

## HAZARDOUS WASTE STATUTES RELATED TO FINANCIAL ASSURANCE

(NOTE: The information contained in this document was current as of July 2012 but is subject to change without notice. It is provided here only as a convenience. For the most complete and up-to-date legal information, please access Tennessee Code Annotated [here](#).)

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

(a) (1) No person shall construct, substantially alter, or own or operate a hazardous waste treatment, storage, or disposal facility, nor shall any person treat, store, or dispose of a hazardous waste, nor shall any hazardous waste transporter receive a hazardous waste from, or deliver a hazardous waste to, any location in the state, without first obtaining a permit from the commissioner for such facility or activity. No such permit shall be issued or otherwise authorized unless and until the person has complied with the requirements established by the board in regulations promulgated under this part. All permits for hazardous waste management facilities and transporters shall be issued by the commissioner. All such permits shall be issued according to procedures established by the board in regulations promulgated under this part.

(2) After public notice and an opportunity for comment, the commissioner may, to the extent allowed in regulations adopted by the board, grant variances and waivers for persons; and the board may through the rulemaking process establish exemptions from the requirements of this part and permits-by-rule for classes of activities subject to the requirements of this part; provided, that it is demonstrated to a reasonable degree of certainty that design or operating practices will prevent degradation of the environment and will adequately protect the public health, safety and environment; and provided further, that the commissioner shall not waive the requirement that a community impact statement be filed.

(b) Each permit shall contain such terms and conditions as the commissioner deems necessary under the regulations promulgated under this part and shall be issued for a fixed period of time. A permit may be modified at any time for cause.

(c) (1) The commissioner may require the posting of a bond by any applicant for permitting of a hazardous waste storage facility, treatment facility or disposal facility. Such bond shall be to assure the availability of funds to the state in the event of abandonment, insolvency, or other inability of the applicant to meet the requirements regarding a public health hazard created by the presence of hazardous waste at a site occupied by the applicant or formerly under its possession, ownership, or control. The amount of the bond will be established by the commissioner as a permit condition and based on the estimated costs of providing proper closure, or post-closure care to the facility. In establishing such requirements, the commissioner shall give due consideration to the probable extent of contamination, the amount of possible property damage, the costs of removal and disposal of hazardous waste used by the applicant, the costs of reclamation of the property in the event of abandonment, insolvency or other inability of the applicant to perform such services to the satisfaction of the commissioner.

(2) In the event it is determined that there is a reasonable probability that a permitted facility or site will eventually cease to operate while containing, storing, or otherwise treating hazardous wastes on the premises which will require continuing and perpetual care or surveillance over the facility or site to protect the public health, safety or welfare, the commissioner, for the commissioner's respective area of permitting authority, may require for storage, treatment or disposal facilities, a sum to be deposited by the applicant, in addition to the posted bond, in such amounts and under such circumstances as the commissioner shall determine as necessary by rule, regulation, or order based upon such rule or regulation, in a trust fund maintained as the perpetual care trust fund in the name of the state. In establishing such additional requirements, the commissioner shall give due consideration to the nature of the hazardous waste material, the size and type of facility or site to be decommissioned, and the anticipated expenses of perpetual care and surveillance.

(3) No private entity shall be precluded by reason of criteria established under subdivisions (c)(1) and (2) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurance of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of a specified hazardous waste.

(4) An acceptable bond shall be issued by a fidelity or surety company authorized to do business in this state; a personal bond supported by such collateral as the commissioner shall deem to be satisfactory; or a cash bond in an amount to be determined by the commissioner. Acceptable forms of collateral shall be established by the board by regulation and shall include, but are not limited to, insurance policies, letters of credit or securities.

(5) The bonds obtained by any applicant shall be payable to the state of Tennessee and shall remain effective until such time as the commissioner determines that the facility or site involved no longer presents a danger to the public health and welfare.

