

**Tennessee Department of Environment and Conservation  
Division of Solid Waste Management**

**Solid Waste Proposed Rule Changes  
Summary Document**

**1. Rule 0400-11-01-.02 – Changes in Language Clarify Permitting of Solid Waste Storage, Processing, and Disposal Facilities** (*Reference Redline Rule Document Pages 8-17*)

**Summary:** The proposed amendments to Paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities will:

1. Clarify that a permit by rule is an authorization to operate and that the owner or operator is deemed permitted to operate the facility or activity.
2. Clarify the requirements owners or operators must comply with when subject to a permit by rule, and includes requirements for:
  - Operating their facilities or activities consistent with their submitted notification that was reviewed and approved by the Division;
  - Submitting a new notification to the Commissioner if the information submitted on file with the Commissioner for the facility is no longer accurate; and
  - Maintain records.

Recently, TDEC Office of General Council determined that the existing regulations do not require owners or operators to operate their facilities or activities consistent with their submitted notification that was reviewed and approved by the Division. The following are a few examples of what a processing facility could potential do immediately after receiving approval of a permit by rule notification:

1. Accept types of solid waste that differ from those listed on the notification;
2. Conduct any type of processing operations;
3. Fail to maintain any records; and
4. Remove or fail to construct/maintain structures necessary to safely operate a facility.

In order to have adequate regulatory authority to ensure permit by rule facilities or activities are operated in an environmentally safe manner, the Division is proposing amendments to Paragraph (2) of Rule 0400-11-01-.02. FYI - There are 750 permit by rule facilities state wide and, last State FY (July 16 – June 17), 75% of the new permit by rule notifications required at least one revision prior to approval, while 40% required multiple revisions prior to approval.

**2. Rule 0400-11-01-.01(6) –Electronic Submittal**

**Summary:** By incorporating an Electronic Submittal requirement into Rule 1 – “General”, DSWM will have the ability to require electronic submittals of all documents required in the Chapter 0400-11-01. This rule inclusion would be particularly important if an individual or entity failed to submit electronic information, such as engineering plans. This rule change also loosens up submission requires to give DSWM and the applicant latitude in submission standards as technology changes and public participation evolves, for example, online viewing of documents over the need to placement in local libraries.

- Add Rule 0400-11-01-.01(6):

*Electronic Submittal - These rules require submittals of applications and reports. To aid in the review or processing of an application or report, the Commissioner may request the submission of the application or report to include a copy of the application or report in an electronic format acceptable to the Commissioner. When requested by the Commissioner the additional electronic copy of the application or report shall be submitted in accordance with the Commissioner’s instruction.*

- Add Rule 0400-11-01-.02(3):

*5. Up Five copies of the required permit application must be submitted to the Commissioner based upon the request of the Department*

*6. All reports, plans, specifications, and manuals must be prepared in proper technical format, typewritten, and bound (e.g., three ring loose-leaf binders), and/or in an electronic format acceptable to the Commissioner.*

### **3. Rule 0400-11-01-.02(1)(b)3(xiv) – Petroleum Contaminated Soil Exemption**

**Summary:** The Petroleum Contaminated Soil Exemption is not protective of human health or the environment. The exemption currently allows for contaminated soils below the stated constituent thresholds to be disposed of offsite (of UST generation), despite having values higher than the Regional Screening Levels for site clean-ups. In essence, this exemption could allow the spread of contamination to new locations. This exemption is a legacy from early in UST standard adoption/changes and is no longer consistent with UST practice. The Hazardous Waste Contained-In Policy will also help offer guidance for offsite disposal of properly treated contaminated soils.

- Rule 0400-11-01-.02(1)(b)3(xiv) as written (below) is deleted:

~~*The use and/or disposal of Petroleum contaminated soil and rock generated from the clean-up of leaking Underground Storage Tank sites regulated under Chapter 0400-18-01, provided such materials are treated and the benzene level is below 5 ppm and the total petroleum hydrocarbon level is below 100 ppm and provided that the method of treatment was reviewed and approved by the Division of Underground Storage Tanks.*~~

- Rule 0400-11-01-.02(1)(b)3(xiv) through (xxii) are shifted to accommodate (xiv) deletion

### **4. Rule 0400-11-01-.02(1)(b)3(xxii) and (xxiii) – RMPF Exemption**

**Summary:** The intent of this rule change is to develop a “bright line” in determining which facilities are permit exempt Recovered Material Processing Facilities, and which facilities qualify for a solid waste

processing permit by rule. By incorporating a detailed permit exemption into the rules we better define whether a facility is first of all a RMPF, and whether it is exempt from permit requirements.

Additional, this rule requires all Recovered Material Processing Facilities to notify the Department of operations in absence of requiring permitting. Upon submitting general information in the notification, the Department can require a facility to file a financial assurance instrument in an amount determined to be sufficient to ensure proper closure and post-closure care of the facility.

