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Sequence Number: 04-03-16
 Notice ID(s): 2496
 File Date: 4/6/16

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 Conservation
Division:	Water Resources
Contact Person:	Bryan Epperson Mining Section Manager
Address:	Knoxville Environmental Field Office 3711 Middlebrook Pike Knoxville, TN 37921-6538
Phone:	(865) 594-5529
Email:	Bryan.epperson@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
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 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:	Knoxville Environmental Field Office		
Address 2:	3711 Middlebrook Pike		
City:	Knoxville, TN		
Zip:	37921-6538		
Hearing Date :	06/01/16		
Hearing Time:	1:00 to 4:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Videoconferencing Location(s): The public may videoconference the Knoxville hearing at the following locations:

Address 1:	Chattanooga Environmental Field Office		
Address 2:	1301 Riverfront Parkway, Suite #206		
City:	Chattanooga, TN		
Zip:	37402		
Hearing Date :	06/01/16		
Hearing Time:	1:00 to 4:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Johnson City Environmental Field Office		
Address 2:	2305 Silverdale Road		
City:	Johnson City, TN		

Zip:	37601-2162		
Hearing Date :	06/01/16		
Hearing Time:	1:00 to 4:00 p.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Cookeville Environmental Field Office		
Address 2:	1221 South Willow Avenue		
City:	Cookeville, TN		
Zip:	38506		
Hearing Date :	06/01/16		
Hearing Time:	12:00 to 3:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

The proposed rulemaking would make the rock harvesting chapter consistent with the Antidegradation Statement, Rule 0400-40-03-.06. The proposed revisions would also (1) clarify what type of processing activities trigger the requirement to apply for an individual permit, and (2) provide NPDES permit coverage for rock harvesting exploration activities disturbing less than one acre of land and resulting in the removal of no more than 100 tons of minerals by providing time-limited coverage under a new general permit for exploration immediately upon submission of a streamlined notice of intent.

An initial set of draft rules has been prepared for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

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

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

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371 or 888-891-8332

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

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

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

The "DRAFT" rules may also be accessed for review using <http://tn.gov/environment/topic/ppo-water>.

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: Bryan Epperson; Knoxville Environmental Field Office; 3711 Middlebrook Pike; Knoxville, TN 37921-6538; telephone 865-594-5529 or FAX 865-594-6105. However, such written comments must be received by the Division by 4:30 PM EDT, June 7, 2016, in order to assure consideration. For further information, contact Bryan Epperson 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
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>)

0400-40-18
Rock Harvesting

Amendments

Chapter 0400-40-18 Rock Harvesting is amended by deleting it in its entirety and substituting instead the following:

Table of Contents

0400-40-18-.01 Purpose
0400-40-18-.02 Application or Notice of Intent for Rock Harvesting
0400-40-18-.03 Notice of Intent for Exploration
0400-40-18-.04 Requirements for Sediment and Erosion Control

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).

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

0400-40-18-.02 Application or Notice of Intent for Rock Harvesting

- (1) Operators shall submit a Notice of Intent for Rock Harvesting to obtain coverage under the applicable general permit 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 a discharge of any water which, during manufacturing or processing, comes into direct contact with, or results from, the production of any raw material, intermediate product, finished product, byproduct, or waste product process associated with stone processing operation(s), which includes crushing, sawing, screening, and/or uncovered breaking on the site;
 - (b) There will be any other non-storm water discharges from the site, including but not limited to mine dewatering and domestic sewage;
 - (c) There will be a discharge from the rock harvesting site to Exceptional Tennessee Waters that would cause degradation of any applicable available parameter above the level of de minimis as defined by paragraph (4) of Rule 0400-40-03-.04;
 - (d) There will be a discharge from the rock harvesting site to waters with unavailable parameters that may cause measurable degradation of the parameter that is unavailable, unless the Division determines the estimated pollutant loading is consistent with an EPA-approved total maximum daily load; and,
 - (e) The Division determines that an individual permit is required 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 (5)(a) of this rule to the department; and
 - (c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (5)(a) and (b) of this rule.
 - (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 haulroads; 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 haulroads, 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.

