

Department of State**Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower

Nashville, TN 37243

Phone: 615-741-2650

Fax: 615-741-5133

Email: register.information@tn.gov**For Department of State Use Only**Sequence Number: 02-12-10Rule ID(s): 4620File Date: 02/16/2010Effective Date: 05/17/2010

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
Address:	5 th Floor, L & C Tower 401 Church Street Nashville, TN
Zip:	37243
Phone:	(615) 532-0874
Email:	greg.luke@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
1200-01-07	Solid Waste Processing and Disposal
Rule Number	Rule Title
1200-01-07-.01	Solid Waste Disposal Control System: General
1200-01-07-.07	Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste

(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>)

Rule Chapter 1200-01-07
Solid Waste Processing and Disposal

Amendments

Part 4 of subparagraph (c) of paragraph (4) of Rule 1200-01-07-.01 Solid Waste Disposal Control System: General is amended by deleting the current part 4 and substituting the following language, so that, as amended, the part shall read as follows:

4. Persons who generate and have special waste processed or disposed of at an off-site facility must:
 - (i) Every three years, recertify the accuracy of the information on a form provided by the Department, thereby certifying that there has been no change in the waste stream or the process generating the waste since the original special waste approval was granted by the Department, and
 - (ii) Submit all recertifications as required by subpart (i) as follows:
 - (I) Originals of such recertification forms shall be submitted to the off-site processing or disposal facility that receives the waste stream and copies to the Department at the address indicated on the forms;
 - (II) Recertifications shall be submitted by July 1 of the third year from the original approval or the last recertification; and
 - (III) All special waste approvals will expire on July 1 of the third year from approval if not recertified as provided herein.
 - (iii) If a change in the waste stream or the process generating the waste has occurred since the original special waste approval was granted, the generator (applicant) shall submit a new special waste request to the Department.

Regulatory Authority: T.C.A. §§ 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

Subparagraph (a) of paragraph (2) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (a) and substituting the following language, so that, as amended, the subparagraph shall read as follows:

- (a) Any person who applies for a permit, permit-by-rule, special waste evaluation or special waste recertification pursuant to part (1)(b)3 of this rule, shall pay the specified amount in subparagraph (b) of this paragraph with the application.

Part 4 of subparagraph (b) of paragraph (2) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current part 4 and substituting the following language, so that, as amended, the part shall read as follows:

4. Special Waste Evaluation \$300.00

Subparagraph (b) of paragraph (2) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by adding a new part 7, so that, as amended, the new part shall read as follows:

7. Special Waste Recertification \$150.00

Subparagraph (c) of paragraph (3) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (c) and substituting the following language, so that, as amended, the subparagraph shall read as follows:

(c) Fee Schedule

1.	Disposal Facilities	
	(i) Class I (Tons/Year)	
	(I) Greater than 50,000	\$15,000.00
	(II) 25,000 to 50,000	\$10,000.00
	(III) Less than 25,000	\$ 5,000.00
	(IV) Zero Tons (Post Closure Period)	\$ 1,000.00
	(ii) Class II (Tons/Year)	
	(I) Greater than 1,000 T	\$10,000.00
	(II) Less than 1,000 T	\$ 4,000.00
	(iii) Class III (Tons/Year)	
	(I) Greater than 10,000	\$ 4,000.00
	(II) Less than 10,000	\$ 3,000.00
	(iv) Class IV (Tons/Year)	
	(I) Greater than 10,000	\$ 4,000.00
	(II) Less than 10,000	\$ 3,000.00
2.	Processing Facilities	\$ 3,000.00
3.	Transfer Station	\$ 1,500.00
4.	Coal Ash Fill Area	\$ 3,000.00
5.	Land Application Facility	\$ 100.00

Regulatory Authority: T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-107(a), and 68-211-111(d)(2).

* 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)
Michael Atchison		X			
John L. Barker				X	
Bob Booker	X				
Elaine Boyd	X				
Melissa Bryant				X	
Kenneth Donaldson		X			
Gregory Nail				X	
Sherry Sloan	X				
Albert F. Smith, III	X				
Julia Williams	X				
Glenn Youngblood				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Solid Waste Disposal Control Board on 02/02/2010, 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: 11/06/09

