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Sequence Number: _____
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File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

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

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

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

☒ Amendment
☐ New
☐ Repeal
☐ Content based on previous emergency rule filed on _____
☐ Content is identical to the emergency rule

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.01	Solid Waste Disposal Control System: General
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities
0400-11-01-.04	Specific Requirements for Class I, II, III, and IV Disposal Facilities
0400-11-01-.07	Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste
0400-11-01-.13	Requirements for Land Application Facilities

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-11-01
Solid Waste Processing and Disposal

Amendments

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by deleting the definition of "Medical wastes" and substituting instead the following new definition for "Medical wastes":

"Medical wastes" means the following solid wastes:

- (a) ~~Wastes generated by hospitalized patients who are isolated to protect others from communicable diseases (see the current U.S. Centers for Disease Control guidance related to preventing transmission of infectious agents in healthcare settings for definition of diseases requiring such isolation). Liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials; and microbiological wastes containing blood or other potentially infectious materials.~~
- (b) Cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures-;
- ~~(c) Waste human blood and blood products such as serum, plasma, and other blood components-;~~
- ~~(d)(c)~~ Pathological wastes (i.e., tissues, organs, and body parts, ~~and body fluids~~) that are removed during surgery and autopsy-;
- ~~(e)(d)~~ All discarded sharps (e.g., hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades) used in patient care or ~~which that~~ have come into contact with infectious agents during use in medical, research, or industrial laboratories-; or
- ~~(f)(e)~~ Contaminated carcasses, body parts, and bedding of animals that were intentionally exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals-; or
- ~~(g) The following wastes from patients known to be infected with blood-borne disease:~~
 - ~~1. Contaminated wastes from surgery and autopsy (e.g., soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, surgical gloves).~~
 - ~~2. Wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents (e.g., specimen containers, slides and cover slips, disposable gloves, lab coats, aprons).~~
 - ~~3. Wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposal equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and lab coats.~~
 - ~~4. Discarded equipment and parts that were used in patient care, medical and industrial laboratories, research, and in the production and testing of certain pharmaceuticals and that may be contaminated with infectious agents.~~

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by adding in alphabetical order the definitions of “appurtenance” and “completeness determination” to read as follows:

“Constructed appurtenances” means ponds, buildings, borrow areas, cut slopes, fill slopes, and other structures, accessories, or similar items associated with a disposal facility.

“Completeness determination” means for the purposes of subparagraph (6)(a) of Rule 0400-11-01-.07, an acknowledgement that an application addresses all applicable requirements specified in subparagraph (3)(c) of Rule 0400-11-01-.02, but does not mean that the contents are technically adequate.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Subitem I of item (I) of subpart (iii) of part 1 of subparagraph (c) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- I. For an incinerator, a copy of the notification required by ~~part (2)(b)2-~~ subparagraph (2)(c) of this rule that contains the information required by subparts (2)(c)2(i) through (v) of this rule; and

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq., and 4-5-201 et seq.

Item (I) of subpart (vii) of part 2 of subparagraph (c) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (I) Documentation to the department that the applicant submitted a copy of the notification required by ~~part (2)(b)2-~~ subparagraph (2)(c) of this rule that contains the information required by subparts (2)(c)2(i) through (v) of ~~that part this rule~~ for the proposed new solid waste processing facility or lateral expansion of a solid waste processing facility to the local government(s) in compliance with T.C.A. § 68-211-701 and that the notification included information about the following:
 - I. The type of waste to be processed;
 - II. The method of processing;
 - III. The projected impact on surrounding areas from noise and odor;
 - IV. The projected impact on property values on surrounding areas;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility;
 - VI. The economic impact on the county, city, or both;
 - VII. The compatibility with existing development or zoning plans; and
 - VIII. Any other factor ~~which that~~ may affect the public health, safety, or welfare.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Subpart (iii) of part 3 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (iii) Comply with items 1-(i)(II), (III), (IV), (V), (VI), (IX), (X), (XII), (XIII), and (XVI) of this subparagraph, and ~~(XVII)~~ item 1(ii)(I) of this subparagraph;

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq., and 4-5-201 et seq.