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

0400-40-18-.03 Notice of Intent for Exploration

- (1) For purposes of this Chapter, "exploration" means the excavation of a potential rock harvesting site that disturbs less than 1 acre of land, does not result in removal of more than 100 tons of minerals as defined in T.C.A. § 69-3-144(1), and does not involve processing as defined in subparagraph (1)(a) of Rule 0400-40-18-.02.
- (2) Persons seeking coverage under the general permit for exploration shall submit a Notice of Intent for Exploration at least 7 days prior to engaging in exploration. The Notice of Intent for Exploration shall include the following:

- (a) The legal name and address of the owner and/or operator;
 - (b) The facility name and location;
 - (c) Proof of property owner notification;
 - (d) A general location map produced from a USGS 7½ minute quadrangle map that shows the location of the exploration area(s) and haul road(s), which shall be marked in red, and includes: the name of the operation; the name and number of the quadrangle; the receiving stream(s); and an indication of whether any stream crossings are required. (Note: stream crossings must in compliance with the requirements of Chapter 0400-40-07); and
 - (e) Description of the erosion prevention and sediment control measures for the site as required by Rule 0400-40-18-.04.
- (3) Coverage under the general permit for exploration shall be effective upon receipt of the Notice of Intent for Exploration by the Division for a period of no more than 60 days, at which time the permittee/operator must either:
- (a) Submit a Notice of Intent for Rock Harvesting in accordance with Rule 0400-40-18-.02;
 - (b) Submit an application for an individual permit; or
 - (c) Stabilize the site and withdraw from the area.

If a Notice of Intent for Rock Harvesting or an application for an individual permit is timely submitted, coverage under the general permit for exploration including applicable restrictions (*i.e.*, disturbance of less than one acre of land and removal of less than 100 tons of mineral) shall continue until the Division issues a notice of coverage under the applicable general permit, issues an individual permit, or denies permit coverage for the operation.

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

0400-40-18-.04 Requirements for Sediment and Erosion Control

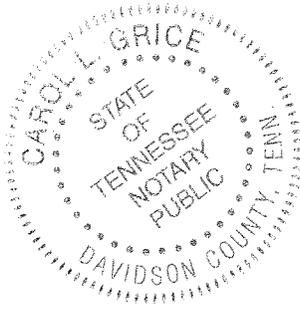
- (1) During Exploration and/or Harvesting
- (a) Rock harvesting operations and exploration activities shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.
 - (b) Operators shall select, design 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 and exploration.
 - (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. These measures must also be maintained throughout the exploration activity until the site has been stabilized.
 - (e) Operators shall operate and maintain harvesting sites so that there are no discharges of oil or other waste to waters of the state. Persons engaging in exploration shall operate and maintain exploration sites so that there are no discharges of oil or other waste to waters of the state.
 - (f) Operators and persons engaging in exploration shall comply with all provision of permits.
 - (g) Operators and persons engaging in exploration 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 is reasonable to its pre-harvesting condition and drainage patterns, considering the amount of available overburden, drainage control, and post-harvesting land use.
- (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. If the Division determines this level of revegetation is not practicable at a given site, the operator shall (1) revegetate to the extent practicable and (2) provide surface stabilization for the entire site.

Authority: T.C.A. §§ 69-3-101 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: April 5, 2016

Signature: *Alan Schwendimann*

Name of Officer: Alan Schwendimann

Title of Officer: Deputy Director of the Division of Water Resources

Subscribed and sworn to before me on: April 5, 2016

Notary Public Signature: *Carol L. Grice*

My commission expires on: March 3, 2020

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Filed with the Department of State on: 4/6/16

Tre Hargett

Tre Hargett
Secretary of State

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