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Rulemaking Hearing Rule(s) Filing Form

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities
0400-11-01-.04	Specific Requirements for Class I, II, III, and IV Disposal Facilities
0400-11-01-.10	Convenience Centers / County Public Collection Receptacles
0400-11-01-.11	Requirements for Compost and Composting Facilities
0400-11-01-.13	Requirements for Land Application Facilities

(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>)

Amendment

Chapter 0400-11-01
Solid Waste Processing and Disposal

Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following:

0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities:

(1) General

(a) Purpose - The purpose of this rule is to establish the procedures, documentation, and other requirements which must be met in order for a person to be permitted to operate a solid waste storage, processing or disposal facility in Tennessee.

(b) Scope/Applicability

1. The requirements of this rule apply as specified to operators of facilities in Tennessee. Except as otherwise provided in this rule, no facility can lawfully store, process, or dispose of solid waste unless the operator has a permit.
2. Each classification of disposal, processing, or transfer facility on a site must have a separate permit. However, a processing facility may have more than one unit.
3. The following facilities or practices are not subject to the requirement to have a permit:
 - (i) Disposal of septic tank pumpings;
 - (ii) Junkyards;
 - (iii) Reclamation of surface mines;
 - (iv) Disposal of farming wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
 - (v) Disposal of landscaping and land clearing wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
 - (vi) Disposal of construction/demolition wastes at facilities which are on-site of generation and with a fill area of less than one acre in areal extent when completed;
 - (vii) Burning solid wastes for energy recovery or processing solid wastes to produce a fuel or processing solid waste for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;
 - (viii) Processing or disposal of solid wastes at hazardous waste management facilities authorized by permit or interim status under Rule 0400-12-01-.07;
 - (ix) Baling, shredding, and mechanical or other processing of solid waste on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;

- (x) Processing of industrial wastewaters in on-site facilities subject to regulation under T.C.A. § 69-3-101 et seq.;
- (xi) Processing or disposal of the following materials:
 - (I) Domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned wastewater treatment works for treatment;
 - (II) Industrial wastewater discharges that are point source discharges subject to permits under T.C.A. § 69-3-101 et seq.;
 - (III) Irrigation return flows;
 - (IV) Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);
 - (V) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;
 - (VI) Farming wastes which are returned to the soil as fertilizers; and
 - (VII) Mining overburden returned to the mine site;
- (xii) Processing or disposal of solid wastes by deep underground injection which are permitted under the Water Quality Act pursuant to the Underground Injection Control Regulations Chapter 1200-04-06.
- (xiii) The use of solely natural rock, dirt, stumps, pavement, concrete and rebar, and/or brick rubble as fill material.
- (xiv) The use and/or disposal of Petroleum contaminated soil and rock generated from the clean-up of leaking Underground Storage Tank sites regulated under Chapter 0400-18-01, provided such materials are treated and the benzene level is below 5 ppm and the total petroleum hydrocarbon level is below 100 ppm and provided that the method of treatment was reviewed and approved by the Division of Underground Storage Tanks.
- (xv) The processing of waste tires at facilities that are permitted or otherwise authorized by this Chapter to store and/or dispose of waste tires.
- (xvi) The storage of solid waste that is incidental to its recycling, reuse, reclamation or salvage provided that upon request of the Commissioner, the operator demonstrates to the satisfaction of the Commissioner that there is a viable market for all stored waste and provided that all waste is stored in a manner that minimizes the potential for harm to the public and the environment. Material may not be stored for more than one (1) year without written approval from the Division.
- (xvii) The storage of solid waste incidental to its collection. (The storage of solid waste at permitted facilities and permit-by-rule facilities and storage in a manner constituting disposal are not exempt from permitting requirements).
- (xviii) The collection of "used oil" and/or the processing of used oil filters, provided that the used oil and/or filters are received directly from "do-it-yourselfers" as the terms are defined at T.C.A. § 68-211-1002.
- (xix) The processing of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch.

- (xx) The land application of both publicly-owned treatment works water sludges and publicly-owned treatment waste water sludges from facilities that are subject to regulatory standards of the Department's Division of Water Supply and Division of Water Pollution Control.
 - (xxi) The burning of natural and untreated wood, landscaping wastes, landclearing wastes in either an air curtain destructor or by open burning.
 - (xxii) The beneficial use of waste, which does not constitute disposal, provided that upon request of the Commissioner, the generator demonstrates to the satisfaction of the Commissioner that such use is not detrimental to public health, safety, or the environment.
4. The Commissioner may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.
 5. No permit or other authorization shall be issued or renewed by the Division of Solid Waste Management pursuant to this Chapter until all fees and/or penalties owed by the applicant to the Division are paid in full, unless a time schedule for payments has been approved and all payments are current or contested fees or penalties are under appeal.
- (c) Coordinating Local Approval with Review of Permits and Permits by Rule
1. Regional Approval under T.C.A. Title 68, Chapter 211, Part 8.
 - (i) T.C.A. subdivision 68-211-814(b)(2) provides that an applicant for a permit for construction or expansion of a municipal solid waste landfill or incinerator must submit a copy of the application to the municipal solid waste region at or before the time the application is submitted to the department. It also requires the region to render a decision within 90 days of receipt of a complete application. Finally, it states that if the region rejects the application, the department shall not issue the permit unless it finds that the region's decision was arbitrary and capricious and unsupported in the record developed before the region.
 - (ii) A person applying to the department for a permit for construction or expansion of a municipal solid waste landfill or incinerator must submit documentation to the department within 120 days of its submittal of a complete application to the region that shall include:
 - (I) evidence of the date on which it submitted its application to the region;
 - (II) a copy of a notice that the application was determined to be complete by the region, if one was issued; and
 - (III) a copy of the decision of the region or a notarized statement that the region failed to act within the 90 days after receipt of a complete application as provided by T.C.A. subsection 68-211-814(b).
 - (iii) Only for purposes of subparts (i) and (ii) of this part, "application" or "complete application" shall mean:
 - (I) I. For an incinerator, a copy of the notification required by part (2)(b)2 of this rule that contains the information required by subparts (i) through (v) of that part; and
 - II. For a landfill, a copy of the Part 1 application required by subpart (3)(c)1(i) of this rule; and

- (II) Other information which the region may reasonably require for its purposes of determining whether a proposed landfill or incinerator is consistent with the region's solid waste plan.

2. Local Approval under T.C.A. Title 68, Chapter 211, Part 7

- (i) T.C.A. Title 68, Chapter 211, Part 7, known as the "Jackson Law," authorizes counties and municipalities to opt-into its provisions in accordance with T.C.A. § 68-211-707. If a local government does so, it may then approve or disapprove the proposed new construction for solid waste disposal by landfilling (including coal ash fills) and solid waste processing facilities in accordance with T.C.A. § 68-211-704. For purposes of T.C.A. §68-211-105(h), a "new landfill for solid waste disposal" or a "new solid waste landfill" means any of the following:
 - (I) A solid waste landfill that received a tentative decision from the department to issue a permit after June 2, 1989 (the date the Jackson Law went into effect);
 - (II) A lateral expansion (a modification that expands the previously permitted footprint) of a solid waste landfill described in item (I) of this part; and
 - (III) A solid waste landfill described in item (I) of this part whose owner or operator proposes to accept waste that would require a change of the landfill's classification under this chapter to a classification with higher standards (i.e., from a Class III/IV landfill to a Class I or II landfill, or from a Class II to a Class I).
- (ii) The Jackson Law does not apply to facilities that existed on June 2, 1989 (the date the Jackson Law went into effect) and it does not apply to an expansion of those facilities. Facilities that existed on June 2, 1989 include those that had received from the department a tentative decision to issue the facility a permit.
- (iii) The Jackson Law does not apply to any private landfill that accepts solid waste solely generated by its owner if the waste is solely generated within the county where the landfill is located and if the private landfill does not accept county or municipal solid waste or ordinary household garbage.
- (iv) If a local government(s) has not adopted the Jackson Law prior to the date the department issues public notice of a tentative decision to issue a permit, then the Jackson Law does not apply to that permitting process. Public Acts 1989, Chapter 515, Section 13 provides that the Jackson Law shall only be applicable to any permit application for which a tentative approval/determination has not been public noticed.

(Note: A current list of local governments that have adopted the Jackson Law can be found on the department's website.)
- (v) The department shall not review or approve a notification for a solid waste processing facility or an application for a new solid waste landfill that is proposed to be located within jurisdictions that have adopted the Jackson Law until the application or notification for a processing facility permit by rule is approved pursuant to T.C.A. § 68-211-704.
- (vi) Within jurisdictions in which the Jackson Law is applicable, any person seeking department review and approval of an application for a new solid waste landfill permit, shall provide:
 - (I) Documentation to the department that the applicant submitted plans for the new solid waste landfill to the local government(s) in compliance with

T.C.A. § 68-211-701 and that those plans included information about the following {T.C.A. subsection 68-211-704(b)}:

- I. The type of waste to be disposed of at the landfill;
 - II. The method of disposal to be used at the landfill (including a drawing, map, or aerial photograph showing the location and maximum dimensions of the proposed landfill or landfill expansion);
 - III. The projected impact on surrounding areas from noise and odor created by the proposed landfill;
 - IV. The projected impact on property values on surrounding areas created by the proposed landfill;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed landfill;
 - VI. The economic impact on the county, city or both;
 - VII. The compatibility with existing development or zoning plans; and
 - VIII. Any other factor which may affect the public health, safety or welfare.
- (II) A copy of the public notice issued by the local government(s) required by T.C.A. subsection 68-211-703(a);
- (III) Evidence that the signs required by T.C.A. subsection 68-211-703(h) were erected;
- (IV) The date of any public hearing held; and
- (V) Evidence of approval by the local government(s).
- (vii) For solid waste processing facilities that are proposed to be located within jurisdictions in which the Jackson Law is applicable, any person seeking a permit by rule authorization for a new solid waste processing facility or a lateral expansion of a facility (a modification that expands the previously permitted footprint) shall provide:
- (I) Documentation to the department that the applicant submitted a copy of the notification required by part (2)(b)2 of this rule that contains the information required by subparts (i) through (v) of that part for the proposed new solid waste processing facility or lateral expansion of a solid waste processing facility to the local government(s) in compliance with T.C.A. § 68-211-701 and that the notification included information about the following:
 - I. The type of waste to be processed;
 - II. The method of processing;
 - III. The projected impact on surrounding areas from noise and odor;
 - IV. The projected impact on property values on surrounding areas;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility;

- VI. The economic impact on the county, city or both;
- VII. The compatibility with existing development or zoning plans; and
- VIII. Any other factor which may affect the public health, safety or welfare.

(II) Evidence of approval by the local government(s).

3. Local Approval under Tennessee Private Acts, 1990, Chapter 210

- (i) Section 1 of Chapter 210 of the Private Acts of 1990 provides that no permit may be issued for a new solid waste landfill or processing facility in Lewis County if the application was submitted by a county or municipality outside Lewis County, unless the legislative body of Lewis County approves it.
- (ii) Any county or municipality outside of Lewis County that applies to the department for a permit for a new landfill in Lewis County shall include with the application documentation that the legislative body of Lewis County was aware of and approved the landfill and the location and maximum dimensions of the proposed landfill or landfill expansion.
- (iii) Any county or municipality outside of Lewis County that applies to the department for a permit for a new processing facility, or a notification for a permit by rule for a new processing facility shall include with the application or notification documentation that the legislative body of Lewis County was aware of and approved the processing facility.

4. Public Notice of Drilling in Certain Counties, including Bledsoe, Lawrence, and Lewis

- (i) T.C.A. subsection 68-211-106(g) requires that, in the counties named or described in subpart (ii) of this part, any person applying for a permit for a solid waste processing or disposal facility for which core drilling is required must notify the department 45 days before the drilling and shall give public notice 30 days before the drilling. It also requires the applicant to include a copy of the public notice in the permit application to the department and mandates that the application be denied if any of these provisions is not met.

(Note: This chapter does not require core drilling for any processing facilities.)

