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For Department of State Use Only

Sequence Number: 06-23-12
 Rule ID(s): 5209-5210
 File Date: 6/18/12
 Effective Date: 9/16/12

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 Supply
Contact Person:	Tom Moss
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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
0400-45-08	Water Registration Requirements
Rule Number	Rule Title
0400-45-08-.01	Authority
0400-45-08-.02	Purpose
0400-45-08-.03	Scope
0400-45-08-.04	Definition
0400-45-08-.05	Registration Requirements
0400-45-08-.06	Ownership/Operational Rights
0400-45-08-.07	Measurement Methods and Standards
0400-45-08-.08	Classification of Water Uses
0400-45-08-.09	Points of Withdrawal and Return Location/Source Identification
0400-45-08-.10	Record Maintenance
0400-45-08-.11	Change of Person Responsible for Withdrawal
0400-45-08-.12	Compliance and Civil Penalties
0400-45-08-.13	Confidentiality of Data

Chapter Number	Chapter Title
1200-05-08	Water Registration Requirements
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(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>)

Repeal

Chapter 1200-04-08 Water Registration Requirements is repealed.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-45-08 Water Registration Requirements

Table of Contents

0400-45-08-.01 Authority
0400-45-08-.02 Purpose
0400-45-08-.03 Scope
0400-45-08-.04 Definitions
0400-45-08-.05 Registration Requirement
0400-45-08-.06 Ownership/Operational Rights
0400-45-08-.07 Measurement Methods and Standards
0400-45-08-.08 Classification of Water Uses
0400-45-08-.09 Points of Withdrawal and Return Location/Source Identification
0400-45-08-.10 Record Maintenance
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0400-45-08-.13 Confidentiality of Data

0400-45-08-.01 Authority.

- (1) These rules and regulations are issued under the authority of T.C.A. §§ 69-7-301 et seq., as amended.
- (2) The Department of Environment and Conservation, Division of Water Supply is responsible for the supervision of water withdrawal registration.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.02 Purpose.

- (1) The purpose of these rules and regulations is to provide guidelines for the interpretation of T.C.A. § 69-7-301 et seq. and to set out the procedures to be followed by the Department in carrying out the Tennessee Water Resources Information Act. These rules and regulations set out the procedures and requirements for registering a water withdrawal.
- (2) Where the terms "shall" and "must" are used, practice and usage is sufficiently standardized to indicate a mandatory requirement, insofar as any complaint action by the Department is concerned. Other items, such as "should", "recommend", "preferred", and the like, indicate desirable procedures or methods.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.03 Scope.

These rules shall apply to all persons withdrawing water from either a surface water or ground water source if the average withdrawal is 10,000 gallons or more a day for any purpose, except those excluded by the Act and listed below:

- (1) A person may withdraw water for agricultural purposes without having registered the withdrawal. If a person withdraws water for agricultural purposes and another purpose, the water used for agriculture

shall not count towards the calculation of whether the withdrawal exceeds an average of ten thousand (10,000) gallons or more per day. For purposes of this part, "agricultural purposes" shall mean use in the production or harvesting of an agricultural product, including, but not limited to, irrigation of crops, vines, production of hay, turf production and nursery stock production as defined at T.C.A. § 43-1-112, and watering of poultry or livestock.

- (2) Nonrecurring withdrawals of water, including, but not limited to, the filling of a swimming pool from a residential water well and accidental withdrawals caused by failure of pipes or equipment.
- (3) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided it is not done on a regular or recurring basis.
- (4) The purchase of water from a utility by a customer, including other water utilities, does not constitute a withdrawal.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.04 Definitions.

