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Sequence Number: 12-14-13  
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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Solid Waste Management
<b>Contact Person:</b>	David Moran
<b>Address:</b>	William R. Snodgrass Tn Tower 312 Rosa L. Parks Avenue, 14 <sup>th</sup> Floor Nashville, Tennessee 37243
<b>Phone:</b>	(615) 532-0875
<b>Email:</b>	<a href="mailto:David.Moran@tn.gov">David.Moran@tn.gov</a>

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	William R. Snodgrass Tn Tower 312 Rosa L. Parks Avenue, 2 <sup>nd</sup> Floor Nashville, Tennessee 37243
<b>Phone:</b>	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
<b>Email:</b>	<a href="mailto:Beverly.Evans@tn.gov">Beverly.Evans@tn.gov</a>

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Conference Room A (14.430), Floor 14		
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	02/11/14		
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

This rulemaking is designed to:

- Address conflicts that have resulted from prior rulemakings.
  - Several years ago the regulations were amended to be more stringent than EPA and surrounding states by requiring some records to be maintained for five years instead of three years as required by EPA. Conflicts were discovered in the rules regarding the three year requirement and the five year requirement. To resolve the conflict the recordkeeping requirement is being restored to three years throughout the regulations making Tennessee's program reflect EPA and surrounding states.
  - Prior versions of the regulations combined the petitioning process for a rulemaking change with variance requests. These two different types of petitions were separated to bring clarity and structure to the petitioning process.
  - In anticipation of EPA deleting some hazardous waste reduction language from its regulations the

language was deleted from the state rules. EPA failed to delete the language and the state regulations are not consistent with the federal regulations. In addition, the deletion of the language created a conflict with the statute that required hazardous waste reduction planning. Therefore, the language is being restored to the state rules to resolve these inconsistencies.

- Update regulatory language to reflect recent changes in state statutes or in EPA language referenced by the state regulations.
  - The Petroleum Underground Storage Tank Board and the Solid Waste Disposal Control Board were combined into one board and given a new name.
  - EPA's list of publications referenced by the regulations had been updated and these are amended to be consistent.
- Clarify ambiguous language to bring clarity to the regulated community.
  - The regulations in several places referenced a public notice procedure that was incorrect. In all places, the public notice procedures were amended to correct this issue.
  - The regulations provide an opportunity for generators to demonstrate to the satisfaction of the Director that a waste containing exclusively trivalent chromium should not be managed as hazardous waste. The regulations are being amended to bring clarity to this evaluation process.
  - Owners or operators of transfer facilities were required to keep a log of hazardous waste shipments on a form provided by the Commissioner. A form for this purpose has not been developed nor approved by the forms committee. To address this issue the regulations are being amended to allow the owner or operator of the transfer facility to utilize their own form provided it contains, at a minimum, the required information.
  - Hazardous waste generators and owners or operators of storage facilities are required to maintain aisle space for safety purposes. The rules are being amended to clarify that at least three feet or more of aisle space be provided unless the Commissioner determines otherwise.
  - An amendment is being made to the generator regulations to make it clearer when a generator was exempt from hazardous waste reduction planning.
  - An amendment is being made to make it clearer to the owners or operators of hazardous waste management facilities applying for permits when the various notices and public meeting are required.
  - An amendment is being made to make the language in the fee rule regarding generators of acute hazardous waste agree with the language in other parts of the regulations.
- Correct typographical errors and update additional rule renumbering changes.

An initial set of draft rules has been prepared for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office  
8383 Wolfe Lake Drive  
Bartlett, TN 38133  
(901) 371-3000/ (901) 371-3170

Cookeville Environmental Field Office  
1221 South Willow Avenue  
Cookeville, TN 38506  
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office  
1625 Hollywood Drive  
Jackson, TN 38305  
(731) 512-1300/1-888-891-8332

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

Columbia Environmental Field Office  
1421 Hampshire Pike  
Columbia, TN 38401  
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office  
3711 Middlebrook Pike  
Knoxville, TN 37921-5602  
(865) 594-6035/1-888-891-8332

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

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

The "DRAFT" rules may also be accessed for review using at <http://tn.gov/environment/ppo/#swm>.

Draft copies are also available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation  
Division of Solid Waste Management  
William R. Snodgrass Tn Tower  
312 Rosa L. Parks Avenue, 14<sup>th</sup> Floor  
Nashville, Tennessee 37243  
(615) 532-0780

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Solid Waste Management; Attention: David Moran, William R. Snodgrass Tn Tower, 312 Rosa L. Parks Avenue, 14<sup>th</sup> Floor, Nashville, Tennessee 37243; telephone 615-532-0875 or fax 615-532-0886. However, such written comments must be received by 4:30 PM CST, February 11, 2014, in order to assure consideration. For further information, please contact David Moran at the above address or telephone number or by e-mail at [David.Moran@tn.gov](mailto:David.Moran@tn.gov).

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0400-12-01	Hazardous Waste Management
Rule Number	Rule Title
0400-12-01-.01	Hazardous Waste Management System: General
0400-12-01-.02	Identification and Listing of Hazardous Waste
0400-12-01-.03	Notification Requirements and Standards Applicable to Generators of Hazardous Wastes
0400-12-01-.04	Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste
0400-12-01-.05	Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.06	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.07	Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities
0400-12-01-.08	Fee System for Transporters, Stors, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters
0400-12-01-.10	Land Disposal Restrictions
0400-12-01-.12	Standards for Universal Waste Management

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Amendments

### Chapter 0400-12-01 Hazardous Waste Management

Paragraph (1) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting subparagraph (c) in its entirety and substituting instead the following:

(c) Rule Structure

These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

I. subitem

A. section

(A) subsection

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting the definition "Board" and substituting instead the following:

"Board" means the Underground Storage Tank and Solid Waste Disposal Control Board as established by T.C.A. § 68-211-111.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting the definition "Underground source of drinking water (USDW)" and substituting instead the following:

"Underground source of drinking water (USDW)" means an aquifer or its portion:

1. (i) Which supplies any public water system; or
- (ii) Which contains a sufficient quantity of ground water to supply a public water system; and
  - (I) Currently supplies drinking water for human consumption; or
  - (II) Contains fewer than 10,000 mg/l total dissolved solids; and
2. Which is not an exempted aquifer.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (2) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (b) References [40 CFR 260.11 and 40 CFR 270.6]
1. Publications/materials and where they may be obtained referred to in these rules are set forth by EPA in 40 CFR 260.11 and 40 CFR 270.6.
  2. These materials are listed as they exist on the effective date of these regulations.