Part 5 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

5. Transfer stations.

- (i) ~~An owner or operator of a transfer station must comply with items 1-(i)(I) through (XV) of this subparagraph, and (XVI) item 1(ii)(I) of this subparagraph.~~
- (ii) ~~In addition to subpart (i) of this part, an owner or operator of a transfer station that manages putrescible solid waste must:~~
 - (I) ~~Operate tipping areas within an enclosed building or covered area consisting of:~~
 - I. ~~An impermeable floor;~~
 - II. ~~Roof; and~~
 - III. ~~At least three walls that are capable of confining all solid waste within the building or covered area;~~
 - (II) ~~Construct and maintain the enclosed building or covered area to prevent precipitation from reaching solid waste inside the structure; and~~
 - (III) ~~Ensure all solid waste is contained in the tipping area.~~

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Subpart (iii) of part 10 of subparagraph (a) of paragraph (5) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (iii) The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any release, discharge, fire, or explosion from the permitted solid waste facility ~~which that~~ could threaten the environment or human health outside the facility. Such report shall be made to the Commissioner, using the toll-free number 1-888-891-8332, and to the Tennessee Emergency Management Agency, using 24-hour toll-free number ~~1-800-~~ 1-800-262-3300.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Parts 1 and 2 of subparagraph (b) of paragraph (6) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities are amended by deleting them in their entirety and substituting instead the following:

- 1. ~~General.~~ Except as otherwise provided in these rules, permits may only be modified or revoked and reissued for the reasons shown in parts 3-, 4-, or 5- of this subparagraph and only according to the procedures set forth in part 2- of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
- 2. Procedures.
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, and required reports) indicating that modification or revocation and reissuance of the permit may be in order, ~~he~~ the Commissioner may determine whether or not one or more of the causes listed in parts 3-, 4-, or 5- of this subparagraph exist.

- (ii) If the Commissioner determines cause exists, ~~he the Commissioner~~ may proceed to modify or revoke and reissue the permit accordingly, subject to the limitations of part 6- of this subparagraph. If a permit modification satisfies the criteria in part 5- of this subparagraph for "minor modifications.", the permit may be modified without following further the procedures of this part, except for subpart (vi) of this part.
- (iii) If the Commissioner determines cause does not exist under parts 3-, 4-, or 5- of this subparagraph, ~~he the Commissioner~~ shall not modify or revoke and reissue the permit. If the modification or revocation and reissuance was requested by the permittee, the Commissioner shall ~~give to the permittee such notice as is required by T.C.A. § 4-5-320~~ notify the permittee in writing.
- (iv) If the Commissioner tentatively decides to ~~cause issue~~ a major modification or revoke and reissue a permit, ~~he the Commissioner~~ shall prepare a draft permit under subparagraph (4)(c) of this rule incorporating the proposed changes. This draft permit shall be processed as set forth in paragraph (4) of this rule. The Commissioner may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application.
- (v) In a permit modification under this part, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this part, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
- (vi) No minor modification to a permit shall be ~~made issued~~ under subpart (ii) of this part, ~~and no draft permit shall be prepared under subpart (iv) of this part,~~ until the permittee has been given such written notice ~~as is required by T.C.A. § 4-5-320 and an opportunity to comment.~~

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Part 5 of subparagraph (b) of paragraph (6) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

5. Permit Modifications.

- ~~(i) Minor Modification of Permits~~—Upon the consent of the permittee, the Commissioner may modify a permit to make the corrections or allowances for those changes in the permitted activity deemed by the Commissioner to be a minor modification without following the procedures of paragraph (4) of this rule. A minor modification is a change in the plans for a facility ~~which that~~ will not alter the expected impact of the facility on the public, public health, or the environment.
- ~~(ii) Major~~ The following changes constitute major modifications: ~~shall include at least changes in final contour elevations,~~
 - ~~(I) An increase in any final contour elevations;~~
 - ~~(II) An increase in capacities capacity;~~ changes in direction of site drainage
 - ~~(III) An increase in maximum stormwater runoff at an existing outfall that could alter the impact of the facility on the public, public health, the environment, or the development of a new outfall;~~
 - ~~(IV) A modification to a facility-specific condition contained in a permit;~~

(V) A modification that constitutes a waiver from a standard or requirement of this chapter; and

(VI) ~~other~~ Other changes deemed major by the Commissioner.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Subpart (vi) of part 1 of subparagraph (t) of paragraph (2) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (vi) A notarized statement that, to the best of the knowledge of the owner or operator, the information contained in the AER is true and accurate. The certification statement in part (3)(a)10 of Rule 0400-11-01-.02 and submitted as required by part (3)(a)8 of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 4-5-201, et seq.; and 68-211-101, et seq.