- (1) "Act" means the Tennessee Water Resources Information Act.
- (2) "Board" means the Water Quality Control Board of the Tennessee Department of Environment and Conservation.
- (3) "Commissioner" means the Commissioner of the Department 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.
- (4) "Consumptive water use" means that portion of water that becomes incorporated into the product, consumed by humans or livestock, that is lost to evaporation or transpiration, or is otherwise removed from the local hydrologic environment from which it was obtained.
- (5) "Department" means the Tennessee Department of Environment and Conservation. The terms "state," "department" and "division" are often used interchangeably in these rules and regulations.
- (6) "Dewatering" means the withdrawal of water to facilitate construction or extraction of earth materials.
- (7) "Division" means the Division of Water Supply. The terms "state", "department" and "division" are often used interchangeably in these rules and regulations.
- (8) "Emergency Water Use" means the withdrawal of water, for a period not exceeding thirty days, for the purpose of fire fighting, hazardous substance waste spill response, or other emergency withdrawal of water as determined by the Department.
- (9) "Ground Water" means any water beneath the surface of the ground, including those under the direct influence of surface water, and includes any water from any well, cave, and spring.
- (10) "Person" means any individual, corporation, company, limited liability company partnership, association, group, utility district, federal, state or local government agency, or any combination of them.
- (11) "Public Utility" means any person engaged in the operation of a public water supply system whether serving domestic or commercial water uses or any combination.
- (12) "Recurring" means the withdrawal of water more than 4 days a year.
- (13) "Return Point" means the surface or ground water location where water withdrawn and used is returned or discharged.
- (14) "Source" means a location where surface or ground water is available, including, but not limited to, a water well, cave, spring, stream, river, lake, or impoundment.

- (15) "Surface Water" means any water located on the land surface that includes creeks, streams, rivers, lakes, and impoundments. It does not include ponds and impoundments that are not located on a stream and that are privately owned by the person withdrawing water where the water is returned to the same impoundment.
- (16) "Use" means the purpose for which any withdrawal is made.
- (17) "Withdraw" means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction. This does not include nonrecurring withdrawals including, but not limited to, the filling of a swimming pool from a residential water well or the accidental withdrawal caused by failure of pipes or equipment.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.05 Registration Requirement.

- (1) Initial Registration - No person shall withdraw an average of ten thousand (10,000) or more gallons of water per day from a surface water or a ground water source unless the withdrawal is currently registered with the commissioner. Such registration shall be on forms furnished, upon request, by the commissioner. Any person required to submit a registration of withdrawal shall provide at a minimum to the commissioner the following information:
 - (a) An identification of all the withdrawal and return points. The withdrawal and return points shall be identified by name of source and facility and county in which the withdrawal and return points are located;
 - (b) The anticipated or proposed volume, frequency and times of year water is to be withdrawn;
 - (c) The volume of the average and maximum withdrawal shall be reported in million gallons per day;
 - (d) The use or uses for which the water withdrawn is applied as specified in Rule 0400-45-08-.08, Classification of Water Uses.
 - (e) The estimated volume of water returned at each return point. Return points include, but are not limited to, municipal or industrial wastewater discharges, stream discharges, subsurface disposal, etc.
 - (f) The person completing and submitting the registration shall sign the form attesting to the accuracy of the information submitted.
- (2) Annual Renewal - Any person who causes such a withdrawal shall annually renew their registration of such water withdrawal with the commissioner on forms provided for the purpose on or before February 15 of every year. Information reported shall include the user's name, address, sources and locations of withdrawal, volume of water withdrawn each calendar month for the previous twelve months, maximum day withdrawal and the month in which it occurred, method of withdrawal measurement, and any change in volume or points of withdrawal. Forms developed by the person withdrawing water may be used if prior approval is obtained from the department.
- (3) Public water systems may comply with the annual water withdrawal registration requirements by providing water pumpage information to the department on a monthly basis.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.06 Ownership/Operational Rights.

Persons withdrawing water from a source shall comply with all other laws, rules and regulations, and policies of the State. These specifically include, but are not limited to, the Interbasin Transfer Act, the Water Quality Control Act, and the Safe Drinking Water Act.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.07 Measurement Methods and Standards.

