

Department of State
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312 Rosa L. Parks Ave., 8th Floor
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tnsos.gov

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Sequence Number: _____
Rule ID(s): _____
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:	Board of Water Quality, Oil, and Gas
Division:	Division of Water Resources (DWR) Division of Mineral and Geologic Resources (DMGR)
Contact Person:	Sarah Terpstra (DWR) Bryan Epperson (DMGR)
Address:	Davy Crockett Tower 500 James Robertson Parkway Nashville, Tennessee
Zip:	37243
Phone:	Sarah Terpstra: (615) 532-3634 Bryan Epperson: (865) 308-3699
Email:	sarah.terpstra@tn.gov bryan.epperson@tn.gov

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
0400-40-05	Individual National Pollutant Discharge Elimination System (NPDES) Permits
Rule Number	Rule Title
0400-40-05-.06	Notice and Public Participation

Chapter Number	Chapter Title
0400-40-10	National Pollutant Discharge Elimination System General Permits
Rule Number	Rule Title
0400-40-10-.03	Permits

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/publications/services/rulemaking-guidelines>.

Chapter 0400-40-05
Individual National Pollutant Discharge Elimination System (NPDES) Permits

Amendments

Paragraph (9) of Rule 0400-40-05-.06 Notice and Public Participation is amended by deleting it in its entirety and substituting instead the following:

- (9) To inform interested and potentially interested persons of the proposed discharge and of the tentative determinations regarding it, public notice shall be circulated within the geographical area of the proposed discharge by the following means:
- (a) By publishing the draft permit, rationale, and if applicable, the notice of public hearing, on the Department's website for the duration of the public comment period;
 - (b) By mailing (either electronically or physically) a copy of the notice to the following persons:
 - 1. The applicant;
 - 2. Any other agency that the Commissioner knows has issued, or is required to issue other permits for the same facility or activity;
 - 3. Federal and state agencies with jurisdiction over fish and wildlife resources and historic preservation;
 - 4. Any affected states and Indian Tribes;
 - 5. Any state agency responsible for plan development under CWA section 208(b)(2), 208(b)(4) or 303(e), the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service;
 - 6. Any user identified in the permit application of a privately owned treatment works;
 - 7. Persons on a mailing list developed by:
 - (i) Including those who request in writing to be on the list;
 - (ii) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
 - (iii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, newsletters, environmental bulletins, or state law journals. The Commissioner may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Commissioner may delete from the list the name of any person who fails to respond to such a request;
 - 8. To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
 - 9. To each state agency having any authority under state law with respect to the construction or operation of such facility; and
 - (c) If determined necessary by the Commissioner, any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases, signs, or any other forum or medium to elicit public participation.

Chapter 0400-40-10
National Pollutant Discharge Elimination System General Permits

Amendments

Subparagraph (g) of paragraph (2) of Rule 0400-40-10-.03 Permits is amended by deleting it in its entirety and substituting instead the following:

(g) Notice of NPDES General Permits.

1. The Commissioner shall give public notice of the intent to issue a general permit:
 - (i) The notice shall set forth the means by which one may comment on the draft general permit and shall give the public a comment period of at least 30 days;
 - (ii) The Commissioner shall consider all comments received from the public during the comment period;
 - (iii) When the general permit is issued, or when the decision is made not to issue the permit, the Commissioner shall prepare and make available to the public a set of responses to comments received during the comment period; and
 - (iv) The Commissioner shall hold a public hearing whenever the Commissioner finds, on the basis of requests, a significant degree of public interest in the general permit. The Commissioner may also hold a public hearing whenever the Commissioner determines a public hearing might clarify one or more issues involved in the permit decision. If a public hearing is held, the Commissioner will give at least a 30 day notice of the hearing, and receive comments for at least 10 days after the hearing.
2. Public notices in part 1. of this subparagraph shall be given by mailing (either electronically or physically) a copy of the notice to the following persons:
 - (i) EPA Region IV;
 - (ii) Any other agency which the Commissioner knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, § 404, or sludge management permit;
 - (iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, the Tennessee Valley Authority, the Advisory Council on Historic Preservation, and the Tennessee Historical Commission, including any affected States;
 - (iv) Any State agency responsible for plan development under CWA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service; and
 - (v) Persons on a mailing list developed by including on the list those who request in writing to be on the list; by soliciting persons for area lists from participants in past permit proceedings in that area; and by notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals.
3. Public notices in part 1. of this subparagraph shall be given by publishing the draft permit and rationale on the Department's website for the duration of the public comment period.
4. The Commissioner shall provide notice of the proposed NPDES general permit action to

facilities and activities it knows to be potentially affected by the general permit action, and also to known agencies, associations, and other umbrella organizations for those facilities or activities.