- (ii) The requirements of subpart (i) of this part apply in any county whose population is not less than 9,650 and not more than 9,750 and not less than 34,075 and not more than 34,175 in the 1980 federal census or any subsequent federal census. In 1980, these population brackets applied to Lewis and Lawrence Counties. In 1990 Bledsoe County was in the smaller bracket so this law now applies in Bledsoe County. It would also apply to any other county whose population is within those brackets in any future federal census.
- (iii) In Bledsoe, Lawrence, and Lewis Counties, and any other county with a population in a future federal census that falls within the brackets stated in subpart (ii) of this part, the applicant for any permit for a solid waste disposal facility that requires core drilling shall include with the application a copy of the public notice that was given that shows the date it was published.

(2) Permits by Rule

- (a) All permit by rule facilities shall keep any records that are required by these rules and a copy of its permit by rule authorization at the facility or at another location approved by the Department. Notwithstanding any other provision of this rule, except for subparagraph (1)(c) of this rule, and

provided they are not excluded pursuant to part (1)(b)3 of this rule, the following classes of activities shall be deemed to have a permit by rule if the conditions listed are met:

1. A processing facility, if:
 - (i) The operator complies with the notification requirement of subparagraph (b) of this paragraph;
 - (ii) The facility is constructed, operated, maintained, and closed in such a manner as to minimize:
 - (I) The propagation, harborage, or attraction of flies, rodents, or other disease vectors;
 - (II) The potential for explosions or uncontrolled fires;
 - (III) The potential for releases of solid wastes or solid waste constituents to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management agencies; and
 - (IV) The potential for harm to the public through unauthorized or uncontrolled access;
 - (iii) The facility has an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility;
 - (iv) The facility, if open to the public, has clearly visible and legible signs at the points of public access which indicate the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedule of charges (if applicable), and other necessary information;
 - (v) Trained personnel are always present during operating hours to operate the facility;
 - (vi) The facility has adequate sanitary facilities, emergency communications (e.g., telephone), and shelter available for personnel;
 - (vii) The facility's access road(s) and parking area(s) are constructed so as to be accessible in all weather conditions;
 - (viii) Except for composting facilities utilizing landscaping and land clearing wastes only, all waste handling (including loading and unloading) at the facility is conducted on paved surfaces;
 - (ix) There is no storage of solid wastes at the facility except in the containers, bins, lined pits or on paved surfaces, designated for such storage;
 - (x) Except for incinerators or energy recovery units, there is no burning of solid wastes at the facility;
 - (xi) There is no scavenging of solid wastes at the facility and any salvaging is conducted at safe, designated areas and times;
 - (xii) Wind dispersal of solid wastes at or from the facility is adequately controlled, including the daily collection and proper disposal of windblown litter and other loose, unconfined solid wastes;

- (xiii) All liquids which either drain from solid wastes or are created by washdown of equipment at the facility go to either:
 - (I) A wastewater treatment facility permitted to receive such wastewaters under T.C.A. §§ 69-3-101 et seq. (Tennessee Water Quality Control Act, or
 - (II) Other methods approved by the Commissioner.
- (xiv) The facility receives no special wastes unless:
 - (I) Such receipt has been specifically approved in writing by the Department, and
 - (II) Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes;
- (xv) The operator can demonstrate, at the request of the Commissioner, that alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes his facility handles are available in the event his facility can not operate;
- (xvi) The facility has properly maintained and located fire suppression equipment (e.g., fire extinguishers, water hoses) continuously available in sufficient quantities to control accidental fires that may occur;
- (xvii) All waste residues resulting from processing activities at the facility are managed in accordance with this Chapter or Chapter 0400-12-01 (Hazardous Waste Management), whichever is applicable, and/or with any other applicable state or federal regulations governing waste management;
- (xviii) The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Division Director in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Division Director shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.
- (xix) New solid waste processing facilities shall not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.
- (xx) The facility must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:
 - (I) Location in the floodplain will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain.
 - (II) The facility is designed, constructed, operated, and maintained to prevent washout of any solid waste.
- (xxi) The facility does not:
 - (I) Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or

- (II) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.
 - (xxii) The owner/operator may not store solid waste until the processing equipment has been installed on-site and is ready for use.
 - (xxiii) The owner/operator of a solid waste processing facility which has a solid waste storage capacity of 1000 cubic yards or greater shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner to insure the proper operation, closure, and post closure care of the facility. The types of financial assurance instruments that are acceptable are those specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116(a) and at subparagraph (3)(b) of Rule 0400-11-01-.03.
 - (xxiv) The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must include in the permit-by-rule notification a demonstration that the facility does not pose a bird hazard to aircraft. The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.
2. A coal ash fill area, if:
- (i) The coal ash disposed of is not hazardous as defined in subparagraph (1)(c) of Rule 0400-12-01-.02 of the rules governing hazardous waste management.
 - (ii) The coal ash disposed of is fly ash, bottom ash, or boiler slag resulting primarily from the combustion of fossil fuel.
 - (iii) Disposal is limited to:
 - (I) Coal ash in engineered structures for the following projects: a highway overpass, levee, runway, or foundation backfill.
 - (II) Such other similar uses as the Commissioner may approve in writing. Financial assurance may be required by the Commissioner if deemed appropriate for these case-by-case projects.
 - (iv) The operator complies with the notification requirement of subparagraph (b) of this paragraph;
 - (v) The fill area is constructed, operated, maintained, and closed in such a manner as to minimize:
 - (I) The potential for harmful release of solid wastes or solid waste constituents to the environment; and
 - (II) The potential for harm to the public through unauthorized or uncontrolled access;
 - (vi) The fill area, until development is complete, must have an artificial or natural barrier to control access of unauthorized entry.

- (vii) There must be equipment available that is capable of spreading and compacting the coal ash, and capable of handling the earthwork required during the periods that coal ash is received at the fill area.
- (viii) The coal-ash fill project is designed with:
 - (I) A geologic buffer of at least three feet with a maximum saturated conductivity of 1×10^{-6} centimeters per second between the base of the fill and the seasonal high water table of the uppermost unconfined aquifer or the top of the formation of a confined aquifer, or such other protection as approved by the Commissioner taking into account site specific coal ash and soil characteristics, ambient groundwater quality, and projected flows in and around the site; and
 - (II) A ground water monitoring program approved by the department that reports sampling results to the department at least once each year. If sampling results indicate that the fill area has caused the ground water protection standards to be exceeded, the owner or operator of the facility shall commence an assessment monitoring program in accordance with regulations adopted by the board and carry-out all corrective measures specified by the Commissioner.
- (ix) At the completion of the coal-ash fill project, and no later than 90 days after operations have ceased, the final cover must meet the requirement of at least 24 inches of compacted soil on the coal-ash project area, except for those areas covered by structures, asphalt, concrete (including concrete containing coal ash), or other similar barriers to water infiltration. The upper six inches of this cover shall be able to support the growth of suitable vegetation.
- (x) The final surface of the coal-ash fill area is graded and/or provided with drainage facilities in a manner that:
 - (I) Minimizes erosion of cover material (e.g., no steep slopes);
 - (II) Promotes drainage of precipitation falling on the area (e.g., prevents pooling);
 - (III) Provides a surface drainage system which is consistent with the surrounding area and in no way significantly adversely affects proper drainage from these adjacent lands; and
 - (IV) The operator must take other erosion control measures (e.g., temporary mulching or seeding, silt barriers) as necessary to control erosion of the site.
- (xi) Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any oils or other chemicals (other than water) for dust suppression must be approved in writing beforehand by the Department.
- (xii) Prior to excavation, all bore holes drilled or dug during subsurface investigation of the site, piezometers, and abandoned wells which are either in or within 100 feet of the areas to be filled must be backfilled with a bentonite slurry or other sealant approved by the Commissioner to an elevation at least ten feet greater than the elevation of the lowest point of the fill base (including any liner), or to the ground surface if the site will be excavated less than ten feet below grade.

- (xiii) The fill area must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:
 - (I) Location in the floodplain will not restrict the flow of the 100-year flood, nor reduce the temporary water storage capacity of the floodplain.
 - (II) The fill area is designed, constructed, operated, and maintained to prevent washout of any solid waste.
 - (xiv) There must be installed on-site a permanent benchmark (e.g., a concrete marker) of known elevation.
 - (xv) New coal ash fill areas and lateral expansions shall not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.
 - (xvi) A fill area must not be located in highly developed karst terrain (i.e., sink holes and caves).
 - (xvii) The coal-ash fill project does not:
 - (I) Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or
 - (II) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.
 - (xviii) Notice in Deed to Property - Except for coal ash fills on federal, state or local government owned right-of-ways, the operator must ensure that, within 90 days of meeting final cover requirements and prior to the sale or lease of the coal ash fill area property, there is recorded, a notation on the deed to the property or on some other instrument which is normally examined during a title search that will in perpetuity notify any person conducting a title search that coal ash has been placed on the property.
3. A tire storage facility, if:
- (i) The county legislative body, of a county that does not own or operate a permitted Class I, Class III or Class IV facility which is accepting waste tires, complies with the notification requirement of part 2 of this subparagraph; and
 - (ii) The facility is constructed, operated, maintained and closed in a manner consistent with items (2)(k)3(i)(I) and (II) of Rule 0400-11-01-.04 and subparts 1(iii), (iv), (v), (vi), (vii), (x), (xi), (xiii), (xiv), (xvi), (xvii), (xviii), (xix), (xx) and (xxi) of this subparagraph.
 - (iii) Contracts for disposal or recycling of the shredded tires have been established.
4. A convenience center, if:
- (i) The operator complies with the notification requirements of Part 2 of this subparagraph;
 - (ii) The operator attaches to his notification all attachments required at part (2)(b)1 of Rule 0400-11-01-.10; and
 - (iii) The facility is designed and operated in compliance with Rule 0400-11-01-.10.
5. A transfer station, if:

- (i) The operator complies with the notification requirements of Part 2 of this subparagraph; and
 - (ii) The facility is constructed, operated, maintained, and closed in a manner consistent with subparts 1(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xviii), (xix), (xx), (xxi) and (xxiv) of this subparagraph.
6. A land application facility, if:
- (i) The operator complies with the notification requirements of subparagraph (b) of this paragraph;
 - (ii) The operator attaches to his notification all attachments required at subparagraph (1)(c) of Rule 0400-11-01-.13; and
 - (iii) The facility is designed and operated in compliance with Rule 0400-11-01-.13.
- (b) The operator of a facility deemed to have a permit by rule must notify the Department in accordance with the requirements of this subparagraph.
- 1. No person shall begin operation on a new facility without having submitted notification and received written approval from the Commissioner.
 - 2. Notification must be submitted on forms provided by the Department and completed as per the accompanying instructions. It must include, but shall not necessarily be limited to, the following information:
 - (i) The processing and disposal activities conducted and the types of solid wastes handled;
 - (ii) The name, mailing address, and location of the facility;
 - (iii) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other contact person;
 - (iv) If different from the operator, the name, mailing address, and telephone number of the landowner, along with a signed letter from such owner to the Department allowing access to the property for purposes of inspection;
 - (v) A map (e.g., U.S.G.S. 7.5 minute topographic map) which clearly indicates the location of the facility;
 - (vi) A written narrative must be submitted that describes how the facility/operation will comply with all applicable standards listed in part 1 of this subparagraph and any other information deemed necessary by the Commissioner; and
 - (vii) A design plan attached indicating boundaries of the site and all on-site appurtenances.
 - 3. The notification under part 2 of this subparagraph shall be revised within 30 days of a change in facility ownership with new information as necessary but at a minimum to include changes to subparts 2(iii) and (iv) of this subparagraph along with payment of the fee specified at part (2)(b)6 of Rule 0400-11-01-.07.
- (c) Duty to Comply - The permittee must comply with all conditions of this permit-by-rule, unless otherwise authorized by the Department in writing. Any permit-by-rule noncompliance constitutes a violation of the Act and is grounds for the assessment of civil penalties by the Commissioner.