Subpart (v) of part 2 of subparagraph (t) of paragraph (2) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (v) A notarized statement that, to the best of the knowledge of the owner or operator, the information contained in the TER is true and accurate. The certification statement in part (3)(a)10 of Rule 0400-11-01-.02 and submitted as required by part (3)(a)8 of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Part 5 of subparagraph (a) of paragraph (3) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

5. A After the effective date of this rule, a total site buffer with no constructed appurtenances within 50 feet of the property line, except for groundwater monitoring wells, piezometers, landfill gas monitoring wells, utility poles, underground and above-ground lines and pipes (e.g., gas, water, electric), fences, permitted entrances and exits, and similar appurtenances approved by the Commissioner.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Part 1 of subparagraph (a) of paragraph (4) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new subpart (vii) following subpart (vi) to read as follows:

- (vii) After the effective date of this rule, designed and constructed with sumps and side slope risers, or technology that provides equivalent or superior performance that is approved by the Commissioner, as part of its leachate removal system and in a manner that minimizes penetrations through the liner. Where penetrations of the liner are approved by the Commissioner, they must be properly sealed to prevent leakage and, wherever feasible, be designed with access to allow repair of damaged seals.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Part 7 of subparagraph (a) of paragraph (4) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

7. The leachate collection and removal system must, at a minimum, meet the following requirements:
- (i) The leachate collection and removal system must be designed, constructed, operated, and maintained such that the leachate depth over the liner does not

exceed one foot as calculated referencing the infiltration volume of the 25-year 24-hour storm through the intermediate cover-;

- (ii) Leachate interception surfaces and associated piping must be designed, constructed, operated, and maintained to function without clogging throughout the scheduled post-closure care period;
- (iii) Leachate collection reservoirs, including tanks, must:
 - (I) Be constructed ~~(e.g. lined)~~ and maintained such that collected leachate is contained;
 - (II) Have sufficient capacity to store the volume of leachate expected to be generated in 30 days, or other adequate provisions approved by the Commissioner; and
 - (III) Have a reliable and convenient means of detecting the level of collected leachate in the reservoir and of sampling such leachate-; and
- (iv) After the effective date of this rule, leachate tanks must include a secondary containment system, that may consist of dikes, liners, pads, ponds, impoundments, curbs, ditches, sumps, or other systems capable of containing the liquid stored, that are:
 - (I) Designed to contain 110 percent of the volume of the largest tank within the containment system; interconnected tanks must have engineering controls (e.g., level sensors and gauges, high level alarms, automatic shutoff controls) to isolate each tank to prevent discharge of the total volume from all interconnected tanks to the secondary containment system;
 - (II) Using best engineering practices, constructed of materials compatible with the liquid being stored, and
 - (III) While in use, maintained to be adequately sealed against leakage.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Part 6 of subparagraph (b) of paragraph (7) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- 6. All ground water monitoring parameters for Class II facilities will be selected and established in the permit for new facilities, and for existing facilities, the parameters will be established in the permit modification ~~which will be established in for~~ the new closure/post-closure care plan ~~care as~~ required in subpart ~~(2)(c)2-(ii) (2)(b)2(ii)~~ of Rule 0400-11-01-.03.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Subparagraph (d) of paragraph (8) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (d) Post-Closure Care Period - For Class I and Class II disposal facilities, post-closure care must continue for 30 years after the date of final completion of closure of the disposal facility or facility parcel unless a shorter period is established in the approved closure/post-closure care plan. For Class III and IV disposal facilities, post-closure care must continue for 2 two years after the date of final completion of closure of the facility or facility parcel. The post-closure care period may be reduced or extended based on cause by amendment of the approved closure/post-closure care plan as provided in subparagraph ~~(2)(c) (2)(d)~~ of Rule 0400-11-01-.03.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Subparagraph (b) of paragraph (2) of Rule 0400-11-01-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting it in its entirety and substituting instead the following:

