

*Rulemaking*  
*[Signature]*

**Notice of Rulemaking Hearing**  
**Tennessee Department of Environment and Conservation**  
**Water Quality Control Board**

There will be a series of hearings before the Water Quality Control Board to consider the promulgation of amendments of rules pursuant to the Tennessee Water Quality Control Act of 1977, Sections 69-3-101 et seq. and the Tennessee Environmental Protection Fund 68-203-101 et seq. The hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the following times and locations:

DATE	SITE	HEARING LOCATION	TIME
May 30	Jackson	West Tennessee Experiment Station Agriculture Center, Room B 605 Airways Blvd.	7:00 p.m. CDT
June 1	Cookeville	Tennessee Technological University Pennebaker Hall, Room 128 or Prescott 1100 North Dixie Avenue	7:00 p.m. CDT
June 5	Murfreesboro	Auditorium Fleming Training Center 2022 Blanton Drive	7:00 p.m. CDT
June 6	Knoxville	Pellissippi State Technical Community College J L Goins Administration Building 10915 Hardin Valley Drive	7:00 p.m. EDT
June 7	Chattanooga	Chattanooga State Office Building First Floor Auditorium 540 McCallie Avenue	7:00 p.m. EDT

The proposed rule revisions as well as the text of notice can be found at the TDEC website at [www.state.tn.us/environment/wpc/publications](http://www.state.tn.us/environment/wpc/publications). To otherwise obtain copies of the proposed revisions/text of the notice, please contact Glenda Stiles of the Division of Water Pollution Control by e-mail at [Glenda.Stiles@state.tn.us](mailto:Glenda.Stiles@state.tn.us) or by phone at 615-532-0637.

Any individuals with disabilities who wish to participate in these proceedings should contact the Division of Water Pollution Control to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Division to determine how it may reasonably provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Oral and written comments will be accepted at the rulemaking hearings. In addition, written comments will be considered if received by close of business, June 26, 2006, by at the office of the technical secretary, Tennessee Water Quality Control Board, c/o Saya Qualls, Chief Engineer by e-mail at [Saya.Qualls@state.tn.us](mailto:Saya.Qualls@state.tn.us) or by regular mail at the following address:

6<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1534

**Summary of Proposed Revisions to Rules**

The Tennessee Water Quality Control Board (the board) has initiated the rulemaking process to make revisions to Tennessee's permitting and fee rules. Recently the Tennessee Water Quality Control Act (TWQCA) was amended to provide for citizen appeal of permit actions. The revisions to 1200-4-5 will incorporate that change in law, will provide minor clarifications and corrections to the rule. The revision to 1200-4-11 is a result of a petition before the board to specifically identify individual concentrated animal feeding permits as an annual maintenance fee category. In addition, a typographical error will also be corrected.

**Chapter 1200-4-5**

The rule revision will include several minor changes to correct a typographical error in the chapter title and internal references in subchapters .02 and 07. The chapter title currently reads, "Permit Effluent Limitations and Standards" instead of reading, "Permits, Effluent Limitations and Standards." The rule revision would make that correction. The rule will also be revised in subchapter .07, paragraph (2), subparagraph (n) to prohibit all overflows in order to stay consistent with federal rule and policy.

Subchapter .12 is being modified in order to implement the recent amendment to the TWQCA and will entitle aggrieved persons (in addition to permittees and applicants for permits) a review of permit actions by the Water Quality Control Board. In addition the rule revision will require that permittees, applicants for permits and aggrieved persons be specific in their appeal or request for review and that any such review would only include issues that were brought forth during the public comment period.

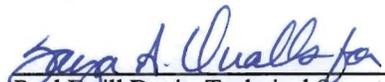
Several revisions are being made to subchapter .14 including a change in paragraph (6) that specifies that all CAFOs regardless of size will submit application information to both the Tennessee Department of Agriculture and the Department of Environment and Conservation. Paragraph (15) contains language that requires that CAFOs seeking permit coverage after December 31, 2006, have a nutrient management plan developed, approved and have all measures, structures, etc., in place to fully implement upon the date of permit coverage. Finally, a typographical error is being corrected in paragraph (16), subparagraph (d) part 4.

**Chapter 1200-4-11**

In addition to correcting a typographical error in Rule 1200 - 4 - 11-.02 (2), the same paragraph would be amended by inserting the following language as part 12 under subparagraph (b) and renumbering the remaining parts:

- 12. Concentrated animal feeding operations covered by an individual permit \$250

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Environment and Conservation's Division of Water Pollution Control.

  
 Paul Estill Davis, Technical Secretary  
 Water Quality Control Board

Subscribed and sworn to before me this the 29<sup>th</sup> day of March, 2006.



  
 Notary Public

My commission expires on the 19<sup>th</sup> day of January, 2010.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31 day of March, 2006.

  
 Riley C. Darnell  
 Secretary of State

By: 

## Proposed Revision of 1200-4-5

1200-4-5 would be amended as follows:

The chapter title would be renamed, "Chapter 1200-4-5 Permits, Effluent Limitations and Standards."

In 1200-4-5-.02, the paragraphs (22) and (48) would be modified to correct internal references. In paragraph (26), the definition of degradation would be made consistent with that in 1200-4-3.

