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Division of Publications**

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For Department of State Use Only

Sequence Number: 02-10-16
Rule ID(s): 6122
File Date: 2/8/16
Effective Date: 5/8/16

Rulemaking Hearing Rule(s) Filing Form

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

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

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Environment and Conservation |
| Division: | Water Resources |
| Contact Person: | Jimmy Smith |
| Address: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 532-0648 |
| Email: | Jimmy.R.Smith@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

Subpart (vi) of part 1 of subparagraph (a) of paragraph (2) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and substituting instead the following:

- | | | |
|------|---|------|
| (vi) | Personal residence, family farm, or recreational prospecting for gold or other precious and semi-precious ores, metals and minerals | \$50 |
|------|---|------|

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

Part 12 of subparagraph (b) of paragraph (2) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and substituting instead the following:

12. General Permits

- | | | |
|-------|---|---------|
| (i) | For construction activities that exceed one 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 |
| (III) | Projects equal to or greater than 5 acres and less than 20 acres | \$500 |
| (IV) | Projects equal to or greater than 1 acre and less than 5 acres | \$125 |
| (ii) | For minor activities that require no notification to obtain general permit coverage, recreational prospecting for gold or other precious and semi-precious ores, metals and minerals, or concentrated animal feeding operations | \$0 |
| (iii) | All other activities | \$350 |

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) |
|---|-----|----|---------|--------|----------------------------|
| Dr. Gary G. Bible (Oil and Gas Industry) | X | | | | |
| Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation) | X | | | | |
| James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests) | | | | X | |
| Jill E. Davis (Municipalities) | X | | | | |
| Mayor Kevin Davis (Counties) | X | | | | |
| Derek Gernt (Oil or Gas Property Owner) | X | | | | |
| C. Monty Halcomb (Environmental Interests) | X | | | | |
| Charlie R. Johnson (Public-at-large) | X | | | | |
| Judy Manners (Commissioner's Designee, Department of Health) | X | | | | |
| John McClurkan (Commissioner's Designee, Department of Agriculture) | | | | X | |
| Frank McGinley (Agricultural Interests) | | | | X | |
| D. Anthony Robinson (Manufacturing Industry) | 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 10/20/2015, 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: 08/25/15

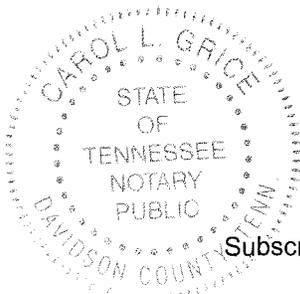
Rulemaking Hearing(s) Conducted on: (add more dates). 10/16/15

Date: October 20, 2015

Signature: C. Monty Halcomb

Name of Officer: C. Monty Halcomb

Title of Officer: Chairman



Subscribed and sworn to before me on: October 20, 2015

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

Rules of the Board of Water Quality, Oil and Gas
Rule 0400-40-11-.02 Fees

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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
2/5/2016
Date

Department of State Use Only

Filed with the Department of State on: 2/8/16

Effective on: 5/8/16

Tre Hargett
Tre Hargett
Secretary of State

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2016 FEB -8 PM 3:18
SECRETARY OF STATE
PUBLICATIONS

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.

There were no comments received during the public comment period.

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.

The intent of this rulemaking is to amend Rule 0400-40-11-.02 to reduce the application fee from \$500 to \$50 and the annual maintenance fee from \$350 to \$0 for general permits for recreational prospecting for gold or other precious and semi-precious ores, metals and minerals.

- (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 rule change is intended to benefit individual hobbyists and would not directly affect small businesses; however, there may be some indirect benefit from equipment purchases and travel expenditures related to recreational prospecting activities.

- (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.

There are no added administrative costs resulting from this proposed rule.

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

It is anticipated that there will be an increase in the number of applicants that will apply to be covered under the general permit for recreational prospecting.

- (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.

This proposed rule reduces the application and annual maintenance fees for recreational prospecting and there is no other method for achieving this purpose or objective under the current rule.

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

The regulation and requirements for a permit to conduct recreational prospecting varies widely from state to state. For those states that do require a permit to conduct activities, it is unknown what specific fee requirements exist, but it is anticipated that the proposed rule change would place the permit fee requirement in Tennessee among the lowest by comparison.

- (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.

Small businesses are not directly impacted by this rule change and exempting small businesses from this proposed rule is not necessary.

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

Additional Information Required by Joint Government Operations Committee

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

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

The intent of this rulemaking is to amend Rule 0400-40-11-.02 to reduce the application fee from \$500 to \$50 and the annual maintenance fee from \$350 to \$0 for general permits for recreational prospecting for gold or other precious and semi-precious ores, metals and minerals.

- (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;

These rules are being promulgated under the authority of T.C.A. § 69-3-101 et seq., 68-203-101 et seq. This rulemaking is not mandated by a federal law or regulation.

- (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;

Recreational prospectors directly benefit by this proposed 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.

