.

**68-215-126. Preemption of local regulation -- Exception.**

The Tennessee Petroleum Underground Storage Tank Act and the regulations promulgated pursuant to this chapter shall take precedence over all existing county, city, and/or municipal laws and/or regulations concerning petroleum underground storage tanks, except in situations where local laws/regulations are both more stringent and in effect on July 1, 1988.

**68-215-127. Exclusivity of provisions.**

- (a) Notwithstanding any provision of law to the contrary, all releases of petroleum or petroleum products from petroleum underground storage tanks shall be solely and exclusively regulated pursuant to this chapter and rules and regulations promulgated to implement this chapter.
- (b) Notwithstanding any provision of law to the contrary, all releases of petroleum or petroleum products that by request or directive of the department require a clean-up response under state law shall be solely and exclusively subject to the soil and groundwater classification and clean-up criteria promulgated hereunder. For purposes of the preceding sentence, "soil and groundwater classification and clean-up criteria" refers to the procedures, methods and levels developed to determine appropriate clean-up levels for soil and groundwater, including, without limitation, the classification of soil and groundwater by use, quality or other category, the manner of establishing a site-specific cleanup standard and promulgated clean-up levels. "Soil and groundwater classification and clean-up criteria," however, does not include the procedures and methods of conducting an investigation, such as determining the extent of contamination, or a cleanup, such as the selection, design or implementation of a remedy. The soil and groundwater classification and clean-up criteria shall be applied by all the divisions of the department pursuant to any applicable law.

**68-215-128. [Obsolete.]**

**68-215-129. Cleanup contracts -- Requirements.**

- (a) Any person who contracts to provide investigation, identification, containment, cleanup, monitoring or maintenance of a petroleum site pursuant to this chapter shall be subject to the following requirements:
  - (1) All contracts for such services shall be in writing and shall be signed by the owner, operator or other party obligated to pay for such services;
  - (2) All such contracts shall clearly indicate which charges are required by the department to remediate the petroleum site to acceptable state standards and

which charges are associated with work performed for tasks other than the remediation of the petroleum site to acceptable state standards; and

- (3) All such contracts shall include an express agreement that is clearly denoted by bold style type or other clearly distinguishable print and that requires the obligated party to initial or execute by a second signature, which agreement shall denote the obligated party's authorization or agreement to pay for all costs for work other than remediation of the petroleum site to acceptable state standards.
- (b) Any person who fails to comply with this section shall not be entitled to receive any reimbursement from the fund until compliance with this section is demonstrated to the satisfaction of the department.
- (c) This section shall only apply to contracts or agreements entered into, renewed or extended after June 30, 1997.

**68-215-130. [Repealed.]**



Tab 7



## Highlights of General Statutes Applicable to All Boards

### **I. Public Records § 10-7-503**

All state, county, and municipal governmental records are open, unless there is an exception in the law. The public records statute is different from the federal Freedom of Information Act (FOIA). Records are open for personal inspection by any citizen of Tennessee. Records do not include the device used to create or store the public record.

### **II. Sunshine Law § 8-44-101, et seq.**

All meetings of multi-member bodies are open and notice must be given. Minutes must be kept. Meetings are prohibited without notice, including those of a subset of the board. This statute also pertains to deliberations and voting.

### **III. Sunset Law § 4-29-201, et seq.**

All entities of state government terminate, unless extended by the General Assembly. The Comptroller does a performance audit of larger entities in year prior to sunset. Legislation is required for setting the term of extension for a particular board or group extension.

### **IV. Contested Cases § 4-5-301, et seq.**

- Due process is background
- Determines rights of a single person in regard to a permit/license or violation
- Appeals
- Roles of Board, Staff, Attorneys, ALJs at hearings
- Representation by Counsel
- Procedure and conduct at the Hearing
- Declaratory Order
- Procedural requirements before and after hearing

### **V. Rule Making § 4-5-201, et seq.**

The statute lays out the rules' place in the legal system, and the steps of the rulemaking process.

