

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 06-8-14
 Rule ID(s): 5732
 File Date: 6-13-14
 Effective Date: 9-11-14

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Britton Dotson
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11 th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0774
Email:	Britton.Dotson@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
0400-40-11	Environmental Protection Fund Fees
Rule Number	Rule Title
0400-40-11-.02	Fees

(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>)

Amendments

Chapter 0400-40-11 Environmental Protection Fund Fees

Subpart (v) of part 1 of subparagraph (a) of paragraph (2) of Rule 0400-40-11-.02 Fees is amended by adding a note to the subpart so that, as amended, the subpart shall read as follows:

(v) Projects seeking Notice of Coverage under a general permit \$500

(Note: Multiple impact points may be covered under one general permit provided the impacts are of the same general permit type, such that each impact would be subject to identical general permit conditions, and provided the cumulative degradation or other aspect of the activities does not require coverage under an individual permit.)

Authority: T.C.A. § 69-3-101 et seq., 68-203-101 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 Guynes				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 Board of Water Quality, Oil and Gas on 04/15/2014, 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: 01/28/14

Rulemaking Hearing(s) Conducted on: (add more dates). 03/25/14

Date: April 15, 2014

Signature: *James W. Cameron III*

Name of Officer: James W. Cameron III

Title of Officer: Chair

Subscribed and sworn to before me on: April 15, 2014

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.

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 OFFICE OF THE
 SECRETARY OF REVENUE

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter

6-10-14
 Date

Department of State Use Only

Filed with the Department of State on: 6-13-14

Effective on: 9-11-14

Tre Hargett

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.

There were no comments received during the 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.

The intent of this amendment is to add a note to subpart (2)(a)1(v) of Rule 0400-40-11-.02 (Fees) to clarify the amount of the application fee that is due when multiple points of impact are involved in one project. The Department maintains that coverage under a general permit with multiple impact points may be covered under one general permit provided the impacts are of the same general permit type, such that each impact would be subject to identical general permit conditions, and provided the cumulative degradation or other aspect of the activities does not require coverage under an individual permit.

- (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.

The Division anticipates those small businesses that are involved in property development and construction, in which land disturbance and alterations to aquatic resources are common, to be affected by this amendment.

- (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.

No additional reporting requirements are required by this amendment.

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

Some small businesses will benefit from covering multiple points of impact from one project in a single general permit with one application fee.

- (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.

This amendment is a clarification of existing regulations and equally applies to small business.

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

This amendment clarifies how projects with multiple points of impact in a single project will be covered under a single general permit with one application fee and should compare well with state counterparts.

- (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.

This amendment will benefit small business and it would not make sense to exemption them.

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 anticipates that these amendments will have an 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;

The intent of this amendment is to add a note to subpart (2)(a)1(v) of Rule 0400-40-11-.02 (Fees) to clarify the amount of the application fee that is due when multiple points of impact are involved in one project. The Department maintains that coverage under a general permit with multiple impact points may be covered under one general permit provided the impacts are of the same general permit type, such that each impact would be subject to identical general permit conditions, and provided the cumulative degradation or other aspect of the activities does not require coverage under an individual permit.

- (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;

This rulemaking is being promulgated under the authority of the Water Quality Control Act of 1977, T.C.A. §§ 69-3-101 et seq. and T.C.A. §§ 68-203-101 et seq. the Tennessee Environmental Protection Fund.

- (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;

Developers, city and county governments, those conducting significant construction projects are most directly affected by the rule. There were no comments received regarding this rulemaking.

- (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 opinions or judicial rulings that directly relate to this rule.

- (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;

This amendment is a clarification of existing regulations and will not generate revenues.

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

Britton Dotson
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
(615) 532-0774

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

Jenny Howard
Deputy General Counsel
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
SS-7039 (October 2011)

Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-8685
Jenny.Howard@tn.gov

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

The Department is not aware of any additional relevant information.

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* 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 (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (Municipalities)				X	
Mayor Kevin Davis (Counties)				X	
Derek Gernt (Oil or Gas Property Owner)	X				
John Guynes (Oil and Gas Industry)				X	
C. Monty Halcomb (Environmental Interest)	X				
Chuck Head (Commissioner's Designee – TDEC)	X				
Charlie R. Johnson (Public-at-large)	X				
Judy Manners (Commissioner's Designee – Dept. of Health)	X				
John McClurkan (Commissioner's Designee – Dept. of Agriculture)	X				
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 04/15/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

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Date: April 15, 2014

Signature: _____

Name of Officer: James W. Cameron III

Title of Officer: Chair

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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.
Attorney General and Reporter

Date

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Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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SS-7039 (October 2011)

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