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

The Department anticipates only a minimal increase in state revenues from this rulemaking. Local governments will not experience a change in revenue as a result of this rulemaking.

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

Jimmy R. Smith
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
Jimmy.R.Smith@tn.gov

- (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) 532-0131
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.

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Rulemaking Hearing Rule(s) Filing Form

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| | |
|---------------------------------|--|
| Agency/Board/Commission: | Environment and Conservation |
| Division: | Water Resources |
| Contact Person: | Jimmy Smith |
| Address: | William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 532-0648 |
| Email: | Jimmy.R.Smith@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

Subpart (vi) of part 1 of subparagraph (a) of paragraph (2) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and substituting instead the following:

- | | | |
|------|---|------|
| (vi) | <u>Personal Residence or Family Farm residence, family farm, or recreational prospecting for gold or other precious and semi-precious ores, metals and minerals</u> | \$50 |
|------|---|------|

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

Part 12 of subparagraph (b) of paragraph (2) of Rule 0400-40-11-.02 Fees is amended by deleting it in its entirety and substituting instead the following:

12. General Permits

- | | | |
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| (i) | For construction activities that exceed one 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 |
| (III) | Projects equal to or greater than 5 acres and less than 20 acres | \$500 |
| (IV) | Projects equal to or greater than 1 acre and less than 5 acres | \$125 |
| (ii) | <u>For minor activities that require no notification to obtain general permit coverage, recreational prospecting for gold or other precious and semi-precious ores, metals and minerals, or concentrated animal feeding operations</u> | \$0 |
| (iii) | <u>All other activities (other than concentrated animal feeding operations or minor activities that require no notification to obtain general permit coverage)</u> | \$350 |

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) |
|---|-----|----|---------|--------|----------------------------|
| Dr. Gary G. Bible (Oil and Gas Industry) | X | | | | |
| Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation) | X | | | | |
| James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests) | | | | X | |
| Jill E. Davis (Municipalities) | X | | | | |
| Mayor Kevin Davis (Counties) | X | | | | |
| Derek Gernt (Oil or Gas Property Owner) | X | | | | |
| C. Monty Halcomb (Environmental Interests) | X | | | | |
| Charlie R. Johnson (Public-at-large) | X | | | | |
| Judy Manners (Commissioner's Designee, Department of Health) | X | | | | |
| John McClurkan (Commissioner's Designee, Department of Agriculture) | | | | X | |
| Frank McGinley (Agricultural Interests) | | | | X | |
| D. Anthony Robinson (Manufacturing Industry) | 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 10/20/2015, 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: 08/25/15

Rulemaking Hearing(s) Conducted on: (add more dates). 10/16/15

Date: October 20, 2015

Signature: _____

Name of Officer: C. Monty Halcolm

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Rules of the Board of Water Quality, Oil and Gas
Rule 0400-40-11-.02 Fees

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.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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2016 FEB -8 PM 3: 19
SECRETARY OF STATE
PUBLICATIONS

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.

There were no comments received during the public comment period.

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.

The intent of this rulemaking is to amend Rule 0400-40-11-.02 to reduce the application fee from \$500 to \$50 and the annual maintenance fee from \$350 to \$0 for general permits for recreational prospecting for gold or other precious and semi-precious ores, metals and minerals.

- (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 rule change is intended to benefit individual hobbyists and would not directly affect small businesses; however, there may be some indirect benefit from equipment purchases and travel expenditures related to recreational prospecting activities.

- (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.

There are no added administrative costs resulting from this proposed rule.

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

It is anticipated that there will be an increase in the number of applicants that will apply to be covered under the general permit for recreational prospecting.

- (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.

This proposed rule reduces the application and annual maintenance fees for recreational prospecting and there is no other method for achieving this purpose or objective under the current rule.

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

The regulation and requirements for a permit to conduct recreational prospecting varies widely from state to state. For those states that do require a permit to conduct activities, it is unknown what specific fee requirements exist, but it is anticipated that the proposed rule change would place the permit fee requirement in Tennessee among the lowest by comparison.

- (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.

Small businesses are not directly impacted by this rule change and exempting small businesses from this proposed rule is not necessary.

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

Additional Information Required by Joint Government Operations Committee

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

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

The intent of this rulemaking is to amend Rule 0400-40-11-.02 to reduce the application fee from \$500 to \$50 and the annual maintenance fee from \$350 to \$0 for general permits for recreational prospecting for gold or other precious and semi-precious ores, metals and minerals.

- (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;

These rules are being promulgated under the authority of T.C.A. § 69-3-101 et seq., 68-203-101 et seq. This rulemaking is not mandated by a federal law or regulation.

- (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;

Recreational prospectors directly benefit by this proposed 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.

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

The Department anticipates only a minimal increase in state revenues from this rulemaking. Local governments will not experience a change in revenue as a result of this rulemaking.

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

Jimmy R. Smith
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
Jimmy.R.Smith@tn.gov

- (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
SS-7039 (November 2014)

312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0131
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.