## Excerpts of General Statutes Applicable to All Boards

### **I. Public Records § 10-7-503**

(a)(1)(A)(i) As used in this part and title 8, chapter 4, part 6, “public record or records” or “state record or records” means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

(a)(1)(A)(ii) “Public record or records” or “state record or records” does not include the device or equipment, including, but not limited to, a cell phone, computer, or other electronic or mechanical device or equipment, that may have been used to create or store a public record or state record.

(a)(2)(A) All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

(a)(2)(B) The custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure. In the event it is not practicable for the record to be promptly available for inspection, the custodian shall, within seven (7) business days:

(a)(2)(B)(i) Make the information available to the requestor;

(a)(2)(B)(ii) Deny the request in writing or by completing a records request response form developed by the office of open records counsel. The response shall include the basis for the denial; or

(a)(2)(B)(iii) Furnish the requestor a completed records request response form developed by the office of open records counsel stating the time reasonably necessary to produce the record or information.

### **II. Sunshine Law § 8-44-102**

(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:

(b)(1)(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 community action agency which administers community action programs under

the provisions of 42 U.S.C. § 2790. 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;

(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.

### **III. Sunshine Law § 8-44-103**

(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.

### **IV. Sunshine Law § 8-44-105**

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.

### **V. Sunshine Law § 8-44-108**

(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.

(b)(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.

(b)(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) shall not apply to the board of regents, to the board of trustees of the University of Tennessee or to the Tennessee higher education commission.

(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.

(c)(2) Notices required by the Open Meetings Law, or any other notice required by law, shall state that the meeting will be conducted permitting participation by electronic or other means of communication.

(c)(3) 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.

(c)(4) 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.

(c)(5) All votes taken during a meeting held pursuant to the terms of this section shall be by roll call vote.

(c)(6) 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.

## **VI. Uniform Administrative Procedures Act**

### **§ 4-5-202**

(a)(1) and (2) An agency shall precede all its rulemaking with notice and a public hearing unless the rule is adopted as an emergency rule; or the proposed rule is posted to the administrative register web site within the secretary of state's web site within seven (7) days of receipt, together with a statement that the agency will adopt the proposed rule without a public hearing unless within ninety (90) days after filing of the proposed rule with the secretary of state, a petition for a public hearing on the proposed rule is filed by ten (10) persons who will be affected by the rule, an association of ten (10) or more members, a municipality or by a majority vote of any standing

committee of the general assembly. If an agency receives such a petition, it shall not proceed with the proposed rulemaking until it has given notice and held a hearing as provided in this section. The agency shall forward the petition to the secretary of state. The secretary of state shall not be required to compile all filings of the preceding month into one (1) document.

(b) Subdivision (a)(2) does not apply if another statute specifically requires the agency to hold a hearing prior to adoption of the rule under consideration.

### **§ 4-5-203**

(a)(1) and (2) Whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site. Such notice of a hearing shall remain on the web site until the date of such hearing; and take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rulemaking.

(b) Except as otherwise permitted by § 4-5-204(e), notice through publication on the administrative register web site shall be given at least forty-five (45) days prior to the date set for the hearing and shall be deemed to have been given seven (7) days from the date notice was transmitted to the secretary of state for such publication.

### **§ 4-5-211**

No rule shall be filed in the office of the secretary of state until such rule has been filed with the office of the attorney general and reporter. The office of the attorney general and reporter shall review the legality and constitutionality of every rule filed pursuant to this section and shall approve or disapprove of rules based upon the attorney general's determination of the legality of such rules. The attorney general and reporter shall not disapprove an emergency rule filed pursuant to § 4-5-208 solely on the basis of failure to meet the statutory criteria for adoption of the rule contained in this chapter, unless the attorney general and reporter determines and states in writing that the attorney general and reporter could not defend the legality of the rule on the basis of failure to meet the statutory criteria for adoption of the rule contained in this chapter, in any action contesting the legal validity of the rule.