(3) Application for a Permit

(a) General

1. Any person who is required to have a permit shall complete, sign, and submit an application to the Commissioner as described in this paragraph.
2. If the property on which a facility is located is owned by a person(s) different from the operator, then that owner(s) must also sign the permit application.
3. The Commissioner shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the Commissioner receives an application form and any supplemental information which is completed to his satisfaction.
4. Operators shall keep records of all data and supplemental information used to complete permit applications until the end of the post-closure care period.
5. Five copies of the required permit application must be submitted to the Commissioner.
6. All reports, plans, specifications, and manuals must be prepared in proper technical format, typewritten, and bound (e.g., 3 ring loose-leaf binders).
7. All permit applications will be signed as follows:
 - (i) For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means (I) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy - or decision making functions for the corporation, or (II) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding 25 million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - (iii) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a federal agency includes (I) the chief executive officer of the agency, or (II) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA) or for overall compliance with environmental regulatory requirements of the agency.
8. All reports required by permits and other information requested by the Commissioner shall be signed by a person described in part 7 of this subparagraph, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (i) The authorization is made in writing by a person described in part 7 of this subparagraph;
 - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or person of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 - (iii) The written authorization is submitted to the Commissioner.

9. If an authorization under part 8 of this subparagraph is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of part 8 of this subparagraph must be submitted to the Commissioner prior to or together with any reports or information to be signed by an authorized representative.

10. Any person signing a document under parts 7 or 8 of this subparagraph shall make the following certification:

"I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. As specified in T.C.A. § 39-16-702(a)(4), this declaration is made under penalty of perjury."

(b) Permitted Facilities - Permitted facilities shall not be subjected to public notice and public hearings when making permit modifications that are necessary to comply with rules passed subsequent to the issuance of the facility's original permit.

(c) Contents of the Permit Application

1. Contents of the Disposal Permit Application -- A complete permit application shall consist of a Part I with the applicant's disclosure statement and a Part II as described in this subparagraph.

(i) The Part I disposal permit application must be submitted on forms provided by the Department with appropriate attachments which includes a disclosure statement as required by T.C.A. 68-211-106(h). All forms must be completed as per the accompanying instructions. The Part I application must include, but shall not necessarily be limited to, the following information:

(I) The activities conducted or to be conducted by the applicant which require him to obtain a permit under this rule and the general types of wastes handled or to be handled;

(II) The name, mailing address, and location of the facility for which the application is submitted;

(III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other person who will serve as the primary contact with the Department;

(IV) If different from the applicant, the name, mailing address, and telephone number of the land owner, along with a signed letter from such owner to the Department allowing access to the property for such investigations as may be necessary to determine its suitability as a disposal facility;

(V) The name, mailing address, and telephone number of the zoning authority of jurisdiction (if any), and the current zoning status of the property; and

(VI) A United States Geological Survey (U.S.G.S.) 7.5 minute topographic map extending one-half mile beyond the property boundaries of the facility which clearly depict:

I. The property boundaries;

- II. The facility and each of its solid waste processing or disposal units and any hazardous waste treatment, storage, or disposal units (to include past waste disposal units); and
 - III. Those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.
 - (ii) The Part II disposal permit application shall consist of those reports, plans and specifications, or other documentation necessary to provide the information specified in paragraph (9) of Rule 0400-11-01-.04.
- 2. Contents of the Compost Facility Permit Application -- A complete permit application shall consist of a Part I with the applicant's disclosure statement and a Part II as described in this subparagraph.
 - (i) The Part I compost facility permit application must be submitted on forms provided by the Department with appropriate attachments which includes a disclosure statement as required by T.C.A. 68-211-106(h). All forms must be completed as per the accompanying instructions. The Part I application must include, but shall not necessarily be limited to, the following information:
 - (I) The activities conducted or to be conducted by the applicant which require him to obtain a permit under this rule and the general types of wastes handled or to be handled;
 - (II) The name, mailing address, and location of the facility for which the application is submitted;
 - (III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other person who will serve as the primary contact with the Department;
 - (IV) If different from the applicant, the name, mailing address, and telephone number of the land owner, along with a signed letter from such owner to the Department allowing access to the property for such investigations as may be necessary to determine its suitability as a composting facility;
 - (V) The name, mailing address, and telephone number of the zoning authority of jurisdiction (if any), and the current zoning status of the property; and
 - (VI) A United States Geological Survey (U.S.G.S.) 7.5 minute topographic map which clearly indicates the location of the facility.
 - (ii) The Part II compost facility permit application shall consist of those reports, plans and specifications, or other documentation necessary to provide the information specified in paragraph (5) of Rule 0400-11-01-.11. The master plan, design plan, and narrative description of the facility and operation are components of the Part II application and each must be prepared by a registered engineer. Any registered engineer herein required shall be governed by the terms of T.C.A. Title 62, Chapter 2.
- (d) Recertification by Disposal Facility Permittees for Facilities Whose Initial Operation is Delayed
 - 1. If the facility does not initiate construction and/or operation within one year of the date a permit (issued pursuant to paragraph (4) of this rule) becomes effective, the permittee must submit a letter to the Commissioner 180 days prior to construction which either:

- (i) Certifies that the information submitted in the permit application is still accurate and complete; or
 - (ii) Identifies those changes that have occurred in the information submitted in the permit application.
 - 2. Such letter must be signed as set forth in part (a)8 of this paragraph.
 - 3. Upon his receipt of such letter or other information that indicates that a change has occurred in the information submitted in the permit application, the Commissioner shall:
 - (i) Determine if cause exists under paragraph (6) of this rule to modify, to revoke and reissue, or to terminate the permit; and
 - (ii) Take such action as he deems appropriate pursuant to paragraph (6) of this rule.
 - 4. The permittee may not initiate construction and/or operation unless and until authorized by the Commissioner in writing.
- (4) Processing the Permit
 - (a) Preliminary Notices - Within 30 days after the date of receipt, the Commissioner shall issue a preliminary public notice under subparagraph (e) of this paragraph for each Part I permit application received.
 - (b) Review of the Permit Application
 - 1. The Commissioner shall review every permit application for completeness. Upon completing the review, the Commissioner shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Commissioner shall list the information necessary to make the application complete. The Commissioner shall notify the applicant that the application is complete upon receiving the required information. After the application is completed, the Commissioner may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.
 - 2. When the Commissioner decides that a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a date shall be scheduled.
 - (c) Draft Permits
 - 1. Once an application is complete, the Commissioner shall tentatively decide whether the permit should be issued or denied.
 - 2. If the Commissioner tentatively decides the permit should be denied, he shall prepare a notice to deny. A notice of intent to deny the permit shall be sent to the applicant. The applicant may wish to appeal the Commissioner's decision to the Board by filing a written petition as provided at T.C.A. 68-211-113(b).
 - 3. If the Commissioner tentatively decides the permit should be issued, he shall prepare a draft permit as set forth in part 4 of this subparagraph.
 - 4. A draft permit shall contain (either expressly or by reference) all applicable terms and conditions from paragraph (5) of this rule.
 - 5. All draft permits shall be subject to the procedures of subparagraphs (d) through (i) of this paragraph, unless otherwise specified in those subparagraphs.

(d) Fact Sheets

1. A fact sheet shall be prepared for every draft permit (or notice to deny the permit).
2. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit to include, when applicable:
 - (i) A brief description of the type of facility or activity which is the subject of the draft permit;
 - (ii) The type and quantity of wastes which are proposed to be or are being disposed of;
 - (iii) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the permit application;
 - (iv) Reasons why any requested waivers or alternatives to required standards do or do not appear justified.
 - (v) A description of the procedures for reaching a final decision on the draft permit, including:
 - (I) The beginning and ending dates of the comment period under subparagraph (e) of this paragraph and the address where comments will be received;
 - (II) Procedures for requesting a public hearing; and
 - (III) Any other procedures by which the public may participate in the final decision; and
 - (vi) Name and telephone number of a person to contact for additional information.
3. The Commissioner shall send this fact sheet to the applicant and, upon request, to any other person.

(e) Public Notices and Public Comments

1. Scope
 - (i) An applicant shall give public notice, as prepared and directed by the Commissioner that the following actions have occurred:
 - (I) A permit application as described in subparagraph (a) of this paragraph has been received;
 - (II) A draft permit has been prepared under part (c)3 of this paragraph or a new draft permit prepared under subparagraph (6)(a) or (6)(b) of this rule;
 - (III) A public hearing has been scheduled under subparagraph (g) of this paragraph; or
 - (IV) A change of ownership.
 - (ii) No public notice is required when a request for a permit modification, revocation and reissuance, or termination is denied under paragraph (6) of this rule. Written notice of that denial shall be given to the permittee.

- (iii) Public notices may describe more than one permit or permit action.
- (iv) An applicant shall provide proof of the completion of all notices required to be given by the Commissioner within 10 days following conclusion of the public notice procedures.
- (v) The Commissioner shall give a public notice that a notice of intent to deny an original permit has been prepared under part (c)2 of this paragraph.

2. Timing

- (i) Public notice of the preparation of a draft permit or a notice of intent to deny an original permit shall allow at least 45 days for public comment.
- (ii) Public notice of a public hearing shall be given at least 15 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

3. Methods - Public notice of activities described in subpart 1(i) of this subparagraph shall be given by all of the following:

- (i) By posting in a public place (e.g., post office, library, health department, etc) of the municipalities nearest the site under consideration; and
- (ii) By publication of a notice in a daily or weekly local newspaper of general circulation as designated by the Commissioner; and
- (iii) By delivery to the county legislative body in which a proposed landfill is located and by delivery to the governing body of any municipality in which the proposed landfill is located or which is within one mile of such proposed landfill; and
- (iv) By any other method deemed necessary or appropriate by the Commissioner to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Such additional notices shall be the financial responsibility of the Commissioner. The Commissioner is financially responsible for newspaper notices in excess of one in each county where coverage is deemed necessary.

4. Contents

- (i) General Public Notices - Except for the preliminary public notices described in subparagraph (a) of this paragraph, all public notices issued under this part shall contain the following minimum information:
 - (I) Name, address and phone number of the office processing the permit action for which notice is being given;
 - (II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 - (III) A brief description of the business conducted at the facility or activity described in the permit application including the size and directions from a state highway or interstate, and/or a map (e.g., a sketched or copied street map if the location is remote or not easily accessible) to the facility and type of waste accepted;
 - (IV) A brief description of the comment procedures required by subparagraphs (f) and (g) of this paragraph, including a statement of procedures to request a public hearing (unless a hearing has already

been scheduled), and other procedures by which the public may participate in the final permit decision;

- (V) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of draft permits and fact sheets;
 - (VI) A description of the time frame and procedure for making a final determination on this facility application approval or disapproval;
 - (VII) If the notice is announcing a public hearing it will state the time and location of the hearing and make reference to any prior public notice issued for each site.
 - (VIII) Any additional information considered necessary or proper.
- (ii) Public Notices for Public Hearing - In addition to the general public notice described in subpart (i) of this part, the public notice of a public hearing shall contain the following information:
- (I) Reference to the dates of previous public notices relating to the permit action;
 - (II) Date, time, and place of the public hearing; and
 - (III) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures.
 - (IV) A concise statement of the issues raised by the persons requesting the hearing.
- (iii) Preliminary Notices - The preliminary public notice described in subparagraph (a) of this paragraph shall contain the following information:
- (I) The information from items (i)(I), (II), (III), (V), (VI), and (VII) of this part; and
 - (II) A brief description of the permitting procedures that will be followed, focusing especially upon the opportunities for public participation in the process.
- (f) Public Comments and Requests for Public Hearings - During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subparagraph (j) of this paragraph.
- (g) Public Hearings
1. (i) The Commissioner shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s).
 - (ii) The Commissioner may also hold a public hearing at his discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
 - (iii) The Commissioner shall hold a public hearing whenever he receives written notice of significant public concern or opposition to a draft permit and a request

for a hearing, within 45 days of public notice under subpart (e)2(i) of this paragraph.

(iv) Public hearing held pursuant to this rule shall be at a location convenient to the nearest population center to the subject facility.

(v) Public notice of the hearing shall be given as specified in subparagraph (e) of this paragraph.

2. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subparagraph (e) of this paragraph shall automatically be extended to the close of any public hearing under this subparagraph. The hearing officer may also extend the comment period by so stating at the hearing.

3. A tape recording or written transcript of the hearing shall be made available to the public.

(h) Reopening of the Public Comment Period

1. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit action, the Commissioner may (at his discretion or as directed by the Board) take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified, under subparagraph (c) of this paragraph;

(ii) Prepare a fact sheet or revised fact sheet under subparagraph (d) of this paragraph and reopen the comment period under subparagraph (e) of this paragraph; or

(iii) Reopen or extend the comment period under subparagraph (e) of this paragraph to give interested persons an opportunity to comment on the information or arguments submitted.

2. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subparagraph (e) of this paragraph shall define the scope of the reopening.

3. Public notice of any of the actions of part 1 of this subparagraph shall be issued under subparagraph (e) of this paragraph.

(i) Final Permit Decision

1. After the close of the public comment period under subparagraph (e) of this paragraph on a draft permit (including a notice of intent to deny a permit), the Commissioner shall issue a final permit decision. The Commissioner shall notify the applicant and each person who has submitted a written request for notice of the final permit decision. For the purposes of this subparagraph, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

2. A final permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.

(j) Response to Comments

1. At the time that a final permit decision is issued under subparagraph (i) of this paragraph, the Commissioner shall issue a response to comments. This response shall:

- (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.
 - 2. The response to comments shall be made available to the public.
 - (k) Appeals - If, in his final permit decision under subparagraph (i) of this paragraph, the Commissioner denied the permit or issued it subject to conditions with which the permit applicant disagrees, the applicant may appeal the decision to the Board as set forth in T.C.A. § 68-211-113. If the Commissioner fails to take any action on a permit application within 45 days after it was submitted to him, the permit applicant may appeal to the Board as set forth in T.C.A. § 68-211-113.
- (5) Terms of the Permit
- (a) Conditions Applicable to all Permits - The following conditions apply to all permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this subparagraph must be included in the permit.
 - 1. Duty to Comply - The permittee must comply with all conditions of this permit, unless otherwise authorized by the Department in writing. Any permit noncompliance constitutes a violation of the Act and is grounds for termination, revocation and/or reissuance, or modification of the permit and/or the assessment of civil penalties by the Commissioner.
 - 2. Need to Halt or Reduce Activity Not a Defense - It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 - 3. Duty to Mitigate - In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.
 - 4. Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
 - 5. Permit Actions - This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.
 - 6. Property Rights - This permit does not convey any property rights of any sort, or any exclusive privilege.
 - 7. Duty to Provide Information - The permittee must furnish to the Commissioner, within a reasonable time, any information which the Commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Commissioner, upon request, copies of records required to be kept by this permit. All records, including a copy of the permit and the approved Part I and Part II application, must be maintained at the facility or other locations as approved by the Commissioner.

8. Inspection and Entry - The permittee shall allow the Commissioner, or an authorized representative, to:
 - (i) Enter at any reasonable time the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (iii) Inspect at any reasonable time any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit (Note: If requested by the permittee at the time of sampling, the Commissioner shall split with the permittee any samples taken.);
 - (iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location; and
 - (v) Make photographs for the purpose of documenting items of compliance or noncompliance at waste management units, or where appropriate to protect legitimate proprietary interests, require the permittee to make such photos for the Commissioner.

9. Monitoring and Records
 - (i) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - (ii) The permittee shall retain records of all required monitoring information. 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 the post-closure care period as well. This period may be extended by request of the Commissioner at any time.
 - (iii) Records of monitoring information shall include:
 - (I) The date, exact place, and time of sampling or measurements;
 - (II) The individual(s) who performed the sampling or measurements;
 - (III) The date(s) analyses were performed;
 - (IV) The individual(s) who performed the analyses;
 - (V) The analytical techniques or methods used (including equipment used); and
 - (VI) The results of such analyses.

10. Reporting Requirements
 - (i) The permittee shall give notice to the Commissioner as soon as possible of any planned physical alterations or additions to the permitted facility.
 - (ii) Monitoring results shall be reported at the intervals specified in the permit.
 - (iii) The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any release, discharge, fire, or explosion

from the permitted solid waste facility which could threaten the environment or human health outside the facility. Such report shall be made to the Tennessee Emergency Management Agency, using 24-hour toll-free number 1/800/262-3300.

- (iv) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Commissioner, it shall promptly submit such facts or information.

11. Periodic Survey of Disposal Facility

- (i) Within 60 days of his receipt of the written request of the Commissioner to do so, the permittee shall cause to be conducted a survey of active and/or closed portions of his facility in order to determine if operations (e.g., cut and fill boundaries, grades) are being conducted in accordance with the approved design and operational plans. The permittee must report the results of such survey to the Commissioner within 90 days of his receipt of the Commissioner's request.
- (ii) The Commissioner may request such a survey:
 - (I) If he has reason to believe that operations are being conducted in a manner that significantly deviates from the approved plans; and/or
 - (II) As a periodic verification (but no more than annually) that operations are being conducted in accordance with the approved plans.
- (iii) Any survey performed pursuant to this part must be performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities.

(b) Facility - Specific Permit Conditions

1. In addition to the conditions required in all permits (subparagraph (a) of this paragraph), the Commissioner shall, as required on a case-by-case basis, establish conditions in permits pursuant to this subparagraph.
2. Each permit shall include such terms and conditions as the Commissioner determines are:
 - (i) Necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in this Chapter, (Note: In satisfying this provision, the Commissioner may incorporate applicable requirements of these rules directly into the permit or establish other permit conditions that are based on these rules.); and
 - (ii) Otherwise necessary to protect human health and the environment.
3. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. Subparagraph (4)(h) of this rule provides a means for reopening permit proceedings at the discretion of the Commissioner when applicable new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in paragraph (6) of this rule.
4. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(c) Duration of Permits - Permits shall be effective for the operating life of the facilities.

(d) Effect of a Permit

1. A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in paragraph (6) of this rule.
2. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
3. The issuance of a permit does not authorize the permittee to injure persons or property or to invade other private rights, or to violate any local law or regulations.

(6) Transfer, Modification, Revocation and Reissuance, and Termination of Permits

(a) Transfer of Permits

1. A permit may be transferred by the permittee to a new operator only if the permit has been modified or revoked and reissued (under subparagraph (b) of this paragraph) to identify the new permittee and incorporate such other requirements (e.g., financial requirements) as may be necessary under the Act or this rule. A permit transfer may be performed as a minor modification, but does require the preparation and issuance of a public notice.
2.
 - (i) For the purpose of this Chapter, the "owner or operator" of a processing, storage or disposal facility has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A "change of ownership" occurs whenever this ultimate authority to control the activities and the policies of the facility is transferred to another individual, group, or legal entity.
 - (ii) A "change of ownership" also occurs whenever there is a change in the legal form under which the controlling entity is organized.
 - (iii) Transactions constituting a change of ownership include, but are not limited to, the following:
 - (I) Sale or donation of the facility's legal title;
 - (II) Lease of the entire facility's real and personal property;
 - (III) A sole proprietor becomes a member of a partnership or corporation, succeeding him as the new operator;
 - (IV) A partnership dissolves;
 - (V) One partnership is replaced by another through the removal, addition or substitution of a partner;
 - (VI) A general partnership becomes a limited partnership, or limited partnership becomes general;
 - (VII) Two (2) or more corporations merge and the originally-permitted corporation does not survive;
 - (VIII) Corporations consolidate;
 - (IX) A non-profit corporation becomes a general corporation, or a for-profit corporation becomes non-profit.

- (X) Transfers between levels of government; and
 - (XI) Corporate stock transfers or sales, when the controlling interest is transferred.
- (iv) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
- (I) Changes in the membership of a corporate board of directors or board of trustees;
 - (II) Two (2) or more corporations merge and the originally-permitted corporation survives;
 - (III) Changes in the membership of a non-profit corporation; and
 - (IV) Transfer between departments of the same level of government.
3. Changes in the ownership or operational control of a facility may be made as a modification with prior written approval of the Commissioner in accordance with part (b)2 of this paragraph. The new owner or operator must submit a transfer of ownership form no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Commissioner. When a transfer of ownership or operational control occurs, the old owner or operator of the disposal facility shall comply with the financial assurance requirements of paragraph (3) of Rule 0400-11-01-.03 and likewise, the owner or operator of a composting facility shall comply with the financial assurance requirements of subparagraph (2)(p) of Rule 0400-11-01-.11 until the new owner or operator has demonstrated that he or she is complying with the requirements of that rule. The new owner or operator must demonstrate compliance with the referenced financial requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Commissioner by the new owner or operator of compliance with the referenced financial requirements, the Commissioner shall notify the old owner or operator that he or she no longer needs to comply with the referenced financial requirements as of the date of demonstration.

(b) Modification or Revocation and Reissuance of Permits

1. General - Except as otherwise provided in these rules, permits may only be modified or revoked and reissued for the reasons shown in parts 3, 4, or 5 of this subparagraph and only according to the procedures set forth in part 2 of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
2. Procedures
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, and required reports) indicating that modification or revocation and reissuance of the permit may be in order, he may determine whether or not one or more of the causes listed in parts 3, 4, or 5 of this subparagraph exist.
 - (ii) If the Commissioner determines cause exists, he may proceed to modify or revoke and reissue the permit accordingly, subject to the limitations of part 6 of this subparagraph. If a permit modification satisfies the criteria in part 5 of this subparagraph for "minor modifications", the permit may be modified without following further the procedures of this part, except for subpart (vi) of this part.

- (iii) If the Commissioner determines cause does not exist under parts 3, 4, or 5 of this subparagraph, he shall not modify or revoke and reissue the permit. If the modification or revocation and reissuance was requested by the permittee, the Commissioner shall give to the permittee such notice as is required by T.C.A. § 4-5-320.
 - (iv) If the Commissioner tentatively decides to cause a major modification or revoke and reissue a permit, he shall prepare a draft permit under subparagraph (4)(c) of this rule incorporating the proposed changes. This draft permit shall be processed as set forth in paragraph (4) of this rule. The Commissioner may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application.
 - (v) In a permit modification under this part, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this part, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
 - (vi) No minor modification to a permit shall be made under subpart (ii) of this part, and no draft permit shall be prepared under subpart (iv) of this part, until the permittee has been given such notice as is required by T.C.A. § 4-5-320.
3. Causes for Modification - The following are causes for modification but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:
- (i) There are changes to the permitted facility which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
 - (ii) The Commissioner has received information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.
 - (iii) The standards or regulations on which the permit was based have been substantially changed by legislation or promulgation of amended standards or regulations or by judicial decision after the permit was issued.
 - (iv) A major modification of a closure plan or post-closure plan is required.
 - (v) To include conditions applicable to units at a facility that were not previously included in the facility's permit.
 - (vi) When a land treatment unit is not achieving adequate treatment under its current permit conditions.
4. Causes for Modification or Revocation and Reissuance - The following are causes to modify or, alternatively, revoke and reissue a permit:
- (i) Cause exists for termination under subparagraph (c) of this paragraph and the Commissioner determines that modification or revocation and reissuance is appropriate.
 - (ii) The Commissioner has received notification of a proposed transfer of the permit.

5. Minor Modification of Permits - Upon the consent of the permittee, the Commissioner may modify a permit to make the corrections or allowances for those changes in the permitted activity deemed by the Commissioner to be a minor modification without following the procedures of paragraph (4) of this rule. A minor modification is a change in the plans for a facility which will not alter the expected impact of the facility on the public, public health, or the environment. Major modifications shall include at least changes in final contour elevations, increase in capacities, changes in direction of site drainage, and other changes deemed major by the Commissioner.
6. Facility Siting - Suitability of the facility location will not be reconsidered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of the permit issuance.

(c) Termination of Permits

1. General - Permits may be terminated only for the reasons shown in part 3 of this subparagraph and only according to the procedures set forth in part 2 of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
2. Procedures
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, reports) indicating that termination of the permit may be in order, he may determine whether or not one or more of the causes listed in part 3 of this subparagraph exist.
 - (ii) If the Commissioner determines cause exists, he may proceed to terminate the permit.
 - (iii) If the Commissioner tentatively decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared and processed under paragraph (4) of this rule.
 - (iv) No notice of intent to terminate shall be issued under subpart (iii) of this part until the permittee has been given such notice as is required by T.C.A. § 4-5-320.
3. Causes for Termination - The following are causes for terminating a permit during its term, or for denying a permit renewal application:
 - (i) Noncompliance by the permittee with any condition of the permit which the Commissioner deems to be significant noncompliance, repeated noncompliance, and/or failure to comply with the Division's compliance schedule relative to permit conditions;
 - (ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
 - (iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination; or
 - (iv) The request of the permittee, providing he has complied with all closure and post-closure requirements in the permit conditions.