The commissioner shall accept a recognized method of measuring the quantities of water withdrawn. Recognized methods of measuring the quantity of surface water withdrawn which are acceptable include any of the following:

- (1) Flow meters accurate to within ten percent of calibration in accordance with the manufacturer's recommendations;
- (2) The rated capacity of the pump in conjunction with the use of an hour meter, electric meter or log;
- (3) Any standard or method employed by the United States Geological Survey in determining water withdrawals;
- (4) Any other method found to provide reliable water withdrawal data approved by the Department. Any person desiring to use an alternate method of measuring the volume of water withdrawal shall make a written request to the department. The request must describe the procedure to be used and furnish information on the accuracy of the method.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.08 Classification of Water Uses.

The following water use classifications shall be used when registering water withdrawals. Persons not covered by this Act that voluntarily register their water withdrawals should use the following water use classification.

- (1) domestic water supply, including municipal water supplies
- (2) irrigation of crops and nursery stock
- (3) livestock watering
- (4) production (including harvesting) of an agricultural product
- (5) navigation (lock usage and flow augmentation)
- (6) thermoelectric power production, including cooling purposes (excludes hydroelectric)
- (7) recreational use
- (8) commercial, institutional or other general public use
- (9) industrial uses include manufacturing processing, washing, and cooling, but excludes mining related uses (defined below)
- (10) hydroelectric power generation (provided none of it is used consumptively)
- (11) mining (where water is used to wash or process an ore)
- (12) dewatering (mining, quarry rock production, and other operations where water is withdrawn in other to conduct another activity.)
- (13) any other use not defined above

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.09 Points of Withdrawal and Return Location/Source Identification.

- (1) The point(s) of withdrawal and return shall be located at a minimum using any one of the following methods:
 - (a) Located on a 7.5 minute USGS topographic map.
 - (b) Coordinates obtained with a GPS unit (in decimal format).
 - (c) The name of the stream or river and river mile from the mouth of the river as shown on a 7.5 minute USGS topographic map.
 - (d) The name of the municipal or industrial wastewater plant.
 - (e) The name of the source and county where the intake, well or spring is located and the name of the source or discharge point and county where water is returned. Water returned through multiple private subsurface disposal systems only have to identify the county where the discharge takes place.
- (2) State Driller Tag Number or other State Identification Number, if one has been assigned or public water system (PWS) entry point ID.
- (3) Multiple points of withdrawal may be further identified and designated as W1, W2, W3 and so forth for reporting purposes. Multiple points of return may be further identified as R1, R2, R3, and so forth.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.10 Record Maintenance.

Persons subject to the water withdrawal provisions of these rules shall retain on their premises or at a convenient location near their premises the following records:

- (1) Copies of Registrations of Withdrawals for the past three (3) years.
- (2) All records and documents, including worksheets, pumpage records, etc., used to calculate the amount of water withdrawn.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.11 Change of Person Responsible for Withdrawal.

Any change of person responsible for water withdrawn shall be reported to the Department within 60 days.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.12 Compliance and Civil Penalties.

- (1) Any person who
 - (a) fails to file a water withdrawal registration, or
 - (b) fails to timely file a water withdrawal registration, or
 - (c) fails to submit a true and accurate information on any registration form or report required by the Act and these rules has incurred a violation and is subject to an Order, including a penalty of up to \$7,500 per day per violation as provided in the Act. Each day such violation continues is a separate violation.
- (2) Any person who attempts to prevent or not to allow the commissioner's agents to enter at a reasonable time upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this part has incurred a violation and is subject to an Order, including

a penalty of up to \$7,500 per day of violation as provided in the Act. Each day such violation continues is a separate violation.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.13 Confidentiality of Data.

- (1) If specifically requested by the person registering the withdrawal and if it is deemed necessary by the commissioner to protect trade secret information as defined in T.C.A. § 47-25-1702, the commissioner shall keep such trade secret information confidential. To effectuate this provision, the registrant must submit specifically precluded data on separate forms using forms which are coded in such a manner as to conceal the identity of the facility or registrant.
- (2) If an applicant makes a request for confidential treatment, the Division shall treat the information as confidential pending a determination of whether it qualifies and any review of that determination as provided herein. If the Division determines that any information is not entitled to confidential treatment for any reason, it shall inform the person in writing. A request for an informal review by the Commissioner or a designee may be filed within 30 days of receipt of the letter denying confidential treatment. The informal review shall not be conducted as a contested case under T.C.A. § 4-5-101 et seq. The Commissioner shall issue a written determination after the informal review. If no timely request for review is filed or upon the expiration of thirty days after the Commissioner's written determination that the information is not entitled to confidential treatment, the Division may cease to treat the information as confidential.

