Notice of Rulemaking Hearing

Tennessee Department of Environment and Conservation
Division of Solid Waste Management

There will be a hearing before the Tennessee Department of Environment and Conservation to consider the promulgation of amendments of rules on behalf of the Tennessee Solid Waste Disposal Control Board pursuant to T.C.A. §§ 68-203-103(a)(1), (68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d), 68-211-116, 68-211-851(a) and 68-211-861. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

Location	Time	Date
5th Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN	1:00 p.m. CST	November 2, 2005

Individuals with disabilities who wish to participate in these proceedings (or review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the scheduled hearing date or date such party intends to review such filings, to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For a copy of the entire text of this notice of rulemaking hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division's Central Office by 4:30 p.m. CST, November 4, 2005 in order to assure consideration. The "DRAFT" rules may also be accessed for review at the Department's World Wide Web Site located at "http://www.state.tn.us/environment/swm/swmppo/".

The Division of Solid Waste Management has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review in the Public Access Areas of the following Departmental Environmental Field Offices:

Memphis Environmental Field Office
Suite E- 645, Perimeter Office Park
2510 Mount Moriah Road
Memphis, TN 38115-1520
901-368-7939/1-888-891-8332

Chattanooga Environmental Field Office
State Office Building, Suite 550
540 McCallie Avenue
Chattanooga, TN 37402-2013
423-634-5745/1-888-891-8332

Knoxville Environmental Field Office
State Plaza, Suite 220
2700 Middlebrook Pike
Knoxville, TN 37921-5602
865-594-6035/1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
615-687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
423-854-5400/1-888-891-8332

Jackson Environmental Field Office
362 Carriage House Drive
Jackson, TN 38305-2222
731-512-1300/1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38501
931-432-4015/1-888-891-8332

Columbia Environmental Field Office
2484 Park Plus Drive
Columbia, TN 38401
931-380-3371/1-888-891-8332

Additional review copies only are available at the following library locations:

E. G. Fisher Public Library
1289 Ingleside Avenue
Athens, TN 37303
423-745-7782

Clarksville-Montgomery Cty. Public Library
350 Pageant Lane, Suite 501
Clarksville, TN 37040-0005
931-648-8826

Hardin County Library
1365 Pickwick St. S.
Savannah, TN 38372
731-925-4314

Art Circle Public Library
154 East First Street
Crossville, TN 38555-4696
931-484-6790

McIver's Grant Public Library
204 North Mill Street
Dyersburg, TN 38024-4631
731-285-5032

Kingsport Public Library & Archives
400 Broad Street
Kingsport, TN 37660-4292
423-229-9489

Coffee County-Manchester Public Library
1005 Hillsboro Highway
Manchester, TN 37355-2099
931-723-5143

W. G. Rhea Public Library
400 West Washington Street
Paris, TN 38242-0456
731-642-1702

Substance of Proposed Rules

Paragraph (2) of rule 1200-1-7-.01 Solid Waste Disposal Control System: General is amended by adding the following definition into the current list alphabetically:

> "Putrescible Wastes" means solid wastes that contain organic matter capable of being decomposed by micro-organisms and of such a character and proportion as to be capable of attracting or providing food for birds.

Regulatory Authority: T.C.A. §§ 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

Subpart (i) of part 1 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new item (XXIV) to read as follows:

> (XXIV) The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must include in the permit-by-rule notification a demonstration that the facility does not pose a bird hazard to aircraft. The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type

aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.

Item (II) of subpart (v) of part 1 of subparagraph (c) of paragraph 1 of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing and Disposal Facilities is amended by deleting the current item (II) and substituting the following language:

(II) The facility is constructed, operated, maintained, and closed in a manner consistent with items II, III, IV, V, VI,VII,VIII, IX, X,XI, XII, XIII, XIV, XV, XVI, XVIII, XIX, XX, XXI, and XXIV of rule 1200-1-7-.02(1)(c)1(i).

Subpart (ii) of part 2 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new item (VIII) to read as follows:

(VIII) A design plan attached indicating boundaries of the site and all on-site appurtenances.

