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 Rule ID(s): 6328
 File Date: 10/3/16
 Effective Date: 1/1/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Environment and Conservation
Division: Water Resources
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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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-40-18	Rock Harvesting
Rule Number	Rule Title
0400-40-18-.01	Purpose
0400-40-18-.02	Application or Notice of Intent
0400-40-18-.03	Requirements for Sediment and Erosion Control During and After Harvesting

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

0400-40-18
Rock Harvesting

Amendments

Chapter 0400-40-18 Rock Harvesting is amended by deleting it in its entirety and substituting instead the following:

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0400-40-18-.01 Purpose
0400-40-18-.02 Application or Notice of Intent for Rock Harvesting
0400-40-18-.03 Notice of Intent for Exploration
0400-40-18-.04 Requirements for Sediment and Erosion Control

0400-40-18-.01 Purpose

The purpose of these rules is to implement T.C.A. §§ 69-3-143 through 69-3-147 which govern rock harvesting operations as defined in T.C.A. §§ 69-3-144 (1) through (3).

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.02 Application or Notice of Intent for Rock Harvesting

- (1) Operators shall submit a Notice of Intent for Rock Harvesting to obtain coverage under the applicable general permit unless the Division informs an operator that an individual NPDES permit is required. The reasons for requiring an individual permit include the following:
 - (a) There will be a discharge of any water which, during manufacturing or processing, comes into direct contact with, or results from, the production of any raw material, intermediate product, finished product, byproduct, or waste product process associated with stone processing operation(s), which includes crushing, sawing, screening, and/or uncovered breaking on the site;
 - (b) There will be any other non-storm water discharges from the site, including but not limited to mine dewatering and domestic sewage;
 - (c) There will be a discharge from the rock harvesting site to Exceptional Tennessee Waters that would cause degradation of any applicable available parameter above the level of de minimis as defined by paragraph (4) of Rule 0400-40-03-.04;
 - (d) There will be a discharge from the rock harvesting site to waters with unavailable parameters that may cause measurable degradation of the parameter that is unavailable, unless the Division determines the estimated pollutant loading is consistent with an EPA-approved total maximum daily load; and
 - (e) The Division determines that an individual permit is required to adequately protect water quality in the receiving stream(s).
- (2) An original and two copies of all individual NPDES application forms or the notice of intent and supporting materials for the application forms or notice of intent, including the information required by this rule, shall be submitted.
- (3) Written proof of general liability insurance coverage shall be submitted by the operator along with the permit application or notice of intent.

- (a) Liability coverage shall be in an amount no less than one million dollars (\$1,000,000).
 - (b) Insurance coverage shall remain in effect for the life of the rock harvesting operation.
 - (c) The policy shall provide that the insurer will notify the department at least thirty (30) days prior to the effectiveness of any cancellation of coverage by the insurer.
 - (d) The operator shall notify the department of any change in insurance coverage during the life of the rock harvesting operation and provide a copy of any new policy issued after the initial policy no later than one week after the new policy becomes effective.
- (4) Written proof of Workers' Compensation insurance coverage, if applicable, shall be submitted by the operator along with the permit application or notice of intent.
 - (5) Written proof of registration with the Tennessee Department of Revenue for all operators and any subcontractors shall be submitted with the permit application or notice of intent.
 - (6) Evidence of the operator's legal right to harvest minerals on the land covered by the permit application or notice of intent, in the form of a properly executed deed, lease, or other appropriate document, shall be submitted with the permit application or notice of intent.
 - (7) If the surface and mineral rights of any portion of the land covered by the permit application or notice of intent have been severed, the operator shall:
 - (a) Notify the surface owner, by certified mail, return receipt required, of the intent to begin rock harvesting operations, at least thirty (30) days prior to beginning such operations including a copy of the permit or notice of coverage from the department;
 - (b) Prior to beginning rock harvesting operations, forward copies of all records relating to the notification required by subparagraph (a) of this paragraph to the department; and
 - (c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (a) and (b) of this paragraph.
 - (8) A general location map taken from a USGS 7 ½ minute quadrangle map that shows the location of the mining area(s) and haul road(s) and which includes the name of the operation and the name and number of the quadrangle shall be submitted with the application or notice of intent.
 - (9) A site/operations map at a scale of 1" = 500', or larger as needed to provide sufficient detail and avoid a cluttered look, shall be submitted with the application or notice of intent. The site/operations map shall include, at a minimum:
 - (a) A title block which contains:
 - 1. The name of the operator;
 - 2. The name of the owner of the surface rights and the name of the owner of the mineral rights;
 - 3. The county(ies) in which the operation is located;
 - 4. The total number of acres to be disturbed by mining operations and haul roads; and,
 - 5. The date the map was prepared along with a certification of its accuracy by the preparer.
 - (b) The body of the site/operations map shall show:
 - 1. The proposed permit boundary, including haul roads, marked in red;

2. The location and type of all water treatment structures, including Best Management Practices;
 3. The location and name(s) of all stream(s) receiving drainage from the operation;
 4. The location and names of all property owners within 500 feet of the permit boundary;
 5. The location of any onsite structures (i.e. buildings, scales, processing equipment, stockpiles, storage areas, etc.);
 6. The location of significant features such as cemeteries, public roads, railroad tracks, oil and gas wells, surface mines, underground mines, transmission lines, pipelines or utility lines within 500 feet of the permit boundary;
 7. The location of initial cuts or excavation and the subsequent cut sequence and direction of mining; and
 8. The location(s) where topsoil and/or other materials suitable for revegetation will be stockpiled.
- (10) A reclamation plan shall be submitted with the application or notice of intent. The plan shall include, at a minimum:
- (a) A description of the manner in which topsoil, and/or other material(s) suitable for revegetation, will be segregated;
 - (b) A description of backfilling and grading operations to be carried out concurrently with mining excavation that addresses whether there will be sufficient overburden to return the land to its original conformation after mining; and if the land will not be returned to its original conformation, a reclamation plan map shall be submitted that depicts:
 1. The altered land conformation and drainage patterns that will exist after mining;
 2. The location of any permanent impoundment(s) proposed to remain when mining is complete; and
 3. The location of any roads to remain after mining, including information regarding the surfacing and drainage controls used to maintain road stability; and
 - (c) A revegetation plan which specifies:
 1. The types and amounts of seed, fertilizer, lime and mulch that will be applied per acre, following the recommendations of the Tennessee Erosion and Sediment Control Handbook;
 2. The type(s) and spacing of trees to be planted; and
 3. If the surface and mineral rights on any portion of the land covered by the permit application or notice of intent have been severed, a notarized letter confirming the concurrence of the surface owner as to the size and location of any impoundment(s) or roads to remain after mining and whether or not trees are to be planted must be submitted.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.03 Notice of Intent for Exploration

