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Sequence Number: 09-10-09
Rule ID(s): 4435
File Date: 09/09/2009
Effective Date: 12/08/2009

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Environment and Conservation
Division:	Ground Water Protection
Contact Person:	Alan Schwendimann
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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
1200-01-06	Regulations to Govern Subsurface Sewage Disposal Systems
Rule Number	Rule Title
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 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	Five hundred dollars (\$500) plus one hundred fifty dollars (\$150) for each additional one thousand (1,000) gpd flow, or portion thereof.

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 annual permit for pumpers and installers. The \$200 annual installer permit applies to installation of conventional, chamber, EPS and large diameter gravelless pipe systems. If an installer wishes to be permitted for installation of alternative systems, an additional one hundred dollars (\$100) applies 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 relative to domestic septage disposal sites. Permits shall be granted or denied within forty-five (45) days of receipt of all necessary information. Four hundred dollars (\$400).

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.

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on _____ (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/26/09

Rulemaking Hearing(s) Conducted on: (add more dates). 08/18/09, 08/20/09, 08/25/09

Date: 9-2-09

Signature: [Handwritten Signature]

Name of Officer: James H. Fyke

Title of Officer: Commissioner



Subscribed and sworn to before me on: September 2, 2009

Notary Public Signature: Glenda B. McCloud

My commission expires on: January 24, 2012

All rulemaking hearing 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.

[Handwritten Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

9-9-09

Date

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Filed with the Department of State on: 9-9-09

Effective on: 12-8-09

[Handwritten Signature]

Tre Hargett
Secretary of State

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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The Department held public hearings on August 18, 2009, August 20, 2009 and August 25, 2009 and closed the comment period at the close of business on August 28, 2009. There were no comments received, either written or verbal, during the comment period.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (1) Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

No significant impact to small business is anticipated. The fees that are being increased by this rule are for septic tanks and drain fields as well as the alternative systems that are occasionally used on lots which cannot handle conventional systems. The department estimates that over 95% of the systems that are installed are for individual homes, not businesses. And not all of that 5% would qualify as small businesses. Although small businesses that are having a conventional septic tank system installed will also have to have to pay this fee that is not a significant amount of the total.

- (2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

No additional costs are anticipated in support of the proposed rule change.

- (3) A statement of the probable effect on impacted small businesses and consumers:

Applicants for conventional subsurface sewage disposal system permits will pay \$150 more than previously (\$250 to \$400). Applicants for alternative subsurface sewage disposal system permits will pay \$200 more than previously (\$300 to \$500). Applicants for large system plans review will pay \$150 more than previously (\$600 to \$750). The fees proposed for change are "one-time" fees associated with construction in areas not served by public sewer. The fees are not recurring.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The department cannot justify treating the small number of businesses differently than the individuals who have to pay this fee. Such differential treatment would likely be unlawful.

- (5) A comparison of the proposed rule with any federal or state counterparts:

Other states do have fees for their septic tank program; however, many states implement this program through local governments.

- (6) Analysis of the effect of the possible exemption of small business from all or any part of the requirements contained in the proposed rule:

The department cannot justify treating the small number of businesses differently than the individuals who have to pay this fee. Such differential treatment would likely be unlawful.

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;

The estimated increase in state revenues is \$1,350,000. This is based on an assumption of issuing approximately the same number (9,000) of subsurface sewage disposal system permits in fiscal year 2010 as in 2009. With the increase of \$150 per permit, an increase of \$1,350,000 will be realized. The reason that this number is larger than the number in item A above is that this amount is needed to balance the budget for the program. The program's budget authorized it to receive a larger amount of revenue than it has actually received in fees in FY 2009 because of the decrease in housing construction.

- (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
Legal Services Director
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
20th 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.