- (22) A "concentrated animal feeding operation" (CAFO) is an AFO that either meets the large (Class I) CAFO size criteria of 1200-4-5-.14(3), the medium (Class II) criteria of 1200-4-5-.14(4) or has otherwise been designated as a CAFO by the director.
- (26) "Degradation" means the alteration of the properties of waters by the addition of pollutants or removal of habitat. Alterations not resulting in the condition of pollution that are of a temporary nature or those alterations having de minimus impact (no measurable or less than 5 percent loss of assimilative capacity) will not be considered degradation.
- (48) A "medium CAFO" (Class II CAFO) is an AFO that confines greater than or equal to the number of animals specified in table 1200-4-5-.14.1 and also meets the criteria of 1200-4-5-.14 (4).

In 1200-4-5-.07, internal references in paragraph (2), subparagraph (j), part 1. and subparagraphs (l) and (n) would be corrected. Additionally, parts 1. through 4. under subparagraph (n) are to be deleted.

- 1. The alteration or addition to a permitted facility is considered a new source per 1200-4-5-.02 (55).
- (l) Bypass, as defined by 1200-4-5-.02(14), is prohibited unless:
- (n) Sanitary sewer overflows, including dry-weather overflows and wet weather overflows as defined by 1200-4-5-.02 (31) and 1200-4-5-.02 (92), respectively, are prohibited.

1200-4-5-.12 will be amended to read as follows:

- (1) Permittees, applicants for permits and aggrieved persons meeting the criteria of 1200-4-4-.12(3)(a) – (b) who disagree with the denial, terms, or conditions of a permit are entitled to review of the commissioner's decision by the Water Quality Control Board (the board) pursuant to Section 69-3-105(i) and -110 of the Act.
- (2) Permittees and applicants for permits must specify what terms or conditions they are appealing in their petition. Only those terms or conditions specified in the petition will be considered subject to appeal. For permit modifications only those terms that were the subject of the modification may be appealed.
- (3) In order to be entitled to a review of the commissioner's permit decision, permittees and aggrieved persons must
  - (a) have submitted a written comment during the public comment period on the permit,  
or
  - (b) given testimony at a formal public hearing on the permit.

- (4) The basis for the appeal for aggrieved persons may only include issues that:
  - (a) were provided to the commissioner in writing during the public comment period,
  - (b) were provided in testimony at a formal public hearing on the permit, or
  - (c) arise from any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment.
- (5) All petitions for permit appeals must be filed within thirty days after the date that public notice of the permit issuance, denial, or modification is given.

In 1200-4-5-.14, paragraph (6) will be amended by revising subparagraph (a), deleting subparagraph (b) and then renumbering the remaining subparagraph. Additionally, subparagraph (15) will also be revised.

- (a) All CAFOs must submit application information to the Tennessee Department of Agriculture and the Department of Environment and Conservation.
- (b) In addition to the application requirements of 1200-4-5-.05 (2), CAFOs must submit, at the time of application:
  - (15) CAFOs that seek NPDES permit coverage after December 31, 2006, must have a nutrient management plan developed, approved and have all measures, structures, etc., in place to fully implement upon the date of permit coverage.

Also in 1200-4-5-.14, part 4. under paragraph (16), subparagraph(d) will be revised as follows:

- 4. weekly records of the depth of the manure and process wastewater in the liquid impoundment as indicated by the required depth marker which indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event or in the case of swine or poultry CAFOS that are new sources indicate the runoff and direct precipitation from a 100-year, 24-hour rainfall event,

### **Proposed Revision of 1200-4-11**

As indicated below, rule 1200 – 4 – 11–.02 (2) would be amended by correcting a typographical error in part 11 under subpart b, inserting a new fee category as part 12 and renumbering the remaining parts:

- |     |  |         |
|-----|--|---------|
| 11. | General Permits (sources other than stormwater or concentrated animal feeding operation) | \$ 250  |
| 12. | Concentrated animal feeding operations covered by an individual permit                   | \$ 250  |
| 13. | Municipal Pretreatment Programs as defined in Rule 1200 – 4 – 11–.01 (2)(a):             |         |
|     | (i) Large Pretreatment Program   | \$5,000 |
|     | (ii) Medium Pretreatment Program   | \$3,000 |
|     | (iii) Small Pretreatment Program   | \$1,000 |
| 14. | Mining:  |         |

(i)	Area equal to or greater than 500 acres	\$5,000
(ii)	Area equal to or greater than 400 acres and less than 500 acres	\$4,500
(iii)	Area equal to or greater than 300 acres and less than 400 acres	\$4,000
(iv)	Area equal to or greater than 200 acres and less than 300 acres	\$3,500
(v)	Area equal to or greater than 100 acres and less than 200 acres	\$3,000
(vi)	Area equal to or greater than 75 acres and less than 100 acres	\$2,500
(vii)	Area equal to or greater than 50 acres and less than 75 acres	\$2,000
(viii)	Area equal to or greater than 25 acres and less than 50 acres	\$1,500
(ix)	Area equal to or greater than 10 acres and less than 25 acres	\$1,000
(x)	Area equal to or greater than 5 acres and less than 10 acres	\$ 750
(xi)	Area less than 5 acres	\$ 500

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

15.	Mining Reclamation:	\$ 250
16.	Stormwater Discharge Permits for Municipal Separate Storm Sewer Systems (MS4):	
	(i) Large MS4s	\$7,500
	(ii) Medium MS4s	\$5,000
	(iii) Small MS4s	\$2,500