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Sequence Number: 02-12-16
Notice ID(s): 2478-2484
File Date: 2/11/16

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conversation
Division:	Water Resources
Contact Person:	Bruce Ragon Knoxville Environmental Field Office 3711 Middlebrook Pike
Address:	Knoxville, Tennessee 37921-6538
Phone:	(865) 594-5547
Email:	Bruce.Ragon@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor
Address:	Nashville, Tennessee 37243 1-866-253-5827 (toll free) or (615) 532-0200
Phone:	Hearing impaired callers may use the TN Relay Service 1-800-848-0298
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Large Conference Room		
Address 2:	Knoxville Environmental Field Office 3711 Middlebrook Pike		
City:	Knoxville, Tennessee		
Zip:	37921-6538		
Hearing Date :	04/12/16		
Hearing Time:	1:00 p.m. to 4:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Additional Hearing Information:

With this rulemaking, the Department of Environment and Conservation is renumbering the Mineral Test Holes regulations by repealing Chapters 0950-01-01, 0950-01-02, 0950-01-03, 0950-01-04, 0950-01-05, and 0950-01-06 and moving all of the requirements into Chapter 0400-43-01. In addition, the requirements are being amended to:

- Raise the permit fee from \$10 to \$100. The \$10 fee failed to cover the administrative costs.
- Limit permit terms to two years.
- Limit the maximum number of holes under a blanket permit to 25.
- Expand the type of bond instruments that are acceptable and clarifying the financial assurance process.
- Add a plugging option of grouting or cementing the entire bore of the hole or by other methods approved, in writing, by the supervisor on a case by case basis.

An initial set of draft rules has been prepared for public review and comment. For more information, including the SS-7037 (July 2014)

"DRAFT" rules and "redline" copy, please visit TDEC's website at <http://tn.gov/environment/topic/ppo-water>.

Copies of these initial draft rules are also available for review at the Tennessee Department of Environment and Conservation's Environmental Field Offices located as follows:

Nashville Environmental Field Office
711 R. S. Gass Blvd
Nashville, TN 37243-1550
615-687-7000 or 888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
931-432-4015 or 888-891-8332

Chattanooga Environmental Field Office
1301 Riverfront Parkway
Suite #206
Chattanooga, TN 37402
423-634-5745 or 888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-6538
865-594-6035 or 888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
423-854-5400 or 888-891-8332

Draft copies are also available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
615-532-0625

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Water Resources; Tennessee Department of Environment and Conservation; Attention: Bruce Ragon; Knoxville Environmental Field Office, 3711 Middlebrook Pike, Knoxville, Tennessee 37921-6538; telephone 865-594-5547 or FAX 865-594-6105. However, such written comments must be received by the Division by 4:30 PM EDT, April 29, 2016, in order to ensure consideration. For further information, contact Bruce Ragon at the above address or telephone number.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0950-01-01	Definitions
Rule Number	Rule Title
0950-01-01-.01	Definitions

Chapter Number	Chapter Title
0950-01-02	Bond
Rule Number	Rule Title
0950-01-02-.01	Amount of Bond
0950-01-02-.02	Blanket Bond
0950-01-02-.03	Relief of Responsibility

0950-01-02-.04	Execution of Bond
0950-01-02-.05	Notice of Noncompliance
0950-01-02-.06	Forfeiture

Chapter Number	Chapter Title
0950-01-03	Permits
Rule Number	Rule Title
0950-01-03-.01	Permit Required
0950-01-03-.02	Drilling Permits

Chapter Number	Chapter Title
0950-01-04	Well Location Plats
Rule Number	Rule Title
0950-01-04-.01	Preparing Plats

Chapter Number	Chapter Title
0950-01-05	Well Abandonment
Rule Number	Rule Title
0950-01-05-.01	Plugging Wells
0950-01-05-.02	Suggested Plugging Procedure for Middle Tennessee
0950-01-05-.03	Suggested Plugging Procedure for the Cumberland Plateau
0950-01-05-.04	Suggested Plugging Procedure for East Tennessee
0950-01-05-.05	Plug and Abandon Report

Chapter Number	Chapter Title
0950-01-06	Rules of Procedure for Hearing Contested Cases

Chapter Number	Chapter Title
0400-43-01	Mineral Test Holes
Rule Number	Rule Title
0400-43-01-.01	Definitions
0400-43-01-.02	Bond
0400-43-01-.03	Permits
0400-43-01-.04	Hole Location Plats
0400-43-01-.05	Hole Abandonment
0400-43-01-.06	Rules of Procedure for Hearing Contested Cases