(Note: 40 CFR 260.11 provides that:

(a) When used in parts 260 through 268 and 273 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, [libraryhq@epa.gov](mailto:libraryhq@epa.gov); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

- (1) ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for §261.21.
- (2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§264.1033, 265.1033.
- (3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for §264.1063.
- (4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," IBR approved for §§264.1033, 265.1033.
- (5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for §265.1084.
- (6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for §261.21(a).
- (7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for §264.1063.
- (8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for §264.1063.
- (9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for §264.1063.
- (10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.

- (c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.
- (1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§264.1035 and 265.1035.
  - (2) Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material SGT-HEM; Non-polar Material) by Extraction and Gravimetry:
    - (i) Revision A, EPA-821-R-98-002, February 1999, IBR approved for Part 261, Appendix IX.
    - (ii) Revision B, EPA-821-R-10-001, February 2010, IBR approved for Part 261, Appendix IX.
  - (3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).
    - (i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
    - (ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
    - (iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
    - (iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
    - (v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§261.24, 268.7, 268.40.
    - (vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.
    - (vii) Method 1312 dated September 1994 and in Update III, IBR approved for part 261, appendix IX and § 278.3(b)(1).
    - (viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.
    - (ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.104.
    - (x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.

- (xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and §266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, §266.106, and part 266, appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, §266.106, and part 266, appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for §261.22 and part 261, appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §261.22.
- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§264.1034, 264.1063, 265.1034, 265.1063.
- (xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§264.190, 264.314, 265.190, 265.314, 265.1081, 267.190(a), 268.32.

- (d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.
  - (1) “Flammable and Combustible Liquids Code” (1977 or 1981), IBR approved for §§264.198, 265.198, 367.202(b).
  - (2) [Reserved]
- (e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.
  - (1) API Publication 2517, Third Edition, February 1989, “Evaporative Loss from External Floating-Roof Tanks,” IBR approved for §265.1084.
  - (2) [Reserved]
- (f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.
  - (1) “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised”, October 1992, EPA Publication No. EPA–450/R–92–019, IBR approved for part 266, appendix IX.
  - (2) [Reserved]
- (g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.
  - (1) OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for 262.89 of this chapter.
  - (2) [Reserved]

(Note: 40 CFR 270.6 provides that:

- (a) When used in part 270 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:

[http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

- (b) The following materials are available for purchase from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800:

- (1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§270.24 and 270.25.
- (2) [Reserved]

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (3) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

(3) Petitions for Exclusions or Variances

(a) Requirements for Regulatory Exclusions

1. General

- (i) Any person may petition the Commissioner for a regulatory exclusion from any provision in Rules 0400-12-01-.01 through 0400-12-01-.06, 0400-12-01-.09, 0400-12-01-.10 and 0400-12-01-.12. This part sets forth general requirements which apply to all such petitions. Part 2 sets forth additional requirements for petitions to add a testing or analytical method to Rule 0400-12-01-.02, 0400-12-01-.05 or 0400-12-01-.06. Part 3 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from subparagraph (1)(c) of Rule 0400-12-01-.02 or the lists of hazardous wastes in paragraph (4) of Rule 0400-12-01-.02. Part 4 sets forth additional requirements for petitions to amend Rule 0400-12-01-.12 to include additional hazardous wastes or categories of hazardous waste as universal waste.
- (ii) Each petition must be submitted to the Commissioner by certified mail and must include:
  - (I) The petitioner's name and address;
  - (II) A statement of the petitioner's interest in the proposed action;
  - (III) A description of the proposed action, including (where appropriate) suggested language; and
  - (IV) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
- (iii) Except for petitions submitted in accordance with parts 2 and 3 of this subparagraph, the Commissioner will make a tentative decision to grant or deny a petition and shall notify the petitioner of such tentative decision. If the Commissioner's tentative decision is to grant the petition, the Commissioner, with the concurrence of the board, shall initiate a rulemaking in accordance with T.C.A. §§ 4-5-201 et seq.
- (iv) Petitions submitted in accordance with parts 2 and 3 of this subparagraph shall be forwarded to EPA by the Commissioner for a determination.
- (v) A determination made by EPA pursuant to 40 CFR 260.21 Petitions for Equivalent Testing or Analytical Methods or 40 CFR 260.22 Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility shall be effective in Tennessee on the effective date of the EPA decision.

2. Petitions for Equivalent Testing or Analytical Methods [40 CFR 260.21]

Petitions received by the Commissioner regarding Equivalent Testing or Analytical Methods shall be forwarded to EPA for a determination.

(Note: The authority for implementing this part remains with the U.S. Environmental Protection Agency.)

3. Petitions to Exclude a Waste Produced at a Particular Facility as Nonhazardous [40 CFR 260.22]

Petitions received by the Commissioner regarding Excluding a Waste Produced at a Particular Facility as Nonhazardous shall be forwarded to EPA for a determination.

(Note: The authority for implementing this part remains with the U.S. Environmental Protection Agency.)

4. Petitions to Amend Rule 0400-12-01-.12 to Include Additional Hazardous Wastes [40 CFR 260.23]

- (i) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Rule 0400-12-01-.12 may petition for a regulatory amendment under this part, part 1 of this subparagraph and Rule 0400-12-01-.12(7).

- (ii) To be successful, the petitioner must demonstrate to the satisfaction of the Commissioner that regulation under the universal waste regulations of Rule 0400-12-01-.12 is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by subpart 1(ii) of this subparagraph. The petition should also address as many of the factors listed in Rule 0400-12-01-.12(7)(b) as are appropriate for the waste or category of waste addressed in the petition.

- (iii) The Commissioner shall consider the factors listed in Rule 0400-12-01-.12(7)(b).

- (iv) The Commissioner may request additional information needed to evaluate the merits of the petition.

- (v) The Commissioner shall make a tentative decision. The tentative decision will be based on the weight of evidence showing that regulation under Rule 0400-12-01-.12 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

- (vi) The Commissioner shall comply with the requirements of subpart 1(iii) of this subparagraph regarding the tentative decision.

(b) Requirements for Variances

1. Any person may petition the Commissioner for a variance from any provision in these rules. This subparagraph sets forth general requirements which apply to all such petitions.

