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Sequence Number: 08-23-13
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 File Date: 8/29/13

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Professional Soil Scientist Licensing Program
Division:	Department of Commerce and Insurance, Division of Regulatory Boards
Contact Person:	Robert Herndon, Assistant General Counsel Professional Soil Scientist Licensing Program
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	Department of Commerce and Insurance 500 James Robertson Parkway, 5 th Floor Nashville, Tennessee 37243
Phone:	(615) 741-0481
Email:	Don.Coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Davy Crockett Tower, Conference Room 1-B 500 James Robertson Parkway		
Address 2:			
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date:	10/29/13		
Hearing Time:	9:00 AM	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0780-05-06	Soil Scientists
Rule Number	Rule Title
0780-05-06-.02	Definitions
0780-05-06-.04	Application Requirements
0780-05-06-.05	Renewal Requirements
0780-05-06-.06	Retired or Inactive Status Exemptions
0780-05-06-.08	Seals
0780-05-06-.09	Civil Penalties
0780-05-06-.10	Code of Professional Conduct
0780-05-06-.11	Continuing Education
0780-05-06-.12	Reciprocity

Substance of Proposed Rules

Chapter 0780-05-06
Soil Scientists

Amendments

Rule 0780-05-06-.04 Application Requirements is amended by deleting subparagraph (1)(a) in its entirety and substituting instead that following so that, as amended, subparagraph (1)(a) shall read:

0780-05-06.04 Applications Requirements.

- (1) Any person who desires to obtain a license as a professional soil scientist shall submit an application to the commissioner, along with the required application fee and all required documentation, including proof that the applicant has:
 - (a) Has graduated from an accredited college or university with a Bachelor of Science degree or higher in soils, agronomy or a closely related field. The applicant shall have successfully completed the minimum number of semester hours of course work in soil science as required by T.C.A. 62-18-208(a)(1);

Authority: T.C.A. §§ 62-18-208 and 62-18-211.

Substance of Proposed Rules

Chapter 0780-05-06
Soil Scientists

New Rules

0780-05-06-.02 Definitions	0780-05-06-.09 Civil Penalties
0780-05-06-.05 Renewal Requirements	0780-05-06-.10 Code of Professional Conduct
0780-05-06-.06 Retired or Inactive Status Exemptions	0780-05-06-.11 Continuing Education
0780-05-06-.08 Seals	0780-05-06-.12 Reciprocity

0780-05-06-.02 Definitions.

Definitions for this chapter shall be as follows:

- (1) "Inactive" means a professional soil scientist who has obtained inactive status from the commissioner and is not required to comply with continuing education requirements as prescribed herein. An inactive professional soil scientist may not engage in the practice of soil science while in such status;
- (2) "Retired" means a professional soil scientist who has obtained retired status from the commissioner and is not required to comply with continuing education or renewal requirements or pay renewal fees as prescribed herein. A retired professional soil scientist may not engage in the practice of soil science and a license in retired status may not be reactivated.

Authority: T.C.A. § 62-18-211.

0780-05-06-.05 Renewal Requirements.

- (1) A license issued to a licensed professional soil scientist pursuant to this chapter shall expire two (2) years from the date of its issuance and shall become invalid on such date unless renewed.
- (2) In order to renew his or her license, a licensee shall submit a renewal application with renewal fee

and with any other prerequisites for renewal.

- (3) A licensee who fails to pay the renewal fee, the applicable late penalty, or otherwise fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have six (6) months after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of twenty-five dollars (\$25.00) for each month or fraction of a month that renewal is late, and submit proof of compliance with any other prerequisites to renewal.
- (4) Any person seeking renewal of a license more than six (6) months after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure.

Authority: T.C.A. § 62-18-211.

0780-05-06-.06 Retired or Inactive Status Exemptions.

- (1) A licensee may request to place his license in inactive or retired status by:
 - (a) Submitting a written request to place his or her license in inactive or retired status to the commissioner; and
 - (b) Paying an inactive or retirement fee.
- (2) A licensee may request to have his or her license reinstated after it has been placed in inactive status by:
 - (a) Submitting a written request to have his or her license returned to active status;
 - (b) Paying a reinstatement fee; and
 - (c) Submitting evidence satisfactory to the commissioner that the licensee has completed twelve (12) hours of continuing education in the two (2) years immediately preceding the date of the request for reinstatement.

