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# Rulemaking Hearing Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Water Resources
<b>Contact Person:</b>	Bruce Ragon
<b>Address:</b>	Knoxville Environmental Field Office 3711 Middlebrook Pike Knoxville, Tennessee
<b>Zip:</b>	37921-6538
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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
0400-40-18	Rock Harvesting
Rule Number	Rule Title
0400-40-18-.01	Purpose
0400-40-18-.02	Application or Notice of Intent
0400-40-18-.03	Requirements for Sediment and Erosion Control During and After Harvesting

(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>)

## New Rules

### 0400-40-18 Rock Harvesting

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#### 0400-40-18-.01 Purpose

The purpose of these regulations is to implement T.C.A. §§ 69-3-143 through 69-3-147 which govern rock harvesting operations as defined in T.C.A. §§ 69-3-144 (1) through (3).

#### 0400-40-18-.02 Application or Notice of Intent

- (1) Operators shall submit a Notice of Intent for coverage under Sector J of the Tennessee Storm Water Multi-Sector General Permit for Industrial Activities unless the division informs them that an individual NPDES permit is required. The reasons for requiring an individual permit include the following:
  - (a) There will be stone processing operation(s) on the site;
  - (b) There will be a discharge of any waste water other than storm water from the site;
  - (c) There will be a discharge to Exceptional Tennessee Waters;
  - (d) The receiving stream is listed as impaired for the pollutant(s) to be discharged from the site; or
  - (e) The division determines that an individual permit is required in order to adequately protect water quality in the receiving stream(s).
- (2) An original and two copies of all application forms and notices of intent and supporting materials shall be submitted.
- (3) Written proof of general liability insurance coverage shall be submitted by the operator along with the permit application or notice of intent.
  - (a) Liability coverage shall be in an amount no less than one million dollars (\$1,000,000).
  - (b) Insurance coverage shall remain in effect for the life of the rock harvesting operation.
  - (c) The policy shall provide that the insurer will notify the department at least thirty (30) days prior to the effectiveness of any cancellation of coverage by the insurer.
  - (d) The operator shall notify the department of any change in insurance coverage during the life of the rock harvesting operation and provide a copy of any new policy after the initial one no later than one week after it becomes effective.
- (4) Written proof of Workers' Compensation insurance coverage, if applicable, shall be submitted by the operator along with the permit application or notice of intent.
- (5) Written proof of registration with the Tennessee Department of Revenue for all operators and any subcontractors shall be submitted with the permit application or notice of intent.
- (6) Evidence of the operator's legal right to harvest minerals on the land covered by the permit application or

notice of intent, in the form of a properly executed deed, lease, or other appropriate document, shall be submitted with the permit application or notice of intent.

- (7) If the surface and mineral rights of any portion of the land covered by the permit application or notice of intent have been severed, the operator shall:
- (a) Notify the surface owner, by certified mail, return receipt required, of the intent to begin rock harvesting operations, at least thirty (30) days prior to beginning such operations including a copy of the permit or notice of coverage from the department;
  - (b) Prior to beginning rock harvesting operations, forward copies of all records relating to the notification required by subparagraph (a) of this paragraph to the department; and
  - (c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (a) and (b) of this paragraph.
- (8) A general location map taken from a USGS 7 ½ minute quadrangle map that shows the location of the mining area(s) and haul road(s) and which includes the name of the operation and the name and number of the quadrangle shall be submitted with the application or notice of intent.
- (9) A site/operations map at a scale of 1" = 500', or larger as needed to provide sufficient detail and avoid a cluttered look, shall be submitted with the application or notice of intent. The site/operations map shall include, at a minimum:
- (a) A title block which contains:
    1. The name of the operator;
    2. The name of the owner of the surface rights and the name of the owner of the mineral rights;
    3. The county(s) in which the operation is located;
    4. The total number of acres to be disturbed by mining operations and haul roads; and,
    5. The date the map was prepared along with a certification of its accuracy by the preparer.
  - (b) The body of the site/operations map shall show:
    1. The proposed permit boundary, including haul roads, marked in red;
    2. The location and type of all water treatment structures, including Best Management Practices;
    3. The location and name(s) of all stream(s) receiving drainage from the operation;
    4. The location and names of all property owners within 500 feet of the permit boundary;
    5. The location of any onsite structures (i.e. buildings, scales, processing equipment, stockpiles, storage areas, etc.);
    6. The location of significant features such as cemeteries, public roads, railroad tracks, oil and gas wells, surface mines, underground mines, transmission lines, pipelines or utility lines within 500 feet of the permit boundary;
    7. The location of initial cuts or excavation and the subsequent cut sequence and direction of mining; and
    8. The location(s) where topsoil and/or other materials suitable for revegetation will be stockpiled.

- (10) A reclamation plan shall be submitted with the application or notice of intent. The plan shall include, at a minimum:
- (a) A description of the manner in which topsoil, and/or other material(s) suitable for revegetation, will be segregated;
  - (b) A description of backfilling and grading operations to be carried out concurrently with mining excavation that addresses whether there will be sufficient overburden to return the land to its original conformation after mining; and if the land will not be returned to its original conformation, a reclamation plan map shall be submitted that depicts:
    - 1. The altered land conformation and drainage patterns that will exist after mining;
    - 2. The location of any permanent impoundment(s) proposed to remain when mining is complete; and
    - 3. The location of any roads to remain after mining, including information regarding the surfacing and drainage controls used to maintain road stability.
  - (c) A revegetation plan which specifies:
    - 1. The types and amounts of seed, fertilizer, lime and mulch that will be applied per acre, following the recommendations of the Tennessee Erosion and Sediment Control Handbook;
    - 2. The type(s) and spacing of trees to be planted; and
    - 3. If the surface and mineral rights on any portion of the land covered by the permit application or notice of intent have been severed, a notarized letter confirming the concurrence of the surface owner as to the size and location of any impoundment(s) or roads to remain after mining and whether or not trees are to be planted must be submitted.