Part 2 of subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new subpart (iii) to read as follows:

(iii) The notification under subpart (ii) shall be revised within 30 days of a change in facility ownership with new information as necessary but at a minimum to include changes to subitems (III) and (IV) along with payment of the fee specified at 1200-1-7-.07(2)(b)6.

Subparagraph (c) of paragraph (1) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new part 3 to read as follows:

3. Duty to Comply - The permittee must comply with all conditions of this permit-by-rule, unless otherwise authorized by the Department in writing. Any permit-by-rule noncompliance constitutes a violation of the Act and is grounds for the assessment of civil penalties by the Commissioner.

Subpart (i) of part 1 of subparagraph (e) of paragraph (3) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new item (IV) to read as follows:

(IV) A change of ownership.

Part 1 of Subparagraph (a) of paragraph (4) of rule 1200-1-7-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting the current part 1 and substituting the following language to read:

1. Duty to Comply - The permittee must comply with all conditions of this permit, unless otherwise authorized by the Department in writing. Any permit noncompliance constitutes a violation of the Act and is grounds for termination, revocation and/or reissuance, or modification of the permit and/or the assessment of civil penalties by the Commissioner.

Regulatory Authority: T.C.A. §§ 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), and 68-211-111(d)(1).

Subparagraph (j) of paragraph (3) of rule 1200-1-7-.03 Requirements for Financial Assurance is amended by adding a new part 5 to read as follows:

5. All forfeited funds shall be deposited in a special account within the Tennessee Environmental Protection Fund for use by the Commissioner as set forth in T.C.A. §§ 68-211-116 of the Act and 68-203-101 et seq.

Regulatory Authority: T.C.A. §§ 68-211-111(d)(1) and 68-211-116.

Item (IV) of subpart (iv) of part 6 of subparagraph (a) of paragraph (7) of rule 1200-1-7-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting the current item IV and substituting the following language:

(IV) Include provisions for identifying all domestic and commercial water use within an area determined by the Commissioner.

Subparagraph (g) of paragraph (8) of rule 1200-1-7-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new part 8 to read as follows:

8. If the dump closed on-site after an order has been issued by the Commissioner or Board and has become final pursuant to T.C.A. §§ 68-211-113 or 4-5-322, the Commissioner may present for recording a notation on the deed to the property, or on some other instrument which is normally examined during title search that will in perpetuity notify any person conducting a title search that the land has been used as a disposal facility.

Regulatory Authority: T.C.A. §§ 68-211-107(a) and 68-211-111(d)(1).

Subparagraph (a) of paragraph (2) of rule 1200-1-7-.07 Fee System For Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting the current subparagraph (a) and substituting the following language:

(a) Any person who applies for a permit, permit-by-rule, or waste evaluation pursuant to part (1)(b)3 of this rule, shall pay the specified amount in subparagraph (b) of this paragraph with the application.

Regulatory Authority: T.C.A. §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-107(a) and 68-211-111(d)(2).

Subparagraph (a) of paragraph (3) of rule 1200-1-7-.09 Waste Disposal Reduction Goal is amended by deleting the current subparagraph (a) and substituting the following language:

(a) A region's waste reduction plan shall be consistent with the guidelines issued by the Division . Such a plan shall explain the region's waste reduction methods. The region may use any combination of methods; however, the following methods or practices will not be considered in the calculation for the region's waste reduction plan:

1. Incineration,

2. Unmarketed municipal solid waste compost,

3. Recovered materials (other than problem wastes) stored for recycling without being marketed as prescribed by rule 1200-1-7-.09(2)(b)3, and

4. Illegal or unauthorized storage or disposal of municipal solid waste.

Subparagraphs (d) and (e) of paragraph (3) of rule 1200-1-7-.09 Waste Disposal Reduction Goal are amended by deleting the current subparagraphs (d) and (e) and substituting the following language:

(d) The region plan shall utilize the base year of 1995 for measuring waste reduction unless a region can demonstrate that the 1995 data is clearly in error. A region may receive credit toward the waste reduction goal from recycling and source reduction programs prior to

1995, but no earlier than 1995. The region shall notify in writing the Division Director of such an error and request approval of any adjustment to the 1995 data.

