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Division of Publications**

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For Department of State Use Only

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Rule ID(s): 5658
File Date: 1/14/14
Effective Date: 4/14/14

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Environment and Conservation |
| Division: | Water Resources |
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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 |
|----------------|------------------------------------|
| 0400-40-11 | Environmental Protection Fund Fees |
| Rule Number | Rule Title |
| 0400-40-11-.02 | Fees |

(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 0400-40-11 Environmental Protection Fund Fees

Paragraph (1) of Rule 0400-40-11-.02 Fees is amended by deleting subparagraph (c) in its entirety and substituting instead the following:

- (c) 1. Except for part 2 of this subparagraph, permit annual maintenance fees shall be paid to the Department for every year the permit is in effect by the permittee. The annual maintenance fee shall be due within 45 days of issuance of an invoice.
- 2. Maintenance fees for post-project monitoring with fixed time periods shall be assessed in total at the time of permit issuance.

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

Rule 0400-40-11-.02 Fees is amended by deleting paragraph (2) in its entirety and substituting instead the following:

(2) Schedule of Fees

- (a) The Application Fees for the processing of applications for 401 certifications and ARAP permits and notices of intent for coverage under a general permit and for decentralized wastewater systems shall be as follows:

- 1. 401 Certification or ARAP (Capped at \$5,000):
 - (i) Projects with 5 or more points of impact and requiring compensatory mitigation \$5,000
 - (ii) Projects not requiring compensatory mitigation, any number of impact points \$2,500
 - (iii) Projects with less than 5 points of impact, with or without mitigation requirements \$2,500
 - (iv) Watershed District Projects \$1,000
 - (v) Projects seeking Notice of Coverage under a general permit \$500
 - (vi) Personal Residence or Family Farm \$50
 - (vii) Projects that replace, restore or repair public infrastructure or remediate damages from flooding or storm events and qualify for federal disaster assistance are exempt from subparts (i), (ii), (iii), (iv), (v) and (vi) of this part.

For the purposes of part 1 of this subparagraph, points of impact shall mean discreet physical locations on one or more jurisdictional water features within an overall project (common plan of development), at which regulated alteration activities are proposed.

- 2. Construction Stormwater permits:
 - (i) Projects equal to or greater than 150 acres \$10,000
 - (ii) Projects equal to or greater than 50 acres and less than 150 acres \$6,000

| | | |
|-------|--|---------|
| (iii) | Projects equal to or greater than 20 acres and less than 50 acres | \$3,000 |
| (iv) | Projects equal to or greater than 5 acres and less than 20 acres | \$1,000 |
| (v) | Projects equal to or greater than 1 acre and less than 5 acres | \$250 |
| (vi) | Projects seeking subsequent coverage under an actively larger common plan of development or sale | \$100 |

3. Decentralized Wastewater Systems

| | | |
|-------|---|--|
| (i) | Systems greater than 0.075 MGD | \$1,000 plus \$150 for each additional 0.02 MGD |
| (ii) | Systems greater than 0.05 MGD and less than 0.075 MGD | \$1,000 |
| (iii) | Systems greater than 0.02 MGD and less than 0.05 MGD | \$750 |
| (iv) | Systems less than 0.02 MGD | \$500 |

(b) Permit Annual Maintenance Fees shall be as follows for these categories of permitted activities (Capped at \$15,000):

| | | |
|-------|---|----------|
| 1. | Gravel Dredging | \$300 |
| 2. | Gravel Dredging for Personal Residence or Family Farm | \$0 |
| 3. | Major Industrial Treatment Facility: | |
| (i) | Flow equal to or greater than 10 MGD | \$10,380 |
| (ii) | Flow equal to or greater than 1 MGD and less than 10 MGD | \$8,650 |
| (iii) | Flow equal to or greater than 0.5 MGD and less than 1 MG | \$6,920 |
| (iv) | Flow equal to or greater than 0.1 MGD and less than 0.5 MGD | \$5,190 |
| (v) | Flow less than 0.1 MGD | \$3,460 |
| 4. | Minor Industrial Treatment Facility: | |
| (i) | Flow equal to or greater than 10 MGD | \$6,920 |
| (ii) | Flow equal to or greater than 1 MGD and less than 10 MGD | \$5,190 |
| (iii) | Flow equal to or greater than 0.5 MGD and less than 1 MGD | \$3,460 |
| (iv) | Flow equal to or greater than 0.1 MGD and less than 0.5 MGD | \$1,380 |
| (v) | Flow less than 0.1 MGD | \$690 |
| 5. | Treated Wastewater Dischargers with flows <0.001 MGD | \$140 |
| 6. | Stormwater Discharge Permits associated with Industrial Activities: | |
| (i) | Facilities equal to or greater than 500 acre | \$970 |

| | | |
|--------|---|-------|
| (ii) | Facilities equal to or greater than 400 acres and less than 500 acres | \$900 |
| (iii) | Facilities equal to or greater than 300 acres and less than 400 acres | \$830 |
| (iv) | Facilities equal to or greater than 200 acres and less than 300 acres | \$760 |
| (v) | Facilities equal to or greater than 100 acres and less than 200 acres | \$690 |
| (vi) | Facilities equal to or greater than 50 acres and less than 100 acres | \$620 |
| (vii) | Facilities equal to or greater than 25 acres and less than 50 acres | \$550 |
| (viii) | Facilities equal to or greater than 10 acres and less than 25 acres | \$480 |
| (ix) | Facilities equal to or greater than 5 acres and less than 10 acres | \$420 |
| (x) | Facilities equal to or greater than 1 acres and less than 5 acres | \$350 |
| (xi) | Facilities equal to or greater than 0 acres and less than 1 acre | \$0 |

7. Sewage Treatment Facility Flow:

| | | |
|--------|---|----------|
| (i) | Flow equal to or greater than 5 MGD | \$10,380 |
| (ii) | Flow equal to or greater than 4.5 MGD and less than 5 MGD | \$10,030 |
| (iii) | Flow equal to or greater than 4 MGD and less than 4.5 MGD | \$9,690 |
| (iv) | Flow equal to or greater than 3.5 MGD and less than 4 MGD | \$9,340 |
| (v) | Flow equal to or greater than 3 MGD and less than 3.5 MGD | \$9,000 |
| (vi) | Flow equal to or greater than 2.5 MGD and less than 3 MGD | \$8,300 |
| (vii) | Flow equal to or greater than 2 MGD and less than 2.5 MGD | \$7,610 |
| (viii) | Flow equal to or greater than 1.5 MGD and less than 2 MGD | \$6,920 |
| (ix) | Flow equal to or greater than 1 MGD and less than 1.5 MGD | \$6,230 |
| (x) | Flow equal to or greater than 0.75 MGD and less than 1 MGD | \$5,540 |
| (xi) | Flow equal to or greater than 0.5 MGD and less than 0.75 MGD | \$4,840 |
| (xii) | Flow equal to or greater than 0.25 MGD and less than 0.5 MGD | \$3,460 |
| (xiii) | Flow equal to or greater than 0.1 MGD and less than 0.25 MGD | \$1,730 |
| (xiv) | Flow equal to or greater than 0.075 MGD and less than 0.1 MGD | \$1,040 |

