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Sequence Number: 06-41-09  
Rule ID(s): 4240  
File Date (effective date): 06/30/2009  
End Effective Date: 12/12/2009

# 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>	Environment and Conservation
<b>Division:</b>	J. R. Fleming Training Center
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**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 Environmental Health Act, T.C.A. §§68-221-901 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.

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 Fleming Training Center was reduced by \$553,600 and fee revenues were increased by the same amount. This reduction eliminated all state general fund appropriations to Fleming Training Center. 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 prohibition on raising fees in a year in which the appropriation was decreased was suspended for three years. These rules effectuate some of those budgetary changes.

**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
1200-05-03	Rules Governing Water and Waste Water Operator Certification
Rule Number	Rule Title
1200-05-03-.01	Application for Certification
1200-05-03-.03	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 1200-05-03  
Rules Governing Water and Waste Water Operator Certification

Amendments

Part 2 of subparagraph (b) of paragraph (1) of Rule 1200-05-03-.01 Application for Certificate is amended by deleting the part and substituting the following so that, as amended, part 2 shall read as follows:

2. Payment of a non-refundable \$100.00 fee for each application for examination.

Part 2 of subparagraph (b) of paragraph (2) of Rule 1200-05-03-.01 Application for Certificate is amended by deleting the part and substituting the following so that, as amended, part 2 shall read as follows:

2. Payment of a non-refundable \$100.00 for each application for reciprocity.

Authority: T.C.A. §§ 4-5-209, 68-221-906, and 68-221-910.

Rule 1200-05-03-.03 of Rule Chapter 1200-05-03 Rules Governing Water and Wastewater Operator Certification is amended by deleting it in its entirety and substituting the following to read as follows:

1200-05-03-.03 Fees.

(1) Fees for Certification

(a) Fees for certification shall be required of each applicant and paid in advance as follows:

1. Application fee for each operator examination or reciprocity request applied for.....\$100.00
2. Discount annual renewal fee for each operator certificate:  
(Payment prior to February 1).....\$ 30.00
3. Standard annual renewal fee for each operator certificate:  
(Payment from February 1 through June 30.)..... \$ 60.00

(b) No application fee will be returned.

(c) Upon payment of an application fee and approval by the Board, an applicant may take any one scheduled examination during the following twelve (12) months. If an applicant chooses not to take or fails to appear for, the first examination offered after receiving approval, the applicant must register on a form approved by the Board to be scheduled for a subsequent exam within the established time. The registration must occur sixty (60) days in advance of the examination he/she wishes to take. If an applicant does not take the examination within twelve months of the

Board's approval, he/she must reapply by submitting a new application with fees in order to be considered to take a subsequent examination.

- (d) Each year a certified operator shall submit to the Board for the following year a completed certificate renewal application and a fee for the renewal of each operator certificate he/she possesses. Applications received prior to February 1 of each year shall be subject to discount renewal fees. Applications received February 1 through June 30 of each year shall be subject to standard renewal fees. Any person failing to meet the June 30 deadline may, within sixty (60) days of the deadline, request that the Board grant a variance. A variance may be granted when the delay was caused by Board or staff error, Board action, or documented postal error. A completed certificate renewal application or appropriate annual renewal fee for an expired certificate not received by the Board by June 30 shall preclude the recertification of the operator in his/her expired classification until he/she shall have fulfilled all the requirements for the issuance of an initial certificate in that classification, including the satisfactory completion of a written examination. When an operator classification is upgraded, the certificate he/she was upgraded from becomes void; and no additional fee payment is necessary until renewal.

(2) Fees for Cross Connection Control Training Registration

- (a) Fees for Cross Connection Control Training registration shall be required of each person and paid in advance as follows:
  - 1. Registration fee for a Cross Connection Control Basic Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt).....\$275.00
  - 2. Registration fee for a Cross Connection Control Renewal Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt).....\$110.00
- (b) No registration fee will be returned.
- (c) The registration fee must be received thirty (30) days in advance of the class he/she wishes to take.

(3) Fees for Cross Connection Control Testing Application

- (a) Fees for Cross Connection Control Testing Application shall be required of each person and paid in advance as follows:
  - 1. Application for a Cross Connection control Basic Test (Department employees who assist with cross connection control training or testing are exempt)..... \$60.00
  - 2. Application fee for Cross Connection Control Renewal Test (Department employees who assist with cross connection control training or testing are exempt).....\$60.00
- (b) Application fees are not refundable or transferable.
- (c) The application must occur a minimum of thirty (30) days in advance of the test he/she wishes to take.
- (d) Prior to sitting for a test, an applicant must present proof of completion of training accepted by the Department for the appropriate test. Basic training may be accepted by the Department if it has a minimum class length of 480 minutes (300 minutes minimum in classroom), including but not limited to the following topics: hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and

actions in a cross connection control program and mechanical equipment for cross connection control. Acceptable training must also provide a minimum of one working practice station and test kit for each three students. Renewal training may be accepted by the Department if it has a minimum class length of 300 minutes (180 minutes minimum in classroom) including but not limited to the following topics: hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and actions in a cross connection control program and mechanical equipment for cross connection control. Acceptable training must also provide a minimum of one working station and test kit for each three students.

- (e) An applicant must take the test within twelve months of receipt of the training certificate.