- (v) The permittee's failure to file and maintain financial assurance in the amount required by Rule 0400-11-01-.03 and subparagraph (2)(p) of Rule 0400-11-01-.11.
- (vi) Non-payment of any fees owed to the Department.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq., Chapter 210 of the Private Acts of 1990, and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new subparagraph (y) to read as follows:

(y) Scenic Rivers, Buffalo River

1. The facility shall not be located within two miles of the center of a Class II scenic river, nor within two miles of the center of such a river in an adjacent upstream county, notwithstanding the fact that the river is not designated as a scenic river in the upstream county, if the river is designated as a Class II scenic river in the adjacent downstream county; and provided further that the facility shall not be located within five miles of the center of the Buffalo River in Lewis County.
2. The river segments that are Class II scenic rivers are those that have been designated by the General Assembly in Tenn. Code Ann. §11-13-104. At this time those are:
 - (i) Blackburn Fork -- That segment downstream from a point one and one-half (1 ½) miles downstream from the county road at Cummings Mill to its confluence with Roaring River.
 - (ii) Buffalo River -- The entire river, except that portion which lies within Wayne, Perry, Humphreys and Lewis counties.
 - (iii) Collins River -- That segment which lies within the Savage Gulf natural-scientific area.
 - (iv) Duck River -- That segment of the Duck River beginning at Iron Bridge Road at river mile 136.4 extending continuously to a point upstream to the boundary of Marshall County at river mile 173.7.
 - (v) Harpeth River -- The entire river except that segment lying north of Highway 100 and south of Interstate 40 in Davidson County; and except those segments located in Cheatham, Dickson and Williamson counties.
 - (vi) Roaring River -- That segment downstream from a point two (2) miles downstream from State Route 136, to its confluence with the Cordell Hull Lake.
 - (vii) Spring Creek -- That segment between State Highway 136 and Waterloo Mill, and that segment downstream from the Overton-Jackson county line to its confluence with Roaring River.

Authority: T.C.A. §§ 68-211-101 et seq., §11-13-111, Chapter 169 of the Private Acts of 1990, and 4-5-201 et seq.

Part 4 of subparagraph (a) of paragraph (5) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and replacing it with a new part to read as follows:

4. The minimum frequency of monitoring shall be quarterly and the operator shall keep records to comply with the monitoring and records requirements at part (5)(a)9 of Rule 0400-11-01-.02; and monitoring shall include at least the following locations:

- (i) Underneath or in the low area of each on-site building;
- (ii) At locations along the boundary as shown in the permit;
- (iii) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and
- (iv) At any other points required by the permit.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.10 Convenience Centers / County Public Collection Receptacles is amended by deleting it in its entirety and replacing it with a new part to read as follows:

1. Convenience centers must meet the permit by rule requirements at part (2)(a)4 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:
 - (i) The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (3) of this rule.
 - (ii) A design plan attached indicating boundaries of the site and all appurtenances.
 - (iii) A site location map is submitted on a USGS Topo map.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

(1) General

- (a) Purpose - The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to operate a composting facility or offer for sale compost in Tennessee.
- (b) Scope/Applicability
 1. The requirements of this rule apply as specified to operators of composting facilities in Tennessee. Except as specifically provided elsewhere in these rules, no facility may compost solid waste without a permit as provided in paragraph (3) of Rule 0400-11-01-.02. Composting facilities, subject to a full permit on the effective date of this rule, must submit a part I and part II permit application to describe how it will comply with this rule. The application must be filed within 180 days of the effective date of this rule and implemented upon approval. The Division will not charge an application fee, nor require public notice of the application for facilities which already have permit-by-rule for composting.
 2. Compost produced from the solid waste classification criteria outside the State of Tennessee, which is used or sold for use within the state, shall comply with subparagraphs (4)(a), (b) and (c) of this rule.
 3. Composting facilities that process domestic sludge as a feedstock shall also comply with all other applicable federal or state laws regarding sludge management.
 4. The following facilities or activities are not subject to the requirement to have a permit.
 - (i) Backyard composting and the resulting compost;
 - (ii) Normal farming operations. For the purpose of this rule, composting of only landscaping/land clearing waste, hereafter referred to as landscaping waste, or

manure by persons on their own property for their own use on that property as part of agronomic or horticultural operations will be considered normal farming operations;

5. A composting facility processing up to 10,000 cubic yards per year of only landscaping waste and manure may receive a permit pursuant to paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing.
6. A composting facility processing only landscaping waste may receive a permit pursuant to paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing.
7. A processing facility composting sewage sludge that is one acre or less in size may apply for a permit by rule pursuant to paragraph (2) of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

- (2) General Facility Standards - Unless specifically noted otherwise, the standards of this paragraph shall apply to all compost facilities subject to a permit as provided at paragraph (3) of Rule 0400-11-01-.02.
 - (a) Performance Standards - The facility must be located, designed, constructed, and maintained, and closed in such a manner as to minimize to the extent practicable:
 1. The propagation, harborage, or attraction of birds, flies, rodents, or other vectors;
 2. The potential for releases of solid waste, solid waste constituents, or other potentially harmful material to the environment except in a manner authorized by state law;
 3. The exposure of the public to potential health and safety hazards through uncontrolled or unauthorized public access;
 4. The presence of odors that constitute a nuisance.
 - (b) Control of Access and Use
 1. The facility shall have a natural or an artificial barrier which completely surrounds the active portion of the facility and must have a means to control entry, at all times, through the gate or other entrances to the active portion of the facility.
 2. If open to the public, the facility shall have clearly visible and legible signs at the points of public access which indicate the hours of operation, the types of waste materials that either will or will not be accepted, emergency telephone numbers, schedules of charges (if applicable), and any other necessary information.
 3. The facility shall have paved (paved includes compacted stone) access roads and parking areas. Traffic control signs shall be provided as necessary.
 4. The facility shall have trained personnel present and on duty during operating hours to assure compliance with operational requirements and to prevent entry of unauthorized wastes.
 5. There shall be no scavenging.
 6. Scales for weighing all waste received at the facility shall be provided, unless the Commissioner approves an alternative method of measurement.
 - (c) Leachate Collection

1. The facility shall have a leachate collection and removal system that is designed, constructed, and maintained such that all leachate from the waste receiving, storage, processing, and curing areas is collected. All washdown, stormwater or other water coming into contact with solid waste or compost must be collected and properly managed.
2. Leachate shall be reused in the process or otherwise properly managed as per all applicable laws and rules.

(d) Waste Management

1. The type [defined at part (4)(a)1 of this rule] and source of solid waste to be received shall be determined and categorized for review. This listing shall be updated as appropriate.
2. The type and source of any additives to be used in the production of compost shall be specified.
3. The facility's waste inspection procedures shall be established to prevent the receipt of unauthorized or unacceptable waste. Inspection of all loads received is required.
4. Contingency operations shall identify proper management of all waste in the event of equipment failure, facility disaster, or receipt of unauthorized material such as oil, hazardous waste, etc.
5. The surfaces for all waste receiving areas, storage areas, and processing and curing areas shall be paved to minimize release of any contaminants to the groundwater. The paved areas shall be capable of withstanding wear and tear during normal operations. The standards for surfaces for facilities shall be as follows:
 - (i) Facilities receiving waste types categorized as solid waste or landscaping waste and manure shall utilize a surface of asphalt or concrete or other surface approved by the Commissioner.
 - (ii) Facilities receiving only the landscape waste type may utilize a surface of compacted gravel or the surfaces authorized in subpart (i) of this part.
6. Landscaping waste shall be stored separately from other solid waste at the facility. Solid waste shall be stored in a manner to prevent vectors. Unusable material must be identified and removed within 48 hours.
7. Recovered materials removed from the solid waste stream shall be stored in a manner that prevents vector problems and shall be sent to a vendor or processor at least every thirty (30) days.

(e) Fire Safety

1. No open burning is allowed.
2. The facility shall have, on-site and continuously available, properly maintained fire suppression equipment capable of controlling accidental fires. If available, local fire fighting service shall be acquired.

(f) Litter Control - Fencing and/or other control shall be provided to confine loose waste to the area designated for storage or processing: Accidental dispersal from the designated areas shall be recovered daily.

(g) Personnel Facilities - There shall be provided:

1. A building or other shelter which is accessible to facility personnel which has adequate heating and light.
 2. Potable water for washing and drinking.
 3. Toilet facilities.
- (h) Communication - The facility shall have available during operating hours equipment capable of summoning emergency assistance as needed.
- (i) Operating Equipment - The facility shall have on-site operational and monitoring equipment capable of maintaining the waste processing as designed.
- (j) Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any dust suppressants (other than water) must be approved in writing beforehand by the Department.
- (k) Run-on/Run-off Control
1. The operator shall design, construct, and maintain a run-on control system capable of preventing the 25 year, 24 hour storm from flowing onto all operational and storage areas.
 2. The operator shall design, construct, and maintain a run-off management system capable of minimizing impact to adjoining properties during the 25 year, 24 hour storm.
 3. Run-off shall be managed separately from leachate unless otherwise approved by the Commissioner.
- (l) Endangered Species - Facilities shall be located, designed, constructed, operated, maintained, closed, and cared for during the post-closure care period in a manner that does not:
1. Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or
 2. Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.
- (m) Location in Floodplains- Facilities shall not be located in a 100-year floodplain, unless the demonstration is made to the Commissioner as required at subparagraph (2)(n) of Rule 0400-11-01-.04.
- (n) Wetlands - The facility shall not be located in a wetland unless the demonstration is made to the Commissioner as required at subparagraph (2)(p) of Rule 0400-11-01-.04.
- (o) Closure - The facility must meet closure requirements described herein. The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Commissioner in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Commissioner shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.
- (p) The owner/operator of a compost facility permitted pursuant to paragraph (3) of Rule 0400-11-01-.02 shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner to insure 30 days operation and proper closure of the facility. The types of financial assurance instruments that are acceptable are those

which are specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116 and at subparagraph (3)(b) of Rule 0400-11-01-.03.

- (q) Compost from facilities subject to a full permit in this rule must meet the appropriate criteria for “compost disinfection” as defined in definitions at Rule 0400-11-01-.01.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

(1) General

- (a) Purpose – The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to design, construct and operate a land application facility in Tennessee.

(b) Scope/Applicability

1. The requirements of this rule apply to land application facilities in Tennessee. Except as specifically provided elsewhere in these rules, no person may land apply solid waste without a permit as provided in part (1)(b)1 of Rule 0400-11-01-.02.
2. The land application of landscaping and landclearing wastes and farming wastes are exempt from the permit requirements of this rule.
3. The land application of solid wastes from food processing facilities are subject to the requirements to have a permit-by-rule.
4. Land application of all other solid wastes will be subject to subpart (1)(b)3(xxii) of Rule 0400-11-01-.02.

- (c) Notification Requirements – The operator must comply with the notification requirements of (2)(a)4 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:

1. The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (2) of this rule.
2. The operator attaches any sampling, monitoring, or other plans required by these rules or by the Commissioner.
3. The operator of an existing permit-by-rule land application facility must modify the notification if:
 - (i) Adding a waste stream from a new generator, or a waste stream from an existing generator which has not been previously approved for land application at that site; or
 - (ii) Adding new acreage to the land application operations.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

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

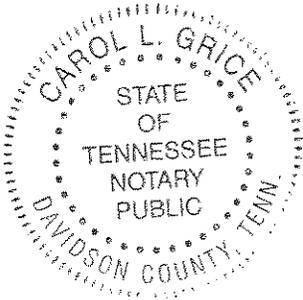
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Warren Anderson				X	
Marty Calloway	X				
Stacy Cothran	X				
Kenneth Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Bhag Kanwar	X				
Jared L. Lynn	X				
David Martin	X				
Beverly Philpot	X				
DeAnne Redman				X	
Mayor Franklin Smith, III	X				
Mark Williams	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tank and Solid Waste Disposal Control Board on 12/04/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/07/11

Rulemaking Hearing(s) Conducted on: (add more dates). 02/16/12



Date: December 4, 2012

Signature: [Handwritten Signature]

Name of Officer: Kenneth Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: December 4, 2012

Notary Public Signature: Carol L. Grice

My commission expires on: June 21, 2016

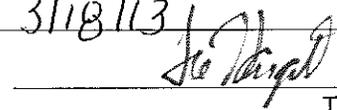
All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]
 Robert E. Cooper, Jr.
 Attorney General and Reporter
12-17-12
 Date

Department of State Use Only

Filed with the Department of State on: 12/18/12

Effective on: 3/18/13



Tre Hargett
Secretary of State

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TRE HARGETT

Public Hearing Comments

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

Comment: A commenter submitted comments about the current rules and not the amendments. Under the Rules 0400-11-01-.02(1)(b)3(ii), (vi) and (vii), the commenter is concerned that the State does not regulate: (ii) junkyards, (vi) construction/demolition wastes..... and (vii) burning of solid wastes.....under a permit.

