

Rulemaking Hearing Rules  
of  
Tennessee Department of Environment and Conservation  
Division of Solid Waste Management

Chapter 1200-01-07  
Solid Waste Processing and Disposal

Amendments

Subpart (xix) of part 3 of subparagraph (b) of paragraph (1) of Rule 1200-01-07-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting subpart (xix) and substituting the following so that, as amended, it shall read as follows:

- (xix) The processing of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch.

Subitem II of item (III) of subpart (ii) of part 1 of subparagraph (c) of paragraph (1) of Rule 1200-01-07-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting subitem II and substituting the following so that, as amended, it shall read as follows:

- II. Such other similar uses as the Commissioner may approve in writing. Financial assurance may be required by the Commissioner if deemed appropriate for these case-by-case projects.

Item (VIII) of subpart (ii) of part 1 of subparagraph (c) of paragraph (1) of Rule 1200-01-07-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting item (VIII) and substituting the following so that, as amended, it shall read as follows:

- (VIII) The coal-ash fill project is designed with:
  - I. A geologic buffer of at least three feet with a maximum saturated conductivity of  $1 \times 10^{-6}$  centimeters per second between the base of the fill and the seasonal high water table of the uppermost unconfined aquifer or the top of the formation of a confined aquifer, or such other protection as approved by the Commissioner taking into account site specific coal ash and soil characteristics, ambient groundwater quality, and projected flows in and around the site; and
  - II. A ground water monitoring program approved by the department that reports sampling results to the department at least once each year. If sampling results indicate that the fill area has caused the ground water protection standards to be exceeded, the owner or operator of the facility shall commence an assessment monitoring program in accordance with regulations adopted by the board and carry-out all corrective measures specified by the Commissioner.

Item (I) of subpart (iii) of part 1 of subparagraph (c) of paragraph (1) of Rule 1200-01-07-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting item (I) and substituting the following so that, as amended, it shall read as follows:

- (I) The county legislative body, of a county that does not own or operate a permitted Class I, Class III or Class IV facility which is accepting waste tires, complies with the notification requirement of part 2 of this subparagraph; and

Subpart (ii) of part 2 of subparagraph (c) of paragraph (1) of Rule 1200-01-07-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting subpart (ii) and substituting the following so that, as amended, it shall read as follows:

- (ii) Notification must be submitted on forms provided by the Department and completed as per the accompanying instructions. It must include, but shall not necessarily be limited to, the following information:
  - (I) The processing and disposal activities conducted and the types of solid wastes handled;
  - (II) The name, mailing address, and location of the facility;
  - (III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other contact person;
  - (IV) If different from the operator, the name, mailing address, and telephone number of the landowner, along with a signed letter from such owner to the Department allowing access to the property for purposes of inspection;
  - (V) A map (e.g., U.S.G.S. 7.5 minute topographic map) which clearly indicates the location of the facility;
  - (VI) A written narrative must be submitted that describes how the facility/operation will comply with all applicable standards listed in rule 1200-01-07-.02(1)(c) and any other information deemed necessary by the Commissioner; and
  - (VII) A design plan attached indicating boundaries of the site and all on-site appurtenances.

Regulatory Authority: T.C.A. §§ 68-211-102(a), 68-211-103, 68-211-105(b), 68-211-105(c), 68-211-105(g), 68-211-106(a)(1), 68-211-107, and 68-211-111(d)(1).

Subparagraph (b) of paragraph (1) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by adding a new part 5 to read as follows:

- 5. No Class IV facility permits will be issued after July 1, 2008.