Authority: T.C.A. §§ 4-5-201 et seq., 68-203-101 et seq., 68-221-906, 68-221-910, and HB 2389/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)
Marion Casto	✓				<i>Marion E. Casto</i>
Robert Foster	X				
J Darryl Green	X				<i>J Darryl Green</i>
Dr. Larry W. Moore				✓	
Donald Stafford	✓				<i>Donald Stafford</i>

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

Date: 6/29/09

Signature: *Marion E. Casto*

Name of Officer: Marion E. Casto

Title of Officer: Chairman Water and Wastewater Operator Certification Board



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

Notary Public Signature: *Mary Jo Reeder*

My commission expires on: April 30, 2011

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

**Department of State Use Only**

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 Appointment, POA*  
 Tre Hargett  
 Secretary of State

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## 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;

In accordance with Tennessee Code Annotated (T.C.A.) § 68-221-904, it is unlawful for any person, firm or corporation, both municipal and private, operating a water supply system or wastewater system, to operate the water treatment plant, wastewater treatment plant, water distribution system, or wastewater collection system unless the competency of the operators in direct charge of such system are duly certified. The Department also offers training in cross connection control, including hydraulic and backflow principles, theory of backflow and cross connection, codes and regulations of a cross connection control program, responsibilities and actions in a cross connection control program and mechanical equipment for cross connection control and/or certification testing in these disciplines. In accordance with T.C.A. § 68-221-906(a)(8), the Water and Wastewater Operator Certification Board ("Board") has the duty and the authority to set up a system of fees and late penalties for applicants to support the expenses of the program.

The Board has examined the cost associated with examination and reciprocity applications and certificate renewals and has found that the application and renewal fees must be increased to cover the costs of administering the training programs. In order for the program to maintain and improve its performance in carrying out its duties, the Board finds the fee increase is necessary to cover the costs associated with receiving the fees, the examination development, generation, conduct, grading and transfer of scores, and the handling associated with all relevant correspondence. The Board has also examined the cost associated with administering the training programs and has found that fees must be established to cover the costs of providing cross connection control training to community water systems and plumbing, lawn irrigation and fire protection businesses that employ staff responsible for testing backflow preventers. These costs must be covered in order to retain a quality staff and for ensuring the performance of training program.

Specific changes to the existing fees for water and wastewater operators include:

- (a) Changes the fee for examination application from \$65.00 to \$100.00;
- (b) Changes the fee for reciprocity application from \$65.00 to \$100.00;
- (c) Changes the discount annual renewal fee for each operator certificate from \$25.00 to \$30.00;
- (d) Changes the standard annual renewal fee for each operator certificate from \$50.00 to \$60.00.

The following new training fees or requirements include:

- (a) A registration fee of \$275.00 for a Cross Connection Control Basic Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt);
- (b) A registration fee of \$110.00 for a Cross Connection Control Renewal Class (full time employees of public water systems as defined in T.C.A. § 68-221-703 and Department employees who assist with cross connection control training or testing classes are exempt);
- (c) A requirement that registration fees are not refundable or transferable and must be received 30 days in advance of the class the student wishes to take;
- (d) An application fee of \$60.00 for a Cross Connection Control Basic Test (Department employees who assist with cross connection control training or testing classes are exempt);
- (e) An application fee of \$60.00 for Cross Connection Control Renewal Test; (Department employees who assist with cross connection control training or testing classes are exempt);
- (f) A requirement that application fees are not refundable or transferable and must be received 30 days in advance of the test the examinee wishes to take; and

(g) Other requirements associated with administering a training program include:

1. Prior to sitting for a test, an applicant must present proof of completion of training accepted by the Department for the appropriate test, provided this training is received within the 12 months prior to taking the exam; and
2. Training, acceptable by the Department, is defined for both basic and renewal tests.

(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 the Tennessee Code Annotated (T.C.A.) § 68-203-101 *et seq.* (Tennessee Environmental Protection Fund Act), T.C.A. §§ 68-221-903, 904, 906, 909, 910, and 910 (Water and Sewerage-Water Environmental Health), and T.C.A. § 4-5-209 (Uniform Administrative Procedures 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;

Persons and entities most affected by these rule changes are: (1) certified operators and persons desiring to become certified; (2) municipal and utility water, distribution, wastewater and collection systems; (3) persons holding and seeking certificates for "Evaluation and Testing of Backflow Prevention Assemblies"; and (4) plumbing, lawn irrigation and fire protection businesses that employ staff responsible for testing backflow preventers.

Three public hearings were held across the State between May 23 and May 30, 2008. Affected entities and persons were notified by mail or email of the changes and the opportunity for input into the rulemaking process. Very few comments were received. Of the comments received two commenters questioned the amount of the fee increase and other commenter thought they were reasonable.

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

The Water and Wastewater Operator Certification Board is not aware of any attorney general opinions or judicial rulings related to the proposed 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;

Certification fees are expected to generate \$56,000 dollars of additional revenue annually. It is anticipated that 800 people will apply for the certification examinations annually. The proposed fee for application is \$100.00 (an increase of \$35.00). This should generate \$28,000 of additional revenue.

Operators holding 5,200 certificates must renew their certificates annually. The proposed discount fee for renewal is \$30.00 (an increase of \$5.00). This should generate \$26,000 of additional revenue.

Operators holding 200 certificates fail to meet the time requirements of the discount renewal of their certificates and must pay the standard fee. The proposed standard fee for renewal is \$60.00 (an increase of \$10.00). This should generate \$2,000 of additional revenue.

Cross connection control fees are expected to generate \$78,650 of revenue annually. It is anticipated that 191 students will attend basic training classes. Of that number, two-thirds fit the requirements for fees. The proposed fee for registration is \$275.00 dollars. This should generate \$34,650.

It is anticipated that 133 students will attend renewal training classes. Of that number, two-thirds fit the requirements for fees. The proposed fee for registration is \$110.00. This should generate \$9,680.

It is anticipated that 572 applicants will take the test annually. The proposed test fee is \$60.00. This should generate \$34,320.

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

Alan Leiserson, Legal Services Director (532-0131)  
Lori Munkeboe, Director of the Fleming Training Center

- (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

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

The Water and Wastewater Operator Certification Board is not aware of any requests.