- (1) For purposes of this chapter, "exploration" means the excavation of a potential rock harvesting site that disturbs less than 1 acre of land, does not result in removal of more than 100 tons of minerals as defined

in T.C.A. § 69-3-144(1), and does not involve processing as described in subparagraph (1)(a) of Rule 0400-40-18-.02.

- (2) Persons seeking coverage under the general permit for exploration shall submit a Notice of Intent for exploration at least 7 days prior to engaging in exploration. The Notice of Intent for exploration shall include the following:
 - (a) The legal name and address of the owner and/or operator;
 - (b) The facility name and location;
 - (c) Proof of property owner notification;
 - (d) A general location map produced from a USGS 7½ minute quadrangle map that shows the location of the exploration area(s) and haul road(s), which shall be marked in red, and includes: the name of the facility; the name and number of the quadrangle; the receiving stream(s); and an indication of whether any stream crossings are required. (Note: stream crossings must in compliance with the requirements of Chapter 0400-40-07); and
 - (e) Description of the erosion prevention and sediment control measures for the site as required by Rule 0400-40-18-.04.
- (3) Coverage under the applicable general permit shall be effective upon receipt of the Notice of Intent for exploration by the Division for a period of no more than 60 days, by which time the permittee must either:
 - (a) Submit a Notice of Intent for Rock Harvesting in accordance with Rule 0400-40-18-.02;
 - (b) Submit an application for an individual permit; or
 - (c) Stabilize the site and withdraw from the area.

If a Notice of Intent for Rock Harvesting or an application for an individual permit is timely submitted, coverage under the general permit covering exploration including applicable restrictions (*i.e.*, disturbance of less than one acre of land and removal of less than 100 tons of mineral) shall continue until the Division issues a notice of coverage for rock harvesting operations under the applicable general permit, issues an individual permit, or denies permit coverage for the operation.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.04 Requirements for Sediment and Erosion Control

- (1) During Rock Harvesting or Exploration
 - (a) Operators and persons engaged in exploration shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.
 - (b) Operators and persons engaged in exploration shall select, design and install erosion prevention and sediment control measures to prevent discharges to waters of the state that would violate water quality standards or cause pollution.
 - (c) Approved sediment and erosion control measures must be in place prior to beginning rock harvesting operations and exploration.
 - (d) Approved sediment and erosion control measures must be maintained throughout the life of the rock harvesting operation until reclamation has been approved as being successful by the Division. Approved control measures must also be maintained throughout the exploration activity until the site has been stabilized.

- (e) Operators and persons engaging in exploration shall operate and maintain sites so that there are no discharges of oil or other waste to waters of the state.
 - (f) Operators and persons engaging in exploration shall comply with all provisions of permits.
 - (g) Operators and persons engaging in exploration shall modify practices or control measures, as directed and/or approved by the Division, to control discharges.
- (2) Reclamation
- (a) The purpose of reclamation is to stabilize the site so that there will not be discharges of sediment or other waste into waters of the state.
 - (b) Grading shall be conducted so as to return the affected area as closely as is reasonable to its pre-harvesting condition and drainage patterns, considering the amount of available overburden, drainage control, and post-harvesting land use.
 - (c) Revegetation shall be deemed acceptable when an eighty percent (80%) groundcover of self-sustaining vegetation, with no bare areas exceeding one fourth (1/4) of an acre, has been established for two (2) growing seasons. If trees are planted, there shall be six hundred (600) surviving stems per acre after two (2) growing seasons. If the Division determines this level of revegetation is not practicable at a given site, the operator shall (1) revegetate to the extent practicable and (2) provide surface stabilization for the entire site.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

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

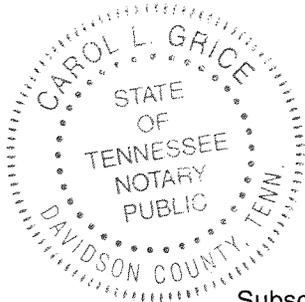
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)	X				
Charlie R. Johnson (Public-at-large)				X	
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)				X	
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 08/16/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/06/16

Rulemaking Hearing(s) Conducted on: (add more dates). 06/01/16



Date: August 16, 2016

Signature: Stephanie A. Durman

Name of Officer: Stephanie A. Durman

Title of Officer: Assistant General Counsel

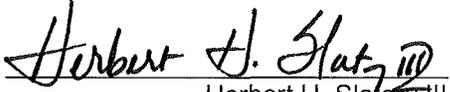
Subscribed and sworn to before me on: August 16, 2016

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Rules of the Board of Water Quality, Oil and Gas
Chapter 0400-40-18 Rock Harvesting
0400-40-18-.01 Purpose
0400-40-18-.02 Application or Notice of Intent for Rock Harvesting
0400-40-18-.03 Notice of Intent for Exploration
0400-40-18-.04 Requirements for Sediment and Erosion Control

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.


Herbert H. Slattery III
Attorney General and Reporter
9/29/2016
Date

Department of State Use Only

Filed with the Department of State on: 10/3/16

Effective on: 11/1/17


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.

Comment: The rule, as proposed, could allow a rock operation of unlimited size to be covered under a general permit. The magnitude of pollution potential from 50-100 acres (or more) of bare ground with its associated overburden is substantial. A Construction General Permit (CGP) requires specific phasing for sites above certain acreage. Due to the overburden, mining can exceed construction impact in both magnitude and duration. Therefore, please consider whether some size limitation or phasing requirement might be appropriate for permitting rock harvesting/dimension stone sites under a general permit.