Authority: T.C.A. § 62-18-211.

0780-05-06-.08 Seals.

- (1) The design of a licensee's seal required by T.C.A. §62-18-211(2) shall be two inches in diameter and shall appear as follows, regardless of whether it is applied to documentation through physical or electronic means, as follows:



- (2) The licensee shall affix his or her seal to all original sheets of any bound or unbound plans, plats, drawings, reports or other soil scientist papers or documents involving soil science work developed by the licensee or under the licensee's responsible charge of work.
- (3) The licensee shall superimpose his or her signature and date of signature across the face and

beyond the circumference of the seal on the documents listed above.

- (4) Any portions of plans, plats, drawings, reports, or other soil science papers or documents involving soil science work prepared in part by a licensee operating as a consultant on a project shall place his or her signature on the pages of the document for which the licensee is responsible.
- (5) No licensee shall affix his or her seal or signature to plans, plats, drawings, reports or other soil science papers or documents developed by others not under the licensee's responsible charge or work as defined by T.C.A. §62-18-203(6).
- (6) Responsible Charge of Work.
 - (a) Plans, plats, drawings, reports or other soil science papers or documents involving soil science work prepared in part or in whole by a licensee or the licensee's subordinate will be deemed to have been prepared under the responsible charge or work of the licensee only when:
 1. The client or employer requesting preparation of plans, plats, drawings, reports or other soil science papers or documents makes the request directly to the licensee or to the licensee's subordinate at the time initial client or employer contact is made, so long as the licensee has the right to control and direct the subordinate in the material detail of how the work is to be performed;
 2. The licensee supervises and is involved in the preparation and approval of the plans, plats, drawing, reports or other soil science papers or documents and has input into and full knowledge of their preparation prior to their completion;
 3. The licensee reviews the final plans, plats, drawings, reports or other soil science papers or documents; and
 4. The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, plats, drawings, reports or other soil science papers or documents.
 - (b) Any changes made to the final plans, plats, drawings, reports or other soil science papers or documents after final revision and sealing by the licensee are prohibited by a person other than the licensee.
 - (c) The mere review of work prepared by another person, even if that person is the licensee's subordinate, does not constitute responsible charge of work unless the licensee has met the criteria set out above.

Authority: T.C.A. § 62-18-211.

0780-05-06-.09 Civil Penalties.

- (1) With respect to any licensed professional soil scientist, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee for each separate violation of a statute, rule, or commissioner's order pertaining to licensed professional soil scientists, in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. §62-18-203	\$0 - \$1,000
(b) T.C.A. §62-18-216	\$0 - \$1,000
(c) Rule 0780-05-06-.08	\$0 - \$1,000
(d) Rule 0780-05-06-.10	\$0 - \$1,000
(e) Commissioner's order	\$0 - \$1,000

- (2) With respect to any other person required to be licensed in this state as a licensed professional soil scientist, the commissioner may assess a civil penalty against such person for each separate violation of statute in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. §62-18-204	\$0 - \$1,000

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any penalty to be assessed pursuant to this rule, the commissioner may consider such factors as the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to public;
 - (d) The economic benefits gained by the violator as a result of noncompliance.
 - (e) The interest of the public.

Authority: T.C.A. § 62-18-211.

0780-05-06-.10 Code of Professional Conduct.

- (1) Licensees shall uphold the public health, safety and welfare in the performance of professional services.
- (2) Licensees shall observe and comply with all federal, state and local building, fire, safety, real estate, or mining codes, as well as other laws, codes, ordinances, or regulations pertaining to the practice of soil science.
- (3) Licensees shall not undertake any type of work that he or she is not competent to undertake unless the licensee discloses his or her lack of training, experience, or education in writing to all appropriate parties prior to undertaking the work.
- (4) Licensees shall not affix their signatures and/or seal any plans, plats, drawings, reports, or other soil science papers or documents with subject matter in which they lack competence acquired through education or experience, nor shall licensees affix their signatures and/or seal plans, plats, drawings, reports or other soil science papers or documents that were not prepared or reviewed by the licensee or the licensee's subordinate and approved by the licensee.
- (5) Opinions expressed by licensees for any purpose in the course of his or her professional practice shall only be based on their education and experience.
- (6) Licensees shall not disclose any information about the lawful business affairs or technical processes of a client or employer without the approval of the client or employer, or the client's/employer's designated representative, unless required by subpoena or in response to a complaint filed by the commissioner.
- (7) Licensees shall not knowingly participate in any illegal activities, or knowingly permit the publication of his or her plans, plats, drawings, reports or other soil science papers or documents for illegal purpose.
- (8) Licensees shall not issue false or misleading information or statements to a client.