(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>)

Repeals

Chapters 0950-01-01 Definitions, 0950-01-02 Bond, 0950-01-03 Permits, 0950-01-04 Well Location Plats, 0950-01-05 Well Abandonment, and 0950-01-06 Rules of Procedure for Hearing Contested Cases are repealed.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

New Rules

0400-43-01 Mineral Test Holes

Table of Contents

0400-43-01-.01 Definitions
0400-43-01-.02 Bond
0400-43-01-.03 Permits
0400-43-01-.04 Hole Location Plats
0400-43-01-.05 Hole Abandonment
0400-43-01-.06 Rules of Procedure for Hearing Contested Cases

0400-43-01-.01 Definitions

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Act" means the Mineral Test Hole Regulatory Act, T.C.A. §§ 60-1-501 et seq.
- (2) "Board" means the Tennessee Board of Water Quality, Oil and Gas.
- (3) "Department" means the Tennessee Department of Environment and Conservation.
- (4) "For exploratory purposes" means drilling of mineral test holes for the specific purpose of exploring for mineral resources.
- (5) "Hole" means a mineral test hole.
- (6) "Mineral" means any substance with economic value whether organic or inorganic that can be extracted from the earth, but excluding oil and gas.
- (7) "Mineral test hole" means any hole in excess of one hundred (100) feet drilled during the exploration for minerals but excludes auger drilling in surficial or otherwise unconsolidated material, drilling in conjunction with mining or quarrying operations (i.e., blast holes), and drill holes for the exploration of oil and/or gas, water, structural foundations, and seismic surveys.
- (8) "Natural brine" means naturally occurring mineralized water other than potable or fresh water.
- (9) "Operator" means the person, whether owner or not, supervising or responsible for drilling, operating, repairing, abandoning or plugging of mineral test holes subject to this chapter.
- (10) "Owner" means the person who has or attains the right to drill, convert or operate any mineral test hole subject to this chapter.
- (11) "Person" means any individual, corporation, company, association, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative or private organization of any kind.

- (12) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters, soils, animal, fish and aquatic life or surface property of this state, as will:
- (a) Result or will likely result in harm, potential harm, or detriment to the public health, safety, or welfare;
 - (b) Result or will likely result in harm, potential harm, or detriment to the health of animals, birds, fish or aquatic life;
 - (c) Render or will likely render the waters, soils, animal, fish and aquatic life or surface property substantially less useful for domestic municipal, industrial, agricultural, recreational, or other reasonable uses; or
 - (d) Leave or will likely leave the waters in such condition as to violate any standards of water quality established by the Board of Water Quality, Oil and Gas.
- (13) "Supervisor" means the Commissioner of the Tennessee Department of Environment and Conservation or the Commissioner's designee.

0400-43-01-.02 Bond

(1) Amount of bond

A bond is required to be in force for a hole from the time a drilling permit is granted until the hole is abandoned in accordance with this chapter. The bond for an individual hole shall be for the sum of one thousand dollars (\$1,000). An individual hole bond shall be released upon the proper plugging of the hole and the filing with the Supervisor of a Plug and Abandon Report.

(2) Blanket bond

In lieu of an individual bond, any operator may file with the Supervisor a blanket bond in the sum of ten thousand dollars (\$10,000) covering up to twenty-five (25) holes to be drilled by the principal in the bond with the acceptance and approval by the Supervisor of such blanket bond being predicated on its full compliance with the requirements of an individual hole bond. A blanket bond shall be released upon the proper plugging of all holes of the operator covered by the bond, and the filing of plug and abandon reports with the Supervisor. A surety may notify the Supervisor in writing by registered mail, that the operator is no longer authorized by the surety to obtain permits under said bond. If or when all holes permitted under said bond have been abandoned in accordance with this chapter, the Supervisor shall release the bond.

(3) Relief of Responsibility

A permittee's bond and other responsibilities to a hole or holes shall be relieved upon approval by the Supervisor of a successor's application for a bond and the tendering of authorization by the permittee requesting the Supervisor to approve the successor's application.

(4) Execution of bond-exception

Acceptable bond instruments include: a bond or bonds executed by a corporate surety authorized to do business in Tennessee and that is among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury, Irrevocable Letters of Credit, Personal Bonds supported by Certificates of Deposit or Personal Bonds supported by cash or certified check. The wording of all instruments must be identical to the wording furnished by the Department's Division of Financial Responsibility.