5. Public notices issued under this subparagraph shall contain the following minimum information:
 - (i) Name and address of the division responsible for processing the permit action for which notice is being given;
 - (ii) A brief description of the activity addressed in the general permit, and the area of coverage of the permit;
 - (iii) Name, address, electronic mail address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft general permit and rationale;
 - (iv) A brief description of the procedures for comment, the time and place of the hearing, and other procedures by which the public may participate in the final permit decision; and
 - (v) In addition to information described in subparts (i) through (iv) of this part, public notice of hearings shall contain reference to the date of previous public notices relating to the permit; date, time and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
6. In addition to the general public notice described in part 5. of this subparagraph, persons identified in subparts 2.(i) through (iv) of this subparagraph shall be mailed (either electronically or physically) a copy of the draft permit and rationale.

Authority: T.C.A. §§ 4-5-201 et seq. and 69-3-101 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)
Dr. Gary G. Bible (Oil and Gas Industry)					
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)					
Mayor Kevin C. Davis (Counties)					
Dodd Galbreath (Environmental Interests)					
Brent Galloway (Oil or Gas Property Owner)					
Amanda Goff (Commissioner's Designee, Department of Health)					
Sam Marshall (Commissioner's Designee, Department of Agriculture)					
Frank McGinley (Agricultural Interests)					
John Schwartz (Public-at-large)					
Neal Whitten (Manufacturing Industry)					
Terry Wimberley (Municipalities)					
Vacant (Small Generator of Water Pollution representing Automotive Interests)					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil, and Gas on 10/20/2026, 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: 07/10/2026

Rulemaking Hearing(s) Conducted on: (add more dates). 09/11/2026

Date: October 20, 2026

Signature: _____

Name of Officer: Dodd Galbreath

Title of Officer: Chair, Board of Water Quality, Oil, and Gas

Agency/Board/Commission: Board of Water Quality, Oil, and Gas

Rule Chapter Number(s): 0400-40-05 and 0400-40-10

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: A commenter requested that the newspaper notice be retained and a requirement to post a 3' by 3' sign in prominent locations around the site be added.

Response: The board appreciates the commenter's interest in effective public outreach but declines to adopt the requested changes. The expense and delay incurred for newspaper publication is not warranted. This proposed rule will now conform with the Federal rule at 40 C.F.R. § 124.10 by requiring posting of draft permits, rationales, and notices of public hearings on TDEC's website instead of requiring newspaper notices. Newspaper notices are costly and, in TDEC's experience, very few members of the public learn about a proposed permit through a notice in the newspaper.

The portion of the NPDES rules related to signage for individual NPDES permits was not opened as a part of this rulemaking, and remains unchanged. Specifically, paragraph (1) of Rule 0400-40-05-.06 provides:

“For an individual application for a new or increased discharge, the applicant shall notify the public of the application by posting a sign near the point of entrance to such facility and within view of a public road. The sign shall contain provisions as specified by the Commissioner. The sign shall be of such size that is clearly visible from the public road. Also, the sign shall be maintained for at least 30 days following submittal of the application to the Division.”

The Department has a template blue sign that measures 2' x 3' that meets the requirements of this rule and has proven effective at informing the public of a proposed permit in their community.

Finally, any person, including the commenter, may also request to be put on a mailing list for proposed NPDES permits.

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 rule affects small businesses.

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

The rule does not affect small businesses.

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

The rule does not impose an administrative or compliance cost.

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

The rule does not affect 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 rule being proposed that may exist, and to what extent the alternative means might be less burdensome to small business.

The rule is the least restrictive or burdensome means to comply with federal public notice and public hearing requirements.

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

The rule amends public notice requirements for national pollutant discharge elimination system (NPDES) permits in conformance with 40 C.F.R. § 124.10 by requiring posting of draft permits, rationales, and notices of public hearings on the Department's website instead of requiring newspaper notices. While the current rule complies with applicable federal law (40 C.F.R. §§ 124.10 and 124.12), it is more stringent because it requires newspaper publication for major NPDES permits and notices of public hearings for any individual NPDES permit and holding public hearings for all general NPDES permits. The rule conforms the Department's requirements to the less stringent federal requirements.

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

The rule does not affect small businesses.