Subparagraphs (c) and (d) of paragraph (4) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities are amended by deleting the subparagraphs and substituting the revised subparagraph (c) so that, as amended, it shall read as follows:

- (c) Class III and Class IV facilities must be located, designed, constructed, operated, and maintained such that there is immediately underlying all solid wastes a geologic buffer which shall have:
  - 1. A maximum hydraulic conductivity of  $1.0 \times 10^{-5}$  cm/s and measures at least ten (10) feet from the bottom of the liner to the seasonal high water table of the uppermost unconfined aquifer or the top of the formation of a confined aquifer; or
  - 2. A maximum hydraulic conductivity of  $1.0 \times 10^{-6}$  cm/s and measures not less than five (5) feet from the bottom of the liner to the seasonal high

water table of the uppermost unconfined aquifer or top of the formation of confined aquifer; or

3. Other equivalent or superior protection as defined in part 2 of this subparagraph.

Subpart (viii) of part 4 of subparagraph (a) of paragraph (7) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting subpart (viii) and substituting the following so that, as amended, it shall read as follows:

- (viii) All ground water sample analysis results with any statistical determinations and the associated recording of ground water surface elevations must be submitted to the Commissioner within sixty days of the sampling event. To facilitate handling and evaluation of this data, the Commissioner may specify the manner and form in which the data must be reported.

Subpart (ii) of part 6 of subparagraph (a) of paragraph (7) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting subpart (ii) and substituting the following so that, as amended, it shall read as follows:

- (ii) Within 90 days of triggering an assessment monitoring program, the owner or operator must sample and analyze the ground water for all constituents identified in Appendix II to this rule and annually thereafter. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete Appendix II analysis, a minimum of four independent samples from each well (upgradient and downgradient) must be collected and analyzed to establish background for the constituents. The Commissioner may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The Commissioner may delete any of the Appendix II monitoring parameters for a SWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

Subpart (iv) of part 6 of subparagraph (a) of paragraph (7) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by revising the first sentence of subpart (iv), so that, as amended, it shall read as follows [retaining items (I)-(VIII)]:

- (iv) If one or more Appendix II constituents are detected at levels above the ground water protection standard, or statistically significant levels if the standard is based on background concentrations, the owner or operator must within 14 days of this finding give notice to the Commissioner of the finding and identify the Appendix II constituents which have exceeded the general ground water protection standard. The owner or operator also:

Subparagraph (b) of paragraph (7) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting the subparagraph and substituting the following so that, as amended, it shall read as follows (retaining all parts):

- (b) Class II Disposal Facilities – Class II disposal facilities must meet the same ground water protection/monitoring standards for Class I facilities in subparagraph (a) of this paragraph except that:

Paragraph (7) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting subparagraphs (c) and (d) and revising subparagraph (c) so that, as amended, it shall read as follows:

- (c) Class III and Class IV Disposal Facilities – Class III and Class IV disposal facilities must meet the same ground water protection/monitoring standards for Class I facilities in subparagraph (a) of this paragraph.

Subparagraph (d) of paragraph (8) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting subparagraph (d) and substituting the following so that, as amended, it shall read as follows:

- (d) Post-Closure Care Period – For Class I and Class II disposal facilities, post-closure care must continue for 30 years after the date of final completion of closure of the disposal facility or facility parcel unless a shorter period is established in the approved closure/post-closure care plan. For Class III and IV disposal facilities, post-closure care must continue for 2 years after the date of final completion of closure of the facility or facility parcel. The post-closure care period may be reduced or extended based on cause by amendment of the approved closure/post-closure care plan as provided in Rule 1200-01-07-.03(2)(c).

Paragraph (9) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by deleting the opening paragraph (9) title and description and substituting the following so that, as amended, it shall read as follows:

- (9) Contents of the Part II Permit Application – This paragraph establishes the information that must be included in the Part II permit application in order for the Commissioner to determine the facility’s compliance with the standards of paragraphs (2) through (8) of this Rule. The information requirements of this paragraph apply to applicants for permits for all Class I, II, and III disposal facilities unless the standard addressed by the information requirement does not apply to such facility.

