

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

Sequence Number: 01-05-14  
Rule ID(s): 5057  
File Date: 1/8/14  
Effective Date: 4/8/14

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Britton Dotson
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11 <sup>th</sup> Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0774
<b>Email:</b>	<a href="mailto:Britton.Dotson@tn.gov">Britton.Dotson@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)**

<b>Chapter Number</b>	<b>Chapter Title</b>
0400-48-01	Regulations to Govern Subsurface Sewage Disposal Systems
<b>Rule Number</b>	<b>Rule Title</b>
0400-48-01-.21	Fees for Services

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

### Chapter 0400-48-01 Regulations to Govern Subsurface Sewage Disposal Systems

Rule 0400-48-01-.21 Fees for Services is amended by deleting it in its entirety and replacing it with the following so that, as amended, the rule shall read:

0400-48-01-.21 Fees for Services.

(1) Fees for services are assessed pursuant to the following:

Specific Procedure Covered by Fee	Fee
(a) Conventional, chamber, EPS and large diameter gravelless pipe subsurface sewage disposal systems permit application processing, making inspections and other regulatory activities relative to the construction of new conventional, chamber and large diameter gravelless pipe subsurface sewage disposal systems and modification or expansion of existing systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.	Four hundred dollars (\$400) up to one thousand (1,000) gpd design flow plus one hundred dollars (\$100) for each additional one thousand (1,000) gpd flow, or portion thereof.
(b) Alternative subsurface sewage disposal systems permit application up to one thousand (1,000) gpd. design flow processing (excluding chamber, EPS and large diameter gravelless pipe systems), making inspections and other enforcement activities relative to the construction of alternative subsurface sewage disposal systems and modification or expansion of existing systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.	Five hundred dollars (\$500) plus one hundred fifty dollars (\$150) for each additional one thousand (1,000) gpd flow, or portion thereof.
(c) Experimental subsurface sewage disposal systems permit application processing, making inspections and other enforcement activities relative to the construction of experimental subsurface sewage disposal systems and expansion of systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.	Five hundred dollars (\$500).

- (d) Subdivision evaluation and plat approval for individual lots - Evaluations of lots within proposed subdivisions to determine and to specify limitations on their usability for subsurface sewage disposal systems.
- |                        |  |
|------------------------|--|
| Two lots or less       | One hundred fifty dollars (\$150) per lot  |
| Three lots to ten lots | One hundred dollars (\$100) per lot  |
| Greater than ten lots  | One thousand dollars (\$1,000) for the first ten lots plus sixty five dollars (\$65) for each additional lot |
- (e) Inspections of existing subsurface sewage disposal systems. Two hundred dollars (\$200) per inspection.
- (f) Installer and Pumper Permits - Enforcement activities relative to sewage system installers and septic tank pumps. Permits shall be granted or denied within forty-five (45) days of the date of application. Two hundred dollars (\$200) per annual permit for pumps and installers. The \$200 annual installer permit applies to installation of conventional, chamber, EPS and large diameter gravelless pipe systems. If an installer wishes to be permitted for installation of alternative systems, an additional one hundred dollars (\$100) applies for each type of alternative system.
- (g) Sewage Surveys - Activities involved in the inspections and surveying of subsurface sewage disposal systems. Actual costs.
- (h) Water Samples - Collection of water samples for bacteriological laboratory analysis, but does not include samples collected in enforcement activities.
- |                   |   |
|-------------------|---|
| 1. Mail Deliver   | One hundred fifteen dollars (\$115) per sample. |
| 2. Direct Deliver | Two hundred fifteen dollars (\$215) per sample. |
- (i) Plans Review - Review of designs for large conventional or large alternative subsurface sewage disposal systems to the point of permit issuance. Seven hundred fifty dollars (\$750) per proposed system.
- (j) Domestic Septage Disposal Site Permit - Permit application processing, making inspections and other regulatory activity relative to domestic septage disposal sites. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information. Four hundred dollars (\$400).
- (k) Training - Non-state agencies and individuals. Calculated costs.
- (l) Certificate of Verification by homeowners of existing system. One hundred dollars (\$100).