Response: Permits are currently issued under the Tennessee Multi-Sector Permit, Sector J (TMSP General Permit) or individual National Pollutant Discharge Elimination System (NPDES) rules found in Chapter 0400-40-05 and the Rock Harvesting rules found in Chapter 0400-40-18. The proposed rules do not change this permitting procedure. The current rules and TMSP General Permit do not utilize size limitation or phasing requirements; however, under the current and proposed Rock Harvesting rules in Rule 0400-40-18-.02(10)(b), backfilling and grading operations are to be carried out concurrently with mining excavation. This requirement is intended to reduce the magnitude of disturbed mining area and duration of such disturbance to prevent the potential of the pollution suggested by the commenter.

Comment: Rock harvesting often begins in areas where the rock strata have conveniently been exposed through natural erosion. Thus rock harvest areas are typically located in steep topography on/near stream banks. Mining at close proximity is a threat to water quality because disturbed soils may be more easily transported to streams. Water quality can also decline due to reduced stream shading and lower allochthonous input when mining extends onto streambanks. A buffer requirement would help protect the permit holder by reducing the likelihood of significant sediment transport from the mine site to waters of the state. Given steep topography, a buffer of at least 50-100 feet from streambank edge to new permit area may be appropriate. Buffer requirements should be higher for Exceptional Tennessee Waters (ETWs) and/or sediment impaired receiving streams than for less critical watersheds.

Response: The commenter is correct in regard to some rock strata being located in steep topography and in close proximity to stream banks. The Division agrees with the commenter that water quality could be threatened if appropriate buffers and Best Management Practices (BMPs) are not installed or maintained. However, specified buffer requirements in the proposed rules are not necessary because under both the current and proposed rules and the TMSP General Permit, the Division may require a buffer, enhanced BMPs, or other measures when necessary to control discharges and prevent a person from causing a condition of pollution or violating water quality standards in a receiving stream.

Unlike under the current rules, discharges to sediment impaired streams, or waters with unavailable parameters, will be eligible for general permit coverage under the proposed rules. General permit coverage will only be available if the applicant can demonstrate that the discharge as proposed will cause no measurable degradation of the parameter that is unavailable. Otherwise the operation will require an individual permit with site-specific water quality-based effluent limitations to ensure the discharge will not cause measurable degradation.

Comment: The NPDES program relies heavily on self-monitoring. Therefore, permits such as the CGP require certification of inspectors performing site assessments and BMP inspections. An inspector training requirement may be a reasonable protective measure to add to the rock harvesting draft rules with the goal of ensuring self-inspection competency.

Response: It is assumed that the commenter is referring to requiring certification of members of the Pollution Prevention Team as described in the TMSP General Permit. The TMSP General Permit does not require any certification of the designated Pollution Prevention Team members; however, under the permit, the operator must provide employee training for storm water pollution prevention activities, including on-site visual assessments and BMP inspections. The Division believes this training enables self-inspection competency.

Comment: Rock Harvesting requirements are tied to the activity rather than the permit type. The proposed rule language at Rule 0400-40-18-.02(1) seems more ambiguous than the statute with regard to the above issue. Please consider changing a portion of the statement at Rule 0400-40-18-.02(1) to "Operators shall submit applicable forms along with the required supplemental information to obtain permit coverage. Permit coverage shall be available under the applicable general permit unless individual NPDES permit coverage is required for the Rock Harvesting activity." (Then Reasons for requiring an individual permit include the following:

...For Rule 0400-40-18-.02(2) please consider the statement: "An original and two copies of all applicable forms and supporting materials shall be submitted."

Response: The proposed language referenced is the same as the language used in the current rules relative to the concern submitted by the commenter. An additional amendment to the current rules has been made in Rule 0400-40-18-.02(2) to clarify that either application forms for an NPDES individual permit or a notice of intent for general permit coverage must be submitted and that the information required relative to rock harvesting operations must be included regardless of the type of permit.

Comment: Subcontractor Concerns:

- A. Please consider whether subcontractors should be required to sign on to TMSP general permit coverage in a manner similar to the CGP subcontractor process. Requiring subcontractors to sign on would better ensure that the subcontractors are aware of storm water pollution prevention plan requirements. It is not uncommon for several subcontractor crews to simultaneously work different areas of a large site under a single permit. No single point of oversight is necessarily required for these crews. Often this multi-directional mining begins after the permit is obtained and was not taken into account in the pollution prevention plan design. Drainage patterns may be altered through multipoint mining in ways that render Erosion Prevention Sediment Control (EPSC) designs ineffective. Such activity multiplies risk for environmental harm. Although the permittee has nominal responsibility for EPSC, that responsibility alone may be ineffectual.
- B. The statute regarding rock harvesting, as written, indicates that the requirements for liability and workmen's compensation apply to subcontractors as well as to the primary permittee. The proposed rules, however, contain no provision for tracking or enforcing those requirements. Please address this apparent deficiency.

Response: A. It is the responsibility of the operator to assure that any subcontractor who is allowed to work on the site follows the requirements of the TMSP General Permit and the storm water prevention plan. While the Division does not necessarily disagree with the concern raised by the commenter, the concern would more appropriately be raised during the comment period for the new TMSP General Permit to address all similar activities addressed by the permit. The current TMSP general permit expires April 14, 2020.

- B. Tenn. Code Ann. § 69-3-145(b) requires the operator to submit proof of general liability, and if applicable, workers' compensation insurance coverage. Operators are permitted to subcontract if the subcontractor meets the requirements of Tenn. Code Ann. Title 69, Chapter 3, Part 1. It is the operator's responsibility to ensure either that the operator's insurance covers the subcontractor or that the subcontractor also has insurance.

Comment: To Rule 0400-40-18-.03...Please consider adding the word "or" to the end of subparagraph (3)(a). It appears the word "or" may have been left out as a typographic error.

Rule 0400-40-18-.03(3)(c)... Please provide detail to adequately characterize the "Stabilize the site and withdraw from the area" option with regard to what it means to stabilize the exploration site. Will either rock armor or establishment of diverse native perennial vegetation be required? Will vegetation have to survive a full growing season or more for the site to be considered stabilized?