Authority: T.C.A. §§ 69-7-301 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)
Elaine Boyd				✓	
James W. Cameron III	✓				
Jill E. Davis	✓				
Geneil H. Dillehay				✓	
C. Monty Halcomb	✓				
Charlie R. Johnson	✓				
Judy Manners	✓				
John McClurkan	✓				
Frank McGinley	✓				
D. Anthony Robinson	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Water Quality Control Board on May 15, 2012 (mm/dd/yyyy), 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: 10/18/11

Rulemaking Hearing(s) Conducted on: (add more dates). 12/13/11, 12/14/11 and 12/16/11

Date: May 15, 2012

Signature: C. Monty Halcomb

Name of Officer: C. Monty Halcomb

Title of Officer: Board Chairman



Subscribed and sworn to before me on: 5-15-12

Notary Public Signature: Glenda Sue Stiles

My commission expires on: 12-22-2013

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

6-14-12
 Date

Department of State Use Only

Filed with the Department of State on: 6/18/12

Effective on: 9/16/12

Tre Hargett by John Sant, PA
Tre Hargett
Secretary of State

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PUNICIPATIONS

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 made regarding the rule changes at the public hearings.

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.

There are currently 294 active water withdrawal registrants (including both ground water and surface water). This does not include public water system withdrawals which are handled separately within the Division of Water Supply. There are no costs identified for small businesses. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

- (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 are no additional costs identified. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

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

There will be no effect on small businesses and 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.

There should be no impact on businesses. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

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

There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health. There is no equivalent federal water registration requirement.

- (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 should be no impact on small businesses and there is nothing to exempt them from in the proposed rule. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

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 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 Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health. There were no substantive changes to the rules.

- (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;

T.C.A. §§ 69-7-301 et seq., The Water Resources Information Act

- (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;

There should be no impact. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health. There were no substantive changes to the rules.

- (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;

There should be no fiscal impact to state and local government.

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

Tom Moss
Division of Water Supply
6th Floor L & C Tower
Nashville, Tennessee

- (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
Tennessee Department of Environment and Conservation
20th Floor L & C Tower
Nashville, Tennessee 37243-1548
(615) 532-0131

Alan.Leiserson@tn.gov

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

The Department is not aware of any.

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Repeal

Chapter 1200-04-08 Water Registration Requirements is repealed.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

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~~1200-5-8-.01~~ 0400-45-08-.01 Authority.

- (1) These rules and regulations are issued under the authority of T.C.A. §§ 69-7-301 et seq., as amended.
- (2) The Department of Environment and Conservation, Division of Water Supply is responsible for the supervision of water withdrawal registration.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-.02~~ 0400-45-08-.02 Purpose.

- (1) The purpose of these rules and regulations is to provide guidelines for the interpretation of T.C.A. § 69-7-301 et seq. ~~of the Tennessee Code Annotated~~ and to set out the procedures to be followed by the Department in carrying out the Tennessee Water Resources Information Act. These rules and regulations set out the procedures and requirements for registering a water withdrawal.
- (2) Where the terms "shall" and "must" are used, practice and usage is sufficiently standardized to indicate a mandatory requirement, insofar as any complaint action by the Department is concerned. Other items, such as "should", "recommend", "preferred", and the like, indicate desirable procedures or methods.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-.03~~ 0400-45-08-.03 Scope.