(b) Fee Schedule

1.	Disposal Facility <u>Class I and Class II Disposal Facilities</u>	
(i)	Class I <u>New Permit</u>	
	(I) <u>Hydrogeologic Report</u>	\$ 4,000
	(II) <u>Design and Construction Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04)</u>	\$ 6,000
(ii)	Class II <u>Lateral Expansions</u>	
	(I) <u>Hydrogeologic Report</u>	\$ 4,000
	(II) <u>Design and Construction Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04)</u>	\$ 6,000
	(iii) <u>Vertical Expansions</u>	
	<u>Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04)</u>	\$ 6,000
	(iv) <u>All other major modifications that do not result in an increase in airspace</u>	<u>\$2,000</u>
(iii)2.	<u>Class III Disposal Facilities</u>	
	(i) <u>New Permit, Lateral, and Vertical Expansions</u>	\$ 3,000
	(ii) <u>All other major modifications that do not result in an increase in airspace</u>	<u>\$2,000</u>
2.3.	<u>Processing Facility</u>	\$ 1,000
3	Major Modifications	\$ 2,000
4.	Special Waste Evaluation	\$ 300
5.	Transfer Station	\$ 500
6.	Transfer of Ownership	\$ 1,000
7.	Special Waste Recertification	\$ 150

Authority: T.C.A. §§ 4-5-201, et seq.; 68-211-101, et seq.; 68-211-801, et seq.; and 68-203-101, et seq.

Subparagraphs (a) and (b) of paragraph (6) of Rule 0400-11-01-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste are amended by deleting them in their entirety and substituting instead the following:

- (a) A completeness determination must be ~~reviewed~~ made and the applicant notified within the following time frames:
- | | | |
|----|--|---------|
| 1. | Hydrogeologic Report for Disposal Facilities | 30 days |
|----|--|---------|

2. ~~Design and Construction Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04)~~ for Disposal & Compost Facilities 45 days
- (b) ~~Permit~~ The Department shall act upon a permit application ~~shall be acted upon (issued or denied) by the Department (issue or deny)~~ within the following time after the ~~application is hydrogeological report and engineering plans, narrative description, and closure/post-closure are~~ certified to be complete:
1. Disposal Facility
 - (i) Class I 270 days
 - (ii) Class II 270 days
 - (iii) Class III 240 days
 2. Processing Facility
 - (i) Permit By Rule 90 days
 - (ii) Compost Facility 120 days
 3. Major Modification
 - (i) Regulatory Requirement 180 days
 - (ii) ~~Application~~ All other major modifications not covered under part 1 of this subparagraph:
 - (I) ~~Plans Only~~ 240 days
 - (II) ~~Hydrogeologic~~ 270 days
 4. Minor Modifications
 - (i) Engineering Plans, Narrative Description, and Closure/Post-Closure Review (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04) 90 days
 - (ii) ~~Reserved.~~
 5. Waste Evaluation 30 days

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

Part 4 of subparagraph (b) of paragraph (1) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and substituting instead for the following:

4. Land application of all other solid wastes will be subject to subpart ~~(1)(b)3.(xxii)~~ (1)(b)3(xxi) of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Daphne Berry (Petroleum Business with at least 15 Underground Storage Tanks)					
Stacey Cothran (Solid/Hazardous Waste Management Industry)					
Will Dean (Single Facility with less than 5 Underground Storage Tanks)					
Pat Flood, P.E. (Commissioner's Designee, Dept. of Environment and Conservation)					
Doug Giles, Jr. (Working in a field related to Agriculture)					
Dr. George Hyfantis, Jr. (Institution of Higher Learning)					
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)					
Jeff McCormick (Municipal Government)					
William "Will" E. Ownby, Jr. (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)					
Steve Perry (Petroleum Management Business)					
The Honorable Bob Rial (County Government)					
Vacant (Environmental Interests)					
Jimmy West (Commissioner's Designee, Dept. of Economic and Community Development)					
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the _____ (board/commission/other authority) on _____ (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/14/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 01/09/2024

Date: _____

Signature: _____

Name of Officer: Lisa A. Hughey

Title of Officer: Technical Secretary

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

Rule Chapter Number(s): Chapter 0400-11-01

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

Jonathan Skrmetti
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

1. Comment: Commenters, including a representative of the Tennessee Department of Health (TDH) Healthcare-Associated Infection and Antimicrobial Resistance Program (HAI/AR), and other qualified medical professionals, recommended changes to the definition of “medical wastes” under paragraph (2) of Rule 0400-11-01-.01 with the intent to enhance understanding and compliance among healthcare providers. Comments included qualifications of expertise of the commenters, references, and pertinent literature from OSHA, the CDC, and the EPA.