Response: There was no typographical error. The placement of "or" in (b) is conjunctive with the word "either" in the first sentence and is properly placed.

Exploration activity can only include a disturbance of no more than one (1) acre and removal of less than 100 tons of mineral. The proposed rules require only that the site be stabilized to prevent the loss of sediment from the site and do not specify particular stabilization methods or requirements because of the relatively limited scope of exploration.

Comment: The Department is encouraged to consider drafting a general permit targeted solely at the dimension stone industry because of the industry's unique characteristics.

Please consider drafting a general permit for dimension stone that would streamline the permitting process for the Department and the industry.

Response: The Division is willing to explore the idea of a general permit for the dimension stone industry, to include exploration, rock harvesting, and associated processing on site. Any such permit could only apply to discharges causing de minimis degradation to waters with available parameters or less than measurable degradation to waters with unavailable parameters.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The 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, or directly benefit from the proposed rule.

The businesses applying for rock harvesting permits are dimension stone mining companies (larger rock harvesting operations) and small rock harvesting operations/businesses. The estimated number of small businesses that will be affected by the proposed rule is approximately 100, with approximately 75, or 75%, seeing a direct benefit from increased eligibility for general permits. The remaining 25, or 25%, will continue to be permitted under Individual Permits, as required by the rules.

- (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 should be no additional reporting, recordkeeping or other administrative costs added as a result of this rulemaking. As a result, no new professional skills will be required to comply with reporting requirements.

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

These rules will not impact consumers. The rule will benefit small businesses by providing increased access to efficient permitting and potentially decreasing administrative costs. General permit coverage can be provided faster and with fewer application requirements than an individual permit.

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

As this rulemaking was being developed, the regulated community was involved in giving input on the best methods to correct existing shortcomings in the current rules. The methods in this rulemaking are the least burdensome, least intrusive and least costly alternative to meet the objectives of this program at this time. During the public comment period, there were discussions with the industry prior to the rulemaking about the possibility of the development of a general permit for the dimension stone industry, to include exploration, rock harvesting and processing. Implementation of this recommendation will be explored by the Division; however, processing activities can have water quality impacts which would preclude permitting through a general permit.

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

There is no known federal counterpart. These rules are being promulgated under the authority of T.C.A. §§ 69-3-143 through 69-3-147, which was added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011. This is an update of the existing Rock Harvesting rules found in Chapter 0400-40-18. These rules are similar to those in surrounding states that are involved in the permitting of dimension stone and rock harvesting operations – coverage is provided either under a general permit or an individual permit, based on whether or not processing is occurring on site.

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

Exemption of small businesses from the proposed rules would prevent those businesses from benefiting from the improved access to general permit coverage and increased flexibility relative to reclamation. In addition, exploration activities currently appear to be conducted without the permits required by the Clean Water Act, leaving a potential regulatory gap and subjecting the activities to potential enforcement. Exemption of small businesses would prevent those businesses from benefiting from the proposed solution of streamlined permit coverage for exploration activities.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

The proposed rule amendments will broaden access to general permit coverage by aligning the rule language relative to discharges with the Antidegradation Statement and by clarifying the types of processing activities that trigger the requirement for an individual permit instead of a general permit. In addition, the proposed rule amendments add flexibility to reclamation requirements and establish time-limited coverage for exploration under the general permit immediately upon submission of a streamlined notice of intent.

- (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;

These rules are being promulgated under the authority of Tenn. Code Ann. §§ 69-3-143 through 69-3-147, added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011.

- (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;

The dimension stone and rock harvesting community constitute the persons affected by this rule. The Tennessee Mining Association, consultants, engineers and the rock harvesting community were contacted, and several meetings were held, prior to and during the formulation of the proposed rules. Many of their suggestions were incorporated into the final version of the proposed rules. The Division also met with several legislators during the formulation of the rules. These groups had positive reactions regarding the proposed rules.

- (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.

- (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;

There should be a not significant fiscal impact to state and local government. It is estimated because of the addition of exploration and less burdensome permitting procedures that the number of general permit notices of intent processed will increase and that the number of individual permit applications processed will decrease. The fiscal impact is not expected to be more than 2% or \$500,000.

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

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Knoxville, TN 37921-6538
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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lucian Geise
Senior Counsel for Legislative Affairs
Office of General Counsel

- (H) Office address, telephone number, and email address 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
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Lucian.Geise@tn.gov

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

The Department is not aware of any.

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: _____
 Rule ID(s): _____
 File Date: _____
 Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Environment and Conservation
Division: Water Resources
Contact Person: Bryan Epperson
 Mining Section Manager
Address: Knoxville Environmental Field Office
 3711 Middlebrook Pike
 Knoxville, TN
Zip: 37921-6538
Phone: (865) 594-5529
Email: Bryan.epperson@tn.gov

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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-40-18	Rock Harvesting
Rule Number	Rule Title
0400-40-18-.01	Purpose
0400-40-18-.02	Application or Notice of Intent
0400-40-18-.03	Requirements for Sediment and Erosion Control During and After Harvesting

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

0400-40-18
Rock Harvesting

Amendments

Chapter 0400-40-18 Rock Harvesting is amended by deleting it in its entirety and substituting instead the following:

Table of Contents

0400-40-18-.01 Purpose
0400-40-18-.02 Application or Notice of Intent for Rock Harvesting
0400-40-18-.03 Notice of Intent for Exploration
~~0400-40-18-.03.04 Requirements for Sediment and Erosion Control During and After Harvesting~~

0400-40-18-.01 Purpose

The purpose of these ~~regulations~~ rules is to implement T.C.A. §§ 69-3-143 through 69-3-147 which govern rock harvesting operations as defined in T.C.A. §§ 69-3-144 (1) through (3).

