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Sequence Number: 06-14-1S
Rule ID(s): S904
File Date: 6/19/15
Effective Date: 9/17/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
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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
0400-45-10	Rules of the Board of Ground Water Management
Rule Number	Rule Title
0400-45-10-.01	Purpose and Intent
0400-45-10-.02	Definitions
0400-45-10-.03	Conflict of Interest
0400-45-10-.04	Reserved
0400-45-10-.05	Criteria for Making Recommendations Regarding License Applications

(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 Rule

Chapter 0400-45-10 Rules of the Board of Ground Water Management

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0400-45-10-.01 Purpose and Intent

It is the purpose of this chapter to address T.C.A. §§ 69-10-107(d) and (e) which require the Board of Ground Water Management to promulgate rules to mandate the creation of a conflict of interest policy for board members and establish the criteria to be used by the Board in making recommendations to the Commissioner regarding applications for driller's and installer's licenses.

0400-45-10-.02 Definitions

As used in this chapter, unless context otherwise requires:

- (1) "Board" means the board of ground water management.
- (2) "Borehole" means the cylindrical opening created by the action of a drill or auger as it penetrates the subsurface.
- (3) "Closed loop geothermal borehole" means a cylindrical opening created by the action of a drill or auger as it penetrates the subsurface greater than twenty (20) feet in depth used to either extract or transfer heat from the earth for heating or cooling. This is also referred to as a geothermal well in T.C.A. § 69-10-101 et seq.
- (4) "Commissioner" means the commissioner of environment and conservation, the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation.
- (5) "Department" means the department of environment and conservation.
- (6) "Drill" means to dig, drill, redrill, construct, deepen or alter a well.
- (7) "Driller" means any person who digs, drills, redrills, constructs, deepens or alters a well.
- (8) "Experience" means the skill and knowledge derived from the actual direct participation and practice gained in a specific occupation. For drillers experience includes the skill and knowledge gained in operating drilling equipment to drill and construct a well or closed loop geothermal borehole. For installers experience includes the skill, knowledge and actual direct participation in determining the equipment required and installing equipment either in or on wells or closed loop geothermal boreholes. Such skill and knowledge must qualify the individual to deal with circumstances and problems that may be encountered by an occupation.
- (9) "Geothermal well" means a hole drilled into the earth, by boring or otherwise, greater than twenty feet

(20') in depth constructed for the primary purpose of adding or removing British Thermal Units (BTUs) from the earth for heating or cooling.

- (10) "Installer" means any person who installs or repairs well pumps or who installs filters and water treatment devices.
- (11) "Well" means one of these three (3) types of holes in the earth: a geothermal well, a monitoring well, or a water well.

0400-45-10-.03 Conflict of Interest

- (1) The board shall create a conflict of interest policy governing conflicts of interests that requires board members to avoid conflicts of interest, identifies specific actions that are prohibited to be taken by a board member and, if a matter is considered by the board in which a member of the board has a conflict of interest, mandates disclosure that a conflict exists and recusal from the matter by the board member.
- (2) Each board member during the first meeting of the board each calendar year, or the member's first attendance of a board meeting of the calendar year, shall:
 - (a) Make a written disclosure of financial interests or other interests that the board member reasonably anticipates have potential to become a conflict of interest;
 - (b) Acknowledge in writing that the board member has read and understands all aspects of the board's conflict of interest policy; and
 - (c) State as a condition of serving as a board member that he or she is not in conflict with the conditions of the board's conflict of interest policy.

0400-45-10-.04 Reserved

0400-45-10-.05 Criteria for Making Recommendations Regarding License Applications

- (1) As provided in Rule 0400-45-09-.05, the board shall determine whether to recommend an applicant to the commissioner for licensing.
- (2) To make the recommendation required by paragraph (1) of this rule, a quorum of the board shall interview an applicant that has complied with Rules 0400-45-09-.02 through 0400-45-09-.05 to determine the quality and quantity of the applicant's experience. Questioning by individual board members will include, but not be limited to, the following:
 - (a) Where and when the applicant's experience was obtained;
 - (b) Types of equipment used by the applicant;
 - (c) The applicant's level of responsibility;
 - (d) Familiarity of the applicant with addressing problems such as:
 - 1. Construction techniques used in each type of well drilled for each license applied for;
 - 2. Operation of drilling equipment used in drilling wells or boreholes; and
 - 3. Installation techniques and principles of operation for pumps and or water treatment devices;
 - (e) Knowledge of state well construction standards; and

(f) Responsibilities of licensees to the well owner and the department.

Authority: T.C.A. §§ 69-10-107(d) and (e) 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)
Brian Keith Campbell Board Member West Tennessee				X	
Robert Hall ExOfficio Environment and Conservation	X				
Tim C. Hawn Board Member East Tennessee	X				
Anna Rollins ExOfficio Environment and Conservation	X				
James C. Watson Board Member Middle Tennessee	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Ground Water Management on 04/23/2015, 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: 12/11/14

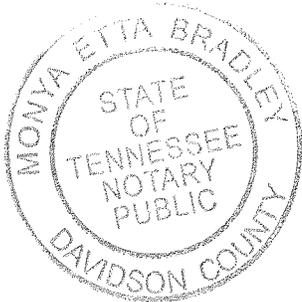
Rulemaking Hearing(s) Conducted on: (add more dates). 02/09/15

Date: April 23, 2015

Signature: Anna Rollins

Name of Officer: Anna Rollins

Title of Officer: Board Chair



Subscribed and sworn to before me on: April 23, 2015

Notary Public Signature: Monya Etta Bradley

My commission expires on: March 10, 2019

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.

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter
6/11/2015
Date

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Filed with the Department of State on: 6/19/15

Effective on: 9/17/15

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

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.

This new chapter only impacts the Board of Ground Water Management and no small businesses are affected.

- (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.

There is no cost to small businesses from this new chapter.

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

There is no impact to small businesses or consumers resulting from this new chapter.

- (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 new chapter complies with T.C.A. §§ 69-10-107(d) and (e) that the Board of Ground Water Management promulgate rules to mandate the creation of a conflict of interest policy for board members and to establish the criteria to be used by the Board in making recommendations to the Commissioner regarding applications for driller's and installer's licenses, and no alternatives were authorized by the statute.

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

The Board of Ground Water Management is unique to Tennessee.

- (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.

There are no small businesses affected by this new chapter.

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 from these new rules.

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 purpose of this rulemaking is to comply with T.C.A. §§ 69-10-107(d) and (e) that the Board of Ground Water Management promulgate rules to mandate the creation of a conflict of interest policy for board members and to establish the criteria to be used by the Board in making recommendations to the Commissioner regarding applications for driller's and installer's licenses. The criteria were previously in Chapter 0400-45-09 and moved to this Chapter without changes. The rulemaking authority given to the Board of Ground Water Management is limited to these two issues.

- (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 new chapter is required by and adopted under the authority of T.C.A. §§ 69-10-107(d) and (e).

- (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;

This new chapter directly affects the members of the Board of Ground Water Management and there were no comments received regarding this new chapter during the public comment period.

- (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 legal opinions or judicial rulings regarding this new chapter.

- (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;

Revenues are not impacted by the adoption of this new chapter.

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

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- (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

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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 requests.