Commenters believe the proposed language in subparagraph (a) of the definition is vague and can be interpreted as any solid waste generated from patients in isolation for any reason resulting in incorrect interpretation of the medical waste definition, having the potential to direct facilities to place any waste from any isolated patients in biohazard containers resulting in substantially higher costs for medical waste management. Concern is also related to novel pathogens, such as with Covid, when above and beyond measures for waste management were not indicated and would have resulted in additional problems with waste management. In addition, healthcare personnel need a simple process for the management of isolation waste. While it may seem simple to determine if an infectious agent may be “released,” the front-line worker will not process this appropriately. The Bloodborne Pathogen Standard already addresses the dripping, flaking, spilling, etc. of blood and body fluids. The proposed language in proposed subparagraph (a) of the definition fails to further define isolation waste as intended by the EPA and the CDC. According to the EPA’s “Model Guidelines for State Medical Waste Management”, isolation waste is more clearly defined as “isolation waste includes wastes contaminated with blood, excretions, exudates, or secretions from sources isolated to protect others from highly communicable infectious diseases which are identified as viruses assigned to Biosafety Level 4 by the Centers for Disease Control”. The Healthcare Environmental Resource Center, (Healthcare Environmental Resource Center, 2015), and the CDC, clearly define isolation waste as biological waste and discarded materials contaminated with blood, excretions, exudates or secretions from humans or animals who are isolated to protect others from highly communicable diseases (Lassa fever virus, Marburg virus, monkey pox virus, Ebola virus) as listed by the CDC, Table 27, of “Guidelines for Environmental Infection Control of Healthcare Facilities”. (CDC, 2019).

Commenters suggested that the proposed language in subparagraph (a) of the definition be clarified for specificity and for consistency with the OSHA definition of regulated medical waste, to read as follows: “liquid or semi-liquid blood or other potentially infectious material (OPIM); contaminated items that would release blood or OPIM in a liquid or semi-liquid state if compressed; items that are caked with dried blood or OPIM and are capable of releasing these materials during handling; contaminated sharps; and pathological and microbiological wastes containing blood or OPIM. (29 CFR 1910.1030(b)).

A commenter believed that subparagraphs (c) and (g) of the definition needed to be clarified and suggested that the proposed rewrite of subparagraph (a) would be sufficient.

Response: The Underground Storage Tanks and Solid Waste Disposal Control Board (Board) agrees with the commenters and has revised the definition of medical waste based on the commenters’ suggestions.

2. Comment: A commenter requested that items (6)(b)5(ii)(I) and (II) of Rule 0400-11-01-.02 be combined to read “Any change in final contour elevations that results in an increase in capacity.”

Response: The Board believes that items (6)(b)5(ii)(I) and (II) of Rule 0400-11-01-.02 should remain separate. Combining these would allow certain modifications to be approved as minor modifications that the Board believes should be a major modification. For example, the Board believes that a modification that lowers bottom grades of a landfill (i.e., lowers final contour elevations to offset volume gained) but results in an increase in capacity should be considered a major modification. Another example would be increasing the final contour elevations in portions of the landfill while reducing the final contours in other portions such that the resultant capacity does not increase. This commenter’s proposal would not capture these examples as major modifications as the landfill modification in these examples would not result in a “change in final contour elevations that results in an increase

in capacity.” By leaving these items separate, these examples would have to get a major modification as the modification would result in an “increase in capacity.”

3. Comment: A commenter requested that (6)(b)5(ii)(III) of Rule 0400-11-01-.02 be removed entirely. Considering an increase in maximum stormwater runoff at an existing outfall or the development of a new outfall as a major modification would require significant engineering resources, an opportunity for TDEC to require any number of otherwise unrelated additional evaluations or documentations (including but not limited to hydrogeology, monitoring networks, updated engineering and operational plans, etc.), public hearings, and Jackson law approval (in applicable jurisdictions). We would envision the determination for whether a proposed change necessitates a major modification be handled much like it currently is, at the discretion of the Commissioner.

Response: The Board believes that item (6)(b)5(ii)(III) of Rule 0400-11-01-.02 should not be removed. The commenter suggests that the proposed change would result in “an opportunity for TDEC to require any number of otherwise unrelated additional evaluations or documentations (including but not limited to hydrogeology, monitoring networks, updated engineering and operational plans, etc.), public hearings, and Jackson law approval (in applicable jurisdictions). The Board does not agree that this change would result in unrelated additional evaluations or documentations. Moreover, the commenter suggests the existing authority for determining whether an increase in maximum stormwater runoff should result in a major modification is “at the discretion of the Commissioner.” This is not the case. The existing language the Board is clarifying states that “changes in direction of site drainage” is a major modification, which the Board believes is too vague and captures changes at a landfill that are minor in nature, as major modifications.