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.02 Application or Notice of Intent for Rock Harvesting

- (1) Operators shall submit a Notice of Intent for Rock Harvesting to obtain coverage under Sector J of the Tennessee Storm Water Multi-Sector General Permit for Industrial Activities the applicable general permit unless the division Division informs them an operator that an individual NPDES permit is required. The reasons for requiring an individual permit include the following:
 - (a) There will be a discharge of any water which, during manufacturing or processing, comes into direct contact with, or results from, the production of any raw material, intermediate product, finished product, byproduct, or waste product process associated with stone processing operation(s), which includes crushing, sawing, screening, and/or uncovered breaking on the site;
 - (b) There will be a discharge of any waste water other than any other non-storm water discharges from the site, including but not limited to mine dewatering and domestic sewage;
 - (c) There will be a discharge from the rock harvesting site to Exceptional Tennessee Waters that would cause degradation of any applicable available parameter above the level of de minimis as defined by paragraph (4) of Rule 0400-40-03-.04;
 - (d) The receiving stream is listed as impaired for the pollutant(s) to be discharged from the site; or There will be a discharge from the rock harvesting site to waters with unavailable parameters that may cause measurable degradation of the parameter that is unavailable, unless the Division determines the estimated pollutant loading is consistent with an EPA-approved total maximum daily load; and
 - (e) The division Division determines that an individual permit is required in order to adequately protect water quality in the receiving stream(s).
- (2) An original and two copies of all individual NPDES application forms and or the notices of intent and supporting materials for the application forms or notice of intent, including the information required by this rule, shall be submitted.
- (3) Written proof of general liability insurance coverage shall be submitted by the operator along with the

permit application or notice of intent.

- (a) Liability coverage shall be in an amount no less than one million dollars (\$1,000,000).
 - (b) Insurance coverage shall remain in effect for the life of the rock harvesting operation.
 - (c) The policy shall provide that the insurer will notify the department at least thirty (30) days prior to the effectiveness of any cancellation of coverage by the insurer.
 - (d) The operator shall notify the department of any change in insurance coverage during the life of the rock harvesting operation and provide a copy of any new policy issued after the initial ~~one~~ policy no later than one week after ~~the new policy~~ becomes effective.
- (4) Written proof of Workers' Compensation insurance coverage, if applicable, shall be submitted by the operator along with the permit application or notice of intent.
- (5) Written proof of registration with the Tennessee Department of Revenue for all operators and any subcontractors shall be submitted with the permit application or notice of intent.
- (6) Evidence of the operator's legal right to harvest minerals on the land covered by the permit application or notice of intent, in the form of a properly executed deed, lease, or other appropriate document, shall be submitted with the permit application or notice of intent.
- (7) If the surface and mineral rights of any portion of the land covered by the permit application or notice of intent have been severed, the operator shall:
- (a) Notify the surface owner, by certified mail, return receipt required, of the intent to begin rock harvesting operations, at least thirty (30) days prior to beginning such operations including a copy of the permit or notice of coverage from the department;
 - (b) Prior to beginning rock harvesting operations, forward copies of all records relating to the notification required by subparagraph (a) of this paragraph to the department; and
 - (c) Bear all costs pertaining to the notification and transmission of documents required by subparagraphs (a) and (b) of this paragraph.
- (8) A general location map taken from a USGS 7 ½ minute quadrangle map that shows the location of the mining area(s) and haul road(s) and which includes the name of the operation and the name and number of the quadrangle shall be submitted with the application or notice of intent.
- (9) A site/operations map at a scale of 1" = 500', or larger as needed to provide sufficient detail and avoid a cluttered look, shall be submitted with the application or notice of intent. The site/operations map shall include, at a minimum:
- (a) A title block which contains:
 - 1. The name of the operator;
 - 2. The name of the owner of the surface rights and the name of the owner of the mineral rights;
 - 3. The county(ies) in which the operation is located;
 - 4. The total number of acres to be disturbed by mining operations and haul roads; and,
 - 5. The date the map was prepared along with a certification of its accuracy by the preparer.
 - (b) The body of the site/operations map shall show:

1. The proposed permit boundary, including haul roads, marked in red;
 2. The location and type of all water treatment structures, including Best Management Practices;
 3. The location and name(s) of all stream(s) receiving drainage from the operation;
 4. The location and names of all property owners within 500 feet of the permit boundary;
 5. The location of any onsite structures (i.e. buildings, scales, processing equipment, stockpiles, storage areas, etc.);
 6. The location of significant features such as cemeteries, public roads, railroad tracks, oil and gas wells, surface mines, underground mines, transmission lines, pipelines or utility lines within 500 feet of the permit boundary;
 7. The location of initial cuts or excavation and the subsequent cut sequence and direction of mining; and
 8. The location(s) where topsoil and/or other materials suitable for revegetation will be stockpiled.
- (10) A reclamation plan shall be submitted with the application or notice of intent. The plan shall include, at a minimum:
- (a) A description of the manner in which topsoil, and/or other material(s) suitable for revegetation, will be segregated;
 - (b) A description of backfilling and grading operations to be carried out concurrently with mining excavation that addresses whether there will be sufficient overburden to return the land to its original conformation after mining; and if the land will not be returned to its original conformation, a reclamation plan map shall be submitted that depicts:
 1. The altered land conformation and drainage patterns that will exist after mining;
 2. The location of any permanent impoundment(s) proposed to remain when mining is complete; and
 3. The location of any roads to remain after mining, including information regarding the surfacing and drainage controls used to maintain road stability: and
 - (c) A revegetation plan which specifies:
 1. The types and amounts of seed, fertilizer, lime and mulch that will be applied per acre, following the recommendations of the Tennessee Erosion and Sediment Control Handbook;
 2. The type(s) and spacing of trees to be planted; and
 3. If the surface and mineral rights on any portion of the land covered by the permit application or notice of intent have been severed, a notarized letter confirming the concurrence of the surface owner as to the size and location of any impoundment(s) or roads to remain after mining and whether or not trees are to be planted must be submitted.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

0400-40-18-.03 Notice of Intent for Exploration

- (1) For purposes of this chapter, "exploration" means the excavation of a potential rock harvesting site that disturbs less than 1 acre of land, does not result in removal of more than 100 tons of minerals as defined in T.C.A. § 69-3-144(1), and does not involve processing as described in subparagraph (1)(a) of Rule 0400-40-18-.02.
- (2) Persons seeking coverage under the general permit for exploration shall submit a Notice of Intent for exploration at least 7 days prior to engaging in exploration. The Notice of Intent for exploration shall include the following:
- (a) The legal name and address of the owner and/or operator;
 - (b) The facility name and location;
 - (c) Proof of property owner notification;
 - (d) A general location map produced from a USGS 7½ minute quadrangle map that shows the location of the exploration area(s) and haul road(s), which shall be marked in red, and includes: the name of the facility; the name and number of the quadrangle; the receiving stream(s); and an indication of whether any stream crossings are required. (Note: stream crossings must in compliance with the requirements of Chapter 0400-40-07); and
 - (e) Description of the erosion prevention and sediment control measures for the site as required by Rule 0400-40-18-.04.
- (3) Coverage under the applicable general permit shall be effective upon receipt of the Notice of Intent for exploration by the Division for a period of no more than 60 days, by which time the permittee must either:
- (a) Submit a Notice of Intent for Rock Harvesting in accordance with Rule 0400-40-18-.02;
 - (b) Submit an application for an individual permit; or
 - (c) Stabilize the site and withdraw from the area.