- (9) No licensee shall accept compensation or any other consideration from more than one (1) interested party for the same service without the written consent of all interested parties.
- (10) No licensee shall accept or offer commissions or allowances, directly or indirectly, from third parties dealing with the client or employer in connection with work for which the licensee is in responsible charge.
- (11) Before the execution of a contract to perform soil science services, a licensee shall disclose to the client or employer any actual or potential conflicts of interest, which may affect the licensee's ability to serve the client or employer.
- (12) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

Authority: T.C.A. § 62-18-211.

0780-05-06-.11 Continuing Education.

- (1) "Continuing education hours" means an hour consisting of not less than fifty (50) minutes of instruction or presentation acceptable to the commissioner or as otherwise noted in this rule. Continuing education hours received through post-secondary education institutions will be awarded according to the following table:
 - (a) One (1) university semester hour of credit..... 15 continuing education hours
 - (b) One (1) university quarter hour of credit..... 10 continuing education hours
- (2) A license holder seeking regular biennial renewal shall, as a prerequisite for such renewal, show that he or she has completed no less than twelve hours of continuing education during the two (2)-year period immediately preceding renewal.
- (3) One (1) of the twelve (12) continuing education hours each licensee obtains for renewal shall be in ethics.
- (4) Activities eligible for continuing education hours include:
 - (a) Professional meetings (no maximum), including short courses, workshops, clinics, conferences, symposia, seminars, field days, scientific presentations and distance education.
 - (b) Self-directed study, including reading of scientific journals and books with a 2,500-word professional article equaling one continuing education hour. Self-directed study may account for a maximum of three (3) continuing education hours per two (2)-year period.
 - (c) Soil science-related community service (2 continuing education hours maximum per renewal period), including serving on committees and community service related to the profession of soil science. Such service shall be deemed to be equal to two (2) continuing education hours per two (2)-year period.
 - (d) Authoring or preparation of educational materials; this credit may claimed only on the renewal period on which the educational materials are initially prepared and/or presented. Such work shall be deemed to be equal to two (2) continuing education hours per two (2)-year period.
- (5) Each license holder shall, when making application for renewal, submit on the prescribed form a signed statement setting forth the number of continuing education hours which he or she has completed during the reporting period. Such license holder shall retain documentation supporting such statement for at least five (5) years subsequent to the date of submission.
- (6) The commissioner will verify information submitted by license holders under this rule on a random

basis.

- (7) If any continuing education hours claimed in a statement submitted by a license holder pursuant to paragraph (5) of this rule are disapproved, the commissioner shall notify such license holder of the reason for disapproval. The commissioner may allow a specified period of time, up to six (6) months, for correction of the deficiencies noted.

Authority: T.C.A. § 62-18-211.

0780-05-06-.12 Reciprocity.

Pursuant to T.C.A. § 62-18-212, the commissioner may grant a license as a professional soil scientist to an individual who holds a like, unexpired license as a professional soil scientist issued by another state, territory, or possession of the United States, the District of Columbia, or any foreign country if such jurisdiction's examination and requirements for licensure are of a standard substantially equal to those required by the commissioner for initial licensure in Tennessee. Such applicant shall file with the commissioner the required application and fee, along with proof that the applicant holds a current, valid license a professional soil scientist and the requirements necessary for obtaining such license.

Authority: T.C.A. § 62-18-211.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 8.29.2013

Signature: *[Handwritten Signature]*

Name of Officer: ROBERT E. HERNDON

Title of Officer: ASSISTANT GENERAL COUNSEL

Subscribed and sworn to before me on: 8-29-13

Notary Public Signature: *Patricia A. Turner*

My commission expires on: 5-15-15



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Filed with the Department of State on: 8/29/13

Tre Hargett
Tre Hargett
Secretary of State

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