### **§ 4-5-301**

(a)(1) and (2) In the hearing of any contested case, the proceedings or any part thereof shall be conducted in the presence of the requisite number of members of the agency as prescribed by law and in the presence of an administrative judge or hearing officer; or by an administrative judge or hearing officer sitting alone.

(c) The agency shall determine whether a contested case shall be conducted by an administrative judge or hearing officer sitting alone or in the presence of members of the agency; provided, that administrative judges or hearing officers employed in the office of the secretary of state shall not be required to conduct a contested case sitting alone in the absence of agreement between the agency and the secretary of state.

Tab 8



Revised Motion : 7-14-14

Whereas, the commissioner is charged with many duties and responsibilities including the exercise of general supervision over solid and hazardous waste processing and disposal facilities (T.C.A. 68-211-101 et seq. and T.C.A. 68-212-101 et seq.); the remediation of inactive hazardous substances sites (T.C.A. 68-212-201); and the placement and storage of petroleum substances in petroleum underground storage tanks (T.C.A. 68-215-101 et seq.) (“Acts”);

Whereas, the board is charged with many duties and responsibilities including the promulgation and adoption of rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter, 5, as are required or are otherwise necessary or desirable to implement the above referenced Acts; and

Whereas, it is necessary for the Board to be current and knowledgeable of the details of how TDEC is implementing the programs established by the referenced Acts, including without limitation how rules currently promulgated by the Board are being interpreted and implemented by TDEC, in order to determine whether additional or modified rules are deemed necessary or desirable by the Board; now, therefore,

In addition to the periodic reports by TDEC to the Board on these programs, the Board has requested and the Department has agreed to: (1) fully advise the Board prior to implementation of any proposed new guidance or policy, or any proposed revisions to an existing guidance or policy document, that materially affects the regulated community and/or interprets the rules of the Board; (2) provide such information on the proposed guidance, policy, or revision, as the Board shall reasonably request, including opportunities the Department has provided to the various stakeholders for input and feedback; and (3) address and discuss any issues raised by the Board concerning the proposed guidance, policy or revision. The Board commits to provide the Department meaningful input on each such proposed guidance, policy or revision and to work together with the Department to ensure that such guidance, policy, or revision is consistent with the rules and the Acts. In the event that the Department and the Board cannot reach a consensus on an interpretation of the rules, the Board reserves the right to take additional rulemaking action.



Tab 9



## **RULE MAKING**

### **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 Tenn. Code Ann. Sections 4-5-101 et seq. 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; or
- (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 proposed rule.

(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.

(5) "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), is typically used only for minor, non-controversial matters or purely housekeeping matters. A proposed rule is filed without a rulemaking hearing.

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

1. 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;

2. The rule only delays the effective date of another rule that is not yet effective;

3. The rule is required by the Constitution, or court order;

4. 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

5. 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 management;