If a Notice of Intent for Rock Harvesting or an application for an individual permit is timely submitted, coverage under the general permit covering exploration including applicable restrictions (i.e., disturbance of less than one acre of land and removal of less than 100 tons of mineral) shall continue until the Division issues a notice of coverage for rock harvesting operations under the applicable general permit, issues an individual permit, or denies permit coverage for the operation.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

~~0400-40-18-.03~~ 0400-40-18-.04 Requirements for Sediment and Erosion Control During and After Harvesting

- (1) During ~~Rock Harvesting or Exploration~~
- (a) ~~Rock harvesting operations~~ Operators and persons engaged in exploration shall use best management practices following the recommendations of the Tennessee Erosion and Sediment Control Handbook to prevent erosion and control sediment.
 - (b) ~~Operators and persons engaged in exploration~~ shall select, design and install erosion prevention and sediment control measures to prevent discharges to waters of the state that would violate water quality standards or cause pollution.
 - (c) Approved sediment and erosion control measures must be in place prior to beginning rock harvesting operations and exploration.
 - (d) Approved sediment and erosion control measures must be maintained throughout the life of the rock harvesting operation until reclamation has been approved as being successful by the division Division. Approved control measures must also be maintained throughout the exploration

activity until the site has been stabilized.

- (e) Operators and persons engaging in exploration shall operate and maintain ~~harvesting~~ sites so that there are no discharges of oil or other waste to waters of the state.
 - (f) Operators and persons engaging in exploration shall comply with all provisions of permits.
 - (g) Operators and persons engaging in exploration shall modify practices or control measures, as directed and/or approved by the ~~division~~ Division, to control discharges.
- (2) Reclamation
- (a) The purpose of reclamation is to stabilize the site so that there will not be discharges of sediment or other waste into waters of the state.
 - (b) Grading shall be conducted so as to return the affected area as closely as possible is reasonable to its pre-harvesting condition and drainage patterns ~~conformation~~, considering the amount of available overburden, drainage control, and post-harvesting land use ~~and other factors~~.
 - (c) Revegetation shall be deemed acceptable when an eighty percent (80%) groundcover of self-sustaining vegetation, with no bare areas exceeding one fourth (1/4) of an acre, has been established for two (2) growing seasons. If trees are planted, there shall be six hundred (600) surviving stems per acre after two (2) growing seasons. If the Division determines this level of revegetation is not practicable at a given site, the operator shall (1) revegetate to the extent practicable and (2) provide surface stabilization for the entire site.

Authority: T.C.A. §§ 69-3-101 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)	X				
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)	X				
James W. Cameron III (Small Generator of Water Pollution representing Automotive Interests)	X				
Jill E. Davis (Municipalities)	X				
Mayor Kevin Davis (Counties)	X				
Derek Gernt (Oil or Gas Property Owner)	X				
C. Monty Halcomb (Environmental Interests)	X				
Charlie R. Johnson (Public-at-large)				X	
Judy Manners (Commissioner's Designee, Department of Health)	X				
John McClurkan (Commissioner's Designee, Department of Agriculture)				X	
Frank McGinley (Agricultural Interests)	X				
D. Anthony Robinson (Manufacturing Industry)	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 08/16/2016, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/06/16

Rulemaking Hearing(s) Conducted on: (add more dates). 06/01/16

Date: August 16, 2016

Signature: _____

Name of Officer: Stephanie A. Durman

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Rules of the Board of Water Quality, Oil and Gas
Chapter 0400-40-18 Rock Harvesting
0400-40-18-.01 Purpose
0400-40-18-.02 Application or Notice of Intent for Rock Harvesting
0400-40-18-.03 Notice of Intent for Exploration
0400-40-18-.04 Requirements for Sediment and Erosion Control

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.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

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.

Comment: The rule, as proposed, could allow a rock operation of unlimited size to be covered under a general permit. The magnitude of pollution potential from 50-100 acres (or more) of bare ground with its associated overburden is substantial. A Construction General Permit (CGP) requires specific phasing for sites above certain acreage. Due to the overburden, mining can exceed construction impact in both magnitude and duration. Therefore, please consider whether some size limitation or phasing requirement might be appropriate for permitting rock harvesting/dimension stone sites under a general permit.

Response: Permits are currently issued under the Tennessee Multi-Sector Permit, Sector J (TMSP General Permit) or individual National Pollutant Discharge Elimination System (NPDES) rules found in Chapter 0400-40-05 and the Rock Harvesting rules found in Chapter 0400-40-18. The proposed rules do not change this permitting procedure. The current rules and TMSP General Permit do not utilize size limitation or phasing requirements; however, under the current and proposed Rock Harvesting rules in Rule 0400-40-18-.02(10)(b), backfilling and grading operations are to be carried out concurrently with mining excavation. This requirement is intended to reduce the magnitude of disturbed mining area and duration of such disturbance to prevent the potential of the pollution suggested by the commenter.

Comment: Rock harvesting often begins in areas where the rock strata have conveniently been exposed through natural erosion. Thus rock harvest areas are typically located in steep topography on/near stream banks. Mining at close proximity is a threat to water quality because disturbed soils may be more easily transported to streams. Water quality can also decline due to reduced stream shading and lower allochthonous input when mining extends onto streambanks. A buffer requirement would help protect the permit holder by reducing the likelihood of significant sediment transport from the mine site to waters of the state. Given steep topography, a buffer of at least 50-100 feet from streambank edge to new permit area may be appropriate. Buffer requirements should be higher for Exceptional Tennessee Waters (ETWs) and/or sediment impaired receiving streams than for less critical watersheds.