(6) At any time during the life of a bond, the commissioner, for the commissioner's respective area of permitting authority, may order forfeiture of the bond of a storage, treatment, or disposal facility based upon the commissioner's determination of abandonment, insolvency or other inability of the applicant to perform to the satisfaction of the commissioner. The board shall promulgate regulations to ensure the applicant adequate notice and an opportunity to be heard on the matter of forfeiture. All forfeited bonds shall be deposited in a special account in the name of the state, entitled "the hazardous waste trust fund." All moneys deposited in the fund may be expended by the commissioner as the commissioner considers necessary to assure the protection of the public health, safety, or welfare. Following the detoxification, the removal and disposal of any hazardous waste, and the reclamation of the premises, any funds remaining from the forfeited bond shall accrue to the state and shall not be refundable to the applicant. Any unencumbered moneys and any unexpended balance of the fund, together with any interest accruing on investments and deposits of the fund, remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward and maintained in the fund until expended in accordance with this part. The moneys which are deposited in the hazardous waste trust fund and the perpetual care trust fund shall not be used for normal operating expenses of the department, but shall be expended only for the detoxification, removal and disposal of any

hazardous waste, reclamation of sites or facilities, and perpetual care and surveillance of sites or facilities where the applicant has abandoned, defaulted, or otherwise refused to perform the above services to the satisfaction of the commissioner. Moneys accumulated in the hazardous waste trust fund or the perpetual care trust fund may be transferred by the commissioner whenever it is determined by the commissioner that the transfer of such funds is required to provide services at abandoned, inoperative, decommissioned facilities or at contaminated sites to protect the public health, safety or welfare.

(d) The commissioner may require any applicant for permitting of a hazardous waste storage facility, treatment facility, or disposal facility, and any such permittee, to have and maintain financial responsibility as may be necessary for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility. The board shall promulgate and adopt rules and regulations as necessary or desirable to implement this provision.

(e) The commissioner may deny or revoke any permit of a storage, treatment or disposal facility if the commissioner finds that the applicant or permittee has failed to comply with any term or condition of the permit, this part, any order of the commissioner, or any rules, regulations or standards adopted pursuant hereto.

(f) (1) The department shall give public notice of an application for a permit for a commercial facility for the storage, treatment, or disposal of hazardous waste within thirty (30) days of its receipt. The commissioner shall hold a community meeting concerning such a permit application within forty-five (45) days of the publication of the public notice. This shall be in addition to the public notice and hearing given after a draft permit or denial is issued. The county legislative body of the county in which the facility is proposed, the governing body of the municipality, if any, in which the facility is proposed and the governing body of any municipality within one (1) mile of the proposed facility shall be represented at the community meeting. Failure to participate shall be deemed a waiver and shall not invalidate the meeting. The board shall prescribe in rules the procedures for such notices and meetings. The local governing bodies participating in the community meeting shall have the opportunity to prepare reports representing their interpretation of the concerns of the community, and shall submit such reports to the department within ninety (90) days after the community meeting. The report may include any summaries of issues that the local governing bodies feel appropriate.

(2) If a local governing body chooses to make such report, it shall include a decision to accept, reject, or modify the application. Such decision shall be based upon the application of the following criteria which shall consider the differences between storage, treatment and disposal facilities:

(A) The facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding area;

(B) The plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(C) The traffic patterns and the capacity of roads and bridges to or from the facility are so designed as to minimize the impact on existing traffic flows;

(D) An emergency response plan has been formulated by or for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

(E) If the facility is to be located in a county where the county or municipality has adopted a hazardous or solid waste management plan and/or zoning plan, the facility is consistent with that plan;

(F) Distances from occupied dwellings, including, but not limited to, private residences, schools, churches, commercial buildings, and other buildings not associated with the facility, and scenic, cultural and recreational areas so as to minimize the adverse economic impacts on the local community and the surrounding communities;

(G) The facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(H) The previous operating experience and past record of convictions relevant to the operation of a proposed facility, or admissions of violations, other than minimal nonwillful permit violations, of the applicant and any subsidiary or parent corporation operating in the field of solid or hazardous waste management; and

(I) The conditions or criteria provided for in § 68-212-107(d)(10).

(3) Failure by any of the local governing bodies to submit such report within the ninety-day period shall be deemed a waiver of the right of such local governing body to submit such report. The department shall consider these reports in granting the permit. The commissioner may affirm the decision of the local governing body, if any, or may reverse or modify the decision if the decision is:

(A) In violation of statutory provisions;

(B) In excess of the statutory authority of the agency or the local governing body;

(C) Made upon unlawful procedure;

(D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion;

(E) Unsupported by evidence which is both substantial and material in the application and report;  
or

(F) Contrary to the conditions or criteria set forth in § 68-212-107(d)(10).