8. Small Mechanical Facility flow less than 0.075 MGD \$690

9. Small Non-Mechanical Facility flow less than 0.075 MGD \$350

10. Non-Discharging Facility:

| | | |
|------|--|---------|
| (i) | Influent flow equal to or greater than 0.5 MGD | \$4,840 |
| (ii) | Influent flow equal to or greater than 0.1 MGD and less than 0.5 | |

| | | |
|-------|---|---------|
| | MGD | \$2,770 |
| (iii) | Influent flow equal to or greater than 0.075 MGD and less than 0.1 MGD | \$1,380 |
| (iv) | Influent flow less than 0.075 MGD | \$350 |
| (v) | Satellite collection systems | \$1,380 |
| (vi) | Pump and haul | \$350 |
| 11. | Other Waste or Wastewater Operations Requiring Permit | \$1,380 |
| 12. | General Permits | |
| (i) | For construction activities that exceed 1 year under general permit coverage: | |
| (I) | Projects equal to or greater than 150 acres | \$3,750 |
| (II) | Projects equal to or greater than 50 acres and less than 150 acres | \$2,000 |
| (III) | Projects equal to or greater than 20 acres and less than 50 acres | \$1,000 |
| (IV) | Projects equal to or greater than 5 acres and less than 20 acres | \$500 |
| (V) | Projects equal to or greater than 1 acre and less than 5 acres | \$125 |
| (ii) | All other activities (other than concentrated animal feeding operations or minor activities that require no notification to obtain general permit coverage) | \$350 |
| 13. | Concentrated animal feeding operations covered by an individual permit | \$350 |
| 14. | Municipal Pretreatment Programs as defined in subparagraph (2)(a) of Rule 0400-40-11-.01: | |
| (i) | Large Pretreatment Program | \$6,920 |
| (ii) | Medium Pretreatment Program | \$4,150 |
| (iii) | Small Pretreatment Program | \$1,380 |
| 15. | Mining: | |
| (i) | Area equal to or greater than 500 acres | \$6,920 |
| (ii) | Area equal to or greater than 400 acres and less than 500 acres | \$6,230 |
| (iii) | Area equal to or greater than 300 acres and less than 400 acres | \$5,540 |
| (iv) | Area equal to or greater than 200 acres and less than 300 acres | \$4,840 |
| (v) | Area equal to or greater than 100 acres and less than 200 acres | \$4,150 |
| (vi) | Area equal to or greater than 75 acres and less than 100 acres | \$3,460 |

| | | |
|--------|---|---------|
| (vii) | Area equal to or greater than 50 acres and less than 75 acres | \$2,770 |
| (viii) | Area equal to or greater than 25 acres and less than 50 acres | \$2,080 |
| (ix) | Area equal to or greater than 10 acres and less than 25 acres | \$1,380 |
| (x) | Area equal to or greater than 5 acres and less than 10 acres | \$1,040 |
| (xi) | Area less than 5 acres | \$690 |

(Note: Fees are based on area being mined or area not yet reclaimed.)

| | | |
|-----|--|----------|
| 16. | Mining Reclamation | \$350 |
| 17. | Stormwater Discharge Permits for Municipal Separate Storm Sewer Systems (MS4): | |
| | (i) Large MS4s | \$10,380 |
| | (ii) Medium MS4s | \$6,920 |
| | (iii) Small MS4s | \$3,460 |
| 18. | 401 Certification or ARAP permits that require monitoring of permitted activities or compensatory mitigation | \$500 |
| 19. | Water Withdrawal ARAP permits that require monthly operational reports, provided an annual maintenance fee has not been paid under Rule 0400-45-01-.32 | \$1,000 |

(c) Plan Review Fees shall apply to new facilities as well as the expansion or modification of existing facilities. If the submittal includes more than one listed category, the fee will be the sum of the fees listed for each individual category. Review of plans documents will not commence until all fees required by these rules are paid in full. Plan Review Fees shall be as follows (Capped at \$1,500):

| | | |
|----|--|---------|
| 1. | Major Industrial Wastewater Treatment Facility: | |
| | (i) Flow equal to or greater than 5 MGD | \$1,500 |
| | (ii) Flow less than 5 MGD | \$1,000 |
| 2. | Minor Industrial Wastewater Treatment Facility: | |
| | (i) Flow equal to or greater than 0.1 MGD | \$ 500 |
| | (ii) Flow less than 0.1 MGD | \$ 250 |
| 3. | Sewage Treatment Facility: | |
| | (i) Flow equal to or greater than 5 MGD | \$1,500 |
| | (ii) Flow equal to or greater than 1MGD and less than 5 MGD | \$1,000 |
| | (iii) Flow equal to or greater than 0 .075 MGD and less than 1 MGD | \$ 500 |
| | (iv) Flow less than 0.075 MGD | \$ 250 |
| 4. | Collection Systems or Force Main: | |

\$25.00 per 250 feet or portion thereof of sewage collection line or force main excluding service laterals. Total fee not to exceed \$1,500.

5. Equalization Basins:

| | | |
|-------|---|--------|
| (i) | Holding capacity equal to or greater than 5 million gallons (MG) | \$ 300 |
| (ii) | Holding capacity equal to or greater than 1 MG and less than 5 MG | \$ 200 |
| (iii) | Holding capacity equal to or greater than 0.075 MG and less than 1 MG | \$ 100 |
| (iv) | Holding capacity less than 0.075 MG | \$ 50 |

6. Pumping Stations:

| | | |
|-------|--|--------|
| (i) | Design capacity equal to or greater than 5 MGD | \$ 300 |
| (ii) | Design capacity equal to or greater than 1 MGD and less than 5 MGD | \$ 200 |
| (iii) | Design capacity equal to or greater than 0.075 MGD and less than 1 MGD | \$ 100 |
| (iv) | Design capacity less than 0.075 MGD (Does not include grinder pumps for septic tanks and septic tank effluent pumps) | \$ 50 |

7. Mining Operations:

| | | |
|-------|--|---------|
| (i) | Coal | \$ 250 |
| (ii) | Non-Coal — \$25.00 per acre, not to exceed | \$1,500 |
| (iii) | Reclamation | \$ 250 |
| (iv) | Quarries | \$ 250 |

8. Wastewater Plant and/or Collection System Modification:

The plans review fee for modifications to wastewater plants and/or collection systems shall be 20% of the full review fee based on the category and size of the resulting facility.

(d) Delegated Plans Review Authority:

Units of local government, which have been granted plans review authority, shall pay an annual fee of \$1,000. Failure of local government to pay this fee will be cause for the revocation of plans review authority.

(e) Engineering Report Review

1. Major Industrial Wastewater Treatment Facility:

| | | |
|------|-------------------------------------|---------|
| (i) | Flow equal to or greater than 5 MGD | \$1,500 |
| (ii) | Flow less than 5 MGD | \$1,000 |

2. Minor Industrial Wastewater Treatment Facility:

| | | |
|-------|---|---------|
| (i) | Flow equal to or greater than 0.1 MGD | \$500 |
| (ii) | Flow less than 0.1 MGD | \$250 |
| 3. | Sewage Treatment Facility: | |
| (i) | Flow equal to or greater than 5 MGD | \$1,500 |
| (ii) | Flow equal to or greater than 1 MGD and less than 5 MGD | \$1,000 |
| (iii) | Flow equal to or greater than 0.075 MGD and less than 1 MGD | \$500 |
| (iv) | Flow less than 0.075 MGD | \$250 |

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (3) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and replacing it with the following so that, as amended, the subparagraph shall read:

- (a) Fees resulting from application for a permit, maintenance of a permit or plans review, shall be made Payable and Mailed to the Department of Environment and Conservation; Attention: Environmental Protection Fees — Water Resources.

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (5) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and replacing it with the following so that, as amended, the subparagraph shall read:

- (a) Any person required to pay any fee specified in this rule, who disagrees with the calculation or applicability of the fee, may petition the Board of Water Quality, Oil and Gas for a hearing. In order to perfect a hearing, the objecting party must present to the Technical Secretary of the Board, not later than 15 days after the fee due date:
1. a petition for hearing, and
 2. the total amount of the fee.

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 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) |
|----------------------|-----|----|---------|--------|-------------------------|
| James W. Cameron III | X | | | | |
| Jill E. Davis | | | | X | |
| Mayor Kevin Davis | | X | | | |
| Derek Gernt | X | | | | |
| John Guoynes | X | | | | |
| C. Monty Halcomb | X | | | | |
| Chuck Head | X | | | | |
| Charlie R. Johnson | X | | | | |
| Judy Manners | X | | | | |
| John McClurkan | X | | | | |
| Frank McGinley | | X | | | |
| D. Anthony Robinson | X | | | | |

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 12/17/2013, 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 17, 2013

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Chair

Subscribed and sworn to before me on: December 17, 2013

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2014

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.

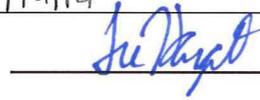
Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

1-14-13
Date

Department of State Use Only

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

Effective on: 4/14/14



Tre Hargett
Secretary of State

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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: A commenter contends that several of the proposed permitting fee increases represent an increase of 500%.