These rules shall apply to all persons withdrawing water from either a surface water or ground water source if the average withdrawal is 10,000 gallons or more a day for any purpose, except those excluded by the Act and listed below:

- (1) A person may withdraw water for agricultural purposes without having registered the withdrawal. If a person withdraws water for agricultural purposes and another purpose, the water used for agriculture

shall not count towards the calculation of whether the withdrawal exceeds an average of ten thousand (10,000) gallons or more per day. For purposes of this part, "agricultural purposes" shall mean use in the production or harvesting of an agricultural product, including, but not limited to, irrigation of crops, vines, production of hay, turf production and nursery stock production as defined at T.C.A. § 43-1-112, and watering of poultry or livestock.

- (2) Nonrecurring withdrawals of water, including, but not limited to, the filling of a swimming pool from a residential water well and accidental withdrawals caused by failure of pipes or equipment.
- (3) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided it is not done on a regular or recurring basis.
- (4) The purchase of water from a utility by a customer, including other water utilities, does not constitute a withdrawal.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-.04~~ 0400-45-08-.04 Definitions.

- (1) "Act" means the Tennessee Water Resources Information Act.
- (2) "Board" means the Water Quality Control Board of the Tennessee Department of Environment and Conservation.
- (3) "Commissioner" means the Commissioner of the Department 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.
- (4) "Consumptive water use" means that portion of water that becomes incorporated into the product, consumed by humans or livestock, that is lost to evaporation or transpiration, or is otherwise removed from the local hydrologic environment from which it was obtained.
- (5) "Department" means the Tennessee Department of Environment and Conservation. The terms "state," "department" and "division" are often used interchangeably in these rules and regulations.
- (6) "Dewatering" means the withdrawal of water to facilitate construction or extraction of earth materials.
- (7) "Division" means the Division of Water Supply. The terms "state", "department" and "division" are often used interchangeably in these rules and regulations.
- (8) "Emergency Water Use" means the withdrawal of water, for a period not exceeding thirty days, for the purpose of fire fighting, hazardous substance waste spill response, or other emergency withdrawal of water as determined by the Department.
- (9) "Ground Water" means any water beneath the surface of the ground, including those under the direct influence of surface water, and includes any water from any well, cave, and spring.
- (10) "Person" means any individual, corporation, company, limited liability company partnership, association, group, utility district, federal, state or local government agency, or any combination of them.
- (11) "Public Utility" means any person engaged in the operation of a public water supply system whether serving domestic or commercial water uses or any combination.
- (12) "Recurring" means the withdrawal of water more than 4 days a year.
- (13) "Return Point" means the surface or ground water location where water withdrawn and used is returned or discharged.
- (14) "Source" means a location where surface or ground water is available, including, but not limited to, a water well, cave, spring, stream, river, lake, or impoundment.

- (15) "Surface Water" means any water located on the land surface that includes creeks, streams, rivers, lakes, and impoundments. It does not include ponds and impoundments that are not located on a stream and that are privately owned by the person withdrawing water where the water is returned to the same impoundment.
- (16) "Use" means the purpose for which any withdrawal is made.
- (17) "Withdraw" means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction. This does not include nonrecurring withdrawals including, but not limited to, the filling of a swimming pool from a residential water well or the accidental withdrawal caused by failure of pipes or equipment.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~4200-5-8-.05~~ 0400-45-08-.05 Registration Requirement.

- (1) Initial Registration - No person shall withdraw an average of ten thousand (10,000) or more gallons of water per day from a surface water or a ground water source unless the withdrawal is currently registered with the commissioner. Such registration shall be on forms furnished, upon request, by the commissioner. Any person required to submit a registration of withdrawal shall provide at a minimum to the commissioner the following information:
 - (a) An identification of all the withdrawal and return points. The withdrawal and return points shall be identified by name of source and facility and county in which the withdrawal and return points are located;
 - (b) The anticipated or proposed volume, frequency and times of year water is to be withdrawn;
 - (c) The volume of the average and maximum withdrawal shall be reported in million gallons per day;
 - (d) The use or uses for which the water withdrawn is applied as specified in ~~4200-5-8-.08~~ Rule 0400-45-08-.08, Classification of Water Uses.
 - (e) The estimated volume of water returned at each return point. Return points include, but are not limited to, municipal or industrial wastewater discharges, stream discharges, subsurface disposal, etc.
 - (f) The person completing and submitting the registration shall sign the form attesting to the accuracy of the information submitted.
- (2) Annual Renewal - Any person who causes such a withdrawal shall annually renew their registration of such water withdrawal with the commissioner on forms provided for the purpose on or before February 15 of every year. Information reported shall include the user's name, address, sources and locations of withdrawal, volume of water withdrawn each calendar month for the previous twelve months, maximum day withdrawal and the month in which it occurred, method of withdrawal measurement, and any change in volume or points of withdrawal. Forms developed by the person withdrawing water may be used if prior approval is obtained from the department.
- (3) Public water systems may comply with the annual water withdrawal registration requirements by providing water pumpage information to the department on a monthly basis.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~4200-5-8-.06~~ 0400-45-08-.06 Ownership/Operational Rights.