In response to the comment, however, the Board has amended the language, for clarity, to read:

- (III) An increase in maximum stormwater runoff at an existing outfall that could alter the impact of the facility on the public, public health, the environment, or the development of a new outfall.

The Board believes this amendment provides clarity and, as requested by the commenter, provides the Commissioner the discretion to determine whether an increase in maximum stormwater runoff is a major modification based on its potential impact of the facility on the public and the environment.

4. Comment: A commenter suggested changing item (6)(b)5(ii)(VI) of Rule 0400-11-01-.02 to read as follows:

- (VI) Other changes deemed major by the Commissioner because they would or could alter the expected impact of the facility on the public, public health, or the environment.

The commenter pointed to subpart (6)(b)5(i) of Rule 0400-11-01-.02 to provide a legitimate basis for the Commissioner to “deem” a change to be a major modification. The original proposed language would allow the Commissioner to deem a change a major modification for any reason (e.g., political, economic).

Response: The Board does not believe it is necessary to revise item (6)(b)5(ii)(VI) of Rule 0400-11-01-.02.

5. Comment: A commenter applauds the removal of notary requirements from subparts (2)(t)1(vi) and (2)(t)2(v) of Rule 0400-11-01-.04 for annual engineering reports. This is an antiquated requirement which created confusion and non-uniform adherence on an annual basis. Using this rulemaking effort to remove vestigial requirements like these is a worthwhile effort.

Response: The Board agrees with the commenter.

6. Comment: Regarding part (3)(a)5 of Rule 0400-11-01-.04, a commenter pointed out that the buffer area is often used for perimeter roads, ditches, and ponds to maximize the permitted waste footprint. Please explain why it is necessary to limit the use of the 50-foot area and, as a result, limit capacity of the facility.

Response: The purpose of this proposed change is not to limit capacity of the facility; rather, the proposed change is to clarify what is considered a constructed appurtenance and limit the impacts of the facility on those who share a property boundary with the facility. The Board has amended the

language so as to not capture existing items that have already been approved in a permit and removed “roads”, “ditches,” and “stockpiles” from the definition of “Constructed Appurtenances.”

7. Comment: Regarding subpart (4)(a)1(vii) of Rule 0400-11-01-.04:

- A commenter agrees that leachate drainage and removal systems utilizing liner penetrations are almost universally inferior and less protective of the environment than a system without liner penetrations. However, liner penetrations are sometimes necessary for the safe and environmentally protective integration of older landfill cells into more modern landfills, and the proposed rule entirely dismisses this fact. Creating a new rule to, at best, obfuscate or, at worst, prevent connection of historic cells with existing or approved and planned liner penetrations to new cells with modern leachate containment systems where said liner penetrations have in many cases been part of the long-term site development plan, expansion and property acquisition, and business strategy for these landfills could be a significant and unrecoverable economic blow. As such, we request the design of leachate removal systems be left to the professional discretion of the engineers designing and regulating the landfill.
- Specifically mandating “sumps and side slope risers” leaves little room for future innovation or creative engineering solutions for unique design situations and would seem to venture into the realm of allowing regulation dictate means and measures to the engineering community rather than requiring a set of prescriptive performance criteria be met (i.e., head on liner) and leaving the best method of arriving at that regulated outcome to professional engineers licensed by the State of Tennessee.
- The language requiring liner penetrations (when approved at the sole discretion of the Commissioner) be designed with access to allow repair of damaged seals, “where possible”, is confusing. Please expand on the intent and anticipated conditions where liner penetration access is anticipated to be “possible” or “not possible”?

Response: The rule does not disallow liner penetrations; rather, the proposed language states that a proposed leachate removal system should be designed and constructed in a manner that “minimizes penetrations through the liner.” Moreover, the proposed language allows liner penetrations to be approved by the Commissioner, though they must be properly sealed to prevent leakage, and, where possible, be designed with access to allow repair of damaged seals.

The Board agrees with the commenter that the proposed language leaves little room for future innovation or creative engineering solutions. As such, we’ve added that the leachate removal system be designed and constructed with either sumps and side slope risers, or technology that provides equivalent or superior performance that is approved by the Commissioner.

The Board agrees with the commenter that the phrase “wherever possible” is confusing and has replaced the phrase with “wherever feasible” and believes this substitution will eliminate the confusion.