Response: Services for which no fees are currently being assessed would now be assessed a fee of \$500 if not exempted by the current general permit. This does not represent a 500% increase but does represent a \$500 fee where there had been no fee. General permits provide a relatively streamlined, expedient tool by which activities with common, low-impact scopes of work are authorized to be conducted. Historically, services associated with general permits have been provided by TDEC technical and administrative staff at no cost to the applicants. These services include: developing and maintaining the general permits; assessing Notices of Intent from applicants seeking coverage under the general permits for completion, applicability and appropriate scope; providing Notice of Coverage to the applicant or Notice of Denial based on staff assessment; site inspections as necessary; and, processing Notices of Termination. TDEC considers the general permit process to be a clear benefit to the regulated community and the process has proven to be successful. However, for TDEC to be able to continue to provide services necessary to support the general permit process, appropriate fees must be assessed. A \$500 fee, assessed to the beneficiary of the service, is considered by TDEC to be appropriate in support of the services rendered. In turn the applicants benefit from the advantages that the general permit process provides.

When General Permits were first allowed, it was anticipated that 15 to 20% of all permit applications would be for General Permits and 80 to 85% of the permit applications would be for individual permits. With this expectation, the Division did not initially collect general permit fees, although authorized to do so. However, because of the expedited time applicants receive via the general permit process, now most permit applications (80 to 85%) are general permit notices of intent. Given this fact, the Division and Department cannot continue to provide this service for free. Our workload analysis demonstrates that the fee proposed is representative of the Department's cost to process general permits.

The General Permit assists both the permit applicants and the Department. Permit processing time is reduced by at least 66%. The general permit respects the time value of money and environmental protection. Its permit terms and conditions are consistent statewide and cost less to process than an individual permit.

Comment: A commenter maintains that TDEC's proposed fee increases will have a direct financial impact on county highway departments.

Response: TDEC agrees that the fee rule proposal will have a direct financial impact on the county highway departments. However, the proposed rule change associated with ARAP fees does not propose to change any portion of the permitting or coverage process. Those activities necessitating notification to TDEC will still require the same notification. The activities that are beyond the scope of exemptions identified in the specific general permit will require the submittal of the \$500 fee with the notification. The increase in administrative costs associated with this proposal would be associated with generating and tracking the payment associated with the notification. The requirement for providing notification to TDEC is not proposed for change.

Reference was made by this commenter that three of the general ARAP permits commonly used by the highway departments were classified by the highway departments as "day to day" and "daily" operational permits. The highway departments are currently required to submit notification

and obtain authorization by TDEC for coverage under these permits prior to conducting the activity, unless the activity is exempt as described in the specific general permit. If the activities are exempt, no notification would be necessary and no fee would be assessed. The fee proposal will not change the process of obtaining coverage under a general permit or the need for authorization to begin the actual work.

To reduce cost and when appropriate, the regulations allow for the less costly but effective general permit as an alternative to the individual permit. The process to issue general permits requires the expenditure of division resources. To continue to make these resources readily available TDEC must amend its rules to recover these costs.

Comment: Some commenters believe that stream and wetland restoration projects (other than restoration conducted for the purpose of compensatory mitigation) should receive an exemption.

Response: TDEC agrees that stream and wetland restoration projects intend to advance the health of water bodies and can result in better water quality or aquatic habitat and as such are not akin to projects which degrade water quality. However, tracking the locations of these activities, providing oversight/consultation and insuring that the impact to the water resource through construction of the restoration project is minimized are activities for which TDEC will expend resources. As such, the \$500 fee is applicable to stream and wetland restoration projects.

Comment: Some commenters maintain that mining plan review fees are too low. Commenters request TDEC impose a plan review fee of \$25/acre not to exceed \$5,000 for all coal mines, non-coal mines, and quarries, but retain the \$250 fee for reclamation.

Response: TDEC agrees that the commenter's proposal has merit. However, this particular fee rule category is not proposed for change in the current filing. TDEC will consider this suggestion for future rulemakings.

Comment: Two commenters believe that one year is too short of a time frame for projects. The time frame needs to be at least 2 years from date of issuance or there should be a 1 year extension beyond the first year at no costs. The annual fees should not begin until at least the end of the 2nd year from issuance. Most projects will take at least 2 years to complete and the 1 year requirement is too short.

Response: The proposed annual maintenance fee is to support services that are commonly rendered in support of longer term projects. TDEC agrees that some projects that are not completed in their first year may be completed in their second year. However, a project being completed within two years does not minimize the need for TDEC's involvement, and need for supporting fees, throughout the timeframe for the project. Assessing an annual fee in support of regulatory oversight of active projects has been a long-standing practice for other Water Resources programs. The general permit fee proposed covers the cost of permit processing and on-site monitoring.

Comment: Two commenters believe that post project monitoring should not be assessed on the front end. A review by TDEC should occur at the end of the project and then once accepted as completed per plan the fee should be paid for the five year post project monitoring. This should be assessed at \$100 per year for the number of years of monitoring and should not be assessed at the beginning of the project but upon approval by TDEC at completion of the project but prior to beginning the maintenance period.

Response: Mitigation plans and/or monitoring requirements for a particular project are known at the time of permit issuance. Thus at time of permit issuance TDEC knows that we will have continued involvement in support of the project at least through the term of the mitigation and/or monitoring plan – irrespective of whether we can deem the project “complete” at the end of the period. It is at the time of permit issuance that the applicant for the project is present and committing to the

term of the project. TDEC considers permit issuance to be the most practical point within the project to receive payment for the services that we are committing to provide for the term of the project.

Comment: Commenters requested that the Department define points of impact.

Response: TDEC interprets "Points of Impact" to mean discreet physical locations on one or more jurisdictional water features within an overall project (common plan of development), at which regulated alteration activities are proposed. A definition has been added to subparagraph (2)(a) of Rule 0400-40-11-.02 to clarify this issue.

Comment: A commenter believes that under item (v) municipalities should have the right to maintain and repair their structures without having to pay a fee to TDEC. This is required for the safety and welfare of the motoring public and is a hindrance to the safety of the general public. Please exempt city maintenance activities from this requirement.

Response: Item (2)(a)1(v) of Rule 0400-40-11-.02 proposes to assess a \$500 fee for projects seeking coverage under a general permit. General permits provide a relatively stream-lined, expedient tool by which activities with common, low-impact scopes of work are authorized to be conducted. Historically, services associated with general permits have been provided by TDEC technical and administrative staff at no cost to the applicants. These services include: developing and maintaining the general permits; assessing Notices of Intent from applicants seeking coverage under the general permits for completion, applicability and appropriate scope; providing Notice of Coverage to the applicant or Notice of Denial based on staff assessment; site inspections as necessary; and, processing Notices of Termination. TDEC considers the general permit process to be a clear benefit to the regulated community and the process has proven to be successful. However, for TDEC to be able to continue to provide services necessary to support the general permit process, appropriate fees must be assessed. A \$500 fee, assessed to the beneficiary of the service, is considered by TDEC to be appropriate in support of the services rendered. In turn permit applicants benefit from the advantages that the general permit process provides.

The proposed rule change associated with ARAP fees does not propose to change any portion of the permitting or coverage process. Those activities necessitating notification to TDEC will still require the same notification. The activities that are beyond the scope of exemptions identified in the specific general permit will require the submittal of the \$500 fee with the notification. The requirement for providing notification to TDEC is not proposed for change.

City agencies/municipalities are not authorized to conduct work under the general permit, unless specifically exempted by the general permit, without providing notification to TDEC and obtaining written authorization from TDEC to conduct the work.

Comment: A commenter believes that the statement in the second line (of "vii") should be changed to "or" as follows: Projects that replace, restore or repair public infrastructure **or** remediate damages from flooding or storm events "or" qualify for federal disaster assistance are exempt from subparts (i), (ii), (iii), (iv), (v), and (vi) of this part.