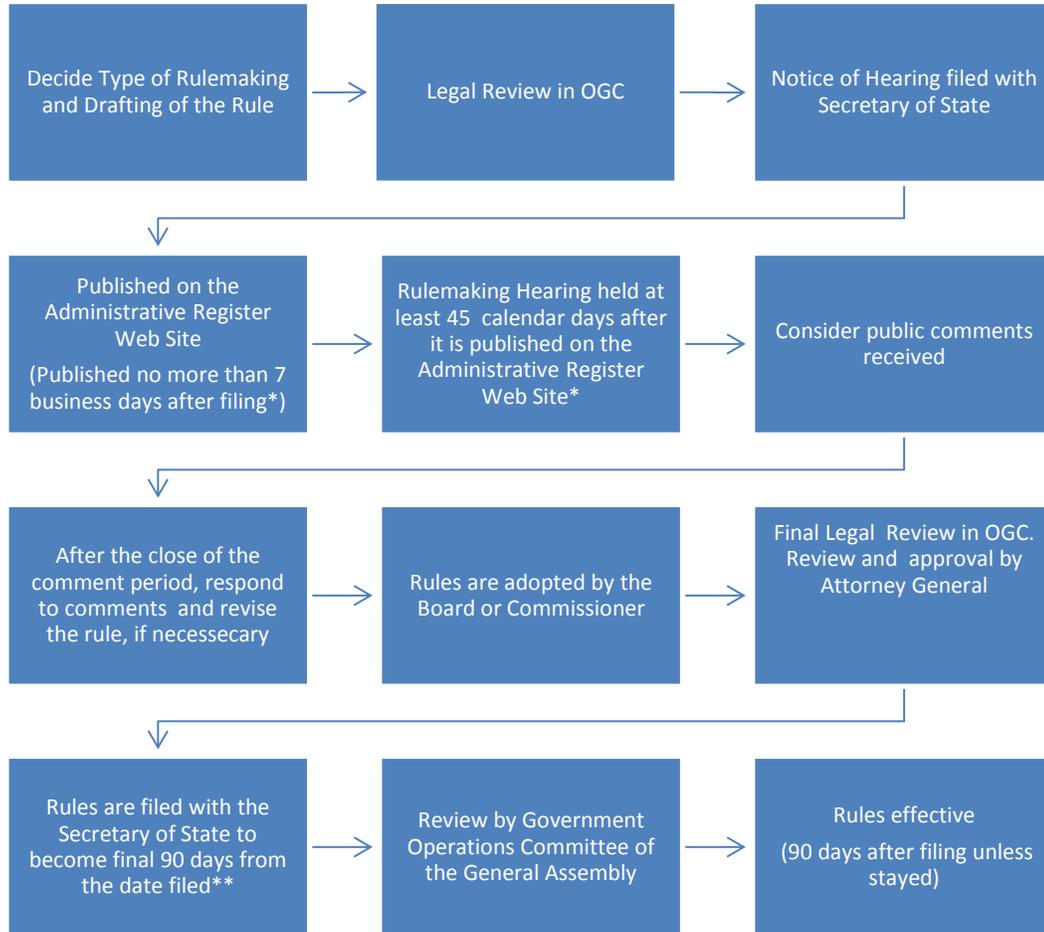
(e) Filing Notice with Secretary of State;

(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 Rulemaking Coordinator and OGC;
- (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).

## PROCESS FLOW DIAGRAM FOR RULEMAKING HEARING RULES

The following flow diagram shows the basic steps used to draft and promulgate Rulemaking Hearing Rules



\*TCA 4-5-203

\*\*TCA 4-5-207

Note: Rules may be stayed for up to 75 days within the 90 day period by the agency and up to 75 days by the Government Operations Committees following the filing with the Secretary of State.

Note: Rules may be withdrawn before they become effective by filing a “Withdrawal of Rules”. Withdrawal of Rules nullifies all procedures undertaken to promulgate the rules. See Tenn. Code Ann. Section 4-5-214.



Tab 10



**March 2010**

## **Alternatives to Civil Penalties: Supplemental Environmental Projects**

By: Max Fleischer

There are alternatives to paying civil penalties in an enforcement proceeding brought by the Tennessee Department of Environment and Conservation (“TDEC”). Of course the preferred alternative is obvious: compliance with the relevant regulatory requirement. However, when a violation has occurred and TDEC has already issued an Order and Assessment (“Order”), that ship has already sailed.

The second alternative to paying civil penalties to TDEC would be the performance of a supplemental environment project (“SEP”) that is satisfactory to the TDEC. Unless a SEP is provided for as an alternative in the Order, the Respondent named in the Order would need to appeal it timely so that the terms for a SEP could be included in an Agreed Order.