Persons withdrawing water from a source shall comply with all other laws, rules and regulations, and policies of the State. These specifically include, but are not limited to, the Interbasin Transfer Act, the Water Quality Control Act, and the Safe Drinking Water Act.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~4200-5-8-.07~~ 0400-45-08-.07 Measurement Methods and Standards.

The commissioner shall accept a recognized method of measuring the quantities of water withdrawn. Recognized methods of measuring the quantity of surface water withdrawn which are acceptable include any of the following:

- (1) Flow meters accurate to within ten percent of calibration in accordance with the manufacturer's recommendations;
- (2) The rated capacity of the pump in conjunction with the use of an hour meter, electric meter or log;
- (3) Any standard or method employed by the United States Geological Survey in determining water withdrawals;
- (4) Any other method found to provide reliable water withdrawal data approved by the Department. Any person desiring to use an alternate method of measuring the volume of water withdrawal shall make a written request to the department. The request must describe the procedure to be used and furnish information on the accuracy of the method.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~4200-5-8-.08~~ 0400-45-08-.08 Classification of Water Uses.

The following water use classifications shall be used when registering water withdrawals. Persons not covered by this Act that voluntarily register their water withdrawals should use the following water use classification.

- (1) domestic water supply, including municipal water supplies
- (2) irrigation of crops and nursery stock
- (3) livestock watering
- (4) production (including harvesting) of an agricultural product
- (5) navigation (lock usage and flow augmentation)
- (6) thermoelectric power production, including cooling purposes (excludes hydroelectric)
- (7) recreational use
- (8) commercial, institutional or other general public use
- (9) industrial uses include manufacturing processing, washing, and cooling, but excludes mining related uses (defined below)
- (10) hydroelectric power generation (provided none of it is used consumptively)
- (11) mining (where water is used to wash or process an ore)
- (12) dewatering (mining, quarry rock production, and other operations where water is withdrawn in other to conduct another activity.)
- (13) any other use not defined above

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~4200-5-8-.09~~ 0400-45-08-.09 Points of Withdrawal and Return Location/Source Identification.

- (1) The point(s) of withdrawal and return shall be located at a minimum using any one of the following methods:
 - (a) Located on a 7.5 minute USGS topographic map.
 - (b) Coordinates obtained with a GPS unit (in decimal format).
 - (c) The name of the stream or river and river mile from the mouth of the river as shown on a 7.5 minute USGS topographic map.
 - (d) The name of the municipal or industrial wastewater plant.
 - (e) The name of the source and county where the intake, well or spring is located and the name of the source or discharge point and county where water is returned. Water returned through multiple private subsurface disposal systems only have to identify the county where the discharge takes place.
- (2) State Driller Tag Number or other State Identification Number, if one has been assigned or public water system (PWS) entry point ID.
- (3) Multiple points of withdrawal may be further identified and designated as W1, W2, W3 and so forth for reporting purposes. Multiple points of return may be further identified as R1, R2, R3, and so forth.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-10~~ 0400-45-08-10 Record Maintenance.