(a) Certificates of Deposit used to meet the requirements of this rule must meet the following requirements:

1. The certificate of deposit shall be registered as follows, except that the phrase "Corporation XYZ" should be replaced by the name of the owner/operator: "Corporation XYZ and Tennessee Department of Environment and Conservation or Tennessee

Department of Environment and Conservation”.

2. The institution holding the funds shall be a commercial financial institution regulated by a federal agency or regulated by the Tennessee Department of Financial Institutions.
3. The certificate of deposit shall be automatically annually renewed with the earned interest released to the principal as accrued.
4. The original certificate of deposit or safekeeping receipt of the deposit shall be submitted to and held by the Tennessee Department of Environment and Conservation.
5. Accompanying the certificate of deposit or safekeeping receipt shall be a letter from an officer of the issuing financial institution on the institution's letterhead that contains the certificate of deposit number, the name of the owner/operator, the date the certificate of deposit was issued, and the following statement:

“Notwithstanding any contrary term or condition of the above described Certificate of Deposit, [INSERT NAME OF FINANCIAL INSTITUTION] (the “Financial Institution”) hereby covenants, warrants and represents that said Certificate of Deposit shall not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Financial Institution. The Financial Institution further agrees that it shall not release the Certificate of Deposit or the proceeds thereof to anyone other than to the Tennessee Department of Environment and Conservation (the “Department”) without the written consent of the Department.”

- (b) Letters of Credit used to meet the requirements of this rule must be issued by an institution which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(5) Notice of noncompliance

If the requirements with respect to proper plugging upon abandonment and submission of all required records and data on a hole or holes have not been complied with within the time limit set by the Department, the Supervisor shall cause a Notice of Noncompliance to be served upon the operator or owner and to the surety, if any, executing the bond filed by said operator or owner. Said Notice shall be mailed by certified mail to the owner or operator's address as set out in the application for a permit, to the agent for the surety, if any, at his address, if known, and to the surety company, if any, at the address provided to the Tennessee Department of Commerce and Insurance for receipt of notices. The Notice shall specify in what respects the operator or owner has failed to comply with this rule or orders of the Department and shall order said operator or owner to comply in accordance therewith within sixty (60) days after service of said Notice. The surety, if any, shall be afforded the opportunity to act on behalf of the operator or owner within the time set forth in the Notice with regard to the proper plugging of the hole or holes and submission of required drilling records.

(6) Forfeiture

Should the operator or owner, or surety, fail to comply fully with the order of the Notice of Noncompliance within the sixty (60) day requirement, then said bond shall be forfeited to the Department. Where possible, the Department, at its election, may use the monies so forfeited to plug the affected hole or holes.

(7) Cancellation of Bond

- (a) An owner or operator must provide that their financial assurance mechanism may not cancel, terminate or fail to renew except for failure to pay for such financial instrument. If there is a failure to pay for the financial instrument, the issuing institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Department. The cancellation must not be final for one hundred eighty (180) days after the Department's and operator's receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility mechanism within ninety (90) days of receipt of notice of cancellation.

- (b) If the owner or operator fails to provide alternate financial assurance and obtain written approval of such assurance from the Department during the ninety (90) days following receipt by both the owner or operator and the Department of a notice of cancellation of this bond, the Supervisor shall collect the full amount of the financial assurance instrument from the financial institution and deposit this amount in a fund within the state treasury reserved for financial assurance cash bonds. If the owner or operator subsequently replaces the financial instrument with an alternate third-party financial instrument and obtains the Supervisor's written approval of such instrument, the amount held as a cash bond will be returned to the owner or operator.

0400-43-01-.03 Permits

(1) Permit required

- (a) A permit is required from the Supervisor before any person shall drill a mineral test hole as described in the Act.
- (b) No work shall be commenced on a hole pursuant to this rule before a permit for such work on the hole has been issued by the Supervisor. Furthermore, any work the operator may do, or may have done, will be at the operator's own risk.
- (c) Permits shall not in any way be construed as a certification by the State of Tennessee that any property interest in the premises covered by a permit is vested in the permittee; they are issued solely under the provisions of the Act for the purposes recited in the Act and this chapter.
- (d) Permits shall expire two (2) years from the date of issuance. Plug and abandon reports, or a certification that a hole was not drilled, are due for all permitted holes within sixty (60) days of the expiration date of the permit.