A Supplemental Environmental Project (“SEP”) is a project that: (1) benefits the environment of the state of Tennessee; (2) is not required to be performed by the person undertaking the project by any federal, state, or local law or regulation; and, (3) is otherwise acceptable to the Commissioner. TDEC has followed the lead of the United States Environmental Protection Agency (“EPA”) in allowing such projects to be performed in lieu of paying civil penalties sought in an enforcement action. In evaluating what is a permissible SEP, TDEC looks at the explanations provided in the EPA’s Final SEP policy (published in May of 1998) for guidance.

According to EPA’s SEP policy, a SEP must improve, protect, or reduce risks to public health or the environment. EPA’s SEP policy generally requires a nexus or connection between the type of violation at issue and the proposed project. However, both EPA and TDEC may relax this nexus requirement based on the nature of the SEP and its benefit to the environment. There are five kinds of SEPs: pollution prevention SEPs; pollution reduction SEPs; restoration and protection SEPs; environmental compliance promotion SEPs; and, assessment and audit SEPs.

1. A pollution prevention project must reduce the generation of pollution through source reduction. The end result of this type of SEP is that there is an overall decrease in the amount and/or toxicity of pollution, not just a transfer of pollution among media.
2. A pollution reduction project must reduce the amount of a pollutant if it has been generated and introduced into the environment. Examples of pollution reduction projects would include recycling, treatment containment or disposal techniques which the Respondent is not otherwise required to implement.
3. A restoration and protection project implements remedial actions that extends beyond repairing the harm caused by the violation and actually enhances the condition of the ecosystem or the geographical area, such as restoring wetlands beyond that those which were damaged or the clean up of an abandoned dump in the vicinity of the unauthorized dump at issue in the case.
4. An environmental compliance promotion SEP would involve a project which provides for technical support to other members of the regulated community to:
  - (a.) identify, achieve and maintain compliance with environmental statutes;
  - (b.) avoid committing violations of a similar nature; and/or
  - (c.) extend beyond the regulatory requirements in reduction of generation and,
  - (d) the release of pollutants.
5. Assessment and audit SEPs would involve, for instance, systematic internal reviews of specific processes and operations designed to identify and provide

information about opportunities to reduce the use, production and generation of toxic and hazardous and other wastes.

In most cases, the Department requires that the SEP be valued in excess of the assessed civil penalty. In fact, as a general rule, SEP's that have a value of at least twice the amount of the civil penalty are sought. However, under certain circumstances SEP's can off-set the assessed penalty on a dollar for dollar basis. As is provided in the EPA's SEP policy, the Department may accept a SEP that has at least the same value as the civil penalty:

(1) When small businesses, government agencies or entities and non-profit organizations can demonstrate that the proposed SEP is of outstanding quality;  
or

(2) When any Respondent implements a pollution prevention SEP if the Respondent demonstrates that the project is of outstanding quality.

Prior to implementing a SEP, a Respondent must obtain the advance approval of the Department of a detailed SEP proposal including a schedule for completion.

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Tab 11





# **Natural Resource Damage Assessment and Restoration (NRDAR)**

## **TDEC NRDAR Program**

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- The State holds the natural resources of Tennessee in trust for the benefit of its citizens.
- The goal of the Department in implementing the NRDAR program is to redress the injuries resulting from discharges of pollutants to natural resources of the State and the ecological and economic services they provide.