(4) The commissioner shall issue or deny the permit within ninety (90) days of the close of the public comment period on the draft permit. The applicant shall reimburse the department for the expense of all public notification. Failure to make such payment shall be grounds for denial of the permit.

(g) If the ownership or operational control of a hazardous waste storage facility, treatment facility, disposal facility or commercial landfill facility for disposal of hazardous waste is sold, voluntarily or involuntarily transferred or in any other manner changed, then the permit shall be revoked; provided, that such permit may be reinstated within ninety (90) days if the commissioner determines that all original permit requirements and conditions will be met by the new owner or operator, and the commissioner may allow such facility to continue to operate during such ninety-day period. Any major modification of prior permitted operation shall require a new permit issuance process to be followed.

(h) The board shall establish criteria in regulations promulgated under this part for the consideration of the applicant's prior related business record and any civil or criminal liability for past ownership or operation of any facility which would be required to receive a permit to be operated in this state. Such record shall be considered by the commissioner prior to the issuance of any permit pursuant to this section.

(i) No permit for a hazardous waste storage facility, treatment facility or disposal facility shall be issued if any person who is the legal or beneficial owner of ten percent (10%) or more of the stock of the company or corporation applying for such permit has been convicted of any felony or has been convicted of a misdemeanor for the unlawful storage, treatment or disposal of hazardous wastes.

(j) Subsections (f)-(j) shall not apply to any facility currently operating under authorization of the commissioner.

(k) Permits issued after July 1, 1986, may require corrective action for all releases of hazardous waste and hazardous constituents from any waste management unit at a treatment, storage, or disposal facility seeking a permit under this part, regardless of the time at which such waste was placed in the facility. Permits shall also include schedules for compliance for such corrective action and assurances of financial responsibility for completing such corrective action.

(l) The commissioner may refuse to issue a permit to a commercial facility for the storage, treatment, or disposal of hazardous waste if, at the time of permit issuance, the applicant or permittee is subject to an order for corrective action pursuant to this part; provided, that upon a determination by the commissioner that the public health, safety and environment will be adequately protected by the posting of a sufficient bond as security to ensure compliance with such order for correction, or by such other means approved by the commissioner, the commissioner may waive the provisions of this subsection (l).

(m) No new commercial hazardous waste permit applications received by the department after June 8, 1989, shall be considered, approved or denied by the commissioner until the board has complied with § 68-212-107(d)(10). This subsection (m) and the regulations adopted pursuant to

§ 68-212-107(d)(10) shall not apply to any application for a permit for a facility if the application was filed with the department, or if the planned facility was under review by the department in anticipation of the filing of the application, on or before July 1, 1989.

(n) (1) No permit shall be issued or otherwise authorized for a portable commercial unit to store, treat or dispose of hazardous waste generated in a state other than Tennessee. The commissioner may deny or revoke any permit of a portable commercial unit which fails to comply with this subsection (n).

(2) A permit issued to a unit which is subject to this subsection (n) may be modified at any time to comply with this subsection (n).

(o) (1) Before submitting to the department the Part B permit application for a new hazardous waste treatment storage or disposal facility permit or for a permit renewal, the applicant shall hold at least one (1) meeting with the public in order to inform the community of proposed hazardous waste management activities and to solicit questions from the community. The applicant shall submit a summary of the meeting and copies of any written comments or materials submitted at the meeting to the department as a part of the permit application. The applicant must provide public notice of the preapplication community meeting at least thirty (30) days prior to the meeting. Public notice shall include, but shall not be limited to, a visible and accessible sign at or near the facility announcing the date, time and location of the meeting, and other information as required by the department.

(2) At the preapplication community meeting the applicant must provide a community impact statement which shall also be maintained in the facility file. The community impact statement shall include the following:

(A) A description of the facility (including a scale drawing or photograph of the facility) and the proposed hazardous waste management activities;

(B) A description of security procedures at the facility;

(C) Information on hazard prevention and preparedness, including a summary of the contingency plan and arrangements with local emergency authorities;

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

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

(F) A description of the facility location information relative to compliance with flood plain requirements and with respect to any commercial applicant, seismic requirements.