(2) Drilling permits

- (a) Single test hole permit applications for a permit to drill a test hole shall be made on the Application for Permit to Drill and submitted to the Division of Water Resources for approval by the Supervisor. The application shall be accompanied by:
 - 1. A map indicating the location of the hole proposed in the application;
 - 2. An application fee of one hundred dollars (\$100);
 - 3. A comprehensive Bond Identification Form (CN-0120).The application shall also include the name and address of the drilling contractor, if any. If the contractor is unknown at the time of application the information must be provided by letter to the Supervisor as soon as determined but prior to beginning drilling operations.
- (b) Applications for a Blanket Permit must be submitted to the Supervisor for approval and shall include all of the information required by subparagraph (a) of this paragraph, including a map that indicates the location of all holes proposed. A Blanket Permit may cover up to a maximum twenty-five (25) holes.
- (c) A drilling permit can only be amended with the prior written approval of the Supervisor.

0400-43-01-.04 Hole Location Plats

Hole locations shall be plotted on the appropriate topographic map or maps. A copy of that portion of the map showing the drill hole location is acceptable provided the topographic map name and/or number is shown on the copy; each proposed hole shall have a discreet identifier. A plat must accompany the application for a permit.

0400-43-01-.05 Hole Abandonment

(1) Plugging Holes

All holes which are to be abandoned shall be plugged in accordance with the procedures outlined herein.

(2) Suggested Plugging procedure for Middle Tennessee

- (a) In all areas where exploration may encounter gas, set NX casing (3½" OD) at least 6 feet into bedrock. Procedure: fill hole with cement, drive in casing, let set up and then drill out cement. Drill hole with gate valve at surface in order to control the hole if gas is encountered.
- (b) After considerable experimentation by industry, they now find the following method most satisfactory for protecting fresh water zones:
 - 1. Place an effective plug at top of Knox and one (1) bag cement across unconformity = + 40' plug.
 - 2. Come up hole to a depth of approximately two hundred (200) Feet below lowest adjacent surface terrain. Place effective plugs every sixty (60) Feet followed by cement all the way to surface.

(3) Suggested plugging procedure for the Cumberland Plateau

Shallow drill holes less than four hundred (400) feet deep or less than one thousand (1,000) feet from the outcrop not encountering underground water shall be plugged by filling or covering the hole adequately with surface material as a safety precaution. Drill holes more than four hundred (400) feet deep or more than one thousand (1,000) feet from the outcrop shall set effective plugs twenty-five (25) feet below; each coal seam encountered and fill with cement to twenty-five (25) feet above each coal seam encountered. Sufficient plugs must be efficiently placed in number and properly located as to prevent commingling of oil, gas, salt water, and fresh water from one zone to another.

(4) Suggested plugging procedure for East Tennessee

Use six (6) to nine (9) bags of cement poured into the bottom of a drill hole and extending upward at the rate of sixty (60) feet per bag of cement up to the chert matrix layer. This will bring the cemented hole above any potential contaminated water in the East Tennessee District. Then one (1) bag of cement will be used to case the top of the drill hole.

(5) Alternative plugging procedures for all areas

The entire hole bore may be filled with suitable grout or cement from the bottom of the hole to the ground surface or by other methods approved, in writing, by the supervisor on a case by case basis.

(6) Plug and abandon report

Work performed under the permit must be reported to the Supervisor in the Plug and Abandon Report (CN-0217) within thirty (30) days after completing the work unless permission has been obtained by the Supervisor to keep a well open.

0400-43-01-.06 Rules of Procedure for Hearing Contested Cases

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter 1360-04-01.

Authority: T.C.A. §§ 60-1-501 et seq. and 4-5-201 et seq.

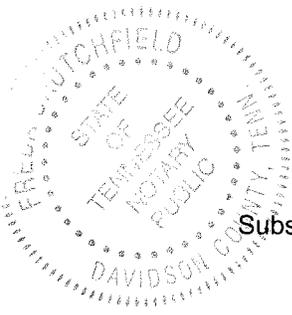
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 2/11/16

Signature: *Tisha Calabrese-Benton*

Name of Officer: Tisha Calabrese-Benton

Title of Officer: Director of the Division of Water Resources



Subscribed and sworn to before me on: February 11, 2016

Notary Public Signature: *Freda Hutchfield*

My commission expires on: May 3, 2016

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Filed with the Department of State on: 2/11/16

Tre Hargett

Tre Hargett
Secretary of State

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