2. Each petition must be submitted to the Commissioner by certified mail and must include:

- (i) The petitioner's name and address;

- (ii) A statement of the petitioner's interest in the proposed action;

- (iii) A description of the proposed action, including (where appropriate) suggested language; and

- (iv) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
3. The Commissioner will make a tentative decision to grant or deny a petition and will notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner will give public notice of such tentative decision for written public comment. The public notice shall be published by the petitioner as required by the Commissioner.
  4. Upon the written request of any interested person, the Commissioner may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commissioner may in any case decide on his own motion to hold an informal public hearing. Notice of the public hearing shall be published by the petitioner as required by the Commissioner.
  5. After evaluating all public comments the Commissioner will make a final decision to either grant or deny the petition, and will give a public notice of such decision. The petitioner shall publish this public notice as required by the Commissioner.
  6. Any variance granted pursuant to this subparagraph may be rescinded if it is discovered and determined by the Commissioner that:
    - (i) The variance has resulted or may result in a significant hazard to public health or the environment;
    - (ii)
      - (I) The factual basis for which the variance was granted has significantly changed;
      - (II) The regulations, as amended, no longer supports the variance; or
      - (III) The conditions issued by the Commissioner for the variance's approval have been violated; or
    - (iii) The variance threatens program authorization with EPA.
  7. Any variance granted pursuant to this subparagraph shall remain valid until rescinded in accordance with part 6 of this subparagraph.
  8. Any person with a valid variance granted in accordance with this subparagraph shall submit to the Commissioner:
    - (i) No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
    - (ii) Within thirty (30) of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 2 of subparagraph (c) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall

give public notice of such tentative decision for written public comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement and radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (d) Any variance granted pursuant to this paragraph may be rescinded if it is discovered and determined by the Commissioner that:
  - 1. The variance has resulted or may result in a significant hazard to public health or the environment;
  - 2.
    - (i) The factual basis for which the variance was granted has significantly changed;
    - (ii) The regulations, as amended, no longer supports the variance; or
    - (iii) The conditions issued by the Commissioner for the variance's approval have been violated; or
  - 3. The variance threatens program authorization with EPA.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (4) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding two new subparagraphs and designating them as subparagraphs (e) and (f) to read as follows:

- (e) Any variance granted pursuant to this paragraph shall remain valid until rescinded in accordance with subparagraph (d) of this paragraph.
- (f) Any person with a valid variance granted pursuant to this paragraph shall submit to the Commissioner:
  - 1. No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
  - 2. Within thirty (30) of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (b) Procedures [40 CFR 260.33]

The Commissioner will use the following procedures in evaluating applications to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the Commissioner for the variance, and the application must address the relevant criteria contained in subparagraph (a) of this paragraph.
2. The Commissioner will evaluate the application and make a tentative decision to grant or deny the application and shall notify the petitioner of this tentative decision. If the Commissioner makes a tentative decision to grant the petition, the Commissioner shall give public notice of such a tentative decision for written comment. The public notice shall be provided by the applicant as prepared and required by the Commissioner in a newspaper advertisement and radio broadcast in the locality where the recycler is located. The applicant shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. Notice of the public hearing shall be given by the applicant and prepared as required by the Commissioner. The Commissioner will issue a final decision after receipt of comments and after the hearing (if any).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (5) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by adding three new subparagraphs and designating them as subparagraphs (c), (d) and (e) to read as follows:

- (c) Any variance granted pursuant to this paragraph may be rescinded if it is discovered and determined by the Commissioner that:
  1. The variance has resulted or may result in a significant hazard to public health or the environment;
  2. (i) The factual basis for which the variance was granted has significantly changed;
  - (ii) The regulations, as amended, no longer supports the variance; or
  - (iii) The conditions issued by the Commissioner for the variance's approval have been violated; or
  3. The variance threatens program authorization with EPA.
- (d) Any variance granted pursuant to this paragraph shall remain valid until rescinded in accordance with subparagraph (c) of this paragraph.
- (e) Any person with a valid variance granted pursuant to this paragraph shall submit to the Commissioner:
  1. No later than March 1 of each year, a certification that the factual basis for which the variance was granted remains unchanged, the regulations, as amended, continue to support it and the conditions for its approval have not been violated; or
  2. Within thirty (30) of its discovery, a detailed description of any change in the factual basis for which the variance was granted, the impact any amended regulation has on the variance, or any noncompliance with a condition for its approval.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (6) of Rule 0400-12-01-.01 Hazardous Waste Management System: General is amended by deleting it in its entirety and substituting instead the following:

- (b) Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities [40 CFR 260.41]

The Commissioner will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Rule 0400-12-01-.02(1)(f)1(ii)(III) under the

provisions of Rule 0400-12-01-.02(1)(f)2 and 3, rather than under the provisions of Rule 0400-12-01-.09(6).

1. If a generator is accumulating the waste, the Commissioner will issue a notice, published by the owner or operator, as prepared and required by the Commissioner, setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of paragraphs (1), (4), (5), and (6) of Rule 0400-12-01-.03. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Commissioner will hold a public hearing. The Commissioner will provide notice, published by the owner or operator as prepared and required by the Commissioner, of the hearing to the public and allow public participation at the hearing. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will issue a final order after the hearing stating whether or not compliance with Rule 0400-12-01-.03 is required. The order becomes effective 30 days after service of the decision unless the Commissioner specifies a later date or unless review by the Board is requested. The order may be appealed to the Board by any person who participated in the public hearing. The Board may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.
2. If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Rule 0400-12-01-.07. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Commissioner's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the determination. The question of whether the Commissioner's decision was proper will remain open for consideration during the public comment period discussed under Rule 0400-12-01-.07(7)(e) and in any subsequent hearing.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Item (IV) of subpart (xix) of part 1 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting subitem III in its entirety and substituting instead the following:

- III. Before making a determination under this subpart, the Commissioner must provide public notice and the opportunity for comment to all persons potentially interested in the determination. This shall be accomplished by the owner or operator placing a notice as prepared and required by the Commissioner, of this action in local newspapers, or broadcasting notice over local radio stations. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 2 of subparagraph (d) of paragraph (1) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting subpart (v) in its entirety and substituting instead the following:

- (v) (I) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in paragraph (4) of this rule due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if a waste generator demonstrates to the satisfaction

of the Director, by submitting an evaluation request and supporting documentation, that:

- I. The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
  - II. The waste generated from an industrial process is trivalent chromium exclusively (or nearly exclusively) and the process does not contain more than minimal amounts of hexavalent chromium<sup>1</sup>; and
  - III. The waste is managed by the waste generator in non-oxidizing environments.
- (II) The waste generator shall also submit to the Department a Chromium Evaluation Review Fee identified in Rule 0400-12-01-.08(11) prior to the Director's review of the submitted documentation.
- (III) This exemption shall be effective only after approval in writing by the Director. Waste generators who obtain this exemption shall:
- I. Annually recertify the accuracy of the information in a letter to the Director that there has been no change in the waste stream or the process generating the waste since the Director determined that waste satisfies the conditions for the exemption;
  - II. Submit all recertifications as required by subitem I of this item by March 1 of each succeeding year following the Director's determination that the waste satisfies the conditions of the exemption; and
  - III. Submit a new evaluation and review fee to the Director within 30 days, if a change in the waste stream or the process generating the waste has occurred since the Director's determination.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (vi) of part 2 of subparagraph (b) of paragraph (4) of Rule 0400-12-01-.02 Identification and Listing of Hazardous Waste is amended by deleting item (II) in its entirety and substituting instead the following:

- (II) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Commissioner.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 6 of subparagraph (d) of paragraph (3) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) Retain at the generator's site a copy of each manifest for at least three years

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<sup>1</sup> Hexavalent chromium concentrations below 5 mg/l currently are considered minimal.  
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from the date of delivery.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (6) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting part 1 in its entirety and substituting instead the following:

1. Except for generators who are conditionally exempt small quantity generators, as determined by subparagraph (1)(e) of Rule 0400-12-01-.02, and who maintain the exemption for all twelve months of the calendar year, all generators shall complete a hazardous waste reduction plan in accordance with the requirements of subparagraph (b) of this paragraph. After completion of a plan, the generator shall maintain a current copy of the plan at the generating facility. The plan and the annual progress reports under subparagraph (c) of this paragraph shall be made available, upon request, to a representative of the department at any reasonable time. The department may make use of the information as it deems necessary to carry out its duties under this rule.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (e) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting part 3 in its entirety and substituting instead the following:

3. An eligible academic entity must keep a copy of the withdrawal notice on file at the eligible academic entity for three years from the date of the notification.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (n) of paragraph (12) of Rule 0400-12-01-.03 Notification Requirements and Standards Applicable to Generators of Hazardous Waste is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) An eligible academic entity must document the activities of the laboratory clean-out. The documentation must, at a minimum, identify the laboratory being cleaned out, the date the laboratory clean-out begins and ends, and the volume of hazardous waste generated during the laboratory clean-out. The eligible academic entity must maintain the records for a period of three years from the date the clean-out ends; and

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (c) of paragraph (1) of Rule 0400-12-01-.04 Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste is amended by deleting part 2 in its entirety and substituting instead the following:

2. (i) The operator of a hazardous waste transfer facility shall maintain a log of all shipments of hazardous waste entering and leaving the facility.
- (ii) The log required by subpart (i) of this part shall be developed by the owner or operator of the transfer facility and shall contain, at a minimum, the following information for each shipment:
  - (I) The date the shipment arrived;
  - (II) The generator's name and EPA identification number;
  - (III) The manifest document number associated with the shipment;
  - (IV) The date the hazardous waste was shipped out of the transfer facility; and

- (V) If the transporter mixes hazardous waste by placing them into a single container at the transfer facility:
  - I. The item number(s) and letter(s) from the manifest document number(s) for all separately containerized wastes that are combined in the container; and
  - II. If the hazardous wastes mixed in the container have different U.S. DOT shipping descriptions, the new manifest number as required by part (a)4 of this paragraph.

(iii) The information required by subpart (ii) of this part shall be retained for a period of three years and made available for review by the Commissioner.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 3 of subparagraph (c) of paragraph (2) of Rule 0400-12-01-.04 Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste is amended by deleting subpart (ii) in its entirety and substituting instead the following:

(ii) The Commissioner, after notifying the transporter and providing him with the opportunity to be heard on the matter, may by order terminate the permit of any transporter upon his violation of one or more of the applicable requirements of this Chapter or Chapter 0400-15-01.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 2 of subparagraph (b) of paragraph (1) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ix) in its entirety and substituting instead the following:

(ix) A person disposing of hazardous waste by means of underground injection subject to permits issued under Chapter 0400-45-06 of the rules of the State of Tennessee and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.);

(Comment: This rule does apply to the aboveground treatment or storage of hazardous waste before it is injected underground.)

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (3) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subparagraph (f) in its entirety and substituting instead the following:

(f) Required Aisle Space [40 CFR 265.35]

The owner or operator shall maintain three feet or more of aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the satisfaction of the Commissioner that aisle space is not needed for any of these purposes.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (5) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 2 in its entirety and substituting instead the following:

2. The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted below:

- (i) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I of paragraph (53) of this rule. This information must be maintained in the operating record until closure of the facility;
- (ii) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

(Comment: See subparagraphs (7)(j), (13)(j), and (14)(j) of this rule for related requirements.)

- (iii) Records and results of waste analysis, waste determinations, and trial tests performed as specified in subparagraphs (2)(d), (10)(k), (11)(g), (12)(c), (13)(d), (14)(o), (15)(b), (16)(f), (17)(c), (27)(e), (28)(n), and (29)(e) of this rule and in subparagraphs (1)(d) and (g) of Rule 0400-12-01-.10;
- (iv) Summary reports and details of all incidents that require implementing the contingency plan as specified in part (4)(g)9 of this rule;
- (v) Records and results of inspections as required by part (2)(f)4 of this rule (except these data need be kept only three years);
- (vi) Monitoring, testing, or analytical data and corrective action where required by paragraph (6) of this rule and by subparagraphs (2)(j), (6)(e), (10)(b), (10)(d), (10)(e), (11)(e), (11)(h), (12)(f), (12)(k), (13)(g), and (13)(i), subpart (13)(k)4(i), subparagraphs (14)(c), (14)(e), (15)(h), and (16)(h), parts (27)(e)3 through (27)(e)6, subparagraph (27)(f), parts (28)(n)4 through (28)(n)9, subparagraphs (28)(o), and (29)(d) through (29)(k) of this rule. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility;

(Comment: As required by subparagraph (6)(e) of this rule, monitoring data at disposal facilities must be kept throughout the post-closure period.)

- (vii) All closure cost estimates under subparagraph (8)(c) of this rule and, for disposal facilities, all post-closure cost estimates under subparagraph (8)(e) of this rule must be maintained in the operating record until closure of the facility;
- (viii) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Rule 0400-12-01-.10(1)(e), monitoring data required pursuant to a petition under Rule 0400-12-01-.10(1)(f), or a certification under Rule 0400-12-01-.10(1)(h), and the applicable notice required by a generator under Rule 0400-12-01-.10(1)(g)1. All this information must be maintained in the operating record until closure of the facility;
- (ix) For an off-site treatment facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (x) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);

- (xi) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h);
- (xii) For an on-site land disposal facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h);
- (xiii) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h); and
- (xiv) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h).
- (xv) Monitoring, testing, or analytical data, and corrective action where required by subparagraph (6)(a), subpart (6)(d)4(ii), and subpart (6)(d)4(v) of this rule and the certification as required by part (10)(g)6 of this rule must be maintained in the operating record until closure of the facility.