Rulemaking Hearing(s) Conducted on: (add more dates). 01/06/10

Date: February 2, 2010

Signature: *[Handwritten Signature]*

Name of Officer: Kenneth Donaldson

Title of Officer: Solid Waste Disposal Control Board Chairman

Subscribed and sworn to before me on: February 2, 2010

Notary Public Signature: *[Handwritten Signature]*

My commission expires on: Nov. 7, 2012



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

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

2-14-10
Date

Department of State Use Only

Filed with the Department of State on: 02/16/2010
Effective on: 05/17/2010

RECEIVED
2010 FEB 16 AM 11:44
SECRETARY OF STATE PUBLICATIONS

[Handwritten Signature]
Tre Hargett
Secretary of State

Public Hearing Comments

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

Comment: We do not desire that the revenue generate large fund balances to the extent that they are used elsewhere in the Department for other costs or services, or elsewhere in state government for expenditures. We feel like these services are being paid for by the fees but also some by general state appropriated dollars.

It is also fair to note that there are other activities that you're doing that you're not charging fees. If the fees are the source of revenues to support activities of that program, then those persons paying the fees should receive the benefits of those inspections, services or whatever they might be and not have those revenues be considered for other future needs in the Department.

Response: This rulemaking does create two new annual maintenance (permit) fees for certain permit-by-rule facilities. These are (1) coal ash fill areas, and (2) land application facilities. The only remaining permits without an annual maintenance fee are (1) county convenience centers, and (2) county tire storage facilities. Since these minimal level services are required by the Tennessee Solid Waste Rules, the Division chose to continue the fee exemption for them.

Comment: We have a county landfill and take trash from several different counties. We have a lot of costs and if there's any way to keep from raising any costs, this would help us out tremendously. As everybody knows it costs a lot to run a landfill.

Response: It is acknowledged that some Class III landfills are small scale. The Division is proposing to create separate fee categories for Class III/IV landfills based on the amount of waste received. The rule is being revised to lower the proposed annual maintenance fee from \$5,000 to the following amounts: <10,000 tons/year to \$3,000 and >10,000 tons/year to \$4,000.

Comment: Whereas, at a period when all local governments are facing financial hardships funding local government budgets; and whereas, at a period when all local government funding streams are facing shortfalls due to adverse economic conditions; we would like to express that these proposed rules are another unfunded mandate passed to local governments.

Response: We disagree that proposed rules are another unfunded mandate passed to local governments. However, it is acknowledged that some Class III landfills are small scale. The Division is proposing to create separate fee categories for Class III/IV landfills based on the amount of waste received. The rule is being revised to lower the proposed annual maintenance fee from \$5,000 to the following amounts: <10,000 tons/year to \$3,000 and >10,000 tons/year to \$4,000.

Comment: These are difficult financial times for both government and private entities. Such times require all organizations to increase efficiency and re-evaluate work performed. Although our company does not welcome additional fees, we respect the work performed by TDSWM, understand the need to keep the solid and hazardous waste programs viable, and recognizes efforts made to improve program efficiency. As such, we support the fee increases proposed.

Response: The Division appreciates the support of the regulated community, government and private entities. This support helps us to make reasonable and efficient changes for the Division and the regulated community.

Comment: The fees for Class II disposal facilities with greater than 1,000 Tons/Year is proposed to double from \$5,000 to \$10,000 per year. This increase comes at a time when, during this downturn in the economy, company's can least afford this steep increase. Our company budgets for calendar year 2010 have already been determined and approved by top management. I understand that if

this increase takes effect the increased fee rate will be due in 2010. This sudden and steep increase does not allow for proper and efficient planning of companies' resources.

We propose a more moderate increase in fees of no more than 25%. The increase should also become effective in 2011 in order to allow companies time to properly budget for this change in expense.

Response: The proposed rule is revised to hold fee increases for both categories of Class II landfills at the same percentage. The fee for facilities receiving less than 1,000 tons/year is revised down to \$4,000. Because of budget shortfalls, further decreases will jeopardize the ability of the Division to regulate these facilities. These fees are still below the landfill fee cap of \$15,000 established in the 1992 EPF statute.

Comment: With regard to Part 4 of subparagraph (c) of paragraph (4) of Rule 1200-01-07-.01 Solid Waste Disposal Control System, maintain the current requirement to recertify annually. The proposed change to recertify every three years is too long a time frame to recertify the accuracy of information provided to the Department by persons who generate and have special waste processed or disposed of at an off-site facility. The completion of a form provided by the Department each year communicates current information to local governments and the public about the waste streams, and this benefit should outweigh the small burden associated with completing the Department's paperwork.

Response: Up until October 2001 recertification of special waste was not required. Based on the past 8 years of experience dealing with annual recertification, the Division believes a three year cycle is adequate. The requirement for a special waste generator to notify the Division of changes in its waste stream remains in effect.

