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Sequence Number: 06-30-09  
Rule ID(s): 228  
File Date (effective date): 06/29/2009  
End Effective Date: 8/11/2009

# Emergency or Public Necessity Rule(s) Filing Form

*Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.*

<b>Agency/Board/Commission:</b>	Department of Environment and Conservation
<b>Division:</b>	Ground Water Protection
<b>Contact Person:</b>	Alan Schwendimann
<b>Address:</b>	10 <sup>th</sup> Floor, L&C Tower 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-0762
<b>Email:</b>	<a href="mailto:alan.schwendimann@state.tn.us">alan.schwendimann@state.tn.us</a>

**Rule Type :**

- Emergency Rule  
 Public Necessity Rule

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Pursuant to T.C.A. §4-5-209, state agencies are authorized to promulgate public necessity rules in the event that rules are required by an act of the General Assembly to be implemented within a prescribed period of time that precludes utilization of rulemaking procedures for permanent rules under chapter 5 of title 4 of the Code.

The General Assembly recently enacted HB 2389 / SB 2357. Sections 2, 3, and 4 of that Act amended different provisions of the Environmental Protection Fund Act which contains authority for environmental program fees of the Department of Environment and Conservation, and specifically of those related to T.C.A. §§68-221-401 et seq., relative to subsurface sewage disposal. Section 10 of HB 2389 / SB 2357 states, "Because of the need for revenue in the entire fiscal year starting July 1, 2009, due to current economic conditions, rules promulgated in the current fiscal year using the authority granted by section 3 or section 4 of this act shall be effective by July 1, 2009, or, if that date has already passed before this bill becomes law, then as close to that date as possible." The rules herein are using the authority granted by section 4 in that they will have the effect of making the ratios between state fund appropriations and fee revenue inconsistent with the requirement of §68-203-104(d) prior to its amendment by section 4, while being consistent with the new provision. Since Section 10 requires the rules to be in effect by July 1 or as close to it as possible, there is insufficient time to enact permanent rules by the deadline set by the General Assembly. Therefore, it is necessary to use public necessity rules to meet the legislature's deadline.

**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)

<b>Chapter Number</b>	<b>Chapter Title</b>
1200-01-06	Regulations to Govern Subsurface Sewage Disposal Systems
<b>Rule Number</b>	<b>Rule Title</b>
1200-01-06-.21	Fees for Services

(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 1200-01-06  
Regulations to Govern Subsurface Sewage Disposal Systems

Amendments

Paragraph (1) of Rule 1200-01-06-.21 Fees for Service is amended by deleting it in its entirety and replacing it with the following so that, as amended, the paragraph shall read as follows:

(1) Fees for services are assessed pursuant to the following:

Specific Procedure Covered by Fee	Fee
(a) General intensity soil mapping to determine eligibility for percolation tests.	Eighty dollars (\$80) per acre, with eighty dollars (\$80) being the minimum for each separate acre or part of acre to be mapped.
(b) High intensity soil mapping (sufficient for final approval, 1" = 100' scale) of single lots, or tracts where lots have been staked, or where tracks are gridded (100' grid staking) for residential, commercial, industrial, institutional or recreational users.	Two hundred dollars (\$200) per acre, with two hundred dollars (\$200) being the minimum for each separate acre or part of acre to be mapped.
(c) Extra-high intensity soil mapping for alternative disposal system.	Two hundred fifty (\$250) dollars per acre, with two hundred fifty (\$250) dollars being the minimum for each separate acre or part of acre to be mapped.
(d) Conventional, chamber, EPS and large diameter gravelless pipe subsurface sewage disposal systems permit application processing, making inspections and other regulatory activities relative to the construction of new conventional, chamber and large diameter gravelless pipe subsurface sewage disposal systems and modification or expansion of existing systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.	Four hundred dollars (\$400) up to one thousand (1,000) gpd design flow plus one hundred dollars (\$100) for each additional one thousand (1,000) gpd flow, or portion thereof.
(e) Alternative subsurface sewage disposal systems permit application up to one thousand (1,000) gpd. design flow processing (excluding chamber, EPS and large diameter gravelless pipe systems), making inspections	Five hundred dollars (\$500) plus one hundred fifty dollars (\$150) for each additional one thousand (1,000) gpd flow, or portion thereof.

and other enforcement activities relative to the construction of alternative subsurface sewage disposal systems and modification or expansion of existing systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information.