Response: Consistent with the proposed subpart (2)(a)1(vii) of Rule 0400-40-11-.02, the existing regulations exempt certain projects from having to obtain permit coverage if the project qualifies for federal disaster assistance and are for natural events of the most destructive type, thus the federal emergency designation. TDEC intends to maintain this exemption. Extending the exemption to any projects resulting from flooding or storm events would not be in keeping with current regulations.

Comment: There should be two additional categories of size (construction stormwater permits). One should be 10-20 acres for \$1,000 and the second should be 5-10 for \$500.

Response: The proposed acreage category changes are based on the perspective of staff that regularly provide these services. Per their experience the proposed categories appropriately represent

thresholds of work magnitude. While the commenter's proposal is not illogical, TDEC intends to maintain its current proposal.

Comment: A commenter suggested that the wording of item (vi) should read "Projects less than 1 acre but part of a larger overall development." The fee should be lowered but charged on a per lot basis and not just \$100 per application that way each lot can get a notice of termination.

Response: The wording of this category is proposed for change to "Projects seeking subsequent coverage under an actively covered larger common plan of development or sale." The \$100 fee is intended to fund the administrative costs associated with adding operators to an existing coverage which, in certain cases, is an option to the regulated community. The fee will also compensate the Division for its activities associated with the "lots" where construction events that are not part of the initial SWPPP occur, such as, driveway construction, installation of subsurface utilities, construction of basements and grading activities. Typically, these activities are performed by someone other than the original SWPPP applicant and if pollution occurs, it is the responsible for the "smaller lot owner." This service has not historically been assessed a fee. The proposed fee is not intended to capture an additional permit population. No change in permitting practices is proposed.

Comment: A commenter requested that the ratio of state appropriations to fees for the water pollution control program be separately calculated to insure that the statutory 50% limit is met and another commenter asked how the proposed amendments would be impacted by the ratios set forth in the law.

Response: The proposed fee amendments would result in fee collections representing 39.4% of the total revenue for the program, which make the fee collections anticipated to be well within the 50% limit of T.C.A. § 68-203-104(d)(3).

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 water pollution control program for current fiscal year was increased.

Comment: A commenter asked how much money the proposed increase/modification in fees will generate and how the money for the increase/modification will be spent.

Response: The proposed fee rule modification will result in an estimated net revenue increase to the Division of Water Resources of approximately \$2.28 million toward the water pollution control program revenue. The money will be spent to maintain an appropriate level of technical and administrative staff needed to provide timely document review, permitting, inspection, and technical assistance services to the regulated community.

Comment: A commenter requested TDEC to provide a workload analysis report for at least the last 5 years, covering activities affecting the proposed fees and any related state appropriation. Include any backlog or pending matters.

Response: The workload analysis for the last 5 years is not available in a consistent format for all heritage water divisions; however a detailed workload report for the consolidated division will be provided to the commenter.

Comment: A commenter asked how the proposed changes will benefit municipalities and other affected parties, to identify problems within the existing rules, to identify remedies/solutions to these problems that the proposed rules correct, simplify, or areas in which they decrease spending, and how the increase/modification in fees will improve services to municipalities.

Response: Adequate funding is necessary for TDEC to maintain a quality regulatory program that is approved by the EPA and that delivers quality and timely services. Receiving quality and timely services directly benefits municipalities. The rules are being amended to adjust some fees to be more commensurate with the level of time and effort required by the division to deliver those services and create fees for services that have been provided at no cost to the applicants. Without adequate funding the program will lose resources and that will result in costly delays and inadequate regulatory oversight.

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 of 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 increase 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.

Comment: A commenter questioned whether the proposed annual maintenance fee for water withdrawal ARAP permits will apply to utility districts that provide drinking water.

Response: This proposed fee will only apply to those permittees that are not currently paying a maintenance fee under Rule 0400-45-01-.32 Fees for Public Water Systems.

Comment: A commenter maintains that TDEC has not complied with T.C.A. § 68-203-103(3) to justify that a fee increase is warranted.

Response: In accordance with T.C.A. § 68-203-103(3), the Board of Water Quality, Oil and Gas is making the required determination at its December 17, 2013 meeting. The Division of Water Resources will be presenting the relevant information required by the statute to enable the Board to make the required determination. The Division has made the information available that justified the need for a fee increase during the comment period to all interested parties. TDEC maintains that it has complied with the requirements of Title 68, Chapter 203 Tennessee Environmental Protection Fund in order to successfully amend the fees required by Rule 0400-40-11-.02.

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.

The Division anticipates those small businesses that are involved in property development and construction, in which land disturbance and alterations to aquatic resources are common, to be affected by these proposed rules. All small businesses of this type statewide would be affected. The Division also anticipates that small businesses providing decentralized wastewater services will be affected. There are less than 10 such businesses statewide.

The Division anticipates that small business providing services related to soil mapping and hydrologic determinations will be positively affected by these proposed rules. The Division estimates there are approximately 50 to 75 such small businesses statewide.

- (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 requirements are required by these proposed rules. No increase in the population of permitted activities or those requiring permits is proposed. There will be additional recordkeeping required in that some services that were historically not assessed a fee will be assessed a fee through these proposed rules. The type of forms to be completed by the applicant will remain the same and the reporting requirements will remain the same.

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

The proposed rule will increase permitting costs for small businesses that develop property (residential, commercial and industrial) whereby land disturbance and aquatic resource alteration are common. Costs of keeping these permits active for long periods of time will also increase. The Division anticipates these costs to be ultimately projected to the consumers that benefit from these activities.

Small businesses and consumers will also continue to benefit from timely permitting and support services that an adequately-staffed program provides.

- (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 Division considers this rule to be necessary to more appropriately fund the program. Other cost-cutting activities have been, and continue to be, implemented. Additional staff reductions will likely occur without these proposed rules becoming effective. Additional staff reductions will affect the program's ability to provide timely permitting and support services.

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

This proposed rule does not increase permitting requirements nor does it attempt to increase the population of permitted activities. These proposed rules are specific to fees for services. The proposed fee changes are an outgrowth of an assessment of the services that the Division 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.

The effect of exempting small businesses from all or any part of the requirements contained in the proposed rule will result in the inability of the Division to continue to fund the services that are critical in

support of the authority delegated to the Division by the Environmental Protection Agency. Furthermore, lack of funding will affect the program's ability to provide services to these small businesses in a timely manner.

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 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;

The Heritage Water Pollution Control Program has been operating at a deficit for several years and after taking significant steps to reduce operating expenses, the Division of Water Resources is proposing to restructure a set of specific fees in an effort to create a division structure that is sustainable, fair and preserves the department's ability to act expeditiously in the permitting process. The rules are being amended to adjust some fees to be more commensurate with the level of time and effort required by the division to deliver those services, and create fees for services that have been provided at no cost to the applicants. Specifically these proposed rules:

- Modify the fee structure supporting permit application fees associated with 401 certifications and Aquatic Resource Alteration Permits (ARAP), including notices of intent for coverage under a general permit, based on level of effort required to process these requests.
- Increase application fees for construction stormwater permits, while also providing additional ability to ensure the fee is commensurate with the level of effort required to process permit requests.
- Assess a fee to cover the cost of soil scientist and engineering services required to approve decentralized wastewater systems, which are becoming an increasingly important and effective alternative to the traditional wastewater management, particularly in areas that are not served by sewer lines and treatment plants.
- Create an annual maintenance fee structure for long-term construction stormwater general permit coverages, specifically those that exceed one year.
- Create an annual maintenance fee for individual ARAP permits that require monitoring of permitted activities or compensatory mitigation.
- Include a fee for the review of Force Mains, which is an important component of water system design.
- Create a fee for Engineering Report reviews.
- Increase that annual maintenance fee for gravel dredging permits from \$140 to \$300. This increase will support annual inspection of commercial gravel dredging sites and annual renewals.

- (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 the Water Quality Control Act of 1977, T.C.A. §§ 69-3-101 et seq. 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;

Developers, city and county governments, those conducting significant construction projects are most directly affected by the rule. Responses have been provided that both oppose and support the rule.