Response: The commenter is correct in regard to some rock strata being located in steep topography and in close proximity to stream banks. The Division agrees with the commenter that water quality could be threatened if appropriate buffers and Best Management Practices (BMPs) are not installed or maintained. However, specified buffer requirements in the proposed rules are not necessary because under both the current and proposed rules and the TMSP General Permit, the Division may require a buffer, enhanced BMPs, or other measures when necessary to control discharges and prevent a person from causing a condition of pollution or violating water quality standards in a receiving stream.

Unlike under the current rules, discharges to sediment impaired streams, or waters with unavailable parameters, will be eligible for general permit coverage under the proposed rules. General permit coverage will only be available if the applicant can demonstrate that the discharge as proposed will cause no measurable degradation of the parameter that is unavailable. Otherwise the operation will require an individual permit with site-specific water quality-based effluent limitations to ensure the discharge will not cause measurable degradation.

Comment: The NPDES program relies heavily on self-monitoring. Therefore, permits such as the CGP require certification of inspectors performing site assessments and BMP inspections. An inspector training requirement may be a reasonable protective measure to add to the rock harvesting draft rules with the goal of ensuring self-inspection competency.

Response: It is assumed that the commenter is referring to requiring certification of members of the Pollution Prevention Team as described in the TMSP General Permit. The TMSP General Permit does not require any certification of the designated Pollution Prevention Team members; however, under the permit, the operator must provide employee training for storm water pollution prevention activities, including on-site visual assessments and BMP inspections. The Division believes this training enables self-inspection competency.

Comment: Rock Harvesting requirements are tied to the activity rather than the permit type. The proposed rule language at Rule 0400-40-18-.02(1) seems more ambiguous than the statute with regard to the above issue. Please consider changing a portion of the statement at Rule 0400-40-18-.02(1) to "Operators shall submit applicable forms along with the required supplemental information to obtain permit coverage. Permit coverage shall be available under the applicable general permit unless individual NPDES permit coverage is required for the Rock Harvesting activity." (Then Reasons for requiring an individual permit include the following:

...For Rule 0400-40-18-.02(2) please consider the statement: "An original and two copies of all applicable forms and supporting materials shall be submitted."

Response: The proposed language referenced is the same as the language used in the current rules relative to the concern submitted by the commenter. An additional amendment to the current rules has been made in Rule 0400-40-18-.02(2) to clarify that either application forms for an NPDES individual permit or a notice of intent for general permit coverage must be submitted and that the information required relative to rock harvesting operations must be included regardless of the type of permit.

Comment: Subcontractor Concerns:

- A. Please consider whether subcontractors should be required to sign on to TMSP general permit coverage in a manner similar to the CGP subcontractor process. Requiring subcontractors to sign on would better ensure that the subcontractors are aware of storm water pollution prevention plan requirements. It is not uncommon for several subcontractor crews to simultaneously work different areas of a large site under a single permit. No single point of oversight is necessarily required for these crews. Often this multi-directional mining begins after the permit is obtained and was not taken into account in the pollution prevention plan design. Drainage patterns may be altered through multipoint mining in ways that render Erosion Prevention Sediment Control (EPSC) designs ineffective. Such activity multiplies risk for environmental harm. Although the permittee has nominal responsibility for EPSC, that responsibility alone may be ineffectual.
- B. The statute regarding rock harvesting, as written, indicates that the requirements for liability and workmen's compensation apply to subcontractors as well as to the primary permittee. The proposed rules, however, contain no provision for tracking or enforcing those requirements. Please address this apparent deficiency.

Response: A. It is the responsibility of the operator to assure that any subcontractor who is allowed to work on the site follows the requirements of the TMSP General Permit and the storm water prevention plan. While the Division does not necessarily disagree with the concern raised by the commenter, the concern would more appropriately be raised during the comment period for the new TMSP General Permit to address all similar activities addressed by the permit. The current TMSP general permit expires April 14, 2020.

B. Tenn. Code Ann. § 69-3-145(b) requires the operator to submit proof of general liability, and if applicable, workers' compensation insurance coverage. Operators are permitted to subcontract if the subcontractor meets the requirements of Tenn. Code Ann. Title 69, Chapter 3, Part 1. It is the operator's responsibility to ensure either that the operator's insurance covers the subcontractor or that the subcontractor also has insurance.

Comment: To Rule 0400-40-18-.03...Please consider adding the word "or" to the end of subparagraph (3)(a). It appears the word "or" may have been left out as a typographic error.

Rule 0400-40-18-.03(3)(c)... Please provide detail to adequately characterize the "Stabilize the site and withdraw from the area" option with regard to what it means to stabilize the exploration site. Will either rock armor or establishment of diverse native perennial vegetation be required? Will vegetation have to survive a full growing season or more for the site to be considered stabilized?

Response: There was no typographical error. The placement of "or" in (b) is conjunctive with the word "either" in the first sentence and is properly placed.

Exploration activity can only include a disturbance of no more than one (1) acre and removal of less than 100 tons of mineral. The proposed rules require only that the site be stabilized to prevent the loss of sediment from the site and do not specify particular stabilization methods or requirements because of the relatively limited scope of exploration.

Comment: The Department is encouraged to consider drafting a general permit targeted solely at the dimension stone industry because of the industry's unique characteristics.

Please consider drafting a general permit for dimension stone that would streamline the permitting process for the Department and the industry.

Response: The Division is willing to explore the idea of a general permit for the dimension stone industry, to include exploration, rock harvesting, and associated processing on site. Any such permit could only apply to discharges causing de minimis degradation to waters with available parameters or less than measurable degradation to waters with unavailable parameters.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The 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, or directly benefit from the proposed rule.