Under (ii), hazardous materials and chemicals are present within equipment that is sent to junkyards. This material is left outside where years of weatherization breaks the various components down and allows for them to contaminate the ground and possibly surface waters during run-off events. Without a permit to hold the owner to some kind of accountability, how does the state intend to protect the environment and water sources? Are junkyards somehow managed under another program? They are likely to become mini remedial sites if not controlled from the outset.

Under (vi), the allowance of construction or demolition debris to be buried without a permit will result in ground subsidence issues for future owners and potentially contaminated sources to migrate into water systems. Without a permit how does the state intend to protect the public from hazardous materials like paints, lead, debris, asbestos materials (not known by the contractor), oils, and garbage in general that could leach into wells or other water systems?

Under (vii), without a permit for burning of solid wastes (which may include hazardous chemicals [plastics, metals..]) for energy recovery, how does the state intend to control hazardous emissions into the atmosphere? Seems like a permit would at least make known the owners responsibility for controlling hazardous emissions.

Response: These amendments are intended to bring clarity to all parties, including the local boards, as to how the various statutes applicable to local approvals are being interpreted and administered. However, regarding these issues:

The current regulations at Rule 0400-11-01-.02(1)(b)3(ii) exempts junkyard permitting. Junkyards and Automobile Graveyards are regulated by the Department of Transportation at T.C.A. §§ 54-20-101 through 205.

The current regulations at Rule 0400-11-01-.02(1)(b)3(vi) exempt from a permit construction/demolition wastes at facilities which are on/site of generation and have a fill area of less than one acre in areal extent when completed. "Construction/demolitions wastes" means wastes, other than special wastes, resulting from construction, remodeling, repair, and demolition of structures and from road building. Such wastes include but are not limited to bricks, concrete, and other masonry materials, soil, rock and lumber, road spoils, rebar, paving materials. Hazardous materials, such as lead based paint and debris, friable asbestos waste, and oils are considered special wastes and must be reported to the Department prior to disposal.

The current regulations at Rule 0400-11-01-.02(1)(b)3(vii) exempts from a permit the burning of solid wastes for energy recovery or processing of solid wastes to produce a fuel or processing of solid wastes for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation. This exemption does not exempt the burning or process from Air Pollution Control regulations which are applicable.

- Comment: A commenter asked if this rule change changes to the powers of the Local Boards, allowing TDEC staff to reject them if they are determined to be "arbitrary and capricious". The commenter believes that it would be wrong for the TDEC staff to make these decisions and if the decision is made by the TDEC staff or a board that the decision made by the Regional Board is arbitrary and capricious then the application should be returned to the Regional Board.
- Response: These amendments are intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. These amendments are not adding or diminishing the authority of any party currently granted by statute nor is it intended to add new procedures.
- Comment: The commenter asked if the law states that a local government must "opt in" to the Jackson Law, does that mean that it must do so for each application submitted or can a government "opt in" in general, choosing to send in an approval or disapproval for only those applications they are interested in.
- Response: If a local government 'opts in', or adopts, the Jackson law, all new landfill or lateral expansion permits must have local approval as prescribed by the law before TDEC can continue the permit process. It is the responsibility of the local government to act on each application within the time restraints under the law.
- Comment: The commenter wanted to know how local governments "opt in" and asked if the Department could provide detailed instructions and/or links to the paperwork for opting in.
- Response: T.C.A. § 68-211-707 states the provisions of the Jackson Law "only apply in any county or municipality in which [the Jackson Law] is approved by a two-thirds vote of the appropriate legislative body." Once the local legislative body adopts the Jackson Law, the local government must notify the department in writing that it has done so and include a copy of the ordinance or resolution.
- Comment: From proposed Rule 0400-11-01-.02(1)(c)2(iii): "...that local government was aware of the approved...", the commenter believes that the rule seems to say that if an application was filed after 1989 then the person/company filing the application for the landfill need only show that the "...local government was aware of and approved (the project)..". However, the required documents listed under this point only indicated that the local government was aware of the application, these documents in no way indicate that they approved it.
- Response: The applicant must provide the local government adopting the Jackson law with the information required by proposed subparagraph (1)(c) of Rule 0400-11-01-.02 and then submit evidence to the Department of the application's or notification's (in case of permit by rule processing facilities) approval, denial, or local government's failure to act.
- Comment: A commenter was of the opinion that ninety days is not enough time for local governments to assess the application and turn in a decision under the Jackson Law. Assessment takes quite a long time and money. In most cases, it takes quite a long time to muster political support to convince local officials to side with ordinary citizens and not wealthy applicants, especially where kick backs are common place. Would your department consider 180 days?
- Response: Ninety days are required by T.C.A. §§ 68-211-814(b)(2) for municipal solid waste regions to make a decision after receiving a complete application to determine if the proposed landfill or incinerator is consistent with the region's solid waste plan. The Jackson Law addresses county legislative bodies and municipal governing bodies and not municipal solid waste regions. T.C.A. subsection 68-211-704(a) requires the county legislative body, the municipal governing body or both such entities to approve or disapprove the proposed new construction for solid waste disposal by landfilling or solid waste processing by landfilling within 30 days after notice and an opportunity for a public hearing has been provided in accordance with T.C.A. § 68-211-703. The Department does not believe it has the authority to extend this timeline.
- Comment: A commenter was concerned about a specific application (Roberta Landfill in Scott Co, TN) that was approved by the Division of Solid Waste Management, but was not yet approved by the

Division regulating the water ways (because this extension to the landfill will be built over a stream that empties into the Big South Fork and is a source for drinking water in KY). What are our rights now under the Jackson Law? Has the time run out?

Response: Scott County's initial adoption (July 17, 1989) of the Jackson Law provisions has expired. A January 21, 2003 letter from the Division of Solid Waste Management to Scott County requested a copy of resolution re-adopting the Jackson Law. Presently the requested documentation has not been received. When an application for a municipal solid waste disposal facility or a solid waste processing by landfilling facility is received by the Division, it is the practice of the Division to check for the applicability of the Jackson Law, and, if needed, the local government will be requested to consider the adoption or re-adoption of the Jackson Law provisions or provide documentation that it has done so.

Comment: A commenter was concerned about the following language: "for purposes of this part [(c)1] only, "complete application" means an application that is deemed complete by the solid waste region for its purposes of determining whether a proposed landfill or incinerator is consistent with the region's solid waste plan."

Most plans do not currently have such a definition, and it would lead to inconsistent application. I believe the rules should be consistent with current practice of a Part 1 and a map of the location. In addition, the definition should not be the "technical completeness" definition of a Part II.

Response: The Department agrees with the commenter and the definition of "complete application" has been revised to clarify the level of information needed for landfill and incinerator proposals to be considered complete for the purposes of obtaining regional approval in accordance with T.C.A. 68-211-814(b)(2).

Comment: Two commenters were concerned about proposed Rule 0400-11-01-.02(1)(c)2(ii) and recommended the rule be amended to provide the county with ninety days to notify the Department as opposed to sixty days as many county commissions only meet quarterly; provide direct written notice be sent to the county mayor and chair of the county legislative body by the Department at the time of the preliminary public notice to ensure that the county promptly receives actual notice; and clarify that even if the county does not provide notice within the ninety day window, the county is still authorized to approve or disapprove the landfill or facility pursuant to the Jackson Law.

When making decisions members of county legislative bodies and mayors often take into consideration, along with the research they do themselves, the information and concerns they receive from their constituents. By nature, the process of receiving information and concerns from constituents takes time. We feel as though the above suggested language strikes a proper balance between representatives' desires to value the concerns of their constituents and the need for an efficient permitting process.

Response: The Department agrees that a ninety day notification period is reasonable to meet the needs of county commissioners that meet on a quarterly basis and has revised the proposed language.

In addition, the Department agrees that direct written notice be sent to the appropriate local authorities and the regulations have been amended accordingly.

However, the Department disagrees with the commenters that the county legislative body or municipal governing body should be able to render a decision on the proposal after missing the decision deadline. There must be fairness in establishing a point beyond which, for a given application, the Jackson Law may not be adopted.

Comment: A commenter questioned the rule numbering used in the notice and asked if the statutory cites used in Rules 0400-11-01-.02(1)(c)2(v) and (vi) were correct.

Response: On October 4, 2011, the Solid Waste Disposal Control Board adopted the number change for these rules from Chapter 1200-01-07 to Chapter 0400-11-01. The rule number change will be effective before this rulemaking is completed. The Department agrees with commenter regarding

the proper statutory citation used in proposed Rules 0400-11-01-.02(1)(c)2(v) and (vi) and has revised the amendments to correct all citations used.

Comment: Paragraph (2) of Rule 0400-11-01-.04 has been amended by adding a new subparagraph (y) to specifically identify protective requirements for Class II Scenic Rivers that have been designated by the General Assembly in T.C.A. § 11-13-104 including Blackburn Fork, Buffalo River, Collins River, Duck River, Harpeth River, Roaring River, and Spring Creek. A commenter was concerned that there was no mention of Wild and Scenic Rivers or a National River in these regulatory amendments. Due to the significance of the Big South Fork National River and the Obed Wild and Scenic River for protecting biological communities, water quality and recreational opportunities the commenter suggested that these two streams be added to the new subparagraph.

Response: These amendments are intended to bring clarity to all parties, including the local boards, as to how the various statutes applicable to local approvals are being interpreted and administered and are not intended to expand regulatory authority by adding additional streams to the list contained in the proposed Rule 0400-11-01-.04(2)(y). Under the Scenic Rivers Act, only the General Assembly can designate scenic rivers. This change would require a law to be passed.

Comment: A commenter suggested that special protection should be specified the new proposed Rule 0400-11-01-.04(2)(y) for the Obed River and the Big South Fork of the Cumberland River, Clear Creek, Daddy's Creek, Clear Fork River, and New River which are the core of National Park System Units. This protection should specify that landfills cannot be placed within two miles of these streams and not less than a mile from tributaries of these streams. These rivers are so important for recreation, and as job producers for Morgan, Scott, Fentress and Cumberland Counties, that it seems ridiculous to allow landfills near them. Any simple economic impact study would show that landfills would have a negative impact on the communities depending on these streams for drinking water and recreation.

Response: These amendments are intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered and are not intended to expand regulatory authority by adding additional streams to the list contained in the proposed Rule 0400-11-01-.04(2)(y). Under the Scenic Rivers Act, only the General Assembly can designate scenic rivers. This change would require a law to be passed.

Comment: A commenter is of the opinion that the solid waste regulatory process will never be a comprehensive, and hence credible, state-controlled process until all of the state regulatory agencies responsible for water quality, are involved. Also the state should perform an unbiased economic impact statement on a landfill before they issue an approval. The commenter is also of the opinion that the state of Tennessee should not allow out-of-state waste to be deposited in Tennessee. The reason this is happening is that Tennessee does not restrict landfill operators from accepting out-of-state waste. Landfills are profitable and the more waste the more profit. Most of the out-of-state waste comes from states that have far more comprehensive regulations than Tennessee has. It's just basic economics: it costs less to deposit your waste in Tennessee than to build your own landfill. The other states are happy, the Tennessee landfill owners are happy and the citizens of Tennessee are left with an expensive clean up in case of a leaking landfill.

Response: These issues go beyond the scope of this rulemaking, which is intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. These issues and concerns can be addressed through a future rulemaking action, to the extent allowed by decisions of the U.S. Supreme Court on interstate commerce.

Comment: A commenter believes that the Department should strike the proposed amendments dealing with local approvals under the Jackson Law and replace it with the following:

"TDEC staff will develop a package of procedures and responsibilities of Regional board members and interested parties including citizens. These training materials and guidelines shall be on-going with training available at suitable meetings and for any

Region facing a vote. TDEC shall research any city or citizens to determine past compliance with the Jackson Law.”