- (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 \$2.28 million 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, 11th 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, 2nd Floor
Nashville, Tennessee 37243
(615) 532-8685
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**

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Nashville, TN 37243
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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. T.C.A. § 4-5-205

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

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 |
|----------------|------------------------------------|
| 0400-40-11 | Environmental Protection Fund Fees |
| Rule Number | Rule Title |
| 0400-40-11-.02 | Fees |

(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 0400-40-11 Environmental Protection Fund Fees

Paragraph (1) of Rule 0400-40-11-.02 Fees is amended by deleting subparagraph (c) in its entirety and substituting instead the following:

- (c) 1. Except for part 2 of this subparagraph, Permit permit annual maintenance fees shall be paid to the Department for every year the permit is in effect by the permittee. The annual maintenance fee shall be due within 45 days of issuance of an invoice.
2. Maintenance fees for post-project monitoring with fixed time periods shall be assessed in total at the time of permit issuance.

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

Rule 0400-40-11-.02 Fees is amended by deleting paragraph (2) in its entirety and substituting instead the following:

(2) Schedule of Fees

- (a) The Application Fees for the processing of applications for 401 certifications and ARAP permits and notices of intent for coverage under the a general permit for discharges of storm water associated with construction activity and for decentralized wastewater systems shall be as follows:

1. 401 Certification ~~of 404 permit~~ or ARAP (Capped at \$5,000):

- | | | |
|-----------------------|--|--------------------------------------|
| (i) | Projects equal to or greater than 10 acres or equal to or greater than 1,000 feet linear <u>with 5 or more points of impact and requiring compensatory mitigation</u> | \$2,500 <u>\$5,000</u> |
| (ii) | Projects less than 10 acres or less than 1,000 feet linear <u>not requiring compensatory mitigation, any number of impact points</u> | \$1,000 <u>\$2,500</u> |
| (iii) | <u>Projects with less than 5 points of impact, with or without mitigation requirements</u> | <u>\$2,500</u> |
| (iii) (iv) | Watershed District Projects | \$ 750 <u>\$1,000</u> |
| (v) | <u>Projects seeking Notice of Coverage under a general permit</u> | <u>\$500</u> |
| (iv) (vi) | Personal Residence or Family Farm | \$50 |
| (v) (vii) | Projects that replace, restore or repair public infrastructure or remediate damages from flooding or storm events and qualify for federal disaster assistance are exempt from subparts (i), (ii), (iii), and (iv), (v) and (vi) of this part. | |

For the purposes of part 1 of this subparagraph, points of impact shall mean discreet physical locations on one or more jurisdictional water features within an overall project (common plan of development), at which regulated alteration activities are proposed.

2. Construction Stormwater permits:

- (i) Projects equal to or greater than 150 acres ~~\$7,500~~ \$10,000

| | | |
|--------------------|---|-----------------------------------|
| (ii) | Projects equal to or greater than 50 acres and less than 150 acres | \$4,000 <u>\$6,000</u> |
| (iii) | Projects equal to or greater than <u>20 acres</u> and less than 50 acres | \$1,000 <u>\$3,000</u> |
| (iv) | Projects equal to or greater than 5 acres and less than 50 <u>20</u> acres | \$1,000 |
| (iv)(v) | Projects equal to or greater than 1 acre and less than 5 acres | \$250 |
| (v) | Projects less than 1 acre | \$0 |
| (vi) | Projects seeking subsequent coverage under an actively larger common plan of development or sale | \$100 |

3. Decentralized Wastewater Systems

| | | |
|------------------|--|--|
| (i) | Systems greater than 0.075 MGD | \$1,000 plus \$150 for each additional 0.02 MGD |
| (ii) | Systems greater than 0.05 MGD and less than 0.075 MGD | \$1,000 |
| (iii) | Systems greater than 0.02 MGD and less than 0.05 MGD | \$750 |
| (iv) | Systems less than 0.02 MGD | \$500 |

(b) Permit Annual Maintenance Fees shall be as follows for these categories of permitted activities (Capped at \$15,000):

| | | |
|-------|--|-------------------------------|
| 1. | Gravel Dredging | \$140 <u>\$300</u> |
| 2. | Gravel Dredging for Personal Residence or Family Farm | \$0 |
| 3. | Major Industrial Treatment Facility: | |
| (i) | Flow equal to or greater than 10 MGD | \$10,380 |
| (ii) | Flow equal to or greater than 1 MGD and less than 10 MGD | \$8,650 |
| (iii) | Flow equal to or greater than 0.5 MGD and less than 1 MG | \$6,920 |
| (iv) | Flow equal to or greater than 0.1 MGD and less than 0.5 MGD | \$5,190 |
| (v) | Flow less than 0.1 MGD | \$3,460 |
| 4. | Minor Industrial Treatment Facility: | |
| (i) | Flow equal to or greater than 10 MGD | \$6,920 |
| (ii) | Flow equal to or greater than 1 MGD and less than 10 MGD | \$5,190 |
| (iii) | Flow equal to or greater than 0.5 MGD and less than 1 MGD | \$3,460 |
| (iv) | Flow equal to or greater than 0.1 MGD and less than 0.5 MGD | \$1,380 |
| (v) | Flow less than 0.1 MGD | \$690 |
| 5. | Treated Washwater <u>Wastewater</u> Dischargers with flows <0.001 MGD | \$140 |

| | | |
|-----|---|----------|
| 6. | Stormwater Discharge Permits associated with Industrial Activities: | |
| | (i) Facilities equal to or greater than 500 acre | \$970 |
| | (ii) Facilities equal to or greater than 400 acres and less than 500 acres | \$900 |
| | (iii) Facilities equal to or greater than 300 acres and less than 400 acres | \$830 |
| | (iv) Facilities equal to or greater than 200 acres and less than 300 acres | \$760 |
| | (v) Facilities equal to or greater than 100 acres and less than 200 acres | \$690 |
| | (vi) Facilities equal to or greater than 50 acres and less than 100 acres | \$620 |
| | (vii) Facilities equal to or greater than 25 acres and less than 50 acres | \$550 |
| | (viii) Facilities equal to or greater than 10 acres and less than 25 acres | \$480 |
| | (ix) Facilities equal to or greater than 5 acres and less than 10 acres | \$420 |
| | (x) Facilities equal to or greater than 1 acres and less than 5 acres | \$350 |
| | (xi) Facilities equal to or greater than 0 acres and less than 1 acre | \$0 |
| 7. | Sewage Treatment Facility Flow: | |
| | (i) Flow equal to or greater than 5 MGD | \$10,380 |
| | (ii) Flow equal to or greater than 4.5 MGD and less than 5 MGD | \$10,030 |
| | (iii) Flow equal to or greater than 4 MGD and less than 4.5 MGD | \$9,690 |
| | (iv) Flow equal to or greater than 3.5 MGD and less than 4 MGD | \$9,340 |
| | (v) Flow equal to or greater than 3 MGD and less than 3.5 MGD | \$9,000 |
| | (vi) Flow equal to or greater than 2.5 MGD and less than 3 MGD | \$8,300 |
| | (vii) Flow equal to or greater than 2 MGD and less than 2.5 MGD | \$7,610 |
| | (viii) Flow equal to or greater than 1.5 MGD and less than 2 MGD | \$6,920 |
| | (ix) Flow equal to or greater than 1 MGD and less than 1.5 MGD | \$6,230 |
| | (x) Flow equal to or greater than 0.75 MGD and less than 1 MGD | \$5,540 |
| | (xi) Flow equal to or greater than 0.5 MGD and less than 0.75 MGD | \$4,840 |
| | (xii) Flow equal to or greater than 0.25 MGD and less than 0.5 MGD | \$3,460 |
| | (xiii) Flow equal to or greater than 0.1 MGD and less than 0.25 MGD | \$1,730 |
| | (xiv) Flow equal to or greater than 0.075 MGD and less than 0.1 MGD | \$1,040 |
| 8. | Small Mechanical Facility flow less than 0.075 MGD | \$690 |
| 9. | Small Non-Mechanical Facility flow less than 0.075 MGD | \$350 |
| 10. | Non-Discharging Facility: | |