(Note: The authority for implementing 40 CFR 268.5 Procedures for Case-by-Case Extensions to an Effective Date and the authority for implementing 40 CFR 268.6 Petitions to Allow Land Disposal of a Prohibited Waste remains with the U.S. Environmental Protection Agency.)

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (f) of paragraph (5) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting parts 7 and 8 in their entirety and substituting instead the following:

- 7. For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- 8. For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 4 of subparagraph (c) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) The Commissioner will provide the owner or operator and the public, through a newspaper notice, published by the owner or operator as prepared and required by the Commissioner, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The owner or operator shall give public notice of the hearing, as prepared and required by the Commissioner, at least 30 days before it occurs. (Public notice of the hearing may be given at

the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Commissioner will approve, modify, or disapprove the plan within 90 days of its receipt. If the Commissioner does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan [four (4) copies] for approval within 30 days after receiving such written statement. The Commissioner will approve or modify this plan in writing within 60 days. If the Commissioner modifies the plan, this modified plan becomes the approved closure plan. The Commissioner must assure that the approved plan is consistent with subparagraphs (b) through (f) of this paragraph and the applicable requirements of paragraph (6) and subparagraphs (10)(h), (11)(i), (12)(i), (13)(k), (14)(k), (15)(l), (16)(l), (17)(e), and (30)(c) of this rule. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (i) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 6 in its entirety and substituting instead the following:

6. The Commissioner will provide the owner or operator and the public, through a newspaper notice, published by the owner or operator as prepared and required by the Commissioner, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The owner or operator shall give public notice as prepared and required by the Commissioner, of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. The Commissioner will approve, modify, or disapprove the plan within 90 days of its receipt. If the Commissioner does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan (four (4) copies) for approval within 30 days after receiving such written statement. The Commissioner will approve or modify this plan in writing within 60 days. If the Commissioner modifies the plan, this modified plan becomes the approved post-closure plan. The Commissioner must ensure that the approved post-closure plan is consistent with subparagraphs (h) through (k) of this paragraph. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (i) of part 7 of subparagraph (i) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (II) in its entirety and substituting instead the following:

- (II) These petitions will be considered by the Commissioner only when they present new and relevant information not previously considered by the Commissioner. Whenever the Commissioner is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, published by the owner or operator as prepared and required by the Commissioner, the opportunity to submit written comments within 30 days of the date of the notice. The Commissioner will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The owner or operator shall give the public notice, as prepared and

required by the Commissioner, of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures. After considering the comments, the Commissioner will issue a final determination, based upon the criteria set forth in subpart (i) of this part.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (ii) of part 7 of subparagraph (i) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) The Commissioner will provide the owner or operator and the affected public, through a newspaper notice, published by the owner or operator, as prepared and required by the Commissioner, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in item (i)(II) of this part. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following the conclusion of the public notice procedures. After considering the comments, he will issue a final determination.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 2 of subparagraph (I) of paragraph (7) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (i) in its entirety and substituting instead the following:

- (i) The Commissioner, in issuing enforceable documents under this subparagraph in lieu of permits, will assure a meaningful opportunity for public involvement which, at a minimum, includes public notice, published by the owner or operator, as prepared and required by the Commissioner, and opportunity for public comment (the owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures):
  - (I) When the Department becomes involved in a remediation at the facility as a regulatory or enforcement matter;
  - (II) On the proposed preferred remedy and the assumptions upon which the remedy is based, in particular those related to land use and site characterization; and
  - (III) At the time of a proposed decision that remedial action is complete at the facility. These requirements must be met before the Commissioner may consider that the facility has met the requirements of Rule 0400-12-01-.07(1)(b)9, unless the facility qualifies for a modification to these public involvement procedures under subpart (ii) or (iii) of this part.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (8) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 7 in its entirety and substituting instead the following:

- 7. The following terms are used in the specifications for the financial tests for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in

a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with Tennessee Rule 0400-45-06-.09(10) or 40 CFR 144.62(a), (b), and (c) (as this federal regulation exists on the effective date of this rulemaking), whichever is greater.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 7 of subparagraph (g) of paragraph (8) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ii) in its entirety and substituting instead the following:

- (ii) The phrase "current closure and post-closure cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (Rule 0400-12-01-.06(8)(p)6). The phrase "current plugging and abandonment cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (See 40 CFR 144.70(f), as that Federal regulation exists on the effective date of this rulemaking, or equivalent State requirement under Chapter 0400-45-06).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 8 of subparagraph (d) of paragraph (10) of Rule 0400-12-01-.05 Interim Status Standards for Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) The Commissioner will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The owner of operator shall place the notice, as prepared and required by the Commissioner, in a daily or weekly local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The Commissioner also will hold a public hearing,

in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given by the owner or operator, as prepared and required by the Commissioner, at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined. The owner or operator shall provide proof of the completion of all notice requirements to the Commissioner within ten days following conclusion of the public notice procedures.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (1) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 3 in its entirety and substituting instead the following:

3. The requirements of this rule apply to a person disposing of hazardous waste by means of underground injection subject to permits issued under the Tennessee Water Quality Control Act (T.C.A. §§69-3-101 et seq.), through Chapter 0400-45-06 of the rules of the State of Tennessee, and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.) only to the extent they are included in a permit-by-rule granted to such a person under Rule 0400-12-01-.07(1)(c).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (3) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subparagraph (f) in its entirety and substituting instead the following:

- (f) Required Aisle Space [40 CFR 264.35]

The owner or operator shall maintain three feet or more of aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless it can be demonstrated to the Commissioner that aisle space is not needed for any of these purposes.

(Comment: Rule 0400-12-01-.07 requires that an owner or operator who wishes to make the demonstration referred to above must do so with part B of the permit application.)

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (5) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 2 in its entirety and substituting instead the following:

2. The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:
  - (i) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I in paragraph (57) of this rule. This information must be maintained in the operating record until closure of the facility;
  - (ii) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

(Comment: See subparagraph (7)(j) of this rule for related requirements.)

