

## Notice of Rulemaking Hearing

### Tennessee Department of Environment and Conservation Division of Solid Waste Management

There will be a hearing before the Tennessee Department of Environment and Conservation, Division of Solid Waste Management acting on behalf of the Tennessee Solid Waste Disposal Control Board to consider the adoption and promulgation of rules pursuant to Tennessee Code Annotated (T.C.A.) §§ 68-203-103(a)(1), 68-203-103(b)(3), 68-211-102(a), 68-211-105(b), 68-211-105(c), 68-211-106(a)(1), 68-211-107(a), 68-211-111(d) and the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-201 et seq.. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4 - 5 - 204 and will take place at the following location, time, and date:

Location	Time	Date
5 <sup>th</sup> Floor Large Conference Room L & C Tower 401 Church Street Nashville, TN	1:00 p.m. CST	January 23, 2008

Individuals with disabilities who wish to participate in these proceedings (or review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the scheduled hearing date or date such party intends to review such filings, to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 (toll free) or 1-615-532-0200 (Nashville) for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

For technical information, a copy of the entire text of this Notice of Rulemaking Hearing or for directions to the hearing location, contact: Greg Luke, Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, TN 37243-1535, 615-532-0874, FAX 615-532-0886. Oral or written comments are invited at the hearing. In addition, written comments may be submitted to Greg Luke prior to or following the public hearing. However, such written comments must be received in the Division's Central Office by 4:30 p.m. CST, January 31, 2008 in order to assure consideration. The "DRAFT" rules may also be accessed for review at the Department's World Wide Web Site located at "<http://www.state.tn.us/environment/swm/ppo/>".

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

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

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

<p>Knoxville Environmental Field Office  3711 Middlebrook Pike  Knoxville, TN 37921-5602  865-594-6035/1-888-891-8332</p> <p>Johnson City Environmental Field Office  2305 Silverdale Road  Johnson City, TN 37601-2162  423-854-5400/1-888-891-8332</p> <p>Cookeville Environmental Field Office  1221 South Willow Avenue  Cookeville, TN 38501  931-432-4015/1-888-891-8332</p>	<p>Nashville Environmental Field Office  711 R. S. Gass Blvd.  Nashville, TN 37243-1550  615-687-7000/1-888-891-8332</p> <p>Jackson Environmental Field Office  1625 Hollywood Drive  Jackson, TN 38305-2222  731-512-1300/1-888-891-8332</p> <p>Columbia Environmental Field Office  2484 Park Plus Drive  Columbia, TN 38401  931-380-3371/1-888-891-8332</p>
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Additional review copies only are available at the following library locations:

<p>E. G. Fisher Public Library  1289 Ingleside Avenue  Athens, TN 37303  423-745-7782</p> <p>Hardin County Library  1365 Pickwick St. S.  Savannah, TN 38372  731-925-4314</p> <p>McIver's Grant Public Library  204 North Mill Street  Dyersburg, TN 38024-4631  731-285-5032</p> <p>Coffee County-Manchester Public Library  1005 Hillsboro Highway  Manchester, TN 37355-2099  931-723-5143</p> <p>Lawson McGhee Library  500 West Church Avenue  Knoxville, TN 37902-2505  (865) 215-8701</p> <p>Chattanooga-Hamilton Co. Bicentennial Library  1001 Broad Street  Chattanooga, TN 37402-2652  (423) 757-5320</p>	<p>Clarksville-Montgomery Cty. Public Library  350 Pageant Lane  Clarksville, TN 37040-0005  931-648-8826</p> <p>Art Circle Public Library  154 East First Street  Crossville, TN 38555-4696  931-484-6790</p> <p>Kingsport Public Library &amp; Archives  400 Broad Street  Kingsport, TN 37660-4292  423-229-9489</p> <p>W. G. Rhea Public Library  400 West Washington Street  Paris, TN 38242-0456  731-642-1702</p> <p>Nashville Public Library  615 Church Street  Nashville, TN 37219-2314  (615) 862-5800</p> <p>Memphis/Shelby County Public Library-  Main Library  3030 Poplar Avenue  Memphis, TN 38111  (901) 725-8853</p>
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## Substance of Proposed Rules

### Amendments

#### Chapter 1200-01-07 Solid Waste Processing and Disposal

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.

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

Item (V) of 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 item (V) and renumbering the remaining items in sequence.

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.

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:
  - (i) 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
  - (ii) 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
  - (iii) Other equivalent or superior protection as defined in (ii) 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, 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 heading 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	0.010
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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 above shall be valid for three (3) years, unless revoked or invalidated for cause as provided at 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).

The notice of rulemaking set out herein was properly filed in the Department of State on the 30th day of October, 2007. (FS 10-22-07; DBID 749)