8. Comment: A commenter suggested changing the word “possible” in subpart (4)(a)1(vii) of Rule 0400-11-01-.04 to the word “feasible.” Almost everything is “possible” if risk and costs need not be considered, but that does not reflect “real world” considerations.

Response: The Board agrees with the commenter that substituting the word “feasible” for the word “possible” better reflects the intent of item (6)(b)5(ii)(VI) of Rule 0400-11-01-.02.

9. Comment: Regarding part (4)(a)7 of Rule 0400-11-01-.04, a commenter believes the proposed change puts an undue and unnecessary burden for secondary containment on the regulated entity which is out of alignment with existing Tennessee and EPA standards. For example, the Spill Prevention, Control, and Countermeasures requirements of 40 C.F.R. part 112, the industry standard for secondary containment for many years, requires secondary containment for the entire capacity of the largest single container plus sufficient freeboard to contain precipitation. In another example, EPA provides standards for hazardous waste tank systems or farms (analogous to a leachate treatment plant or system of storage tanks with leachate loadout piping, only with a more benign material) in 40 C.F.R. § 264.193 which requires secondary containment be designed to contain 100% of the capacity of the largest tank within its boundary. These two examples are for storage of bulk petroleum and hazardous wastes, which should necessarily be more protective than, or at most equally protective as, a system designed for storing leachate. The proposed language does the opposite of this.

Furthermore, and in consideration of the prevailing historic standards, any existing secondary containment structures for leachate storage vessels have been designed to meet the standard of storage for the largest vessel as opposed to the entire volume of the combined vessels, and likely would become immediately in violation of this amendment when effective.

Response: The Board has revised the language to not capture existing items that have already been approved in a permit and added clarifications to the secondary containment requirement.

10. Comment: A commenter suggested that subparts (4)(a)7(iii) and (iv) of Rule 0400-11-01-.04 clarify the construction materials that can or must be used for the containment surfaces in leachate collection reservoirs and leachate tank secondary containment systems. More specifically, the subparts should specify whether containment surfaces can be constructed solely of compacted soil (to what specifications?) or whether virtually impermeable materials like concrete and synthetic liners must be utilized?

Response: The Board believes the language as proposed adequately addresses the commenter's concerns. Subpart (4)(a)7(iv) of Rule 0400-11-01-.04 utilizes performance criteria such as "using best engineering practices, constructed of materials compatible with the liquid being stored." Using this phrasing provides the applicant an opportunity to make the argument for why particular construction specifications are appropriate.

11. Comment: Regarding subpart (4)(a)7(iv) of Rule 0400-11-01-.04, a commenter pointed out that the secondary containment requirements for the leachate collection does not appear to allow for instances where those tanks are already subgrade and any kind of deviation or waiver or other implementation of measures from the secondary containment requirement.

Response: The Board has amended the language to subpart (4)(a)7(iv) of Rule 0400-11-01-.04 to not capture existing items that have already been approved. Additionally, the existing rule language allows for waiver requests.

Regulatory Flexibility Addendum

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

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

This rule package is not anticipated to affect small businesses.

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

The rule does not add reporting, recordkeeping, or other administrative costs for compliance with the rule.

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

The Board does not anticipate the rule to have a probable impact on small businesses or consumers.

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

The purpose and objects of the proposed rule could not be achieved by less burdensome, less intrusive, or less costly alternative methods. The Board believes the proposed rule changes are minimally restrictive and are not burdensome.

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

There is not a federal counterpart that can be compared to the proposed rule. The proposed rules are similar in nature to those in surrounding states. The Board considered other state regulations and modeled and vetted several of the rule changes (i.e., those rules that were not clarifying or “clean up” in nature) after review of other states’ comparable regulations. For example, the Board modeled the proposed rule changes to transfer stations and landfills from regulations in North Carolina, Georgia, Alabama, Florida, and Mississippi.

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

The Board does not anticipate impacts on small businesses; as such, the Board believes it is not necessary to exempt small businesses for all or any of the requirements contained in the proposed rule.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The Board believes that these amended rules may result in a small increase in expenditures for those local governments that run landfills or transfer stations.

Additional Information Required by Joint Government Operations Committee

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

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

Most of the proposed amendments are to correct, clarify, or remove unclear and unnecessary requirements. These changes include:

- Clarifying the difference between major and minor landfill modifications to clarify permitting requirements, and improve the Department's workflow;
- Defining appurtenances and associated buffer requirements;
- Clarifying the permitting process;
- Clarifying the fee schedule and regulatory timelines;
- Updating, at the request of the Department of Health, the definition of "medical waste" to reduce unnecessary costs for the medical community; and
- Making it clear that a permittee must notify the Commissioner within 24 hours if a fire has occurred at its facility.