- (iii) Records and results of waste analyses and waste determinations performed as specified in subparagraphs (2)(d), (2)(h), (14)(o), (15)(b), (30)(e), (31)(n), (32)(d) of this rule, and part (1)(d)1 and subparagraph (1)(g) of Rule 0400-12-01-.10;
- (iv) Summary reports and details of all incidents that require implementing the contingency plan as specified in part (4)(g)9 of this rule;
- (v) Records and results of inspections as required by part (2)(f)4 of this rule (except these data need be kept only three years);
- (vi) Monitoring, testing or analytical data, and corrective action where required by paragraph (6), subparagraphs (2)(j), (10)(b), (10)(d), (10)(f), (11)(c), (11)(d), (11)(g), (12)(c) through (12)(e), (13)(g), (13)(i), (13)(k), (14)(c) through (14)(e), (14)(j), (27)(c), parts (30)(e)3 through (30)(e)6, subparagraph (30)(f), parts (31)(n)4 through (31)(n)9, subparagraph (31)(o), and subparagraphs (32)(c) through (32)(k) of this rule. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility;
- (vii) For off-site facilities, notices to generators as specified in part (2)(c)2 of this rule;
- (viii) All closure cost estimates under subparagraph (8)(c) of this rule, and, for disposal facilities, all post-closure cost estimates under subparagraph (8)(e) of this rule. This information must be maintained in the operating record until closure of the facility;
- (ix) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment;
- (x) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to Rule 0400-12-01-.10(1)(e), a petition pursuant to Rule 0400-12-01-.10(1)(f), or a certification under Rule 0400-12-01-.10(1)(h), and the applicable notice required by a generator under Rule 0400-12-01-.10(1)(g)1. This information must be maintained in the operating record until closure of the facility;
- (xi) For an off-site treatment facility, a copy of the notice, and the certification and demonstration, if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (xii) For an on-site treatment facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h);
- (xiii) For an off-site land disposal facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g) or (h), whichever is applicable;
- (xiv) For an on-site land disposal facility, the information contained in the notice required by the generator or owner or operator of a treatment facility under Rule 0400-12-01-.10(1)(g), except for the manifest number, and the certification and demonstration if applicable, required under Rule 0400-12-01-.10(1)(h), whichever is applicable;

- (xv) For an off-site storage facility, a copy of the notice, and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h); and
- (xvi) For an on-site storage facility, the information contained in the notice (except the manifest number), and the certification and demonstration if applicable, required by the generator or the owner or operator under Rule 0400-12-01-.10(1)(g) or (h).
- (xvii) Any records required under subpart (1)(b)9(xiii) of this rule.
- (xviii) Monitoring, testing or analytical data where required by subparagraph (15)(h) of this rule must be maintained in the operating record for five years, or as required by a permit issued after the effective date of this rulemaking, but no less than five (5) years.
- (xix) Certifications as required by part (10)(g)6 of this rule must be maintained in the operating record until closure of the facility;

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (f) of paragraph (5) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting parts 8 and 9 in their entirety and substituting instead the following:

- 8. For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
- 9. For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (d) of paragraph (6) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 3 in its entirety and substituting instead the following:

- 3. In making any determination under part 2 of this subparagraph about the use of ground water in the area around the facility, the Commissioner will consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.8 or Tennessee Chapter 0400-45-06.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (e) of paragraph (6) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 3 in its entirety and substituting instead the following:

- 3. In making any determination under part 2 of this subparagraph about the use of ground water in the area around the facility the Commissioner will consider any identification of underground sources of drinking water and exempted aquifers made under 40 CFR 144.8 or Tennessee Chapter 0400-45-06.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (b) of paragraph (8) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting part 7 in its entirety and substituting

instead the following:

7. The following terms are used in the specifications for the financial tests for financial assurance for closure, post-closure care, and liability coverage. The definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Current assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

"Current liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with Tennessee Rule 0400-45-06-.09(10) or 40 CFR 144.62(a), (b), and (c) (as this Federal regulation exists on the effective date of this rulemaking), whichever is greater.

"Independently audited" refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

"Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

"Net working capital" means current assets minus current liabilities.

"Net worth" means total assets minus total liabilities and is equivalent to owner's equity.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 8 of subparagraph (g) of paragraph (8) of Rule 0400-12-01-.06 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (ii) in its entirety and substituting instead the following:

- (ii) The phrase "current closure and post-closure cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (part (p)6 of this paragraph). The phrase "current plugging and abandonment cost estimates" as used in subpart (i) of this part refers to the cost estimates required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer (See 40 CFR 144.70(f), as that Federal regulation exists on the effective date of this rulemaking, or equivalent State requirement under Chapter 0400-45-06).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 3 of subparagraph (b) of paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subpart (i) in its entirety and substituting instead the following:

- (i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with permits issued under the Tennessee Water Quality Control Act (T.C.A. §§69-3-101 et seq.), through Chapter 0400-45-06 of the rules of the State of Tennessee, and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.), will be deemed to have a permit under the Act for the injection well itself if they comply with the requirements of subpart (c)1(ii) and part (c)2 of this paragraph (permit by rule for injection wells).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (ii) of part 1 of subparagraph (c) of paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) Has permits for underground injection issued under the Tennessee Water Quality Control Act (T.C.A. §§69-3-101 et seq.), through Chapter 0400-45-06 of the rules of the State of Tennessee, and under Part C of the Federal Safe Drinking Water Act (42 U.S.C. 3001 et seq.).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (iii) of part 1 of subparagraph (c) of paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (II) in its entirety and substituting instead the following:

- (II) Meets all appropriate standards of Tennessee Chapters 0400-40-01 through 0400-40-05 that are in effect on the effective date of this rulemaking;

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subparagraph (m) in its entirety and substituting instead the following:

- (m) Pre-application public meeting and notice for an existing hazardous waste management facility, a new hazardous waste treatment, storage or disposal facility permit or a permit renewal.
  - 1. The requirements of this subparagraph shall apply to an owner or operator of an existing hazardous waste management facility required by subparagraph (2)(b) of this rule to submit a Part B permit application, and all permit applicants seeking a new hazardous waste facility permit, including new commercial hazardous waste management facilities subject to Chapter 0400-12-02, or applicants seeking a hazardous waste facility permit renewal under subparagraph (9)(a) of this rule.
  - 2. Prior to submission of a Part B permit application for a facility, or, for a new commercial hazardous waste management facility, prior to submitting a Part B permit application in accordance with subparagraph (2)(a) of Rule 0400-12-02-.02, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses. At the pre-application community meeting the applicant must provide a community impact statement which shall also be maintained in the facility file. The community impact statement shall include the following:
    - (i) A description of the facility (including a scale drawing or photograph of the facility) and the proposed hazardous waste management activities;
    - (ii) A description of security procedures at the facility;