- (xxii) *Recovered materials processing facilities engaged solely in the storage, processing and resale or reuse of recovered materials, provided all the following conditions are met:*
  - (I) *The owner or operator notifies the Commissioner prior to commencing operations and includes:*
    - I. *The facility name, owner, mailing and location address;*
    - II. *The type(s) of material to be received;*
    - III. *The maximum storage capacity at the facility for the storage of each material identified in subitem II of this item; and*
    - IV. *A general description of the recovered materials processing operation;*
  - (II) *Prior to implementing a change in ownership, location, type of material received, increase in storage capacity for a material, or method of processing, the owner or operator:*
    - I. *Notifies the Commissioner of the proposed change; and*
    - II. *Complies with item (VII) of this subpart;*
  - (III) *All material arriving at the facility to be processed has been diverted or removed from the solid waste stream for sale, or a beneficial use or reuse;*
  - (IV) *The owner or operator manages all solid waste generated as a result of recovered materials processing from the point of generation and provides for its proper disposal in accordance with the requirements of this Chapter;*
  - (V) *The owner or operator manages the recovered material and/or product as a valuable commodity when it is under the owner or operator's control and minimizes:*
    - I. *The propagation, harborage, or attraction of flies, rodents, or other disease vectors;*
    - II. *The potential for explosions or uncontrolled fires;*
    - III. *The potential for releases of recovered materials or process residues to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management agencies; and*
    - IV. *The potential for harm to the public through unauthorized or uncontrolled access;*
  - (VI) *Upon request of the Commissioner, the operator demonstrates, to the satisfaction of the Commissioner, that there is a viable market for the sale of, or a beneficial use or reuse of, the recovered material;*
  - (VII) *Upon request of the Commissioner, after receiving the initial notification pursuant to item (I) of this subpart or a change in the information pursuant to item (II) of this subpart, the operator files with the Commissioner a financial assurance instrument that complies with subparagraph (3) (d) of Rule 0400-11-01-.03, in an amount determined by the Commissioner to be sufficient to ensure proper closure and post-closure care of the facility;*

- (VIII) *The owner or operator maintains the records necessary to demonstrate:*
  - I. *Compliance with items (III), (IV) and (VI) of this subpart; and*
  - II. *That the maximum storage capacity at the facility for the storage of each recovered material has not been exceeded; and*
- (IX) *If applicable, in accordance with T.C.A. § 68-211-871 and subparagraph (5)(c) of Rule 0400-11-01-.09, the owner or operator submits an annual report by type of material by March 31st of each year as directed by the Commissioner.*

## 5. Rule 0400-11-01-.02(2)(a)2 – Repeal Coal Ash Fill PBR

**Summary:** Due to the promulgation of the federal CCR disposal rules (40 CFR 257) the coal ash fill PBR is no longer an appropriate permit for public utilities. In addition, federal CCR beneficial use guidance creates framework for approving coal ash fill projects moving forward.

- Rule 0400-11-01-.02(1)(c)2(i) is amended to read:

*T.C.A. Title 68, Chapter 211, Part 7, known as the “Jackson Law,” authorizes counties and municipalities to opt-into its provisions in accordance with T.C.A. § 68-211-707. If a local government does so, it may then approve or disapprove the proposed new construction for solid waste disposal by landfilling ~~(including coal ash fills)~~ and solid waste processing facilities in accordance with T.C.A. § 68-211-704. For purposes of T.C.A. §68-211-105(h), a “new landfill for solid waste disposal” or a “new solid waste landfill” means any of the following:*

- Rule 0400-11-01-.02(2)(a)2 is deleted
- Rule 0400-11-01-.07(3)(c)4 is deleted

## 6. Rule 0400-11-01-.02(2)(b)2(vi) – PBR Permit Requirements Correction

**Summary:** Several subparts found in the Permit-by-Rule section use incorrect references. These changes seek to correct these references.

- Rule 0400-11-01-.02(2)(b)2(vi) is amended to read:

*A written narrative must be submitted that describes how the facility/operation will comply with all applicable standards listed in **subparagraph (a)** of this paragraph and any other information deemed necessary by the Commissioner; and*

- Rule 0400-11-01-.02(2)(a)3(i) is amended to read:

*The county legislative body, of a county that does not own or operate a permitted Class I, Class III or Class IV facility which is accepting waste tires, complies with the notification requirements of **subparagraph (b)** of this paragraph;*

- Rule 0400-11-01-.02(2)(a)4(i) is amended to read:

*The operator complies with the notification requirements of **subparagraph (b) of this paragraph**;*

- Rule 0400-11-01-.02(2)(a)5(i) is amended to read:

*The operator complied with the notification requirements of **subparagraph (b) of this paragraph**;*

## **7. Rule 0400-11-01-.02(4)(e)1(vi) – 365 Day Part I/II Submittal Requirement**

**Summary:** Within 1 year of submitting their Part I, applicants must submit either Hydrogeological Report or Engineering Plans (one piece of the Part II application), or they will be require to resubmit the Part I at the time of a complete Engineering Plan submission. This change will help clear unexecuted permits from the DSWM’s “books”, which is a work efficiency issue. It also reduces the likelihood of a scenario where an applicant could submit a Part I and complete a public notice, but not act on the complete Part I for a number of years, in effect undermining the public notice system. This rule change will not have a fiscal impact on stakeholders as they are already required to pay for the public notice.