**NATURAL RESOURCE DAMAGES  
LEGAL AUTHORITY**

**I. State Laws**

<b>Title</b>	<b>Statute</b>	<b>Language</b>
Solid Waste Disposal Act (SDWA)	Tennessee Code Annotated §§ 68-211-117(a)(2), (d)	<p>68-211-117(a)(2) states: Each day such violation continues constitutes a separate violation. In addition, such person shall <i>also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.</i></p> <p>68-211-117(d) clarifies by stating: Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, <i>and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.</i></p>
Hazardous Waste Management Act (HWMA)	Tennessee Code Annotated §§ 68-212-114(b)(1), (b)(4)	<p>68-212-114(b)(1) states: Any person who violates or fails to comply with any provision of this part, any order of the board or commissioner, the terms and conditions of any permit issued, or any rule, regulation or standard adopted pursuant to this part shall be subject to a civil penalty of up to fifty thousand dollars (\$50,000) per day of each violation. Each day upon which such violation occurs constitutes a separate punishable offense, and each such person shall <i>also be liable for any damages to the state resulting therefrom.</i></p> <p>68-212-114(b)(4) clarifies: Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, <i>and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.</i></p>
Petroleum Underground Storage Tank Act (PUSTA)	Tennessee Code Annotated §§ 68-215-121(a)(1), (d)	<p>68-215-121(a)(1) states, in pertinent part: Each day such violation continues constitutes a separate punishable offense, and such person is also <i>liable for any damages to the state resulting therefrom.</i></p> <p>68-215-121(d): Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this chapter and <i>in restoring the air, water, land, and other property, including the replacement of animal, plant, and aquatic life destroyed due to the violation.</i></p>
Air Quality Act (AQA)	Tennessee Code Annotated §§ 68-201-106; 68-201-116(b)(1), (c)	68-201-116(b)(1) states, in pertinent part: Each day such violation continues constitutes a separate punishable offense, and such person shall <i>also be liable for any damages to the state resulting from the continued violation.</i>

**NATURAL RESOURCE DAMAGES  
LEGAL AUTHORITY**

		<p>68-201-116(c) clarifies: In assessing such civil penalty, the factors specified in 68-201-106 may be considered. Damages to the state or respective municipality or county may include any expenses incurred in investigating the enforcing of this part, in removing, correcting, or terminating the effects of air pollution and <i>also compensation for any expense, loss or destruction of plant or animal life or any other actual damages or clean-up expenses caused by the pollution or by the violation.</i> The plea of financial inability to prevent, abate or control pollution by the polluter or violator shall not be a valid defense to liability for violations of the provisions of this part or of regulations or ordinances promulgated thereunder.</p> <p>68-201-106 states, in pertinent part: In exercising powers to prevent, abate and control air pollution, the board or department shall give due consideration to all pertinent facts, including, but not necessarily limited to:</p> <ul style="list-style-type: none"> <li>(1) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people;</li> <li>(2) The social and economic value of the air contaminant source;</li> <li>(3) The suitability or unsuitability of the air pollution source to the area in which it is located. In this respect it is expressly anticipated that the board may establish zones and categories of air contaminant sources in which the standards, rules and regulations may differ according to zone and category of air contaminant source;</li> <li>(4) The technical practicability and economic reasonableness of reducing or eliminating the emission of such air contaminants;</li> <li>(5) The economic benefit gained by the air contaminant source through any failure to comply with this part and regulations promulgated thereunder; and</li> <li>(6) The amount or degree of effort put forth by the air contaminant source to attain compliance.</li> </ul>
<p>Radiological Health Service Act (RHSA)</p>	<p>Tennessee Code Annotated §§ 68-202-212(b), (c)(3)</p>	<p>68-202-212(b): Each day such violation continues constitutes a separate violation, and such person is also <i>liable for any damages to the state resulting from such violations.</i></p> <p>68-202-212(c)(3): Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and <i>in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.</i></p>

**NATURAL RESOURCE DAMAGES  
LEGAL AUTHORITY**

Title	Statute	Language
Tennessee Water Quality Control Act (TWQCA)	Tennessee Code Annotated §§ 69-3-116(a), (c)	<p>69-3-116(a): <i>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 or orders issued pursuant to the provisions of this part.</i></p> <p>69-3-116(c): <i>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.</i></p>
Tennessee Safe Drinking Water Act (SDWA)	Tennessee Code Annotated §§ 68-221-713(a)(3), (e)	<p>68-221-713(a)(3): <i>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.</i></p> <p>68-221-713(e): <i>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.</i></p>
Tennessee Well Drilling Act	Tennessee Code Annotated §§ 69-10-110(a), (g)	<p>69-10-110(d) states, in pertinent part: <i>Each day such violation continues is a separate violation. In addition, such person shall also be liable for any damages to the state resulting from the violation, without regard to whether any civil penalty is assessed.</i></p> <p>69-10-110(g): <i>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.</i></p>
Tennessee Safe Dams Act	Tennessee Code Annotated §§ 69-11-121(a)	<p>69-11-121(a) states, in pertinent part: <i>In addition, such person shall also be liable for any damages to the state resulting from the violation, without regard to whether any civil penalty is assessed.</i></p>

