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# 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>	Environment and Conservation
<b>Division:</b>	Water Pollution Control
<b>Contact Person:</b>	Garland Wiggins
<b>Address:</b>	6 <sup>th</sup> Floor, L & C Annex 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243-1531
<b>Phone:</b>	(615) 532-0633
<b>Email:</b>	Garland.Wiggins@tn.gov

**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 the Water Quality Control Act, T.C.A. §§69-3-101 et seq. 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>
1200-04-11	Environmental Protection Fund Fees
<b>Rule Number</b>	<b>Rule Title</b>
1200-04-11-.02	Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-04-11  
Environmental Protection Fund Fees

Amendments

Part 1 of subparagraph (a) of paragraph (2) of Rule 1200-04-11-.02 Fees is amended by deleting "\$2,500" from the parenthetical and replacing it with "\$5,000" so that, as amended the part shall read, without changing its subparts:

1. 401 Certification of 404 permit or ARAP (Capped at \$5,000):

Subparagraph (b) of paragraph (2) of Rule 1200-04-11-.02 is amended by deleting the phrase "Construction Stormwater permits (Capped at \$7,500)" and replacing it with "Construction Stormwater permits" so that, as amended, it shall read as follows, without changing its parts:

- (b) Construction Stormwater permits:

Subparagraph (c) of paragraph (2) of Rule 1200-04-11-.02 Fees is amended by deleting it in its entirety and substituting the following so that, as amended, it shall read as follows:

- (c) Permit Annual Maintenance Fees shall be as follows for these categories of permitted activities (Capped at \$15,000):
  1. Gravel Dredging \$ 140\*
  2. Gravel Dredging for Personal Residence or Family Farm \$ 0
  3. Major Industrial Treatment Facility:
    - (i) Flow equal to or greater than 10 MGD \$ 10,380\*
    - (ii) Flow equal to or greater than 1 MGD and less than 10 MGD \$ 8,650\*
    - (iii) Flow equal to or greater than 0.5 MGD and less than 1 MG \$ 6,920\*
    - (iv) Flow equal to or greater than 0.1 MGD and less than 0.5 MGD \$ 5,190\*
    - (v) Flow less than 0.1 MGD \$ 3,460\*
  4. Minor Industrial Treatment Facility:
    - (i) Flow equal to or greater than 10 MGD \$ 6,920\*
    - (ii) Flow equal to or greater than 1 MGD and less than 10 MGD \$ 5,190\*
    - (iii) Flow equal to or greater than 0.5 MGD and less than 1 MGD \$ 3,460\*

	(iv)	Flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$ 1,380*
	(v)	Flow less than 0.1 MGD	\$ 690*
5.		Treated Wastewater Dischargers with flows <0.001 MGD	\$ 140*
6.		Stormwater Discharge Permits associated with Industrial Activities:	
	(i)	Facilities equal to or greater than 500 acre	\$ 970*
	(ii)	Facilities equal to or greater than 400 acres and less than 500 acres	\$ 900*
	(iii)	Facilities equal to or greater than 300 acres and less than 400 acres	\$ 830*
	(iv)	Facilities equal to or greater than 200 acres and less than 300 acres	\$ 760*
	(v)	Facilities equal to or greater than 100 acres and less than 200 acres	\$ 690*
	(vi)	Facilities equal to or greater than 50 acres and less than 100 acres	\$ 620*
	(vii)	Facilities equal to or greater than 25 acres and less than 50 acres	\$ 550*
	(viii)	Facilities equal to or greater than 10 acres and less than 25 acres	\$ 480*
	(ix)	Facilities equal to or greater than 5 acres and less than 10 acres	\$ 420*
	(x)	Facilities equal to or greater than 1 acres and less than 5 acres	\$ 350*
	(xi)	Facilities equal to or greater than 0 acres and less than 1 acre	\$ 0
7.		Sewage Treatment Facility Flow:	
	(i)	Flow equal to or greater than 5 MGD	\$10,380*
	(ii)	Flow equal to or greater than 4.5 MGD and less than 5 MGD	\$10,030*
	(iii)	Flow equal to or greater than 4 MGD and less than 4.5 MGD	\$ 9,690*
	(iv)	Flow equal to or greater than 3.5 MGD and less than 4 MGD	\$ 9,340*
	(v)	Flow equal to or greater than 3 MGD and less than 3.5 MGD	\$ 9,000*
	(vi)	Flow equal to or greater than 2.5 MGD and less than 3 MGD	\$ 8,300*
	(vii)	Flow equal to or greater than 2 MGD and less than 2.5 MGD	\$ 7,610*
	(viii)	Flow equal to or greater than 1.5 MGD and less than 2 MGD	\$ 6,920*
	(ix)	Flow equal to or greater than 1 MGD and less than 1.5 MGD	\$ 6,230*