- Rule 0400-11-01-.02(4)(e)1(vi) is added:

*Within one year after the date of receipt of the Part I permit application, the applicant shall submit either the Hydrogeological Report or Engineering Plans required to satisfy the Part II permit application. If within 1 year of the date of receipt of the Part I permit application the Commissioner has not received either the Hydrogeological Report or Engineering Plans, the Commissioner will require the applicant to resubmit the Part I permit application at the time of the submittal of the Engineering Plans.*

## **8. Rule 0400-11-01-.03(2)(c) – Closure/Post-Closure Renewal**

**Summary:** This rule change would require the resubmittal of the Closure/Post-Closure (CPC) plans every 10 years. Resubmittal of the CPC is important because in Tennessee permits are issued for life of the landfill. In being able to revisit the CPC of a landfill permit, DSWM will be able to update itemized cost estimates which are the basis for financial assurance .Owners will be provided an opportunity to evaluate best available technology for closure. Class I and Class II owners will also plan for the long term maintenance costs (custodial care) of the landfill beyond the Post-Closure period with no increase in required financial assurance. CPC resubmittal will be, processed as a minor modification

- Definition is added to Rule 0400-11-01-.01(2):

*“Long Term Custodial Care” means those inspections, maintenance, and monitoring activities necessary to insure that a Class I or Class II facility, which has completed post closure certification, will not impact human health or the environment. The time period used to describe these activities is 50 years from the date of post closure certification.*

- Current Rule 0400-11-01-.03(2)(b)2(vi) is added:

*For Class I and Class II facilities, a description of recommended activities during long term custodial care to inspect, monitor and maintain the facility. Facilities, which utilize synthetic components in the final cover system, must include an analysis of the life cycle of such components.*

- Current Rule 0400-11-01-.03(2)(c) is moved to .03(2)(d)

- Current Rule 0400-11-01-.03(2)(c) is added:

*Resubmittal of Plan – All Class I and Class II facilities must submit a new closure/post-closure care plan every 10 years from the date of the original permit or most recent permit expansion. The resubmittal of plan will be processed as a minor modification to the facility and must comply with subparagraph (b) of this paragraph. At minimum it must include:*

- 1. Itemized closure/post-closure cost estimates must be adjusted by recalculating the maximum closure/post-closure amounts in current dollars and taking into account any design changes, new monitoring points and changes in materials.*
- 2. The phased development plan must be updated and reconciled with the closure/post-closure cost estimate.*
- 3. Minimum closure areas must be revised or added to reflect planned partial closure of the facility.*
- 4. A separate itemized cost estimate for long term custodial care activities. This cost estimate is not to be included in the financial assurance amount for the facility.*

## **9. Rule 0400-11-01-.04(2)(t) – Annual Engineering Report**

**Summary:** Current annual reporting requirements require landfills to submit an annual report (dubbed the “Remaining Life Survey”) which is satisfied by completing the “Estimate of Remaining Landfill Life” form. The current system lends itself to a significant amount of guesstimating and has on occasion resulted in owners be unprepared for needed expansion. In establishing more robust reporting requirements DSWM would like to have a better understanding of where landfills are at with respect to their planned phase development, projected dates for cell openings and closings, remaining cell capacity and overall to ensure landfills are in compliance with their permitted fill progression. Class I landfills systems would report annually. Class II landfills would report every three years. Current Rule 0400-11-01-.04(2)(t) is deleted

- Add new Rule 0400-11-01-.04(2)(t)

### *Annual and Triennial Engineering Reports*

- Add new Rule 0400-11-01-.04(2)(t)1

*All operators of Class I disposal facilities within the state of Tennessee shall file with the Department, by May 1<sup>st</sup> of every year, an annual engineering report which shall include:*

- 1. A current topographic survey of the active portion of the disposal facility (same scale as approved plans) performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities. This should be superimposed on the approved contours;*
- 2. Calculations on the current constructed capacity of the disposal facility, in cubic yards, and the total remaining volume within the currently constructed cells to be filled, in cubic yards, along with the total remaining permitted cubic yards;*