| | | | |
|-----|-------|---|----------------|
| | (i) | Influent flow equal to or greater than 0.5 MGD | \$4,840 |
| | (ii) | Influent flow equal to or greater than 0.1 MGD and less than 0.5 MGD | \$2,770 |
| | (iii) | Influent flow equal to or greater than 0.075 MGD and less than 0.1 MGD | \$1,380 |
| | (iv) | Influent flow less than 0.075 MGD | \$350 |
| | (v) | Satellite collection systems | \$1,380 |
| | (vi) | Pump and haul | \$350 |
| 11. | | Other Waste or Wastewater Operations Requiring Permit | \$1,380 |
| 12. | | General Permits | |
| | (i) | <u>For construction activities that exceed 1 year under general permit coverage:</u> | |
| | (I) | <u>Projects equal to or greater than 150 acres</u> | <u>\$3,750</u> |
| | (II) | <u>Projects equal to or greater than 50 acres and less than 150 acres</u> | <u>\$2,000</u> |
| | (III) | <u>Projects equal to or greater than 20 acres and less than 50 acres</u> | <u>\$1,000</u> |
| | (IV) | <u>Projects equal to or greater than 5 acres and less than 20 acres</u> | <u>\$500</u> |
| | (V) | <u>Projects equal to or greater than 1 acre and less than 5 acres</u> | <u>\$125</u> |
| | (ii) | <u>All other activities (other than stormwater or concentrated animal feeding operations or minor activities that require no notification to obtain general permit coverage)</u> | \$350 |
| 13. | | Concentrated animal feeding operations covered by an individual permit | \$350 |
| 14. | | Municipal Pretreatment Programs as defined in subparagraph (2)(a) of Rule 0400-40-11-.01: | |
| | (i) | Large Pretreatment Program | \$6,920 |
| | (ii) | Medium Pretreatment Program | \$4,150 |
| | (iii) | Small Pretreatment Program | \$1,380 |
| 15. | | Mining: | |
| | (i) | Area equal to or greater than 500 acres | \$6,920 |
| | (ii) | Area equal to or greater than 400 acres and less than 500 acres | \$6,230 |
| | (iii) | Area equal to or greater than 300 acres and less than 400 acres | \$5,540 |
| | (iv) | Area equal to or greater than 200 acres and less than 300 acres | \$4,840 |

| | | |
|--------|---|---------|
| (v) | Area equal to or greater than 100 acres and less than 200 acres | \$4,150 |
| (vi) | Area equal to or greater than 75 acres and less than 100 acres | \$3,460 |
| (vii) | Area equal to or greater than 50 acres and less than 75 acres | \$2,770 |
| (viii) | Area equal to or greater than 25 acres and less than 50 acres | \$2,080 |
| (ix) | Area equal to or greater than 10 acres and less than 25 acres | \$1,380 |
| (x) | Area equal to or greater than 5 acres and less than 10 acres | \$1,040 |
| (xi) | Area less than 5 acres | \$690 |

(Note: Fees are based on area being mined or area not yet reclaimed.)

| | | |
|-------|--|----------|
| 16. | Mining Reclamation | \$350 |
| 17. | Stormwater Discharge Permits for Municipal Separate Storm Sewer Systems (MS4): | |
| (i) | Large MS4s | \$10,380 |
| (ii) | Medium MS4s | \$6,920 |
| (iii) | Small MS4s | \$3,460 |

18. 401 Certification or ARAP permits that require monitoring of permitted activities or compensatory mitigation \$500

19. Water Withdrawal ARAP permits that require monthly operational reports, provided an annual maintenance fee has not been paid under Rule 0400-45-01-.32 \$1,000

(c) Plan Review Fees shall apply to new facilities as well as the expansion or modification of existing facilities. If the submittal includes more than one listed category, the fee will be the sum of the fees listed for each individual category. Review of plans documents will not commence until all fees required by these rules are paid in full. Plan Review Fees shall be as follows (Capped at \$1,500):

| | | |
|-------|--|---------|
| 1. | Major Industrial Wastewater Treatment Facility: | |
| (i) | Flow equal to or greater than 5 MGD | \$1,500 |
| (ii) | Flow less than 5 MGD | \$1,000 |
| 2. | Minor Industrial Wastewater Treatment Facility: | |
| (i) | Flow equal to or greater than 0.1 MGD | \$ 500 |
| (ii) | Flow less than 0.1 MGD | \$ 250 |
| 3. | Sewage Treatment Facility: | |
| (i) | Flow equal to or greater than 5 MGD | \$1,500 |
| (ii) | Flow equal to or greater than 1MGD and less than 5 MGD | \$1,000 |
| (iii) | Flow equal to or greater than 0 .075 MGD and less than 1 MGD | \$ 500 |

(iv) Flow less than 0.075 MGD \$ 250

4. Collection Systems or Force Main:

~~(i) Collection Lines~~

\$25.00 per 250 feet or portion thereof of sewage collection line or force main excluding service laterals. Total fee not to exceed \$1,500.

5. Equalization Basins:

(i) Holding capacity equal to or greater than 5 million gallons (MG) \$ 300

(ii) Holding capacity equal to or greater than 1 MG and less than 5 MG \$ 200

(iii) Holding capacity equal to or greater than 0.075 MG and less than 1 MG \$ 100

(iv) Holding capacity less than 0.075 MG \$ 50

6. Pumping Stations:

(i) Design capacity equal to or greater than 5 MGD \$ 300

(ii) Design capacity equal to or greater than 1 MGD and less than 5 MGD \$ 200

(iii) Design capacity equal to or greater than 0.075 MGD and less than 1 MGD \$ 100

(iv) Design capacity less than 0.075 MGD (Does not include grinder pumps for septic tanks and septic tank effluent pumps) \$ 50

7. Mining Operations:

(i) Coal \$ 250

(ii) Non-Coal — \$25.00 per acre, not to exceed \$1,500

(iii) Reclamation \$ 250

(iv) Quarries \$ 250

8. Wastewater Plant and/or Collection System Modification:

The plans review fee for modifications to wastewater plants and/or collection systems shall be 20% of the full review fee based on the category and size of the resulting facility.

(d) Delegated Plans Review Authority:

Units of local government, which have been granted plans review authority, shall pay an annual fee of \$1,000. Failure of local government to pay this fee will be cause for the revocation of plans review authority.

(e) Engineering Report Review

1. Major Industrial Wastewater Treatment Facility:

(i) Flow equal to or greater than 5 MGD \$1,500

(ii) Flow less than 5 MGD \$1,000

2. Minor Industrial Wastewater Treatment Facility:

(i) Flow equal to or greater than 0.1 MGD \$500

(ii) Flow less than 0.1 MGD \$250

3. Sewage Treatment Facility:

(i) Flow equal to or greater than 5 MGD \$1,500

(ii) Flow equal to or greater than 1 MGD and less than 5 MGD \$1,000

(iii) Flow equal to or greater than 0.075 MGD and less than 1 MGD \$500

(iv) Flow less than 0.075 MGD \$250

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (3) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and replacing it with the following so that, as amended, the subparagraph shall read:

- (a) Fees resulting from application for a permit, maintenance of a permit or plans review, shall be made Payable and Mailed to the Department of Environment and Conservation; Attention: Environmental Protection Fees — Water ~~Pollution Control~~ Resources.

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (5) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and replacing it with the following so that, as amended, the subparagraph shall read:

- (a) Any person required to pay any fee specified in this rule, who disagrees with the calculation or applicability of the fee, may petition the Board of Water Quality, Oil and Gas Control Board for a hearing. In order to perfect a hearing, the objecting party must present to the Technical Secretary of the Board, not later than 15 days after the fee due date:
1. a petition for hearing, and
 2. the total amount of the fee.

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 et seq. and 4-5-201 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) |
|----------------------|-----|----|---------|--------|-------------------------|
| James W. Cameron III | X | | | | |
| Jill E. Davis | | | | X | |
| Mayor Kevin Davis | | X | | | |
| Derek Gernt | X | | | | |
| John Guoynes | X | | | | |
| C. Monty Halcomb | X | | | | |
| Chuck Head | X | | | | |
| Charlie R. Johnson | X | | | | |
| Judy Manners | X | | | | |
| John McClurkan | X | | | | |
| Frank McGinley | | X | | | |
| D. Anthony Robinson | X | | | | |

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 12/17/2013, 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 17, 2013

Signature: _____

Name of Officer: James W. Cameron III

Title of Officer: Chair

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: A commenter contends that several of the proposed permitting fee increases represent an increase of 500%.