Subparagraph (a) of paragraph (9) of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by adding a new part 6 to read as follows:

- 6. The report must include:
  - (i) A comprehensive environmental site assessment that includes an evaluation of the quality of ground water beneath the proposed facility. At a minimum, the applicant must provide analytical information for all constituents specified in regulations adopted by the board. The requirement for a comprehensive environmental assessment shall apply only to new sites for proposed solid waste disposal facilities and does not include expansions, modifications, or new units for existing permitted facilities or sites; and
  - (ii) Proof satisfactory to the Commissioner that the geological formation of the proposed site and the design of the proposed facility are capable of containing the disposed wastes so that ground water protection standards are not exceeded.

Appendix III of Rule 1200-01-07-.04 Specific Requirements For Class I, II, III, and IV Disposal Facilities is amended by replacing the value for the inorganic chemical arsenic with the following value, so that, as amended arsenic and its value shall read as follows:

Arsenic	0.01
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Regulatory Authority: T.C.A. §§ 68-211-105(b), 68-211-105(c), 68-211-105(g), 68-211-107 and 68-211-111(d).

Subpart (iv) of part 1 of subparagraph (b) of paragraph (2) of Rule 1200-01-07-.07 Fee System For Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting subpart (iv) in its entirety.

Subpart (iv) of part 1 of subparagraph (b) of paragraph (6) of Rule 1200-01-07-.07 Fee System For Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting subpart (iv) in its entirety.

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

Part 4 of subparagraph (c) of paragraph (1) of Rule 1200-01-07-.12 Requirements For Certification of Operators, Attendants, and Responsible Persons For Solid Waste Landfills is amended by deleting part 4 in its entirety substituting the following so that, as amended, it shall read as follows:

4. Term of Certification

A certificate of completion issued by the Department under part 3 of this subparagraph shall be valid for three (3) years, unless revoked or invalidated for cause as provided by T.C.A. § 68-211-853.

All persons required to obtain certification must become recertified within 3 years by attending 24 hours of Department approved training.

Regulatory Authority: T.C.A. §§ 68-211-853 and 68-211-111(d)(2).

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 12th day of September, 2008, and will become effective on the 26th day of November, 2008. (FS 09-12-08; DBID 3149)

### Economic Impact Statement

This rulemaking has nineteen amendments with three areas of focus. The first area involves thirteen amendment revisions that substantially codify existing state or federal law and, therefore, in accordance with T.C.A. §4-5-404, are not subject to the Regulatory Flexibility Act of 2007. The second area involves five amendment revisions to clarify and/or update existing rule language to either eliminate obsolete language or to correct typographical errors and incorrect rule references, and therefore, is not addressed by this economic impact statement. The third area involves one revision that is more stringent than the current rule chapter and is more stringent than 40 CFR Part 258 requirements promulgated by EPA. Therefore this economic impact statement shall address the impact on affected small businesses by this amendment change.

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

Type or types of small business: Operators of solid waste disposal landfills subject to T.C.A. §68-211-101 et seq. or the rules promulgated thereunder.

Estimate of the number of small businesses: There are approximately 96 owners of solid waste disposal landfills permitted by the Department that are non-government owned and are currently operating. Since numbers of employees are not reported to the Department this number is the maximum number of facilities that could be affected as small businesses by the current rulemaking.

- (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:

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendment to Rule 1200-01-07-.04(7)(a)6(iv) for existing facilities.

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

Rule 1200-01-07-.04(7)(a)6(iv) will require landfills which have exceeded a ground water protection standard to begin assessment monitoring immediately, which increases sampling frequency to four times a year or approximately \$20,000 a year.

- (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:

When a groundwater monitoring requirement is exceeded, the Department is responsible to ensure that the extent of these exceedences are defined and that the potentially affected citizens do not consume contaminated ground water at concentrations that have been determined to be unsafe. The Department cannot identify any alternate ways to achieve the proposed Rule 1200-01-07-.04(7)(a)6(iv) revision.

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

Rule 1200-01-07-.04(7)(a)6(iv) amendment is more stringent than 40 CFR Part 258 requirements.

- (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 number of small businesses that can impact the environment is small but exemption from regulatory requirements could compromise the Department's ability to protect public health and the environment at these facilities.