- (iii) Information on hazard prevention and preparedness, including a summary of the contingency plan and arrangements with local emergency authorities;
  - (iv) A description of procedures, structures or equipment used to prevent employee exposure, hazards during unloading, runoff from handling areas and contamination of water supplies;
  - (v) A description of traffic patterns, traffic volume and control, condition of access roads, and the adequacy of traffic control signals; and
  - (vi) A description of the facility location information relative to compliance with flood plain requirements and with respect to any commercial applicant, seismic requirements.
3. The applicant shall submit documentation of the public notices, a summary of the meeting, along with the list of attendees and their addresses developed under part 2 of this subparagraph, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the Part B application, in accordance with part (5)(a)1 of this rule.
4. The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting.
- (i) The applicant shall provide public notice in all of the following forms:
    - (I) A newspaper advertisement.
 

The applicant shall publish a notice, fulfilling the requirements in subpart (ii) of this part, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Commissioner shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Commissioner determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.
    - (II) A visible and accessible sign.
 

The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subpart (ii) of this part. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.
    - (III) A broadcast media announcement.
 

The applicant shall broadcast a notice, fulfilling the requirements in subpart (ii) of this part, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Commissioner.
    - (IV) A notice to the permitting agency.
 

The applicant shall send a copy of the newspaper notice to the permitting agency and to any unit of local government having jurisdiction over the area where the facility is or is proposed to be located, and to each state agency having authority under state law with respect to the construction or operation of such facility.
  - (ii) The notices required under subpart (i) of this part must include:

- (I) The date, time, and location of the meeting;
- (II) A brief description of the purpose of the meeting;
- (III) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;
- (IV) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and
- (V) The name, address, and telephone number of a contact person for the applicant.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting subparagraphs (b) and (c) in their entirety and substituting instead the following:

(b) Existing Facilities [40 CFR 270.10(e)]

1. Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a permit must submit Part A of their permit application no later than whichever of the following dates first occurs:
  - (i) Ninety days after the effective date of regulations which first require them to comply with the standards set forth in Rules 0400-12-01-.05 or 0400-12-01-.09; or
  - (ii) Thirty days after the date they first became subject to the standards set forth in Rules 0400-12-01-.05 or 0400-12-01-.09; or
  - (iii) For generators generating greater than 100 kilograms but less than 1000 kilograms in a calendar month and treating, storing, or disposing of these wastes in an on-site facility for which he is required to apply for and obtain a permit under this rule, by March 24, 1987.
2. Owners and operators of existing facilities who submitted Part A application (or their equivalent) to the Commissioner under emergency rules promulgated earlier under the Act shall not be required to resubmit their Part A application unless required to do so under subparagraph (d) of this paragraph.
3. The Commissioner may by issuance of a public notice extend the date by which owners and operators of specified classes of existing hazardous waste management facilities must submit Part A of their permit application if he finds that
  - (i) there has been substantial confusion as to whether the owners and operators of such facilities were required to file a permit application and
  - (ii) such confusion is attributable to ambiguities in Rules 0400-12-01-.01, 0400-12-01-.02, or 0400-12-01-.05.
4. The Commissioner may by compliance order issued under T.C.A. §68-212-111 extend the date by which the owner and operator of an existing hazardous waste management facility must submit Part A of their permit application.
5. The owner or operator of an existing facility must submit Part B of their permit application as required by the Commissioner or Board. The Commissioner or Board may require

such submission at any time after the due date of the Part A application for the facility, except that any owner or operator of an existing facility shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing facility may voluntarily submit Part B of the application at any time.

6. Failure to furnish a requested Part B application on time, or to furnish in full the information required by the Part B application, is grounds for termination of interim status.
7. The Commissioner shall assign an Installation Identification Number to the owner or operator of an existing facility upon receipt of the Part A application.

(Note: Owners or operators of an existing hazardous waste management facility required by this subparagraph to submit a Part B permit application are required to comply with subparagraph (1)(m) of this rule.

(c) New Facilities [40 CFR 270.10(f), 124.31]

1. Except as provided in part 4 of this subparagraph, no person shall begin physical construction of a new hazardous waste management facility without having submitted Part A and Part B of the permit application and having received an effective permit.
2. An application for a permit for a new facility (including both Part A and Part B) may be filed with the Commissioner at any time after promulgation of those standards in Rule 0400-12-01-.06 applicable to such facility. Except as provided in part 4 of this subparagraph, all applications must be submitted at least 180 days before physical construction is expected to commence.
3. The owner or operator of a hazardous waste treatment or disposal facility which he anticipates will receive hazardous wastes generated off-site must submit his Part A permit application, completed to the best of his ability, to the Commissioner at least 120 days prior to submission of his Part B permit application. Failure to do so will result in the Commissioner delaying the processing of the Part B application for an equivalent amount of time.
4. Notwithstanding part 1 of this subparagraph, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the EPA under section (6)(e) of the federal Toxic Substance Control Act and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a permit to incinerate hazardous waste pursuant to this rule.

(Note: Owners or operators of a new hazardous waste management facility, including a new commercial hazardous waste management facility, are required to comply with subparagraph (1)(m) of this rule prior to submitting a Part B permit application.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (i) of part 3 of subparagraph (e) of Paragraph (7) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (IV) in its entirety and substituting instead the following:

- (IV) Each State agency having authority under State law with respect to the construction or operation of such facility; and

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (iv) of part 4 of subparagraph (e) of Paragraph (7) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) Applicability

The requirements of this subpart shall apply to all Part B applications seeking initial permits for hazardous waste management units. The requirements of this subpart shall also apply to Part B applications seeking renewal of permits for such units under subparagraph (9)(a) of this rule. The requirements of this subpart do not apply to permit modifications under part (9)(c)5 of this rule or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 10 of subparagraph (a) of paragraph (8) of Rule 0400-12-01-.07 Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities is amended by deleting item (II) in its entirety and substituting instead the following:

- (ii) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by Rule 0400-12-01-.06(5)(d)2(ix), and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification, or application. The permittee shall maintain records from all ground-water monitoring wells and associated ground-water surface elevations, for the active life of the facility, and, for disposal facilities, for the post-closure care period as well. This period may be extended by request of the Commissioner at any time.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Item (II) of subpart (i) of part 2 of subparagraph (a) of paragraph (5) of Rule 0400-12-01-.08 Fee System for Transporters, Stors, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters is amended by deleting it in its entirety and substituting instead the following:

- (II) Any generator who generates over 1 kilogram of acute hazardous waste, or over 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of an acute hazardous waste, in any calendar month of the previous calendar year; or

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Rule 0400-12-01-.08 Fee System for Transporters, Stors, Treaters, Disposers, and Certain Generators of Hazardous Wastes and for Certain Used Oil Facilities or Transporters is amended by deleting paragraph (11) in its entirety and substituting instead the following:

(11) Chromium Evaluation Review Fee

2,500 dollars for each chromium waste stream applicable to the evaluation in Rule 0400-12-01-.02(1)(d)2(v).