Response: Services for which no fees are currently being assessed would now be assessed a fee of \$500 if not exempted by the current general permit. This does not represent a 500% increase but does represent a \$500 fee where there had been no fee. General permits provide a relatively streamlined, expedient tool by which activities with common, low-impact scopes of work are authorized to be conducted. Historically, services associated with general permits have been provided by TDEC technical and administrative staff at no cost to the applicants. These services include: developing and maintaining the general permits; assessing Notices of Intent from applicants seeking coverage under the general permits for completion, applicability and appropriate scope; providing Notice of Coverage to the applicant or Notice of Denial based on staff assessment; site inspections as necessary; and, processing Notices of Termination. TDEC considers the general permit process to be a clear benefit to the regulated community and the process has proven to be successful. However, for TDEC to be able to continue to provide services necessary to support the general permit process, appropriate fees must be assessed. A \$500 fee, assessed to the beneficiary of the service, is considered by TDEC to be appropriate in support of the services rendered. In turn the applicants benefit from the advantages that the general permit process provides.

When General Permits were first allowed, it was anticipated that 15 to 20% of all permit applications would be for General Permits and 80 to 85% of the permit applications would be for individual permits. With this expectation, the Division did not initially collect general permit fees, although authorized to do so. However, because of the expedited time applicants receive via the general permit process, now most permit applications (80 to 85%) are general permit notices of intent. Given this fact, the Division and Department cannot continue to provide this service for free. Our workload analysis demonstrates that the fee proposed is representative of the Department's cost to process general permits.

The General Permit assists both the permit applicants and the Department. Permit processing time is reduced by at least 66%. The general permit respects the time value of money and environmental protection. Its permit terms and conditions are consistent statewide and cost less to process than an individual permit.

Comment: A commenter maintains that TDEC's proposed fee increases will have a direct financial impact on county highway departments.

Response: TDEC agrees that the fee rule proposal will have a direct financial impact on the county highway departments. However, the proposed rule change associated with ARAP fees does not propose to change any portion of the permitting or coverage process. Those activities necessitating notification to TDEC will still require the same notification. The activities that are beyond the scope of exemptions identified in the specific general permit will require the submittal of the \$500 fee with the notification. The increase in administrative costs associated with this proposal would be associated with generating and tracking the payment associated with the notification. The requirement for providing notification to TDEC is not proposed for change.

Reference was made by this commenter that three of the general ARAP permits commonly used by the highway departments were classified by the highway departments as "day to day" and "daily" operational permits. The highway departments are currently required to submit notification

and obtain authorization by TDEC for coverage under these permits prior to conducting the activity, unless the activity is exempt as described in the specific general permit. If the activities are exempt, no notification would be necessary and no fee would be assessed. The fee proposal will not change the process of obtaining coverage under a general permit or the need for authorization to begin the actual work.

To reduce cost and when appropriate, the regulations allow for the less costly but effective general permit as an alternative to the individual permit. The process to issue general permits requires the expenditure of division resources. To continue to make these resources readily available TDEC must amend its rules to recover these costs.

Comment: Some commenters believe that stream and wetland restoration projects (other than restoration conducted for the purpose of compensatory mitigation) should receive an exemption.

Response: TDEC agrees that stream and wetland restoration projects intend to advance the health of water bodies and can result in better water quality or aquatic habitat and as such are not akin to projects which degrade water quality. However, tracking the locations of these activities, providing oversight/consultation and insuring that the impact to the water resource through construction of the restoration project is minimized are activities for which TDEC will expend resources. As such, the \$500 fee is applicable to stream and wetland restoration projects.

Comment: Some commenters maintain that mining plan review fees are too low. Commenters request TDEC impose a plan review fee of \$25/acre not to exceed \$5,000 for all coal mines, non-coal mines, and quarries, but retain the \$250 fee for reclamation.

Response: TDEC agrees that the commenter's proposal has merit. However, this particular fee rule category is not proposed for change in the current filing. TDEC will consider this suggestion for future rulemakings.

Comment: Two commenters believe that one year is too short of a time frame for projects. The time frame needs to be at least 2 years from date of issuance or there should be a 1 year extension beyond the first year at no costs. The annual fees should not begin until at least the end of the 2nd year from issuance. Most projects will take at least 2 years to complete and the 1 year requirement is too short.

Response: The proposed annual maintenance fee is to support services that are commonly rendered in support of longer term projects. TDEC agrees that some projects that are not completed in their first year may be completed in their second year. However, a project being completed within two years does not minimize the need for TDEC's involvement, and need for supporting fees, throughout the timeframe for the project. Assessing an annual fee in support of regulatory oversight of active projects has been a long-standing practice for other Water Resources programs. The general permit fee proposed covers the cost of permit processing and on-site monitoring.

Comment: Two commenters believe that post project monitoring should not be assessed on the front end. A review by TDEC should occur at the end of the project and then once accepted as completed per plan the fee should be paid for the five year post project monitoring. This should be assessed at \$100 per year for the number of years of monitoring and should not be assessed at the beginning of the project but upon approval by TDEC at completion of the project but prior to beginning the maintenance period.

Response: Mitigation plans and/or monitoring requirements for a particular project are known at the time of permit issuance. Thus at time of permit issuance TDEC knows that we will have continued involvement in support of the project at least through the term of the mitigation and/or monitoring plan – irrespective of whether we can deem the project "complete" at the end of the period. It is at the time of permit issuance that the applicant for the project is present and committing to the

term of the project. TDEC considers permit issuance to be the most practical point within the project to receive payment for the services that we are committing to provide for the term of the project.

Comment: Commenters requested that the Department define points of impact.

Response: TDEC interprets "Points of Impact" to mean discreet physical locations on one or more jurisdictional water features within an overall project (common plan of development), at which regulated alteration activities are proposed. A definition has been added to subparagraph (2)(a) of Rule 0400-40-11-.02 to clarify this issue.

Comment: A commenter believes that under item (v) municipalities should have the right to maintain and repair their structures without having to pay a fee to TDEC. This is required for the safety and welfare of the motoring public and is a hindrance to the safety of the general public. Please exempt city maintenance activities from this requirement.

Response: Item (2)(a)1(v) of Rule 0400-40-11-.02 proposes to assess a \$500 fee for projects seeking coverage under a general permit. General permits provide a relatively stream-lined, expedient tool by which activities with common, low-impact scopes of work are authorized to be conducted. Historically, services associated with general permits have been provided by TDEC technical and administrative staff at no cost to the applicants. These services include: developing and maintaining the general permits; assessing Notices of Intent from applicants seeking coverage under the general permits for completion, applicability and appropriate scope; providing Notice of Coverage to the applicant or Notice of Denial based on staff assessment; site inspections as necessary; and, processing Notices of Termination. TDEC considers the general permit process to be a clear benefit to the regulated community and the process has proven to be successful. However, for TDEC to be able to continue to provide services necessary to support the general permit process, appropriate fees must be assessed. A \$500 fee, assessed to the beneficiary of the service, is considered by TDEC to be appropriate in support of the services rendered. In turn permit applicants benefit from the advantages that the general permit process provides.

The proposed rule change associated with ARAP fees does not propose to change any portion of the permitting or coverage process. Those activities necessitating notification to TDEC will still require the same notification. The activities that are beyond the scope of exemptions identified in the specific general permit will require the submittal of the \$500 fee with the notification. The requirement for providing notification to TDEC is not proposed for change.

City agencies/municipalities are not authorized to conduct work under the general permit, unless specifically exempted by the general permit, without providing notification to TDEC and obtaining written authorization from TDEC to conduct the work.

Comment: A commenter believes that the statement in the second line (of "vii") should be changed to "or" as follows: Projects that replace, restore or repair public infrastructure **or** remediate damages from flooding or storm events "or" qualify for federal disaster assistance are exempt from subparts (i), (ii), (iii), (iv), (v), and (vi) of this part.