Authority: T.C.A. §§ 68-221-401 et seq., 68-203-101 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 12/18/2013, 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: 10/18/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/10/13



Date: December 18, 2013

Signature: [Handwritten Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: December 18, 2013

Notary Public Signature: [Handwritten Signature]

My commission expires on: July 6, 2015

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.

[Handwritten Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter

1-7-14  
Date

**Department of State Use Only**

RECEIVED  
2014 JAN -8 PM 12:00  
OFFICE OF  
SECRETARY OF STATE

Filed with the Department of State on: 1/8/14

Effective on: 1/8/14

[Handwritten Signature]  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: Several commenters requested the ratio of state appropriations to fees for the subsurface sewage disposal program to insure that the statutory limit set by T.C.A. § 68-203-104(d)(3) is in compliance.

Response: The proposed amendments would result in fee collections of approximately 60% of the total revenue for the subsurface sewage disposal program, which is well below the statutory limit of 71%.

Comment: A commenter requested an explanation of the Division's proposal to increase fees in light of the state revenue numbers as this action appears inconsistent with the express language of T.C.A. 68-203-104(a)(3).

Response: The proposed fee amendments are not inconsistent with the language of T.C.A. § 68-203-104(a)(3), The state appropriation to the heritage subsurface sewage disposal program for current fiscal year was increased.

Comment: A commenter requested the amount of state appropriation allotted to this division for FY 2013-14, the amount allotted in 2012-13, and the amount of anticipated appropriation for FY 2014-15.

Response: In FY 2012-13, the legacy Division of Water Pollution Control (WPC) was appropriated \$9,424,700; the legacy Division of Water Supply (DWS) was appropriated \$1,002,200; and the legacy Groundwater Protection Division (GWP) was appropriated \$2,155,400. When combined into the Division Water Resources the total appropriated for this period was \$12,582,300 (WPC 74.9%, DWS 8%, GWP 17.1%). For FY 2013-14, the Division of Water Resources was appropriated \$13,435,100; an increase of \$852,800 from the previous fiscal year. The percentage of allocations to the legacy programs within the Division of Water Resources would have increase by proportionally to each program. Since the Administration is in the process of developing the recommended budget for FY 2014-15, which the Governor will submit to the General Assembly in late January 2014, we are not able to determine the amount that will be appropriated. However, we do not anticipate that the appropriation will be decreased.

### Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or 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 proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Those small business and consulting firms that provide soil mapping services will benefit from the proposed rule change. This rule change will result in the Department no longer providing soil mapping services and in doing so will direct this work to the private sector. There are an estimated 30 – 50 such businesses within Tennessee. The proposed rule change will also raise subdivision evaluation fees for subdivisions in areas not served by public sewer – particularly those with only a few lots. The majority of subdivisions with only a few lots are proposed by existing land owners that elect to further divide their property. This change will affect small businesses that are involved with residential developments. For example, per the proposed rule: if a developer buys a five-acre tract of land in an area that is not served by sewer and proposes to create a five-lot subdivision the cost for this service would increase from \$325 to \$500 (\$35 per lot); if a developer buys a three-acre tract in an area that is not served by sewer and proposed to create a two-lot subdivision the cost for this service would increase from \$130 to \$300 (\$85 per lot); if a developer buys a 50-acre tract in an area that is not served by sewer and proposes to create 30 lots the fee for this service would increase from \$1,950 to \$2,300 (~\$12 per lot).

- (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.

No additional reporting, recordkeeping or administrative costs are anticipated by this rule change.

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

Small businesses providing soil mapping services will benefit from the additional workload. Buyers of lots in new subdivisions will likely bear the cost of the increased fee. However, at most the increase will be \$85 per lot.