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting part 2 in its entirety and substituting instead the following:

- 2. Except as specifically provided otherwise in this rule or Rule 0400-12-01-.02, the requirements of this rule apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (iii) of part 3 of subparagraph (a) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting item (I) in its entirety and substituting instead the following:

- (I) Are disposed into a nonhazardous or hazardous injection well as defined in Tennessee's Underground Injection Control Program, Chapter 0400-45-06 [40 CFR 146.6(a)]; and

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subpart (iv) of part 3 of subparagraph (a) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting item (III) in its entirety and substituting instead the following:

- (III) The wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in part (2)(h)1 of this rule; and

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Part 2 of subparagraph (g) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting subpart (iv) in its entirety and substituting instead the following:

- (iv) The treatment facility must submit a one-time certification signed by an authorized representative with the initial shipment of waste or treatment residue of a restricted waste to the land disposal facility. A certification is also necessary for contaminated soil and it must state:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that it has been maintained and operated properly so as to comply with the treatment standards specified in Rule 0400-12-001-.10(3)(a) without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

A certification is also necessary for contaminated soil and it must state:

I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification and believe that it has been maintained and operated properly so as to comply with treatment standards specified in Rule 0400-12-01-.10(3)(j) without impermissible dilution of the prohibited waste. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

- (I) A copy of the certification must be placed in the treatment facility's on-site files. If the waste or treatment residue changes, or the receiving facility changes, a new certification must be sent to the receiving facility, and a copy placed in the file.
- (II) Debris excluded from the definition of hazardous waste under Rule 0400-12-01-.02(1)(c)6 (i.e., debris treated by an extraction or destruction technology provided by Table 1, subparagraph (3)(f) of this rule, and debris that the Commissioner has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of part 4 of this subparagraph rather than the certification requirements of this subpart.
- (III) For wastes with organic constituents having treatment standards expressed as concentration levels, if compliance with the treatment standards is based in whole or in part on the analytical detection limit

alternative specified in part (3)(a)4 of this rule, the certification, signed by an authorized representative, must state the following:

"I certify under penalty of law that I have personally examined and am familiar with the treatment technology and operation of the treatment process used to support this certification. Based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the nonwastewater organic constituents have been treated by combustion units as specified in Rule 0400-12-01-.10(3)(c), Table 1. I have been unable to detect the nonwastewater organic constituents, despite having used best good-faith efforts to analyze for such constituents. I am aware there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

- (IV) For characteristic wastes that are subject to the treatment standards in subparagraph (3)(a) of this rule (other than those expressed as a method of treatment) or subparagraph (3)(j) of this rule and that contain underlying hazardous constituents as defined in part (b)10 of this paragraph; if these wastes are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of Rule 0400-12-01-.10(3)(a) or Rule 0400-12-01-.10(3)(j) to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

- (V) For characteristic wastes that contain underlying hazardous constituents as defined in part (b)10 of this paragraph that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in subparagraph (3)(i) of this rule Universal Treatment Standards, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of Rule 0400-12-01-.10(3)(a) to remove the hazardous characteristic, and that underlying hazardous constituents, as defined in Rule 0400-12-01-.10(1)(b)10, have been treated on-site to meet the Rule 0400-12-01-.10(3)(i) Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (i) of paragraph (1) of Rule 0400-12-01-.10 Land Disposal Restrictions is amended by deleting part 4 in its entirety and substituting instead the following:

4. Wastes that exhibit a characteristic are also subject to the requirements of subparagraph (g) of this paragraph, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the nonhazardous solid waste landfill (Subtitle D) facility receiving the waste changes.
  - (i) The notification must include the following information:
    - (I) Name and address of the nonhazardous solid waste landfill (Subtitle D) facility receiving the waste shipment; and

- (II) A description of the waste as initially generated, including the applicable Hazardous Waste Code(s), treatability group(s), and underlying hazardous constituents (as defined in part (b)10 of this paragraph), unless the waste will be treated and monitored for all underlying hazardous constituents. If all underlying hazardous constituents will be treated and monitored, there is no requirement to list any of the underlying hazardous constituents on the notice.
- (ii) The certification must be signed by an authorized representative and must state the language found in subpart (g)2(iv) of this paragraph.
  - (I) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in item (g)2(iv)(IV) of this paragraph applies.
  - (II) (RESERVED)

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

Subparagraph (a) of paragraph (7) of Rule 0400-12-01-.12 Standards Standards for Universal Waste Management is amended by deleting it in its entirety and substituting instead the following:

- (a) General [40 CFR 273.80]
  - 1. Any person seeking to add a hazardous waste or a category of hazardous waste to this rule may petition for a regulatory amendment under this paragraph and Rules 0400-12-01-.01(3)(a)1 and 4.
  - 2. To be successful, the petitioner must demonstrate to the satisfaction of the Commissioner that regulation under the universal waste regulations of Rule 0400-12-01-.12 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by Rule 0400-12-01-.01(3)(a)1(ii). The petition should also address as many of the factors listed in subparagraph (b) of this paragraph as are appropriate for the waste or waste category addressed in the petition.
  - 3. The Commissioner will evaluate petitions using the factors listed in subparagraph (b) of this paragraph. The Commissioner will grant or deny a petition using the factors listed in subparagraph (b) of this paragraph. The decision will be based on the weight of evidence showing that regulation under this rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

Authority: T.C.A. §§ 68-212-101 et seq. and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: December 13, 2013

Signature: Patrick J. Flood

Name of Officer: Patrick J. Flood, P.E.

Title of Officer: Director of the Division of Solid Waste Management



Subscribed and sworn to before me on: December 13, 2013

Notary Public Signature: Mary Evans

My commission expires on: November 6, 2017

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Filed with the Department of State on: 12/16/13

Tre Hargett  
Tre Hargett  
Secretary of State

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