Response: Consistent with the proposed subpart (2)(a)1(vii) of Rule 0400-40-11-.02, the existing regulations exempt certain projects from having to obtain permit coverage if the project qualifies for federal disaster assistance and are for natural events of the most destructive type, thus the federal emergency designation. TDEC intends to maintain this exemption. Extending the exemption to any projects resulting from flooding or storm events would not be in keeping with current regulations.

Comment: There should be two additional categories of size (construction stormwater permits). One should be 10-20 acres for \$1,000 and the second should be 5-10 for \$500.

Response: The proposed acreage category changes are based on the perspective of staff that regularly provide these services. Per their experience the proposed categories appropriately represent

thresholds of work magnitude. While the commenter's proposal is not illogical, TDEC intends to maintain its current proposal.

Comment: A commenter suggested that the wording of item (vi) should read "Projects less than 1 acre but part of a larger overall development." The fee should be lowered but charged on a per lot basis and not just \$100 per application that way each lot can get a notice of termination.

Response: The wording of this category is proposed for change to "Projects seeking subsequent coverage under an actively covered larger common plan of development or sale." The \$100 fee is intended to fund the administrative costs associated with adding operators to an existing coverage which, in certain cases, is an option to the regulated community. The fee will also compensate the Division for its activities associated with the "lots" where construction events that are not part of the initial SWPPP occur, such as, driveway construction, installation of subsurface utilities, construction of basements and grading activities. Typically, these activities are performed by someone other than the original SWPPP applicant and if pollution occurs, it is the responsible for the "smaller lot owner." This service has not historically been assessed a fee. The proposed fee is not intended to capture an additional permit population. No change in permitting practices is proposed.

Comment: A commenter requested that the ratio of state appropriations to fees for the water pollution control program be separately calculated to insure that the statutory 50% limit is met and another commenter asked how the proposed amendments would be impacted by the ratios set forth in the law.

Response: The proposed fee amendments would result in fee collections representing 39.4% of the total revenue for the program, which make the fee collections anticipated to be well within the 50% limit of T.C.A. § 68-203-104(d)(3).

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 water pollution control program for current fiscal year was increased.

Comment: A commenter asked how much money the proposed increase/modification in fees will generate and how the money for the increase/modification will be spent.

Response: The proposed fee rule modification will result in an estimated net revenue increase to the Division of Water Resources of approximately \$2.28 million toward the water pollution control program revenue. The money will be spent to maintain an appropriate level of technical and administrative staff needed to provide timely document review, permitting, inspection, and technical assistance services to the regulated community.

Comment: A commenter requested TDEC to provide a workload analysis report for at least the last 5 years, covering activities affecting the proposed fees and any related state appropriation. Include any backlog or pending matters.

Response: The workload analysis for the last 5 years is not available in a consistent format for all heritage water divisions; however a detailed workload report for the consolidated division will be provided to the commenter.

Comment: A commenter asked how the proposed changes will benefit municipalities and other affected parties, to identify problems within the existing rules, to identify remedies/solutions to these problems that the proposed rules correct, simplify, or areas in which they decrease spending, and how the increase/modification in fees will improve services to municipalities.

Response: Adequate funding is necessary for TDEC to maintain a quality regulatory program that is approved by the EPA and that delivers quality and timely services. Receiving quality and timely services directly benefits municipalities. The rules are being amended to adjust some fees to be more commensurate with the level of time and effort required by the division to deliver those services and create fees for services that have been provided at no cost to the applicants. Without adequate funding the program will lose resources and that will result in costly delays and inadequate regulatory oversight.

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 of 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 increase 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.

Comment: A commenter questioned whether the proposed annual maintenance fee for water withdrawal ARAP permits will apply to utility districts that provide drinking water.

Response: This proposed fee will only apply to those permittees that are not currently paying a maintenance fee under Rule 0400-45-01-.32 Fees for Public Water Systems.

Comment: A commenter maintains that TDEC has not complied with T.C.A. § 68-203-103(3) to justify that a fee increase is warranted.

Response: In accordance with T.C.A. § 68-203-103(3), the Board of Water Quality, Oil and Gas is making the required determination at its December 17, 2013 meeting. The Division of Water Resources will be presenting the relevant information required by the statute to enable the Board to make the required determination. The Division has made the information available that justified the need for a fee increase during the comment period to all interested parties. TDEC maintains that it has complied with the requirements of Title 68, Chapter 203 Tennessee Environmental Protection Fund in order to successfully amend the fees required by Rule 0400-40-11-.02.

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.

The Division anticipates those small businesses that are involved in property development and construction, in which land disturbance and alterations to aquatic resources are common, to be affected by these proposed rules. All small businesses of this type statewide would be affected. The Division also anticipates that small businesses providing decentralized wastewater services will be affected. There are less than 10 such businesses statewide.

The Division anticipates that small business providing services related to soil mapping and hydrologic determinations will be positively affected by these proposed rules. The Division estimates there are approximately 50 to 75 such small businesses statewide.

- (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 requirements are required by these proposed rules. No increase in the population of permitted activities or those requiring permits is proposed. There will be additional recordkeeping required in that some services that were historically not assessed a fee will be assessed a fee through these proposed rules. The type of forms to be completed by the applicant will remain the same and the reporting requirements will remain the same.

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

The proposed rule will increase permitting costs for small businesses that develop property (residential, commercial and industrial) whereby land disturbance and aquatic resource alteration are common. Costs of keeping these permits active for long periods of time will also increase. The Division anticipates these costs to be ultimately projected to the consumers that benefit from these activities.

Small businesses and consumers will also continue to benefit from timely permitting and support services that an adequately-staffed program provides.

- (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 Division considers this rule to be necessary to more appropriately fund the program. Other cost-cutting activities have been, and continue to be, implemented. Additional staff reductions will likely occur without these proposed rules becoming effective. Additional staff reductions will affect the program's ability to provide timely permitting and support services.

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

This proposed rule does not increase permitting requirements nor does it attempt to increase the population of permitted activities. These proposed rules are specific to fees for services. The proposed fee changes are an outgrowth of an assessment of the services that the Division 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.

The effect of exempting small businesses from all or any part of the requirements contained in the proposed rule will result in the inability of the Division to continue to fund the services that are critical in

support of the authority delegated to the Division by the Environmental Protection Agency. Furthermore, lack of funding will affect the program's ability to provide services to these small businesses in a timely manner.

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 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;

The Heritage Water Pollution Control Program has been operating at a deficit for several years and after taking significant steps to reduce operating expenses, the Division of Water Resources is proposing to restructure a set of specific fees in an effort to create a division structure that is sustainable, fair and preserves the department's ability to act expeditiously in the permitting process. The rules are being amended to adjust some fees to be more commensurate with the level of time and effort required by the division to deliver those services, and create fees for services that have been provided at no cost to the applicants. Specifically these proposed rules:

- Modify the fee structure supporting permit application fees associated with 401 certifications and Aquatic Resource Alteration Permits (ARAP), including notices of intent for coverage under a general permit, based on level of effort required to process these requests.
- Increase application fees for construction stormwater permits, while also providing additional ability to ensure the fee is commensurate with the level of effort required to process permit requests.
- Assess a fee to cover the cost of soil scientist and engineering services required to approve decentralized wastewater systems, which are becoming an increasingly important and effective alternative to the traditional wastewater management, particularly in areas that are not served by sewer lines and treatment plants.
- Create an annual maintenance fee structure for long-term construction stormwater general permit coverages, specifically those that exceed one year.
- Create an annual maintenance fee for individual ARAP permits that require monitoring of permitted activities or compensatory mitigation.
- Include a fee for the review of Force Mains, which is an important component of water system design.
- Create a fee for Engineering Report reviews.
- Increase that annual maintenance fee for gravel dredging permits from \$140 to \$300. This increase will support annual inspection of commercial gravel dredging sites and annual renewals.

- (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 the Water Quality Control Act of 1977, T.C.A. §§ 69-3-101 et seq. 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;

Developers, city and county governments, those conducting significant construction projects are most directly affected by the rule. Responses have been provided that both oppose and support the rule.

- (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 \$2.28 million 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, 11th 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, 2nd Floor
Nashville, Tennessee 37243
(615) 532-8685
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.