The businesses applying for rock harvesting permits are dimension stone mining companies (larger rock harvesting operations) and small rock harvesting operations/businesses. The estimated number of small businesses that will be affected by the proposed rule is approximately 100, with approximately 75, or 75%, seeing a direct benefit from increased eligibility for general permits. The remaining 25, or 25%, will continue to be permitted under Individual Permits, as required by the rules.

- (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 should be no additional reporting, recordkeeping or other administrative costs added as a result of this rulemaking. As a result, no new professional skills will be required to comply with reporting requirements.

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

These rules will not impact consumers. The rule will benefit small businesses by providing increased access to efficient permitting and potentially decreasing administrative costs. General permit coverage can be provided faster and with fewer application requirements than an individual permit.

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

As this rulemaking was being developed, the regulated community was involved in giving input on the best methods to correct existing shortcomings in the current rules. The methods in this rulemaking are the least burdensome, least intrusive and least costly alternative to meet the objectives of this program at this time. During the public comment period, there were discussions with the industry prior to the rulemaking about the possibility of the development of a general permit for the dimension stone industry, to include exploration, rock harvesting and processing. Implementation of this recommendation will be explored by the Division; however, processing activities can have water quality impacts which would preclude permitting through a general permit.

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

There is no known federal counterpart. These rules are being promulgated under the authority of T.C.A. §§ 69-3-143 through 69-3-147, which was added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011. This is an update of the existing Rock Harvesting rules found in Chapter 0400-40-18. These rules are similar to those in surrounding states that are involved in the permitting of dimension stone and rock harvesting operations – coverage is provided either under a general permit or an individual permit, based on whether or not processing is occurring on site.

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

Exemption of small businesses from the proposed rules would prevent those businesses from benefiting from the improved access to general permit coverage and increased flexibility relative to reclamation. In addition, exploration activities currently appear to be conducted without the permits required by the Clean Water Act, leaving a potential regulatory gap and subjecting the activities to potential enforcement. Exemption of small businesses would prevent those businesses from benefiting from the proposed solution of streamlined permit coverage for exploration activities.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that this rulemaking will not result in an increase in expenditures or decrease in revenues for local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

The proposed rule amendments will broaden access to general permit coverage by aligning the rule language relative to discharges with the Antidegradation Statement and by clarifying the types of processing activities that trigger the requirement for an individual permit instead of a general permit. In addition, the proposed rule amendments add flexibility to reclamation requirements and establish time-limited coverage for exploration under the general permit immediately upon submission of a streamlined notice of intent.

- (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;

These rules are being promulgated under the authority of Tenn. Code Ann. §§ 69-3-143 through 69-3-147, added to the Tennessee Water Quality Control Act of 1977 by Public Chapter 341 of 2011.

- (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;

The dimension stone and rock harvesting community constitute the persons affected by this rule. The Tennessee Mining Association, consultants, engineers and the rock harvesting community were contacted, and several meetings were held, prior to and during the formulation of the proposed rules. Many of their suggestions were incorporated into the final version of the proposed rules. The Division also met with several legislators during the formulation of the rules. These groups had positive reactions regarding the proposed rules.

- (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.

- (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;

There should be a not significant fiscal impact to state and local government. It is estimated because of the addition of exploration and less burdensome permitting procedures that the number of general permit notices of intent processed will increase and that the number of individual permit applications processed will decrease. The fiscal impact is not expected to be more than 2% or \$500,000.

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

Bryan Epperson
Mining Section Manager
3711 Middlebrook Pike
Knoxville, TN 37921-6538
(865) 594-5529
Bryan.epperson@tn.gov

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Lucian Geise
Senior Counsel for Legislative Affairs
Office of General Counsel

- (H) Office address, telephone number, and email address 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
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0108
Lucian.Geise@tn.gov

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

The Department is not aware of any.

01-07-17



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
KNOXVILLE ENVIRONMENTAL FIELD OFFICE
DIVISION OF WATER RESOURCES – MINING SECTION
3711 MIDDLEBROOK PIKE
KNOXVILLE, TN 37921
PHONE 865-594-6035 STATEWIDE 1-888-891-8332 FAX 865-594-6105

Cody Ryan York
 Director
 Division of Publications
 Office of Tennessee Secretary of State Tre Hargett
 312 Rosa L. Parks Ave. 8th FL
 Nashville, TN 37243-1102

Mr. York:

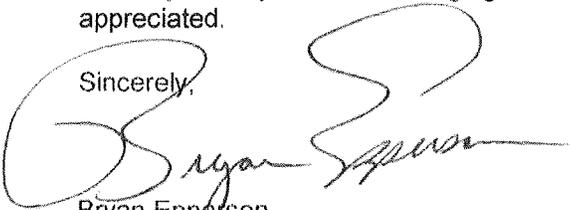
On October 3, 2016, the Division of Water Resources – Mining Section filed with the Secretary of State's Office one Rulemaking Hearing Filing Form regarding amendments to the Rock Harvesting Rules found at Chapter 0400-40-18. The rules became effective on January 1, 2017.

During review of the rules, your office astutely noted a typographical error from previous language incorporated into the amendments to the new rules, upon which time I was notified of the error. The error was found on page 5, in 0400-40-18-03 (2) (d). Specifically, the word "be" was omitted in the statement "stream crossings must be in compliance with the requirements of Chapter 0400-40-07."

Though we believe this word would not have any impact on the interpretation or implementation of the rules, we are respectfully requesting your office to correct this minor typographical error in the final version of the new rules to be published for viewing and disbursement.

Thank you very much for bringing this to my attention, and your help in this manner would be greatly appreciated.

Sincerely,



Bryan Epperson
 Mining Section Manager
 Division of Water Resources – Mining Section

E:copy Cody Ryan York, Director – Division of Publications

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Cody Ryan York
Director of Publications

615-253-4564
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January 10, 2017

Mr. Bryan Epperson
Mining Section Manager
Division of Water Resources – Mining Section
Knoxville Environmental Field Office
Department of Environment and Conservation
3711 Middlebrook Pike
Knoxville, TN 37921

Dear Mr. Epperson,

Per your letter received January 9, 2017, we have corrected the typographical error in Rule 0400-40-18-.03.

If you have any questions, please feel free to contact my office at 615-741-2650.

Sincerely,

Cody Ryan York
Director of Publications