Response: The Department does not agree with the commenter that the proposed amendments addressing the applicability of the Jackson Law should be replaced with the suggested language. The suggestion of the commenter goes beyond the scope of this rulemaking, which is intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered.

Comment: A commenter is of the opinion that:

- (a) the Division of Solid Waste Management has not developed a productive and successful regulatory method for solid waste. Regulations are not based on the content of solid waste. Regulations and reports should be based on the type of waste and how it is composted or recycled;
- (b) the state needs rules and regulations which apply throughout the state – fast food, schools, universities, and business;
- (c) the state does not need local mandates – composting and recycling construction waste is market driven;
- (d) TDEC is developing solid waste regulations in discrete packages. This is a risky practice which could be interpreted to eliminate public input;
- (e) written comments should be posted; and
- (f) the Department has failed to write adequate regulations that are based on the content and source of the waste.

Response: These comments are beyond the scope of this rulemaking. The Department believes that the current regulations are consistent with the intent of the legislature and that there is not an attempt to eliminate any public input into these regulations.

Comment: The commenter asked if the US EPA or some other party pressing the Department for these rules.

Response: With these amendments the Department intends to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. This rulemaking was initiated by the Department.

Comment: The commenter is of the opinion that the General Assembly did not intend the Jackson Law to apply to the siting of new solid waste processing facilities which are not located on land where there is disposal of solid waste by filling and covering. There are many solid waste processing facilities that are freestanding facilities located nowhere near a landfill. At these processing facilities, there is no “disposal of solid waste by filling and covering.” Since that is the definition of “landfill” or “landfilling” in the Jackson Law and since T.C.A. § 68-211-701 and subsection 68-211-704(a) apply only to “solid waste processing by landfilling,” it is clear that the Jackson Law was not intended to apply to freestanding solid waste processing facilities not operated on the site of a landfill where there is “disposal of solid waste by filling and covering.”

Response: The Department agrees and is adding language accordingly.

Comment: A commenter pointed out that subparts (1)(c)2(v) and (viii) of Rule 0400-11-01-.02 as revised would not clearly recognize the court’s approval as a means to proceed with the permitting process in accordance with T.C.A. subsection 68-211-704(c).

Response: The Department agrees and amended the regulatory language accordingly.

Issues Raised by the Attorney General's Office

After these rule amendments were adopted by the Solid Waste Disposal Control Board, we received advice from the Attorney General's Office that they would not approve the rules because of issues summarized below regarding certain of the provisions addressing Tenn. Code Ann. Sections 68-211-701 to -707 (the Jackson Law). The rules were revised accordingly and then the board adopted the revised rules.

- The Board does not have the authority to limit the Jackson Law so that it applies only to processing facilities located at landfills. The Court of Appeals ruled in *Profill Development, Inc. v. Dills*, 960 S.W. 2d 17, 26-27 that it applied to all solid waste processing facilities.
- The adopted rules required that local governments have adopted the Jackson Law within 90 days of receiving either a preliminary public notice for a landfill permit application or a permit by rule notification for a processing facility. The Jackson Law requires that this option be available to the local government until the time the Department issues a public notice tentatively approving the issuance of a solid waste permit.
- The adopted rule authorizes the Department to review an application if the "local government(s) fails to act." In contrast to the provision in Part 8 on approval by a solid waste region, the Jackson Law places no time limit on local governments to provide the public notice which in turn starts the thirty day time limit running to approve or disapprove a permit or permit by rule.
- The adopted rule provided that local approval under the Jackson Law would be necessary when there was a proposed change in the waste received at a landfill that would require a change in landfill classification. This was based on the provision in the Jackson Law that stated that "type of waste to be disposed at the landfill" was a factor to be considered. Although this rationale was not sufficient, a similar provision would be within the authority of the board if defines a 'new solid waste landfill' as that term is used in §68-211-105(h).
- It was recommended to delete the reference to classification in the provision addressing Chapter 210 of the Private Acts of 1990.

The Attorney's General's Office also recommended a change in the certification statement that is required on applications and reports while the other changes were being made.

Regulatory Flexibility Addendum

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

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

These amendments apply to future landfills and facilities that process solid waste by landfilling. Currently, these types of facilities are owned by local governments or large businesses. It is very difficult for the Department to estimate the number of small businesses that will be impacted by these amendments since small businesses have shown little to no interest in pursuing permits to operate new landfills or facilities that process solid waste by landfilling. Furthermore, this rule only clarifies existing statutory requirements, it does not impose new costs.

Types or types of small businesses: Operators of solid waste disposal and processing facilities and businesses that are subject to T.C.A. §§ 68-211-101 et seq. or the rules promulgated thereunder.

Estimate of the number of small businesses: There are currently 148 operating landfills, 89 processing facilities, 3 coal ash facilities, and 1 compost facility affected by these rule amendments. Currently, there are also 55 local governments which have adopted the "Jackson Law" provisions and would be affected by the amendments.

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

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments.

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

The rule amendment is proposed to help clarify the different provisions in different laws for local approval of landfills, processing facilities and local applicable site restrictions. It also seeks to clarify how the local approval process fits into TDEC's current permitting process.

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

The "Jackson Law" is already effective by statute. By incorporating the amendments into the regulations, small businesses and consumers should be more aware of the current local approval process and make it more efficient in the Department permitting process.

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

The federal rules at 40 CFR 258 for municipal solid waste disposal do not address local approval issues.

States bordering Tennessee – Kentucky, North Carolina, Georgia, Alabama, and Arkansas have local approval regulatory language in varying degrees of complexity reflecting that state's statutory language. In each state, local approval is a vital part of the beginning of the permit application process.

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

Exemption from regulatory requirements would not be possible under the under current state and local statutory language.

Impact on Local Governments

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

The rule amendments proposed will have no impact beyond the current statutory language that is currently in effect for local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule amendment changes are to make clear to TDEC staff, applicants, local governments, and concerned citizens the different provisions in different laws for local approval of landfills or processing facilities and also applicable site restrictions. They are also to make clear how the local approval processes fit into the TDEC permitting process.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are promulgated under the authorities of T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., and 4-5-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The existing statutory requirements that are clarified by this rule apply to existing landfills and facilities that process solid waste by landfilling that seek to expand or to new landfills and facilities that process solid waste by landfilling. Some of them made comments on details and some changes were made in response to those comments. None urged rejection of the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Attorney General has issued a great many opinions regarding solid waste issues. Most are not applicable to the subject of this rules amendment. Two that are somewhat relevant are No. 93-27 stating that the Jackson Law is constitutional and No. 96-074 which says the Jackson Law does apply to lateral expansions of landfills permitted after June 2, 1989.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The amendment should have no increase or decrease from the current process. The Department is seeking to put our current process into the regulations for clarity.

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

Greg Luke
Division of Solid Waste Management
5th Floor, L & C Tower, 401 Church Street
Nashville, TN 37243
Phone: (615) 532-0874

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

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
Alan.Leiserson@tn.gov

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

The Board is not aware of any additional information requested by the committee.

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

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
Address:	5 th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1535
Phone:	(615) 532-0874
Email:	greg.luke@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities
0400-11-01-.04	Specific Requirements for Class I, II, III, and IV Disposal Facilities
0400-11-01-.10	Convenience Centers / County Public Collection Receptacles
0400-11-01-.11	Requirements for Compost and Composting Facilities
0400-11-01-.13	Requirements for Land Application Facilities

(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>)

Amendment

Chapter 0400-11-01
Solid Waste Processing and Disposal

Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and replacing it with the following:

0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities.

(1) General

(a) Purpose - The purpose of this rule is to establish the procedures, documentation, and other requirements which must be met in order for a person to be permitted to operate a solid waste storage, processing or disposal facility in Tennessee.

(b) Scope/Applicability

1. The requirements of this rule apply as specified to operators of facilities in Tennessee. Except as otherwise provided in this rule, no facility can lawfully store, process, or dispose of solid waste unless the operator has a permit.
2. Each classification of disposal, processing, or transfer facility on a site must have a separate permit. However, a processing facility may have more than one unit.
3. The following facilities or practices are not subject to the requirement to have a permit:
 - (i) Disposal of septic tank pumpings;
 - (ii) Junkyards;
 - (iii) Reclamation of surface mines;
 - (iv) Disposal of farming wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
 - (v) Disposal of landscaping and land clearing wastes at facilities which are on the site of generation and with a fill area of less than one acre in areal extent when completed;
 - (vi) Disposal of construction/demolition wastes at facilities which are on-site of generation and with a fill area of less than one acre in areal extent when completed;
 - (vii) Burning solid wastes for energy recovery or processing solid wastes to produce a fuel or processing solid waste for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;
 - (viii) Processing or disposal of solid wastes at hazardous waste management facilities authorized by permit or interim status under Rule 0400-12-01-.07;
 - (ix) Baling, shredding, and mechanical or other processing of solid waste on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation;

- (x) Processing of industrial wastewaters in on-site facilities subject to regulation under T.C.A. § 69-3-101 et seq.;
- (xi) Processing or disposal of the following materials:
 - (I) Domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned wastewater treatment works for treatment;
 - (II) Industrial wastewater discharges that are point source discharges subject to permits under T.C.A. § 69-3-101 et seq.;
 - (III) Irrigation return flows;
 - (IV) Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.);
 - (V) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process;
 - (VI) Farming wastes which are returned to the soil as fertilizers; and
 - (VII) Mining overburden returned to the mine site;
- (xii) Processing or disposal of solid wastes by deep underground injection which are permitted under the Water Quality Act pursuant to the Underground Injection Control Regulations Chapter 1200-04-06.
- (xiii) The use of solely natural rock, dirt, stumps, pavement, concrete and rebar, and/or brick rubble as fill material.
- (xiv) The use and/or disposal of Petroleum contaminated soil and rock generated from the clean-up of leaking Underground Storage Tank sites regulated under Chapter 0400-18-01, provided such materials are treated and the benzene level is below 5 ppm and the total petroleum hydrocarbon level is below 100 ppm and provided that the method of treatment was reviewed and approved by the Division of Underground Storage Tanks.
- (xv) The processing of waste tires at facilities that are permitted or otherwise authorized by this Chapter to store and/or dispose of waste tires.
- (xvi) The storage of solid waste that is incidental to its recycling, reuse, reclamation or salvage provided that upon request of the Commissioner, the operator demonstrates to the satisfaction of the Commissioner that there is a viable market for all stored waste and provided that all waste is stored in a manner that minimizes the potential for harm to the public and the environment. Material may not be stored for more than one (1) year without written approval from the Division.
- (xvii) The storage of solid waste incidental to its collection. (The storage of solid waste at permitted facilities and permit-by-rule facilities and storage in a manner constituting disposal are not exempt from permitting requirements).
- (xviii) The collection of "used oil" and/or the processing of used oil filters, provided that the used oil and/or filters are received directly from "do-it-yourselfers" as the terms are defined at T.C.A. § 68-211-1002.
- (xix) The processing of landscaping or land clearing wastes or unpainted, unstained, and untreated wood into mulch.

- (xx) The land application of both publicly-owned treatment works water sludges and publicly-owned treatment waste water sludges from facilities that are subject to regulatory standards of the Department's Division of Water Supply and Division of Water Pollution Control.
 - (xxi) The burning of natural and untreated wood, landscaping wastes, landclearing wastes in either an air curtain destructor or by open burning.
 - (xxii) The beneficial use of waste, which does not constitute disposal, provided that upon request of the Commissioner, the generator demonstrates to the satisfaction of the Commissioner that such use is not detrimental to public health, safety, or the environment.
4. The Commissioner may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.
 5. No permit or other authorization shall be issued or renewed by the Division of Solid Waste Management pursuant to this Chapter until all fees and/or penalties owed by the applicant to the Division are paid in full, unless a time schedule for payments has been approved and all payments are current or contested fees or penalties are under appeal.