## NATURAL RESOURCE DAMAGES LEGAL AUTHORITY

### II. Federal Laws and Regulations

Three laws, and their accompanying regulations, form the legal foundation for the federal Natural Resource Damage and Restoration Program and provide trustees with the legal authority to carry out their responsibilities.

Title	Statute	Regulations
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)	42 U.S.C. §§ 9601, <i>et seq.</i> (including but not limited to sections 104, 107, 111(i), and 122)	43 CFR 11.
Oil Pollution Act of 1990 (OPA)	33 U.S.C. §§ 2701, <i>et seq.</i> (including but not limited to sections 1006 and 1012)	15 CFR 990.
Federal Water Pollution Control Act or Clean Water Act (CWA)	33 U.S.C. §§ 1251, <i>et seq.</i> (including but not limited to section 311(f))	X

Additionally, the federal Natural Resource Damage Assessment and Restoration Program refers to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as amended (40 CFR 300), issued by the U.S. Environmental Protection Agency. The NCP regulations provide for efficient, coordinated, and effective action to minimize adverse effects from oil discharges and hazardous substance releases.

For additional information and other authorizing federal statutes and information, please visit the U.S. Dept of Interior's (DOI) Natural Resource Damage Assessment and Restoration Program at <https://www.doi.gov/restoration/authorities>.



Tab 12



## **Board Member Travel Overview**

**January 20, 2017**

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/assets/entities/finance/attachments/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 \$0.47 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 October, 2015)*

**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 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 department head is responsible for establishing the official station of the employee. This is typically the location from which the employee performs the major portion of his/her assigned duties. The work station closest to an employee's residence should be designated as the official station for employees with multiple work stations. If an employee works predominantly from a home residence and reports to an office or other station less than twice a week, the employee's official station should be the home residence. Under unusual situations, the department head may designate other locations as the employee's official station.

11. The residence of the employee usually becomes the official station for an employee required to be on call at times other than the employee's normal working hours (i.e. nights or weekends). Employees working overtime on weekends are not normally eligible for reimbursement.

12. In the event that an employee is temporarily reassigned to a work location other than his usual official station, that location shall become the employee's official station. 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 usual official station.

## **Reimbursement Procedures**

13. 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.

14. 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.

## **Corporate Charge Cards**

15. Employees who routinely travel on state business and meet the eligibility requirements may apply for a corporate charge card through their department's fiscal office. Charges made on these charge cards are the liability of the employee.

## **Travel Advances**

16. 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 (for example, an employee is ineligible for a corporate travel card), 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.

17. 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**

18. 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**

19. Departments may set their own policy as to how their employees may make reservations for air travel: either through the state travel agency designated by the Department of Finance and Administration, directly through an on-line booking service, or through either option at the choice of the employee. 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. Reservations made through the state travel agency offer employees the benefit of 1-800 service for after-hour changes, automatic departmental billing for airfare charges, management of unused tickets, and common carrier insurance. 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**

20. 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**

21. 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.

22. Car rental for out-of-state travel can be made through contracts with the Department of General Services or through the State Travel Agency. 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**

23. 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.

24. 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.

25. 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.

26. 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.

### **Parking**

27. 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.

28. 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**

29. 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**

30. 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 manner similar to local hotel or sales taxes.

31. 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.

32. 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**

33. 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.

34. 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.

35. 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.

36. 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.

37. 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**

38. 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**

39. 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.

40. 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**

41. 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.