3. *The first Annual Engineering Report submitted should include a summary of all minor modifications to the facility since the most recent permit issuance.*
4. *A report showing the quantity of leachate collected in gallons: for treatment, for disposal, recirculation, or other management method on a monthly basis for the reporting year. The report must name the location and method of leachate treatment and disposal. A summary of any leachate management system cleanouts performed since the last Annual Engineering Report must also be provided.*
5. *A report of amounts and types of Special Wastes disposal relative to normal solid waste disposed at the facility since the last Annual Engineering Report, presented in the form of a ratio; and*
6. *A notarized statement that, to the best of the knowledge of the owner or operator, the information contained in the annual engineering report is true and accurate.*

- Add new Rule 0400-11-01-.04(2)(t)2

*All operators of Class II facilities in the state of Tennessee shall file with the Department, beginning May 1, 2019, a triennial engineering report. This report shall include,*

1. *A current topographic survey of the active portion of the disposal facility (same scale as approved plans) performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities. This should be superimposed on the approved contours;*
2. *Calculations on the current constructed capacity of the disposal facility, in cubic yards, and the total remaining volume within the currently constructed cells to be filled, in cubic yards, along with the total remaining permitted cubic yards;*
3. *The first Annual Engineering Report submitted should include a summary of all minor modifications to the facility since the most recent permit issuance.*
4. *A notarized statement that, to the best of the knowledge of the owner or operator, the information contained in the annual engineering report is true and accurate.*

## **10. Rule 0400-11-01-.04(7)(a)4(i)(II) – Field Filtered Samples**

**Summary:** Scientific sampling processes, procedures, and understandings have changed over time to support, in some instances, the practice of field filtering of water samples prior to laboratory analysis. DSWM seeks to incorporate these new standards into our rules.

- Current Rule 0400-11-01-.04(7)(a)4(i)(II) is amended

*The ground water monitoring program must include sampling and analytical methods that are appropriate for ground water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground water samples. ~~Ground water samples shall not be field filtered prior to laboratory analysis.~~*

## **11. Rule 0400-11-01-.04(8)(c)3(i) and (ii) – Final Cover Low Permeability**

**Summary:** Low permeability is not defined anywhere in the DSWM Rules. Without a definition of what constitutes “low permeability” this rule could result in problems for the DSWM if there is disagreement with prescribed permitting requirements during the permitting process when our rules are currently not specific. Current Rule 0400-11-01-.04(8)(c)3(i) is amended to read:

*At Class III and Class IV facilities, unless the Commissioner determines that a greater depth is needed to achieve the general performance standard of subparagraph (a) of this paragraph, the depth of final cover shall be at least 30 inches of compacted soil. The final cover consists of an 18 inch **compacted soil layer with a maximum hydraulic conductivity of  $1 \times 10^{-5}$  cm/s** overlain by a 12 inch protective layer.*

## **12. Rule 0400-11-01-.04(8)(g)8 – Deed Restrictions**

**Summary:** The Attorney General's Office - Environmental Division made this recommendation for a clarification in the Rule because “Under (g)8 TDEC would not be in a legal position to rely on an original administrative order because this rule was enacted after that order went final. Current Rule 0400-11-01-.04(8)(g)8 is amended to read:

*If the **owner or operator fails to timely comply with part 7 of this subparagraph**, the Commissioner may present for recording in the office of the county register an instrument **that will be** in the chain of title that will in perpetuity notify any person conducting a title search that the land has been used as a disposal **site**. **Such notice may include the following:***

- (i) **The name of the person who owns the property upon which the dump is located;***
- (ii) **The book and page number in which the deed to such property is recorded; and***
- (iii) **A description of the wastes believed to be disposed on such property.***

## **13. Rule 0400-11-01-.04(9)(d) – Appendices**

**Summary:** The groundwater monitoring appendices are being assigned paragraph (10) for better referencing. In addition, Boron is being added as a constituent in Appendix I and II. Sampling will only be required for facilities permitted for Coal Combustion Residuals (CCR) disposal or that have received CCR through a Special Waste Approval. Boron is a common constituent found in association with CCR.

- Definition is added to Rule 0400-11-01-.01(2):

*“**Coal combustion residuals**” means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.*

- Current Rule 0400-11-01-.04(9)(d) is amended to break out Appendices



- Current Rule 0400-11-01-.04(10) is added:

*Appendices*

- Current Rule 0400-11-01-.04(10) is amended to include Boron in Appendix I and Appendix II.
- The footnotes are amended to reflect new rule citations, and only require Boron sampling for facilities outlined in footnote 1 (included below):

*The inclusion of this parameter is only required for facilities that are subject to 40 CFR 257 Subpart D – Standards for the Disposal of Coal Combustion Residuals (CCR) in Landfills and Surface Impoundments, or landfills that have received CCR through a Special Waste Approval.*