- (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 proposed rule change is expected to benefit small businesses in that the Department will no longer be providing a service. This service can be provided by private soil scientists. The increase of fees associated with the evaluation of subdivision lots is weighted toward those subdivisions with minimal number of lots. The fee increase is proposed to more appropriately fund the support (staff, transportation, office review) for smaller subdivisions. The existing fee, while appropriate for larger subdivisions, did not appropriately fund the Department's service for those subdivisions with only a few lots. The Department is not aware of any alternative means of providing this regulatory mandated service.

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

This proposed rule does not increase permitting requirements nor does the rule attempt to increase the population of permitted activities. This proposed rule is specific to fees for services. The proposed fee changes are an outgrowth of an assessment of the services that the Department provides and the fees that are assessed for those services. Funding ratios (fees/state appropriations) vary from program to program within the state. Furthermore, other states have varied means of funding practices which makes direct comparison of fees impractical.

- (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.

This rule change will benefit small businesses providing soil mapping services. Exempting small businesses from the increased fee associated with subdivision evaluations would benefit small businesses that buy property for the purpose of subdividing and resale; however, the benefit would be minimal. The additional expense would be factored in to the process of buying, developing, and selling subdivision lots and ultimately borne by the consumer.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that these amendments will not have a financial impact on 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;

With this rulemaking, the department proposes to eliminate soil mapping services that compete with the private sector and remove this fee category from the rule. In the 1960s and 1970s, the vast majority of subdivision approvals and permits were based on percolation tests. Beginning in the late 1970s soil mapping became the preferred method for evaluating the suitability of soils to effectively treat domestic wastewater. Early in this transition state-employed soil consultants provided the majority of the soil-mapping services associated with the program. As the program evolved, private soil scientists entered the market. In fact, the current rules require private soil scientists providing services in support of the program to be approved by the state. Currently, the vast majority of soil mapping is performed by private soil consultants. This proposal removes soil mapping as a service provided by the state and places all soil mapping services in the private sector.

The department proposes to modify the fee structure for subdivision evaluation and plat approval to a sliding scale that more accurately distributes review costs. Field work is critical to effective soil evaluation. Historically, the fee for subdivision evaluation and plat approval has been \$65 per lot. However, for plat consideration with a limited number of lots, the fee does not cover review costs. The department proposes a fee of \$150 per lot for one or two lots on a proposed plat; and, \$100 per lot for three to ten lots on a proposed plat. Plats containing more than 10 lots will be assessed \$1,000 (\$100 per lot) for the first ten lots plus \$65 for each additional lot.

- (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 rulemaking is being promulgated under the authority of T.C.A. §§ 68-221-401 et seq., Subsurface Sewage Disposal Systems and T.C.A. §§ 68-203-101 et seq. the Tennessee Environmental Protection Fund.

- (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;

Private soil scientists support the rule in that they will benefit from additional workload. Developers of residential subdivisions in areas not served by public sewer will be affected by the fee increase for subdivision evaluations. No comments to this rule have been received from this community.

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

The Department is not aware of any opinions or judicial rulings that directly relate 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 amendment is estimated to increase revenue by approximately \$80,000 annually. This estimate is based on the actual workload from the previous year.

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

Britton Dotson  
Division of Water Resources  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor  
Nashville, Tennessee 37243

(615) 532-0774

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

Jenny Howard  
Deputy General Counsel  
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  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-8685  
[Jenny.Howard@tn.gov](mailto:Jenny.Howard@tn.gov)

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

The Department is not aware of any additional relevant information.

**Department of State  
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

**For Department of State Use Only**

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. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Britton Dotson
<b>Address:</b>	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11 <sup>th</sup> Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0774
<b>Email:</b>	<a href="mailto:Britton.Dotson@tn.gov">Britton.Dotson@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
0400-48-01	Regulations to Govern Subsurface Sewage Disposal Systems
Rule Number	Rule Title
0400-48-01-.21	Fees for Services

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

### Chapter 0400-48-01 Regulations to Govern Subsurface Sewage Disposal Systems

Rule 0400-48-01-.21 Fees for Services is amended by deleting it in its entirety and replacing it with the following so that, as amended, the rule shall read:

0400-48-01-.21 Fees for Services.