- (f) Experimental subsurface sewage disposal systems permit application processing, making inspections and other enforcement activities relative to the construction of experimental subsurface sewage disposal systems and expansion of systems because of additions resulting in added wastewater flow, but not for repair of malfunctioning systems. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information. Five hundred dollars (\$500).
- (g) Subdivision Evaluation - Evaluations of lots within proposed subdivisions to determine and to specify limitations on their usability for subsurface sewage disposal systems. Sixty five dollars (\$65) per evaluated lot.
- (h) Inspections of existing subsurface sewage disposal systems. Two hundred dollars (\$200) per inspection.
- (i) Installer and Pumper Permits - Enforcement activities relative to sewage system installers and septic tank pumpers. Permits shall be granted or denied within forty-five (45) days of the date of application. Two hundred dollars (\$200) per permit for pumpers and installers of conventional, chamber, EPS and large diameter gravelless pipe systems. An additional one hundred dollars (\$100) for each type of alternative system.
- (j) Sewage Surveys - Activities involved in the inspections and surveying of subsurface sewage disposal systems. Actual costs.
- (k) Water Samples - Collection of water samples for bacteriological laboratory analysis, but does not include samples collected in enforcement activities.
  - 1. Mail Deliver One hundred fifteen dollars (\$115) per sample.
  - 2. Direct Deliver Two hundred fifteen dollars (\$215) per sample.
- (l) Plans Review - Review of designs for large conventional or large alternative subsurface sewage disposal systems to the point of permit issuance. Seven hundred fifty dollars (\$750) per proposed system.
- (m) Plat approval for individual lots. Sixty five dollars (\$65) per evaluated lot.
- (n) Domestic Septage Disposal Site Permit - Permit application processing, making inspections and other regulatory activity Four hundred dollars (\$400).

relative to domestic septage disposal sites  
Permits shall be granted or denied within  
forty-five (45) days of receipt of all necessary  
information.

- (o) Training - Non-state agencies and individuals. Calculated costs.
- (p) Certificate of Verification by homeowners of existing system. One hundred dollars (\$100).

Authority: T.C.A. §§ 4-5-201 et seq., 68-203-101 et seq., 68-221-403 and HB2389/SB2357, Sections 1 through 10.

I certify that this is an accurate and complete copy of emergency or public necessity rules, lawfully promulgated and adopted.

Date: June 26, 2009

Signature: *James H. Fyke*

Name of Officer: James H. Fyke

Title of Officer: Commissioner



Subscribed and sworn to before me on: June 26, 2009

Notary Public Signature: *Glenda B. McCloud*

My commission expires on: January 24, 2012

All emergency or public necessity 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  
6-29-09  
Date

**Department of State Use Only**

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

Effective for: 165 \*days

Effective through: 12/11/09

\* Temporary rules may be effective for up to 165 days from the date of filing.

*Tre Hargett*  
Tre Hargett  
Secretary of State

## 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;

Under the appropriations bill the General Assembly passed in June, 2009 for FY 09-10 (SB 2355 / HB 2392 /), the state general fund appropriation to the Division of Ground Water Protection was reduced by \$604,800 and revenues from fees were increased by the same amount. In addition, the budget of the Division was reduced by \$1.2 million to reflect elimination of 18 positions. In the Omnibus Budget bill (HB 2389 / SB 2357) that passed as part of the budget package, changes were made in the Environmental Protection Fund Act to allow fees to be raised to effectuate this shift, specifically, the limit on the ratio between fee dollars and state appropriations was changed, and the prohibition on raising fees in a year in which the appropriation was decreased was suspended for three years. These rules effectuate those budgetary changes.

- (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 authorized by T.C.A. §§ 68-221-401 et seq. Subsurface Sewage Disposal Systems, including T.C.A. § 68-221-403 Duties of commissioner and department – Permit approval – Subsurface sewage disposal requirements, and T.C.A. §§ 4-5-201 et seq.

- (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;

Persons affected by these rule changes include applicants for subsurface sewage disposal system construction permits and those persons applying for evaluation and approval in support of property division. Primarily, permit applicants are property owners, or those persons involved with the construction of new residential structures in areas not served by public sewer. Increased fees associated with property division evaluation and approval affects primarily developers or owners of large tracts of land. No knowledge of support or opposition is available regarding this rule change.

- (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 attorney general opinions or judicial rulings related to these amendments.

- (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;

Probable increase in state revenues will be \$1,350,000. An estimated total of 9,000 subsurface sewage disposal system permits will be issued in fiscal year 2009. Assuming the same number issued in fiscal year 2010 at an increase of \$150 per permit, an increase of \$ 1,350,000 will be realized.

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

Alan Leiserson, Legal Services Director (532-0131);  
Alan Schwendimann, Director of the Division of Ground Water Protection (615) 532-0762;  
Britton Dotson, Deputy Director of the Division of Ground Water Protection (615) 532-0762

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

Alan M. Leiserson

SS-7040 (January, 2009)

Legal Services Director  
[Alan.Leiserson@tn.gov](mailto:Alan.Leiserson@tn.gov)  
Tennessee Department of Environment and Conservation

- (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  
20<sup>th</sup> 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 Department is not aware of any.