(e) By March 31 of each year, each region shall submit an annual report to the Division . Pursuant to T.C.A. §§68-211-863 and 68-211-871, such reports shall include, at a minimum, the amount and type of recycled materials collected in the region.

Rule 1200-1-7-.09 Waste Reduction Goal is amended by adding a new paragraph (4) to read as follows:

(4) Qualitative Assessment Methods

(a) An assessment method shall be developed by the Department of Environment and Conservation and approved by the Municipal Solid Waste Advisory Committee. This assessment will be applied to Municipal Solid Waste Planning Regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. §68-211-861(a) according to the 2003 Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the Municipal Solid Waste Planning Region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region.

(b) The qualitative assessment shall be done in the following two steps::

1. The Department shall use the waste and diversion reported by the solid waste region for the most current reporting period to determine whether in that year twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled. If it was, the region meets the qualitative assessment and the department does not proceed to the next step.

2. The Department shall evaluate the programs in those regions that do not satisfy subparagraph (2)(a) above to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal by evaluating at least the following solid waste program activities for the most current reporting period, giving the first two items the greatest weight:

(i) waste reduction and recycling programs and systems;

(ii) waste diversion programs and systems;

(iii) solid waste education programs and systems;

(iv) waste collection and handling systems; and

(v) solid waste program budgets and staffing.

The methodology shall make comparisons between regions that are as similar as possible in terms of population and socio-ecomonic level to the region that failed to meet the goal.

Regulatory Authority: T.C.A. §§ 68-211-111(d)(2) and 68-211-861.

Subparagraph (a) of paragraph (6) of rule 1200-1-7-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting the current subparagraph (a) and substituting the following language:

(a) By March 31 of each year, each county which maintains and uses receptacles for the collection of municipal solid waste from the general public at sites separate from a convenience center, shall include the following information as part of the Solid Waste Region's annual report (which is submitted to the Division):

1. The number of receptacles in the County;

2. The location of all receptacles;

3. Collection times for such receptacles; and

4. Operation procedures and security measures adopted and enforced to maintain and service the receptacles and to ensure the protection of public health and safety. Such information in this part must be in the form of a narrative manual and meet the minimum requirements in subparagraph (b).

Regulatory Authority: T.C.A. §§ 68-211-111(d)(2) and 68-211-851(a).

Part 3 subparagraph (a) of paragraph 4 of rule 1200-1-7-.11 Requirements For Compost and Composting Facilities is amended by deleting the current part 3 and substituting the following language:

3. Compost shall be classified as either Type A Compost or Type B Compost according to its metal content characterization as shown in this part. Metal concentrations in finished compost shall not exceed the concentrations shown in Type B Compost below:

METAL CONSTITUENT	TYPE A COMPOST TOTAL METAL CONCENTRATION (PPM)	TYPE B COMPOST TOTAL METAL CONCENTRATION (PPM)
Arsenic	10	16
Cadmium	3	39
Chromium	210	1200
Cobalt	200	200
Copper	300	1500
Lead	100	250
Mercury	1.0	17
Molybdenum	10	18
Nickel	50	420
Selenium	3.0	36
Zinc	500	2800

Subpart (ii) of part 1 of subparagraph (c) of paragraph (4) of rule 1200-1-7-.11 Requirements for Compost and Composting Facilities is amended by deleting the current subpart (ii) and substituting the following language to read:

(ii) In addition to (i) of this part all compost utilizing the solid waste classification at rule 1200-1-7-.11(4)(a)1(iii), shall be analyzed at intervals of every 20,000 tons of compost produced or every three months, whichever comes first, for:

Parameter	Unit	Method
All metals of Rule 1200-1-7-	mg/kg of dry Weight	SW-846 Method

For technical information concerning this notice of rulemaking contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Division of Solid Waste Management.

Mike Apple
Director
Division of Solid Waste Management

BRENDA CARR
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.
My Commission Expires
July 19, 2008

Subscribed and sworn to before me this the 18th day of August, 2005.

Notary Public

My Commission expires on the 19th day of July, 2008.

The notice of rulemaking set out herein was properly filed in the Department of State on the 18 day of Aug, 2005.

Riley C. Darnell
Secretary of State

By: _____

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