	(x)	Flow equal to or greater than 0.75 MGD and less than 1 MGD	\$ 5,540*
	(xi)	Flow equal to or greater than 0.5 MGD and less than 0.75 MGD	\$ 4,840*
	(xii)	Flow equal to or greater than 0.25 MGD and less than 0.5 MGD	\$ 3,460*
	(xiii)	Flow equal to or greater than 0.1 MGD and less than 0.25 MGD	\$ 1,730*
	(xiv)	Flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$ 1,040*
8.		Small Mechanical Facility flow less than 0.075 MGD	\$ 690*
9.		Small Non-Mechanical Facility flow less than 0.075 MGD	\$ 350*
10.		Non-Discharging Facility:	
	(i)	Influent flow equal to or greater than 0.5 MGD	\$ 4,840*
	(ii)	Influent flow equal to or greater than 0.1 MGD and less than 0.5 MGD	\$ 2,770*
	(iii)	Influent flow equal to or greater than 0.075 MGD and less than 0.1 MGD	\$ 1,380*
	(iv)	Influent flow less than 0.075 MGD	\$ 350*
	(v)	Satellite collection systems	\$ 1,380*
	(vi)	Pump and haul	\$ 350*
11.		Other Waste or Wastewater Operations Requiring Permit	\$ 1,380*
12.		General Permits (sources other than stormwater or concentrated animal feeding operation)	\$ 350*
13.		Concentrated animal feeding operations covered by an individual permit	\$ 350*
14.		Municipal Pretreatment Programs as defined in Rule 1200-04-11-.01(2)(a):	
	(i)	Large Pretreatment Program	\$ 6,920*
	(ii)	Medium Pretreatment Program	\$ 4,150*
	(iii)	Small Pretreatment Program	\$ 1,380*
15.		Mining:	
	(i)	Area equal to or greater than 500 acres	\$ 6,920*
	(ii)	Area equal to or greater than 400 acres and less than 500 acres	\$ 6,230*
	(iii)	Area equal to or greater than 300 acres and less than 400 acres	\$ 5,540*
	(iv)	Area equal to or greater than 200 acres and less than 300 acres	\$ 4,840*
	(v)	Area equal to or greater than 100 acres and less than 200 acres	\$ 4,150*
	(vi)	Area equal to or greater than 75 acres and less than 100 acres	\$ 3,460*
	(vii)	Area equal to or greater than 50 acres and less than 75 acres	\$ 2,770*

(viii)	Area equal to or greater than 25 acres and less than 50 acres	\$ 2,080*
(ix)	Area equal to or greater than 10 acres and less than 25 acres	\$ 1,380*
(x)	Area equal to or greater than 5 acres and less than 10 acres	\$ 1,040*
(xi)	Area less than 5 acres	\$ 690*

(Note: Fees are based on area being mined or area not yet reclaimed.)

16.	Mining Reclamation	\$ 350*
17.	Stormwater Discharge Permits for Municipal Separate Storm Sewer Systems (MS4):	
(i)	Large MS4s	\$ 10,380*
(ii)	Medium MS4s	\$ 6,920*
(iii)	Small MS4s	\$ 3,460*

\*This fee increase will be phased in as follows. Those permittees whose annual maintenance fee falls due from July 1, 2009 to December 31, 2009, will have to pay, at that due date, only the amount they would have paid under these rules prior to this increase and the payment for the difference between that amount and the total shown above will be due in January, 2010. For those permittees whose annual maintenance fee falls due in the second half of the fiscal year 09-10, payment of the entire amount shown above shall be due on the due date.

Authority: T.C.A §§ 69-3-105(b), 4-5-201 et seq., 68-203-101 et seq., and HB2389/SB2357, Sections 1 through 10.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Elaine Boyd	✓				
James Cameron				✓	
Larry Clark				✓	
Jill Davis	✓				
Geneil Dillehay	✓				
Eddie Floyd	✓				
C. Monty Halcomb	✓				
John McClurkan	✓				
Frank McGinley	✓				
Robert Taylor	✓				

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



Date: June 29, 2009

Signature: Robert Taylor

Name of Officer: Robert Taylor

Title of Officer: Chairman of Water Quality Control Board

Subscribed and sworn to before me on: June 29, 2009

Notary Public Signature: Wanda Powers

My commission expires on: 11/7/2012

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  
6-30-09  
 Date

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Filed with the Department of State on: 6/30/09

Effective for: 165 \*days

Effective through: 12/12/09

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

Tre Hargett by Wanda Powers, Notary  
 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 Water Pollution Control was reduced by \$1,400,000 and fee revenues were increased by the same amount. 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 caps on WPC fees were raised, 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;

T.C.A. 68-203-101 Established the Environmental Protection Fund Fee program in the Tennessee Department of Environment and Conservation. Chapter 1200-4-11 establishes the rules for management of the EPF fee program in the Division of Water Pollution Control.

- (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;

All entities in Tennessee who treat waste water in accordance with the terms and conditions of a multi-year permit issued by the Division of Water Pollution Control, and who are required to pay an annual maintenance fee to the division are included in this rule making process. Such entities include industrial facilities, municipalities, commercial operations, concentrated animal feeding operations, municipal pretreatment programs, mining operations, and municipal separate storm sewer systems. The organizations that represent the interests of these operations were aware of the necessity for fee increases. They met with the Department of Environment and Conservation on several occasions during the current legislative session and expressed their opinions to the general assembly members.

- (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;

Implementation of the proposed rules is expected to produce additional revenue in the amount of \$1,400,000 to the Division of Water Pollution Control. These revenues are needed to offset a reduction in state appropriations of \$1,400,000 to the division, as a result of the current national and state economic downturn and reduction of state tax collections. The fee increase is directed to the annual maintenance fee categories. These are entities that receive permits for periods not greater than five (5) years. The division proposed a 38.4% increase to the facilities in this category, as the means for replacing the lost state revenues.

Annual maintenance fees have remained at the same fee level since inception of the EPF program in 1991. When the EPF program was implemented, the division agreed not to increase fees for a minimum of four (4) years, and then only when such increases were absolutely necessary. This action represents the first increase in annual maintenance fees in 18 years.

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

Alan Leiserson, Legal Services Director (532-0131);  
Garland Wiggins, Division of Water Pollution Control (615) 532-0633;

- (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  
[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.