Persons subject to the water withdrawal provisions of these rules shall retain on their premises or at a convenient location near their premises the following records:

- (1) Copies of Registrations of Withdrawals for the past three (3) years.
- (2) All records and documents, including worksheets, pumpage records, etc., used to calculate the amount of water withdrawn.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-11~~ 0400-45-08-11 Change of Person Responsible for Withdrawal.

Any change of person responsible for water withdrawn shall be reported to the Department within 60 days.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-12~~ 0400-45-08-12 Compliance and Civil Penalties.

- (1) Any person who
 - (a) fails to file a water withdrawal registration, or
 - (b) fails to timely file a water withdrawal registration, or
 - (c) fails to submit a true and accurate information on any registration form or report required by the Act and these rules has incurred a violation and is subject to an Order, including a penalty of up to \$7,500.00 per day per violation as provided in the Act. Each day such violation continues is a separate violation.
- (2) Any person who attempts to prevent or not to allow the commissioner's agents to enter at a reasonable time upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this part has incurred a violation and is subject to an Order, including

a penalty of up to \$7,500.00 per day of violation as provided in the Act. Each day such violation continues is a separate violation.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

~~1200-5-8-13~~ 0400-45-08-13 Confidentiality of Data.

- (1) If specifically requested by the person registering the withdrawal and if it is deemed necessary by the commissioner to protect trade secret information as defined in T.C.A. § 47-25-1702, the commissioner shall keep such trade secret information confidential. To effectuate this provision, the registrant must submit specifically precluded data on separate forms using forms which are coded in such a manner as to conceal the identity of the facility or registrant.
- (2) If an applicant makes a request for confidential treatment, the Division shall treat the information as confidential pending a determination of whether it qualifies and any review of that determination as provided herein. If the Division determines that any information is not entitled to confidential treatment for any reason, it shall inform the person in writing. A request for an informal review by the Commissioner or a designee may be filed within 30 days of receipt of the letter denying confidential treatment. The informal review shall not be conducted as a contested case under T.C.A. § 4-5-101 et seq. The Commissioner shall issue a written determination after the informal review. If no timely request for review is filed or upon the expiration of thirty days after the Commissioner's written determination that the information is not entitled to confidential treatment, the Division may cease to treat the information as confidential.

Authority: T.C.A. §§ 69-7-301 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)
Elaine Boyd				X	
James W. Cameron III	X				
Jill E. Davis	X				
Geneil H. Dillehay				X	
C. Monty Halcomb	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 Water Quality Control Board on 05/15/2012, 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: 10/18/11

Rulemaking Hearing(s) Conducted on: (add more dates). 12/13/11, 12/14/11 and 12/16/11

Date: May 15, 2012

Signature: _____

Name of Officer: C. Monty Halcomb

Title of Officer: Chairman

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

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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2012 JUN 18 AM 9:07
SECRETARY OF STATE
PUNJICATIONS

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 made regarding the rule changes at the public hearings.

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.

There are currently 294 active water withdrawal registrants (including both ground water and surface water). This does not include public water system withdrawals which are handled separately within the Division of Water Supply. There are no costs identified for small businesses. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

- (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 are no additional costs identified. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

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

There will be no effect on small businesses and 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.

There should be no impact on businesses. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

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

There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health. There is no equivalent federal water registration requirement.

- (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 should be no impact on small businesses and there is nothing to exempt them from in the proposed rule. There were no substantive changes to the rules. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health.

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 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 Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health. There were no substantive changes to the rules.

- (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;

T.C.A. §§ 69-7-301 et seq., The Water Resources Information Act

- (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;

There should be no impact. The Department is re-numbering to the chapter 0400 series which is designated for Environment and Conservation from the chapter 1200 series of the Department of Health. There were no substantive changes to the rules.

- (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;

There should be no fiscal impact to state and local government.

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

Tom Moss
Division of Water Supply
6th Floor L & C Tower
Nashville, Tennessee

- (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
Tennessee Department of Environment and Conservation
20th Floor L & C Tower
Nashville, Tennessee 37243-1548
(615) 532-0131

Alan.Leiserson@tn.gov

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

The Department is not aware of any.