42. 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

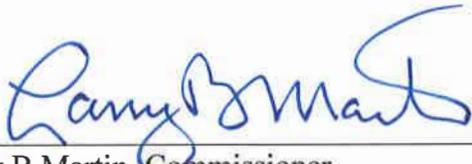
statement indicating that additional cost was incurred above the standard monthly charge is required for reimbursement. In some instances employees may be able to obtain lower cellular rates by purchasing a package that offers lower per minute rates for a higher threshold of minutes per month. Reimbursement 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**

43. 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**

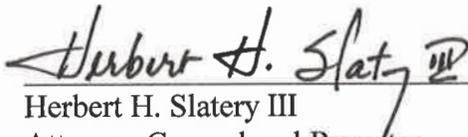
44. In accordance with the provisions of T.C.A. § 4-3-1008(3), these travel regulations, effective when signed, supersede and rescind all previous promulgated travel regulations and shall remain in effect until subsequently modified or rescinded.



Larry B Martin, Commissioner  
Department of Finance and Administration.

9/21/15  
Date

APPROVED:



Herbert H. Slatery III  
Attorney General and Reporter

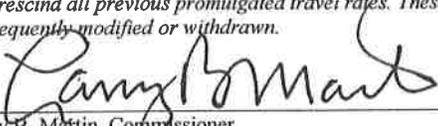
10/30/2015  
Date



**Per Diem Rates-  
Three-Fourths Calculations  
Partial Day of Travel  
Effective October 1, 2015**

Total	First & Last Day of Travel
\$51	\$38.25
\$54	\$40.50
\$59	\$44.25
\$64	\$48.00
\$69	\$51.75
\$74	\$55.50

*In accordance with the provisions of TCA 4-3-1-8 (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.*

  
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Larry B. Martin, Commissioner  
Department of Finance and Administration

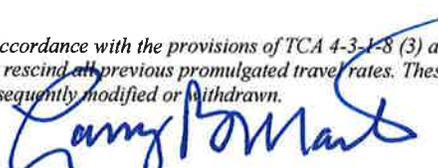
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Date



**Per Diem Rates-  
Three-Fourths Calculations  
For Partial Day of Travel  
Effective October 1, 2015**

<b>Total</b>	<b>First &amp; Last Day of Travel</b>
\$51	<b>\$38.25</b>
\$54	<b>\$40.50</b>
\$59	<b>\$44.25</b>
\$64	<b>\$48.00</b>
\$69	<b>\$51.75</b>
\$74	<b>\$55.50</b>

*In accordance with the provisions of TCA 4-3-1-8 (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.*

  
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Larry B. Martin, Commissioner  
Department of Finance and Administration

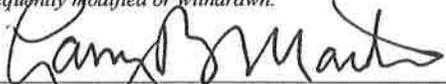
8/24/16  
Date



**Per Diem Rates-  
Three-Fourths Calculations  
For Partial Day of Travel  
Effective October 1, 2015**

Total	First & Last Day of Travel
\$51	\$38.25
\$54	\$40.50
\$59	\$44.25
\$64	\$48.00
\$69	\$51.75
\$74	\$55.50

*In accordance with the provisions of TCA 4-3-1.8 (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.*

  
\_\_\_\_\_  
Larry B. Martin, Commissioner  
Department of Finance and Administration

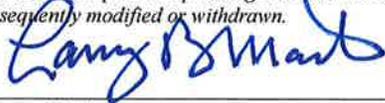
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Date



**Per Diem Rates-  
Three-Fourths Calculations  
Partial Day of Travel  
Effective October 1, 2015**

Total	First & Last Day of Travel
\$51	\$38.25
\$54	\$40.50
\$59	\$44.25
\$64	\$48.00
\$69	\$51.75
\$74	\$55.50

*In accordance with the provisions of TCA 4-3-1-8 (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.*



Larry B. Martin, Commissioner  
Department of Finance and Administration

Date 8/24/16

**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 serving 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.