(1) Fees for services are assessed pursuant to the following:

Specific Procedure Covered by Fee	Fee
<del>(a) General intensity soil mapping to determine eligibility for percolation tests.</del>	<del>Eighty dollars (\$80) per acre, with eighty dollars (\$80) being the minimum for each separate acre or part of acre to be mapped.</del>
<del>(b) High intensity soil mapping (sufficient for final approval, 1" = 100' scale) of single lots, or tracts where lots have been staked, or where tracks are gridded (100' grid staking) for residential, commercial, industrial, institutional or recreational users.</del>	<del>Two hundred dollars (\$200) per acre, with two hundred dollars (\$200) being the minimum for each separate acre or part of acre to be mapped.</del>
<del>(c) Extra-high intensity soil mapping for alternative disposal system.</del>	<del>Two hundred fifty (\$250) dollars per acre, with two hundred fifty (\$250) dollars being the minimum for each separate acre or part of acre to be mapped.</del>
<del>(d)</del> (a) Conventional, chamber, EPS and large diameter gravelless pipe subsurface sewage disposal systems permit application processing, making inspections and other regulatory activities relative to the construction of new conventional, chamber and large diameter gravelless pipe subsurface sewage disposal systems and modification or expansion of existing systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.	Four hundred dollars (\$400) up to one thousand (1,000) gpd design flow plus one hundred dollars (\$100) for each additional one thousand (1,000) gpd flow, or portion thereof.
<del>(e)</del> (b) Alternative subsurface sewage disposal systems permit application up to one thousand (1,000) gpd. design flow processing (excluding chamber, EPS and large diameter gravelless pipe systems), making inspections and other enforcement activities relative to the construction of alternative subsurface sewage disposal systems and modification or expansion of existing systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits	Five hundred dollars (\$500) plus one hundred fifty dollars (\$150) for each additional one thousand (1,000) gpd flow, or portion thereof.

shall be granted or denied within forty-five (45) days of receipt of all necessary information.

- (f)(c) Experimental subsurface sewage disposal systems permit application processing, making inspections and other enforcement activities relative to the construction of experimental subsurface sewage disposal systems and expansion of systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information. Five hundred dollars (\$500).
- (g)(d) Subdivision ~~E~~evaluation and plat approval for individual lots - Evaluations of lots within proposed subdivisions to determine and to specify limitations on their usability for subsurface sewage disposal systems. ~~Sixty five dollars (\$65) per evaluated lot.~~
- Two lots or less One hundred fifty dollars (\$150) per lot
- Three lots to ten lots One hundred dollars (\$100) per lot
- Greater than ten lots One thousand dollars (\$1,000) for the first ten lots plus sixty five dollars (\$65) for each additional lot
- (h)(e) Inspections of existing subsurface sewage disposal systems. Two hundred dollars (\$200) per inspection.
- (i)(f) Installer and Pumper Permits - Enforcement activities relative to sewage system installers and septic tank pumps. Permits shall be granted or denied within forty-five (45) days of the date of application. Two hundred dollars (\$200) per annual permit for pumpers and installers. The \$200 annual installer permit applies to installation of conventional, chamber, EPS and large diameter gravelless pipe systems. If an installer wishes to be permitted for installation of alternative systems, an additional one hundred dollars (\$100) applies for each type of alternative system.
- (j)(g) Sewage Surveys - Activities involved in the inspections and surveying of subsurface sewage disposal systems. Actual costs.
- (k)(h) Water Samples - Collection of water samples for bacteriological laboratory analysis, but does not include samples collected in enforcement activities.
1. Mail Deliver One hundred fifteen dollars (\$115) per sample.
  2. Direct Deliver Two hundred fifteen dollars (\$215) per sample.
- (l)(i) Plans Review - Review of designs for large conventional or large alternative subsurface Seven hundred fifty dollars (\$750) per proposed system.

sewage disposal systems to the point of permit issuance.