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 rule will not result in an increase in expenditures or decrease in revenues for local governments.

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;

This rule amends public notice requirements for national pollutant discharge elimination system (NPDES) permits in conformance with 40 C.F.R. § 124.10 by requiring posting of draft permits and rationales on TDEC's website instead of requiring newspaper notices. The rule is also being amended to reflect that two divisions, the Division of Water Resources and the Division of Mineral and Geologic Resources, issue NPDES permits. In addition, these amendments reflect the use of electronic mail for public notice and comment and conforms the public hearing requirement for general permits to 40 C.F.R. § 124.12.

- (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;

The rule is not required to comply with current state or federal law. While the current rule complies with applicable federal law (40 C.F.R. §§ 124.10 and 124.12), it is more stringent because it requires newspaper publication for major NPDES permits and notices of public hearings for any individual NPDES permit and holding public hearings for all general NPDES permits. The rule conforms Tennessee's requirements to the less stringent federal requirements.

- (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;

The rule primarily affects the Department, which currently pays for newspaper notices for draft NPDES permits and public hearings. The rule also affects newspapers, which enjoy revenue from publishing these notices. Finally, the rule has a minor impact on members of the public who comment on NPDES permits.

TDEC received only one comment, submitted by an individual concerned about a particular quarry. TDEC did not receive any comments from the newspaper industry.

- (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 Department is unaware of any opinions of the attorney general and reporter or any judicial ruling that would directly relate to the necessity to promulgate 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;

The rule will result in a cost savings to the Department. There are currently 163 major NPDES permits and seven general NPDES permits that require newspaper notices for draft permits. Newspaper notices range from \$100 to \$1,500 per notice. Assuming an average cost of \$800 per notice, with newspaper notice required once every five years (the maximum permit term), the estimated cost savings would be in the range of \$27,000 per year.

Additionally, preparing for and holding a public hearing for a general permit usually requires the time of at least four TDEC staff for approximately three hours each. Such a hearing also requires the reservation of a publicly accessible meeting space, the use of audio/visual equipment, and audio/visual technical support staff, even if the public does not attend.

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

Sarah Terpstra, Division of Water Resources, 615-532-3634
Bryan Epperson, Division of Mineral and Geologic Resources, 865-308-3699

- (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
Commissioner's Office

- (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

Commissioner's Office
Tennessee Department of Environment and Conservation
Davy Crockett Tower, Floor 5
500 James Robertson Parkway
Nashville, Tennessee 37243
(629) 401-9485
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.
- The rule amends public notice requirements for national pollutant discharge elimination system (NPDES) permits in conformance with 40 C.F.R. § 124.10 by requiring posting of draft permits and rationales on TDEC's website instead of requiring newspaper notices. The rule is also being amended to reflect that two divisions, the Division of Water Resources and the Division of Mineral and Geologic Resources, issue NPDES permits. In addition, these amendments reflect the use of electronic mail for public notice and comment and conforms the public hearing requirement for general permits to 40 C.F.R. § 124.12.
- (2) A determination that the action is the least-cost method for achieving the stated purpose.
- The rule is the least-cost method for conducting effective public notice for NPDES permits. The Department anticipates a significant annual cost savings for eliminating newspaper notices. Further, the Department has recently held several public hearings for general permits that have garnered minimal attendance and little or no testimony. Often, there are more Department staff present at these public hearings than members of the public. These hearings involve a significant investment of Department resources with little benefit to the public. The rule eliminates the requirement to conduct public hearings for every general NPDES permit and instead requires such hearings only when there is a significant public interest in the draft permit or a specific reason to hold a hearing.
- (3) A comparison of the cost-benefit relation of the action to nonaction.
- The promulgation of this proposed rule would result in cost savings to the Department of a minimum of \$27,000 per year while not affecting members of the public, small businesses, consumers, or rural communities. If the rule were not promulgated, administrative costs would continue to rise, and Department's public participation rule would not conform Tennessee's requirements to the less stringent federal requirements.
- (4) A determination that the action represents the most efficient allocation of public and private resources.
- The action represents the most efficient allocation of public resources. No private resources are impacted.
- (5) A determination of the effect of the action on competition.
- The rule does not impact competition.
- (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 rule does not impact the cost of living.
(7)	A determination of the effect of the action on employment in the geographical area in which the action would occur. The rule does not impact employment.
(8)	The source of revenue to be used for the action. The rule does not raise additional revenue.
(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. The rule impacts only the Department's cost, and does not have an economic impact on third parties other than newspapers that will lose some revenue.