Comment: With regard to the proposed fee schedule contained in subparagraph (c) of paragraph (3) of Rule 1200-01-07-.07, insert language to raise proposed fees by 20%, with the Department collecting and returning a portion of said fees to affected local governments as follows:

"10% to the municipality where waste is stored, treated, transferred or disposed and 10% to the county where waste is stored, treated, transferred, or disposed.

"Expenditures of such fees by the local governments would be restricted to activities related to the storage, treatment, transfer or disposal of waste in the respective jurisdiction."

Response: The Department lacks the statutory authority to share those fees with local governments. Below is the statutory language regarding the use of the Environmental Protection Fund:

T.C.A. § 68-203-102, "Use of funds" states:

The fund shall be available to the department of environment and conservation to help defray the costs of administering the regulatory programs under each statute listed in § 68-203-101(b). The moneys shall be used for improved performance in permitting, monitoring, investigation, enforcement, and administration of the department's functions under each statute listed in § 68-203-101(b), including the payment of salaries and benefits to employees administering the regulatory programs under each statute listed in § 68-203-101(b).

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. (If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement

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;

Types or types of small businesses: Operators of solid waste disposal and processing facilities and businesses that generate special waste subject to T.C.A. §68-211-101 et seq. or the rule promulgated thereunder.

Estimate of the number of small businesses: There are approximately 78 disposal facilities and 123 solid waste processing facilities that are non-government owned and operating. Since numbers of employees at facilities are not reported to the Department, this number is the maximum number of facilities that could be affected as small businesses by the current rulemaking. There are an estimated 100 special waste approval generators and 380 special waste recertification generators that are small businesses affected by this rulemaking.

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;

Coal ash fill and land application facilities will be required to submit a one page fee form annually. The reporting, record keeping and administrative cost involved is considered to be a minimal for these facilities. There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments for all other facilities.

3. A statement of the probable effect on impacted small businesses and consumers;

The annual maintenance fee increases at Rule 1200-01-07-.07 are based on inflationary increases and actual costs needed by the Department to regulate these facilities. These would be expected to be passed on to the consumer.

The annual projected revenue increase is expected to be approximately \$650,000 from all permitted facilities and special waste generators affected by the rule amendments. Small business disposal facilities will generate approximately \$130,000 in additional revenues. Small business solid waste processing facilities will generate approximately \$77,000 in additional revenues. Small business special waste approvals will generate approximately \$5,000. Small business special waste recertifications will generate approximately \$19,000.

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 Department must raise fees to meet budget shortfalls. The only other alternatives would be increases from the general fund appropriations or to cut the program services. The legislature controls all funds appropriated to the Department. Cutting program services would compromise the Department's oversight ability to protect public health and the environment at these facilities. Neither of these means meet the purpose and objectives of the proposed rule.

The Division responded to comments from the regulated community concerning the fee increases and reduced the increase amounts in areas that were possible as noted in the rulehearing summary of comments.

5. A comparison of the proposed rule with any federal or state counterparts; and

The federal rules at 40 CFR 258 for municipal solid waste disposal do not address fees for services.

A comparison was done on fees for six surrounding states in Region IV. While the states vary in categories of disposal and processing permit structures, Tennessee is in the same range as the average fee structure of three of the states, North Carolina, Kentucky, and Florida. Three states, Georgia, Mississippi and Alabama, do not have annual maintenance fees.

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.

Exemption from regulatory requirements could compromise the Department's oversight ability to protect public health and the environment at these facilities.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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 proposed amendments shall increase the fees in order to account for inflation since the fees became effective in October 1991 and reflect the actual cost of regulating facilities. Due to the Division's current fiscal situation, these rule amendments are necessary to allow the Division of Solid Waste Management's solid waste program to continue adequately performing its duty to protect human health and the environment.

- (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 fee increases are being promulgated pursuant to T.C.A. §§ 4-5-208, 68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

- (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;

These fee increases will affect all persons, organizations, corporation, or government entities that dispose or process solid waste and generate special wastes pursuant to Chapter 1200-01-07 Solid Waste Processing and Disposal.

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

There are no known attorney general or judicial rulings that directly relate to the proposed amendments.

- (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 annual projected revenue increase is expected to be approximately \$650,000 from all permitted facilities and special waste generators affected by the rule amendments.