- ~~(m)~~ ~~Plat approval for individual lots.~~ ~~Sixty five dollars (\$65) per evaluated lot.~~
- ~~(n)~~(j) Domestic Septage Disposal Site Permit - Four hundred dollars (\$400).  
Permit application processing, making inspections and other regulatory activity relative to domestic septage disposal sites. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.
- ~~(o)~~(k) Training - Non-state agencies and individuals. - and Calculated costs.
- ~~(p)~~(l) Certificate of Verification by homeowners of existing system. One hundred dollars (\$100).

Authority: T.C.A. §§ 68-221-401 et seq., 68-203-101 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 12/18/2013, 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: 10/18/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/10/13

Date: December 18, 2013

Signature: \_\_\_\_\_

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

---

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.

\_\_\_\_\_  
Robert E. Cooper, Jr.  
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 containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: Several commenters requested the ratio of state appropriations to fees for the subsurface sewage disposal program to insure that the statutory limit set by T.C.A. § 68-203-104(d)(3) is in compliance.

Response: The proposed amendments would result in fee collections of approximately 60% of the total revenue for the subsurface sewage disposal program, which is well below the statutory limit of 71%.

Comment: A commenter requested an explanation of the Division's proposal to increase fees in light of the state revenue numbers as this action appears inconsistent with the express language of T.C.A. 68-203-104(a)(3).

Response: The proposed fee amendments are not inconsistent with the language of T.C.A. § 68-203-104(a)(3), The state appropriation to the heritage subsurface sewage disposal program for current fiscal year was increased.

Comment: A commenter requested the amount of state appropriation allotted to this division for FY 2013-14, the amount allotted in 2012-13, and the amount of anticipated appropriation for FY 2014-15.

Response: In FY 2012-13, the legacy Division of Water Pollution Control (WPC) was appropriated \$9,424,700; the legacy Division of Water Supply (DWS) was appropriated \$1,002,200; and the legacy Groundwater Protection Division (GWP) was appropriated \$2,155,400. When combined into the Division Water Resources the total appropriated for this period was \$12,582,300 (WPC 74.9%, DWS 8%, GWP 17.1%). For FY 2013-14, the Division of Water Resources was appropriated \$13,435,100; an increase of \$852,800 from the previous fiscal year. The percentage of allocations to the legacy programs within the Division of Water Resources would have increase by proportionally to each program. Since the Administration is in the process of developing the recommended budget for FY 2014-15, which the Governor will submit to the General Assembly in late January 2014, we are not able to determine the amount that will be appropriated. However, we do not anticipate that the appropriation will be decreased.

### Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or 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 proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Those small business and consulting firms that provide soil mapping services will benefit from the proposed rule change. This rule change will result in the Department no longer providing soil mapping services and in doing so will direct this work to the private sector. There are an estimated 30 – 50 such businesses within Tennessee. The proposed rule change will also raise subdivision evaluation fees for subdivisions in areas not served by public sewer – particularly those with only a few lots. The majority of subdivisions with only a few lots are proposed by existing land owners that elect to further divide their property. This change will affect small businesses that are involved with residential developments. For example, per the proposed rule: if a developer buys a five-acre tract of land in an area that is not served by sewer and proposes to create a five-lot subdivision the cost for this service would increase from \$325 to \$500 (\$35 per lot); if a developer buys a three-acre tract in an area that is not served by sewer and proposed to create a two-lot subdivision the cost for this service would increase from \$130 to \$300 (\$85 per lot); if a developer buys a 50-acre tract in an area that is not served by sewer and proposes to create 30 lots the fee for this service would increase from \$1,950 to \$2,300 (~\$12 per lot).