Other rule changes bring the rules for transfer stations and landfills in line with existing industry and department practices. This includes:

- Requiring a roof on transfer stations that manage putrescible waste;
- Reducing scenarios in which DSWM would allow a leachate pipe to penetrate the bottom liner of a landfill; and
- Adding requirements for secondary containment of leachate.

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

This rule is not required to comply with current state or federal law.

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

Owners and operators of solid waste disposal and management facilities that are permitted by the department and the medical industry (i.e., medical waste generators). The Board received feedback from these stakeholders but no one urged rejection of this rule.

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

The Board is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this rule.

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

This rule is unlikely to lead to an increase or decrease in state revenues or expenditures. The rule is unlikely to lead to an increase in local government revenues but may lead to a small increase in local government expenditures for those local governments that run landfills or transfer stations.

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

Jeremy Hooper
Davy Crockett Tower, Floor 7

500 James Robertson Parkway
Nashville, TN 37243
Jeremy.Hooper@tn.gov
615-686-7847

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

Alli F. Williamson
Legislative Director
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
Davy Crockett Tower, Floor 5
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 253-5339
Alli.F.Williamson@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

Most of the proposed amendments are to correct, clarify, or remove unclear and unnecessary requirements. These changes include:

- Clarifying the difference between major and minor landfill modifications to clarify permitting requirements, and improve the Department's workflow;
- Defining appurtenances and associated buffer requirements;
- Clarifying the permitting process;
- Clarifying the fee schedule and regulatory timelines;
- Updating, at the request of the Department of Health, the definition of "medical waste" to reduce unnecessary costs for the medical community; and
- Making it clear that a permittee must notify the Commissioner within 24 hours if a fire has occurred at its facility.

Other rule changes bring the rules for transfer stations and landfills in line with existing industry and department practices. This includes:

- Requiring a roof on transfer stations that manage putrescible waste;
- Reducing scenarios in which DSWM would allow a leachate pipe to penetrate the bottom liner of a landfill; and
- Adding requirements for secondary containment of leachate.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

These rules are believed to be the least-cost method for achieving improved solid waste management in the State for the purposes of protecting human health, safety, and the environment. The Board believes the proposed rule changes are minimally restrictive and are not burdensome.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

These rules are being promulgated to improve the Commissioner's ability to execute the solid waste program, including, but not limited to, aligning the rules with current standards in the regulated field and modern practical realities, clarifying existing rules, and removing unnecessary requirements. The costs of the rules on local governments and other regulated entities are anticipated to be minimal. Several of

the proposed rule changes will result in reduced regulatory costs, including, but not limited to, updating the definition of isolation room medical waste, and others simply clarify existing rules.

Requiring landfills to include secondary containment on primary leachate storage systems provides a safeguard that helps to reduce and mitigate risks associated with leachate management. Proper leachate management is critical to protection of surface water and groundwater resources in Tennessee.

The Board believes that transfer stations need a roof to best protect human health and the environment, and make compliance with other relevant regulations easier, including, but not limited to: reducing stormwater runoff from becoming contaminated with solid waste; minimizing vectors; and reducing wind dispersal of solid waste.

Based on this comparison, the benefits of moving forward with this rule outweigh the costs.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources because the compliance costs are anticipated to be minimal, the rule does not add any significant costs to the Commissioner's administration or enforcement of the solid waste rules, and several of the rule changes reduce regulatory costs on regulated entities and clarify existing rules which have caused confusion.

- (5) A determination of the effect of the action on competition.

The Board does not anticipate that this rule will have an effect on competition in the marketplace.

- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

The Board does not anticipate that this rule will have an effect on the cost of living in any geographical area of the state.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

The Board does not anticipate that this rule will have an effect on employment in any geographical area in the state.

- (8) The source of revenue to be used for the action.

The action can be accommodated with existing resources.

- (9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This rule will clarify existing rules and advance the health, safety, and welfare of Tennesseans, while resulting in minimal compliance costs. Private entities and local governments that run landfills or transfer stations will bear the costs of the action, though the costs are anticipated to be minimal. Tennesseans will benefit from this rule through better protection of human health, safety, and the environment through improved management of solid waste.