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

Glen Pugh
Division of Solid Waste Management
5th Floor, L & C Tower, 401 Church Street
Nashville, TN 37243
Phone: (615) 532-0818
E-Mail: Glen.Pugh@tn.gov

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

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

Phone: (615) 532-0131
E-Mail: Alan.Leiserson@tn.gov

- (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

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
Phone: (615) 532-0131

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

The Board is not aware of any.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: REDLINE
 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. TCA Section 4-5-205

Agency/Board/Commission:	Department of Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
Address:	5 th Floor, L & C Tower 401 Church Street Nashville, TN
Zip:	37243
Phone:	(615) 532-0874
Email:	greg.luke@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
1200-01-07	Solid Waste Processing and Disposal
Rule Number	Rule Title
1200-01-07-.01	Solid Waste Disposal Control System: General
1200-01-07-.07	Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste

(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>)

Rule Chapter 1200-01-07
Solid Waste Processing and Disposal

Amendments

Part 4 of subparagraph (c) of paragraph (4) of Rule 1200-01-07-.01 Solid Waste Disposal Control System: General is amended by deleting the current part 4 and substituting the following language, so that, as amended, the part shall read as follows:

4. Persons who generate and have special waste processed or disposed of at an off-site facility must:
- (i) ~~Annually~~ ~~Every three years~~, recertify the accuracy of the information on a form provided by the Department, thereby certifying that there has been no change in the waste stream or the process generating the waste since the original special waste approval was granted by the Department; and
 - (ii) Submit all recertifications as required by subpart (i) as follows:
 - (I) Originals of such ~~annual~~ recertification forms shall be submitted to the off-site processing or disposal facility that receives the waste stream and copies to the Department at the address indicated on the forms;
 - (II) Recertifications shall be submitted by July 1 of ~~each year, except that the first recertification of a newly approved special waste shall be submitted by July 1 of the following year~~ the third year from the original approval or the last recertification; and
 - (III) All special waste approvals will expire on July 1 ~~each year of the third year from approval~~ if not recertified as provided herein.
 - (iii) If a change in the waste stream or the process generating the waste has occurred since the original special waste approval was granted, the generator (applicant) shall submit a new special waste request to the Department.

Regulatory Authority: T.C.A. §§ 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

Subparagraph (a) of paragraph (2) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (a) and substituting the following language, so that, as amended, the subparagraph shall read as follows:

- (a) Any person who applies for a permit, permit-by-rule, ~~or~~ ~~special~~ waste evaluation ~~or~~ ~~special waste recertification~~ pursuant to part (1)(b)3 of this rule, shall pay the specified amount in subparagraph (b) of this paragraph with the application.

Part 4 of subparagraph (b) of paragraph (2) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current part 4 and substituting the following language, so that, as amended, the part shall read as follows:

4. ~~Special~~ Waste Evaluation ~~\$250.00~~ \$300.00

Subparagraph (b) of paragraph (2) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by adding a new part 7, so that, as amended, the new part shall read as follows:

7. ~~Special~~ Waste Recertification \$150.00

Subparagraph (c) of paragraph (3) of Rule 1200-01-07-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (c) and substituting the following language, so that, as amended, the subparagraph shall read as follows:

(c) Fee Schedule

1. Disposal Facilities

(i) Class I (Tons/Year)

(I)	Greater than 100,000 50,000	\$15,000.00
(II)	50,000 to 100,000 25,000 to 50,000	\$10,000.00
(III)	25,000 to 50,000 Less than 25,000	\$ 6,000.00 \$ 5,000.00
(IV)	10,000 to 25,000 Zero Tons (Post Closure Period)	\$ 2,000.00 \$ 1,000.00
(V)	Less than 10,000	\$ 1,000.00

(ii) Class II (Tons/Year)

(I)	Greater than 1,000 T	\$ 5,000.00 \$10,000.00
(II)	Less than 1,000 T	\$ 2,000.00 \$ 4,000.00

(iii) Class III (Tons/Year)

		\$ 2,000.00
(I)	Greater than 10,000	\$ 4,000.00
(II)	Less than 10,000	\$ 3,000.00

(iv) Class IV (Tons/Year)

		\$ 2,000.00
(I)	Greater than 10,000	\$ 4,000.00
(II)	Less than 10,000	\$ 3,000.00

2. Processing Facilities ~~\$ 2,000.00~~ \$ 3,000.00

3. Transfer Station ~~\$ 1,000.00~~ \$ 1,500.00

4. Coal Ash Fill Area \$ 3,000.00

5. Land Application Facility \$ 100.00

Regulatory Authority: T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-107(a), and 68-211-111(d)(2).