- (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.

No additional reporting, recordkeeping or administrative costs are anticipated by this rule change.

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

Small businesses providing soil mapping services will benefit from the additional workload. Buyers of lots in new subdivisions will likely bear the cost of the increased fee. However, at most the increase will be \$85 per lot.

- (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 proposed rule change is expected to benefit small businesses in that the Department will no longer be providing a service. This service can be provided by private soil scientists. The increase of fees associated with the evaluation of subdivision lots is weighted toward those subdivisions with minimal number of lots. The fee increase is proposed to more appropriately fund the support (staff, transportation, office review) for smaller subdivisions. The existing fee, while appropriate for larger subdivisions, did not appropriately fund the Department's service for those subdivisions with only a few lots. The Department is not aware of any alternative means of providing this regulatory mandated service.

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

This proposed rule does not increase permitting requirements nor does the rule attempt to increase the population of permitted activities. This proposed rule is specific to fees for services. The proposed fee changes are an outgrowth of an assessment of the services that the Department provides and the fees that are assessed for those services. Funding ratios (fees/state appropriations) vary from program to program within the state. Furthermore, other states have varied means of funding practices which makes direct comparison of fees impractical.

- (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.

This rule change will benefit small businesses providing soil mapping services. Exempting small businesses from the increased fee associated with subdivision evaluations would benefit small businesses that buy property for the purpose of subdividing and resale; however, the benefit would be minimal. The additional expense would be factored in to the process of buying, developing, and selling subdivision lots and ultimately borne by the consumer.

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that these amendments will not have a financial impact on 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;

With this rulemaking, the department proposes to eliminate soil mapping services that compete with the private sector and remove this fee category from the rule. In the 1960s and 1970s, the vast majority of subdivision approvals and permits were based on percolation tests. Beginning in the late 1970s soil mapping became the preferred method for evaluating the suitability of soils to effectively treat domestic wastewater. Early in this transition state-employed soil consultants provided the majority of the soil-mapping services associated with the program. As the program evolved, private soil scientists entered the market. In fact, the current rules require private soil scientists providing services in support of the program to be approved by the state. Currently, the vast majority of soil mapping is performed by private soil consultants. This proposal removes soil mapping as a service provided by the state and places all soil mapping services in the private sector.

The department proposes to modify the fee structure for subdivision evaluation and plat approval to a sliding scale that more accurately distributes review costs. Field work is critical to effective soil evaluation. Historically, the fee for subdivision evaluation and plat approval has been \$65 per lot. However, for plat consideration with a limited number of lots, the fee does not cover review costs. The department proposes a fee of \$150 per lot for one or two lots on a proposed plat; and, \$100 per lot for three to ten lots on a proposed plat. Plats containing more than 10 lots will be assessed \$1,000 (\$100 per lot) for the first ten lots plus \$65 for each additional lot.

- (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 rulemaking is being promulgated under the authority of T.C.A. §§ 68-221-401 et seq., Subsurface Sewage Disposal Systems and T.C.A. §§ 68-203-101 et seq. the Tennessee Environmental Protection Fund.

- (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;

Private soil scientists support the rule in that they will benefit from additional workload. Developers of residential subdivisions in areas not served by public sewer will be affected by the fee increase for subdivision evaluations. No comments to this rule have been received from this community.

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

The Department is not aware of any opinions or judicial rulings that directly relate 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 amendment is estimated to increase revenue by approximately \$80,000 annually. This estimate is based on the actual workload from the previous year.

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

Britton Dotson  
Division of Water Resources  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 11<sup>th</sup> Floor  
Nashville, Tennessee 37243

(615) 532-0774

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

Jenny Howard  
Deputy General Counsel  
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  
William R. Snodgrass Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-8685  
[Jenny.Howard@tn.gov](mailto:Jenny.Howard@tn.gov)

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

The Department is not aware of any additional relevant information.