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Sequence Number: 06-28-09  
Rule ID(s): 4227  
File Date: 06/29/2009  
Effective Date: 09/12/2009

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Solid Waste Management
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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. Please enter only ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
1200-01-11	Hazardous Waste Management
Rule Number	Rule Title
1200-01-11-.01	Hazardous Waste Management System: General
1200-01-11-.02	Identification and Listing of Hazardous Waste
1200-01-11-.06	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

(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>)

Chapter 1200-01-11  
Hazardous Waste Management

Amendments

Subparagraph (a) of paragraph (2) of Rule 1200-01-11-.01 Hazardous Waste Management System: General is amended by adding in a definition for "gasification" in alphabetical order that shall read as follows:

"Gasification" for the purpose of complying with Rule 1200-01-11-.02(1)(d)1(xii) means a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas clearing to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

Item (I) of subpart (xii) of part 1 of subparagraph (d) of paragraph (1) of Rule 1200-01-11-.02 Identification and Listing of Hazardous Waste is amended by inserting the phrase, "gasification (as defined in Rule 1200-01-11-.01(2)(a))" after "fractionation" and before "or" in the first sentence, and removing the comma after "refinery" and before "and" in the third sentence so that, as amended, the item shall read as follows:

- (xii) (I) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to distillation, catalytic cracking, fractionation, gasification (as defined in Rule 1200-01-11-.01(2)(a)), or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this item provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in item (II) of this subpart, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this subpart. Residuals generated from processing or recycling materials excluded under this item (I) of this subpart, where such materials as generated would have otherwise met a listing under paragraph (4) of this Rule, are designated as F037 listed wastes when disposed of or intended for disposal.

Part 1 of subparagraph (b) of paragraph (4) of Rule 1200-01-11-.02 Identification and Listing of Hazardous Waste is amended by deleting the description for F019 in its entirety and replacing it with the description below, so that, as amended, the description shall read as follows:

- F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and

is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in 40 CFR 258.40 or the state equivalent, Rule 1200-01-11-.06(14)(b) or Rule 1200-01-11-.05(14)(b). For the purposes of this listing, motor vehicle manufacturing is defined in item 2(iv)(I) of this subparagraph and item 2(iv)(II) of this subparagraph describes the recordkeeping requirements for motor vehicle manufacturing facilities.

Part 2 of subparagraph (b) of paragraph (4) of Rule 1200-01-11-.02 Identification and Listing of Hazardous Waste is amended by adding a subpart (iv) so that subpart (iv) shall read as follows:

- (iv) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.
  - (I) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.
  - (II) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on site for no less than five (5) years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Commissioner.

Subpart (i) of part 2 of subparagraph (a) of paragraph (15) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by replacing "2(ii) through 2(v)" with "2(ii) through 2(iv)" in the first sentence so that, as amended, the subpart shall read as follows:

- (i) Except as provided by subparts 2(ii) through 2(iv) of this subparagraph, the standards of this Rule do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR 63 Subpart EEE by conducting a comprehensive performance test and submitting to the Commissioner a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR 63 Subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, Hazardous Waste permit conditions that were based on the standards of this Rule will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

Subpart (iii) of part 2 of subparagraph (a) of paragraph (15) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by adding the phrase "and 63.1219(e)" to the end of the sentence so that, as amended, the subpart shall read as follows:

- (iii) The particulate matter standard of part (d)3 of this paragraph remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of § 63.1206(b)(14) and 63.1219(e).

Subpart (v) of part 2 of subparagraph (a) of paragraph (15) of Rule 1200-01-11-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is deleted in its entirety.