#### 0400-40-18-.03 Requirements for Sediment and Erosion Control During and After Harvesting

- (1) During Harvesting
- (a) Rock harvesting operations shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.
  - (b) Operators shall select, design and install erosion prevention and sediment control measures to prevent discharges to waters of the state that would violate water quality standards or cause pollution.
  - (c) Approved sediment and erosion control measures must be in place prior to beginning rock harvesting operations.
  - (d) Approved sediment and erosion control measures must be maintained throughout the life of the harvesting operation until reclamation has been approved as being successful by the division.
  - (e) Operators shall operate and maintain harvesting sites so that there are no discharges of oil or other waste to waters of the state.
  - (f) Operators shall comply with all provisions of permits.
  - (g) Operators shall modify practices or control measures, as directed and/or approved by the division, to control discharges.

(2) Reclamation

- (a) The purpose of reclamation is to stabilize the site so that there will not be discharges of sediment or other waste into waters of the state.
- (b) Grading shall be conducted so as to return the affected area as closely as possible to its pre-harvesting conformation, considering the amount of available overburden, drainage control, post-harvesting land use and other factors.
- (c) Revegetation shall be deemed acceptable when an eighty percent (80%) groundcover of self-sustaining vegetation, with no bare areas exceeding one fourth (1/4) of an acre, has been established for two (2) growing seasons. If trees are planted, there shall be six hundred (600) surviving stems per acre after two (2) growing seasons.

Authority: T.C.A. §§ 69-3-101 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:

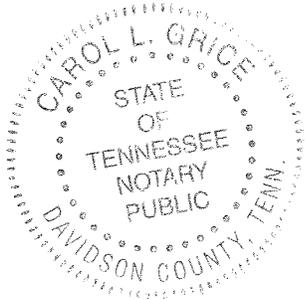
Board Member	Aye	No	Abstain	Absent	Signature (if required)
James W. Cameron III	X				
Jill E. Davis	X				
Mayor Kevin Davis				X	
Derek Gernt	X				
John Guoynes	X				
C. Monty Halcomb				X	
Chuck Head	X				
Charlie R. Johnson	X				
Judy Manners				X	
John McClurkan	X				
Frank McGinley	X				
D. Anthony Robinson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Water Quality, Oil and Gas on 01/15/2013, 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: 01/20/12

Rulemaking Hearing(s) Conducted on: (add more dates). 03/20/12



Date: January 15, 2013

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Chairman

Subscribed and sworn to before me on: January 15, 2013

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

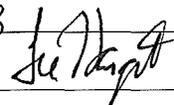
All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
2-13-13  
 Date

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Filed with the Department of State on: 2/15/13

Effective on: 5/16/13



Tre Hargett  
Secretary of State

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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.

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.

- (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.

On average, 15 new applications for rock harvesting are received per year depending on economic conditions. The rules are not retroactive to existing operations.

- (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.

Public Chapter 341 of 2011 imposed new application requirements including proof of right to enter harvesting area, general liability insurance, Workers' Compensation Insurance (if applicable) and registration with the TN Dept. of Revenue. In addition, notification to the surface owner (if surface and mineral rights are severed), new mapping standards and a reclamation plan are required by the new law and these regulations. Most operators fill out application forms themselves so any additional costs should be negligible.

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

The probable effect on businesses will amount to the small amount of time required to assemble the additional information required by the underlying law. There should be no effect on consumers.

- (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.

None.

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

Most other states considerer rock harvesting to be mining and require a mining permit along with varying fees. Almost all rock harvesting sites in Tennessee are eligible for coverage under a Sector J, Industrial Stormwater permit which requires no fee. A few sites require an individual NPDES permit which does require a fee. Overall, these rules are somewhat less stringent than other states.

- (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 underlying statue for these rules was passed in order to ensure that all rock harvesting operations meet the same criteria required of all businesses. Exemption of any businesses would nullify this goal.

### **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 does not anticipate any 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;

These rules were developed to implement Public Chapter 341 of 2011 which added §§ 69-3-143 through 69-3-147 to the Tennessee Water Quality Control Act of 1977. Points addressed in the rules, consistent with the new law, require operators to:

- obtain coverage under Sector J of the Industrial Stormwater general permit or, in some cases, obtain an individual NPDES permit;
- provide proof of their legal right to harvest minerals on the area(s) involved;
- provide proof of general liability insurance;
- provide proof of Workers' Compensation insurance;
- provide proof of registration with the TN Dept. of Revenue; and
- in cases where the surface and mineral rights are severed, provide notice to the surface owner of the intent to harvest minerals and provide a copy of the approved permit.

The rules outline standards for other elements of the new law, e.g., maps, grading, revegetation, and reclamation success. Also addressed are standards for sediment and erosion control measures to be utilized during and after harvesting activities.

- (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. §§ 69-3-143 through 69-3-147, which was added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011.

- (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;

Rock harvesting operations will be affected by these rules. Some rock harvesters were involved in the negotiations over the bill that became Public Chapter 341.

- (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;

No increase or decrease in revenues or expenditures is expected.

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

Bruce Ragon  
Water Pollution Control – Mining Section  
3711 Middlebrook Pike  
Knoxville, TN 37921  
(865) 594-5547 or (865) 594-6035

- (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

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

The Department is not aware of any.