Authority: T.C.A. §§ 68-212-107 and 68-212-108

\* 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)
Michael Atchison	X				
John L. Barker				X	
Bob Booker	X				
Elaine Boyd	X				
Melissa H. Bryant				X	
Kevin C. Davis	X				
Kenneth L. Donaldson				X	
Gregory H. Nail	X				
Sherry Sloan			X		
Julia L. Williams	X				
Glenn Youngblood	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Solid Waste Disposal Control Board (board/commission/ other authority) on 02/03/2009 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/21/08

Notice published in the Tennessee Administrative Register on: 12/15/08

Rulemaking Hearing(s) Conducted on: (add more dates). 01/15/09

Date: February 3, 2009

Signature: *Gregory H. Nail*

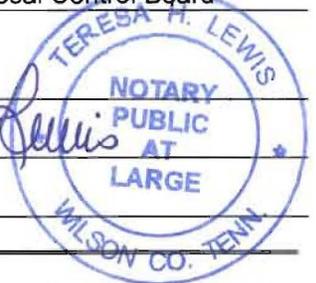
Name of Officer: Dr. Gregory H. Nail

Title of Officer: Chairman of the Solid Waste Disposal Control Board

Subscribed and sworn to before me on: Feb. 3, 2009

Notary Public Signature: *Teresa H. Lewis*

My commission expires on: 11-28-2011



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  
6-25-09

Date

**Department of State Use Only**

Filed with the Department of State on: 6/29/09 9:02:09

Effective on: 9/2/09

*Tre Hargett by [Signature]*

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.

Comment: The regulatory citations on the last two items had the wrong part and paragraph numbers. The next to last citation that reads "Subpart (iii) of part 1 of subparagraph (a) of paragraph (8) of Rule 1200-01-11-.06" should instead read "Subpart (iii) of part 2 of subparagraph (a) of paragraph (15) of Rule 1200-01-11-.06". The last citation that reads "Subpart (v) of part 1 of subparagraph (a) of paragraph (8) of Rule 1200-01-11-.06" should instead read "Subpart (v) of part 2 of subparagraph (a) of paragraph (15) of Rule 1200-01-11-.06".

Response: The Board concurs and has corrected the citation references.

Comment: Several comments were received from the automotive industry encouraging the Board to adopt the federal amendment revising the F019 listing.

Response: The Board agrees.

### **Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (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 applicability of the amended rule is limited to adopting the federal regulatory revisions in RCRA Cluster XVIII. RCRA Cluster XVIII encompasses the federal amendments published in the Federal Register from July 1, 2007 to June 30, 2008. The amendments are either deregulatory or clarifying in nature, so no additional net cost or burden is anticipated to affect the regulated community. It is expected that these changes will only affect a minimal number of Tennessee facilities.

- (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 would be no additional costs associated with administrative or professional skills above those already required by our regulations.

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

The applicability of the amended rule is limited to adopting the federal regulatory revisions in RCRA Cluster XVIII. These amendments are either deregulatory or clarifying changes, so no new added net cost or burden is anticipated to affect the regulated community. It is expected that these changes will only affect a minimal number of Tennessee facilities.

- (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:

The Board is not aware of any.

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

The rules are being amended to adopt the federal revisions in RCRA Cluster XVIII and other state programs are encouraged to adopt them as well.

- (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.

These are either deregulatory or clarifying changes, so no new added net cost or burden is anticipated to affect the regulated community. It is expected that these changes will only affect a minimal number of Tennessee facilities. There is no reason to consider exempting small business from these requirements.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

These amendments are in response to federal revisions that are deregulatory and clarifying in nature. They will exclude certain oil-bearing secondary materials processed in a gasification system to produce synthesis gas from being regulated as a hazardous waste. It also clarifies, but does not amend, regulations dealing with Hazardous Waste Combustors by clarifying text and correcting typographical errors. The final amendment is associated with the F019 hazardous waste listing code definition to exempt certain wastewater treatment sludges generated from zinc phosphating processes used in automobile manufacturing.

- (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;

These amendments are issued under the authority of T.C.A. § 68-212-107 and 68-212-108(a)(2). Revisions to Title 40 of the Code of Federal Regulations (CFR) is the reason for promulgating these amendments.

- (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;

These amendments are anticipated to affect facilities that process oil-bearing secondary material, automobile manufacturers, and hazardous waste combustors. We have received positive comments from automobile manufacturers in favor of adopting these amendments.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Board 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;

These amendments are anticipated to result in a minimal change in revenues or expenditures.

- (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;

Alan M. Leiserson  
Legal Services Director, Office of General Counsel  
Tennessee Department of Environment and Conservation  
20<sup>th</sup> Floor, L&C Tower

Nashville, Tennessee 37243-1548  
Phone: 615-532-0131

- (H)** Office address and telephone number 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)

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

The Board is not aware of any.