(c) Coordinating Local Approval with Review of Permits and Permits by Rule

1. Regional Approval under T.C.A. Title 68, Chapter 211, Part 8.

- (i) T.C.A. subdivision 68-211-814(b)(2) provides that an applicant for a permit for construction or expansion of a municipal solid waste landfill or incinerator must submit a copy of the application to the municipal solid waste region at or before the time the application is submitted to the department. It also requires the region to render a decision within 90 days of receipt of a complete application. Finally, it states that if the region rejects the application, the department shall not issue the permit unless it finds that the region's decision was arbitrary and capricious and unsupported in the record developed before the region.
- (ii) A person applying to the department for a permit for construction or expansion of a municipal solid waste landfill or incinerator must submit documentation to the department within 120 days of its submittal of a complete application to the region that shall include:
 - (I) evidence of the date on which it submitted its application to the region;
 - (II) a copy of a notice that the application was determined to be complete by the region, if one was issued; and
 - (III) a copy of the decision of the region or a notarized statement that the region failed to act within the 90 days after receipt of a complete application as provided by T.C.A. subsection 68-211-814(b).
- (iii) Only for purposes of subparts (i) and (ii) of this part, "application" or "complete application" shall mean:
 - I. For an incinerator, a copy of the notification required by part (2)(b)2 of this rule that contains the information required by subparts (i) through (v) of that part; and
 - II. For a landfill, a copy of the Part 1 application required by subpart (3)(c)1(i) of this rule; and

- (II) Other information which the region may reasonably require for its purposes of determining whether a proposed landfill or incinerator is consistent with the region's solid waste plan.

2. Local Approval under T.C.A. Title 68, Chapter 211, Part 7

- (I) T.C.A. Title 68, Chapter 211, Part 7, known as the "Jackson Law," authorizes counties and municipalities to opt-into its provisions in accordance with T.C.A. § 68-211-707. If a local government does so, it may then approve or disapprove the proposed new construction for solid waste disposal by landfilling (including coal ash fills) and solid waste processing facilities in accordance with T.C.A. § 68-211-704. For purposes of T.C.A. §68-211-105(h), a "new landfill for solid waste disposal" or a "new solid waste landfill" means any of the following:

- (I) A solid waste landfill that received a tentative decision from the department to issue a permit after June 2, 1989 (the date the Jackson Law went into effect);

- (II) A lateral expansion (a modification that expands the previously permitted footprint) of a solid waste landfill described in item (I) of this part; and

- (III) A solid waste landfill described in item (I) of this part whose owner or operator proposes to accept waste that would require a change of the landfill's classification under this chapter to a classification with higher standards (i.e., from a Class III/IV landfill to a Class I or II landfill, or from a Class II to a Class I).

- (ii) The Jackson Law does not apply to facilities that existed on June 2, 1989 (the date the Jackson Law went into effect) and it does not apply to an expansion of those facilities. Facilities that existed on June 2, 1989 include those that had received from the department a tentative decision to issue the facility a permit.

- (iii) The Jackson Law does not apply to any private landfill that accepts solid waste solely generated by its owner if the waste is solely generated within the county where the landfill is located and if the private landfill does not accept county or municipal solid waste or ordinary household garbage.

- (iv) If a local government(s) has not adopted the Jackson Law prior to the date the department issues public notice of a tentative decision to issue a permit, then the Jackson Law does not apply to that permitting process. Public Acts 1989, Chapter 515, Section 13 provides that the Jackson Law shall only be applicable to any permit application for which a tentative approval/determination has not been public noticed.

(Note: A current list of local governments that have adopted the Jackson Law can be found on the department's website.)

- (v) The department shall not review or approve a notification for a solid waste processing facility or an application for a new solid waste landfill that is proposed to be located within jurisdictions that have adopted the Jackson Law until the application or notification for a processing facility permit by rule is approved pursuant to T.C.A. § 68-211-704.

- (vi) Within jurisdictions in which the Jackson Law is applicable, any person seeking department review and approval of an application for a new solid waste landfill permit, shall provide:

- (I) Documentation to the department that the applicant submitted plans for the new solid waste landfill to the local government(s) in compliance with

T.C.A. § 68-211-701 and that those plans included information about the following (T.C.A. subsection 68-211-704(b));

- I. The type of waste to be disposed of at the landfill;
 - II. The method of disposal to be used at the landfill (including a drawing, map, or aerial photograph showing the location and maximum dimensions of the proposed landfill or landfill expansion);
 - III. The projected impact on surrounding areas from noise and odor created by the proposed landfill;
 - IV. The projected impact on property values on surrounding areas created by the proposed landfill;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed landfill;
 - VI. The economic impact on the county, city or both;
 - VII. The compatibility with existing development or zoning plans; and
 - VIII. Any other factor which may affect the public health, safety or welfare.
- (II) A copy of the public notice issued by the local government(s) required by T.C.A. subsection 68-211-703(a);
- (III) Evidence that the signs required by T.C.A. subsection 68-211-703(h) were erected;
- (IV) The date of any public hearing held; and
- (V) Evidence of approval by the local government(s).
- (vii) For solid waste processing facilities that are proposed to be located within jurisdictions in which the Jackson Law is applicable, any person seeking a permit by rule authorization for a new solid waste processing facility or a lateral expansion of a facility (a modification that expands the previously permitted footprint) shall provide:
- (I) Documentation to the department that the applicant submitted a copy of the notification required by part (2)(b)2 of this rule that contains the information required by subparts (i) through (v) of that part for the proposed new solid waste processing facility or lateral expansion of a solid waste processing facility to the local government(s) in compliance with T.C.A. § 68-211-701 and that the notification included information about the following:
 - I. The type of waste to be processed;
 - II. The method of processing;
 - III. The projected impact on surrounding areas from noise and odor;
 - IV. The projected impact on property values on surrounding areas;
 - V. The adequacy of existing roads and bridges to carry the increased traffic projected to result from the proposed facility;

VI. The economic impact on the county, city or both;

VII. The compatibility with existing development or zoning plans; and

VIII. Any other factor which may affect the public health, safety or welfare.

(II) Evidence of approval by the local government(s).

3. Local Approval under Tennessee Private Acts, 1990, Chapter 210

(i) Section 1 of Chapter 210 of the Private Acts of 1990 provides that no permit may be issued for a new solid waste landfill or processing facility in Lewis County if the application was submitted by a county or municipality outside Lewis County, unless the legislative body of Lewis County approves it.

(ii) Any county or municipality outside of Lewis County that applies to the department for a permit for a new landfill in Lewis County shall include with the application documentation that the legislative body of Lewis County was aware of and approved the landfill and the location and maximum dimensions of the proposed landfill or landfill expansion.

(iii) Any county or municipality outside of Lewis County that applies to the department for a permit for a new processing facility, or a notification for a permit by rule for a new processing facility shall include with the application or notification documentation that the legislative body of Lewis County was aware of and approved the processing facility.

4. Public Notice of Drilling in Certain Counties, including Bledsoe, Lawrence, and Lewis

(i) T.C.A. subsection 68-211-106(g) requires that, in the counties named or described in subpart (ii) of this part, any person applying for a permit for a solid waste processing or disposal facility for which core drilling is required must notify the department 45 days before the drilling and shall give public notice 30 days before the drilling. It also requires the applicant to include a copy of the public notice in the permit application to the department and mandates that the application be denied if any of these provisions is not met.

(Note: This chapter does not require core drilling for any processing facilities.)

(ii) The requirements of subpart (i) of this part apply in any county whose population is not less than 9,650 and not more than 9,750 and not less than 34,075 and not more than 34,175 in the 1980 federal census or any subsequent federal census. In 1980, these population brackets applied to Lewis and Lawrence Counties. In 1990 Bledsoe County was in the smaller bracket so this law now applies in Bledsoe County. It would also apply to any other county whose population is within those brackets in any future federal census.

(iii) In Bledsoe, Lawrence, and Lewis Counties, and any other county with a population in a future federal census that falls within the brackets stated in subpart (ii) of this part, the applicant for any permit for a solid waste disposal facility that requires core drilling shall include with the application a copy of the public notice that was given that shows the date it was published.

(e)(2) Permits by Rule

4.(a) All permit by rule facilities shall keep any records that are required by these rules and a copy of its permit by rule authorization at the facility or at another location approved by the Department. Notwithstanding any other provision of this rule, except for subparagraph (1)(c) of this rule, and

provided they are not excluded pursuant to part (1)(b)²³ of this paragraph rule, the following classes of activities shall be deemed to have a permit by rule if the conditions listed are met:

~~(i)~~1. A processing facility, if:

- ~~(i)~~(i) The operator complies with the notification requirement of ~~part 2 of this subparagraph (b) of this paragraph;~~
- ~~(ii)~~(ii) The facility is constructed, operated, maintained, and closed in such a manner as to minimize:
 - ~~I.~~(I) The propagation, harborage, or attraction of flies, rodents, or other disease vectors;
 - ~~II.~~(II) The potential for explosions or uncontrolled fires;
 - ~~III.~~(III) The potential for releases of solid wastes or solid waste constituents to the environment except in a manner authorized by state and local air pollution control, water pollution control, and/or waste management agencies; and
 - ~~IV.~~(IV) The potential for harm to the public through unauthorized or uncontrolled access;
- ~~(iii)~~(iii) The facility has an artificial or natural barrier which completely surrounds the facility and a means to control entry, at all times, through the gate or other entrances to the facility;
- ~~(iv)~~(iv) The facility, if open to the public, has clearly visible and legible signs at the points of public access which indicate the hours of operation, the general types of waste materials that either will or will not be accepted, emergency telephone numbers, schedule of charges (if applicable), and other necessary information;
- ~~(v)~~(v) Trained personnel are always present during operating hours to operate the facility;
- ~~(vi)~~(vi) The facility has adequate sanitary facilities, emergency communications (e.g., telephone), and shelter available for personnel;
- ~~(vii)~~(vii) The facility's access road(s) and parking area(s) are constructed so as to be accessible in all weather conditions;
- ~~(viii)~~(viii) Except for composting facilities utilizing landscaping and land clearing wastes only, all waste handling (including loading and unloading) at the facility is conducted on paved surfaces;
- ~~(ix)~~(ix) There is no storage of solid wastes at the facility except in the containers, bins, lined pits or on paved surfaces, designated for such storage;
- ~~(x)~~(x) Except for incinerators or energy recovery units, there is no burning of solid wastes at the facility;
- ~~(xi)~~(xi) There is no scavenging of solid wastes at the facility and any salvaging is conducted at safe, designated areas and times;
- ~~(xii)~~(xii) Wind dispersal of solid wastes at or from the facility is adequately controlled, including the daily collection and proper disposal of windblown litter and other loose, unconfined solid wastes;

~~(XIII)~~(xiii) All liquids which either drain from solid wastes or are created by washdown of equipment at the facility go to either:

I.(I) A wastewater treatment facility permitted to receive such wastewaters under T.C.A. §§ 69-3-101 et seq. (Tennessee Water Quality Control Act, or

II.(II) Other methods approved by the Commissioner.

~~(XIV)~~(xiv) The facility receives no special wastes unless:

I.(I) Such receipt has been specifically approved in writing by the Department, and

II.(II) Special procedures and/or equipment are utilized to adequately confine and segregate the special wastes;

~~(XV)~~(xv) The operator can demonstrate, at the request of the Commissioner, that alternative arrangements (e.g., contracts with other facilities) for the proper processing or disposal of the solid wastes his facility handles are available in the event his facility can not operate;

~~(XVI)~~(xvi) The facility has properly maintained and located fire suppression equipment (e.g., fire extinguishers, water hoses) continuously available in sufficient quantities to control accidental fires that may occur;

~~(XVII)~~(xvii) All waste residues resulting from processing activities at the facility are managed in accordance with this Chapter or Chapter 0400-12-01 (Hazardous Waste Management), whichever is applicable, and/or with any other applicable state or federal regulations governing waste management;

~~(XVIII)~~(xviii) The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Division Director in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Division Director shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.

~~(XIX)~~(xix) New solid waste processing facilities shall not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.

~~(XX)~~(xx) The facility must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

I.(I) Location in the floodplain will not restrict the flow of the 100-year flood nor reduce the temporary water storage capacity of the floodplain.

II.(II) The facility is designed, constructed, operated, and maintained to prevent washout of any solid waste.

~~(XXI)~~(xxi) The facility does not:

I.(I) Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or

~~II~~(II) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.

~~(XXII)~~(XXII) The owner/operator may not store solid waste until the processing equipment has been installed on-site and is ready for use.

~~(XXIII)~~(XXIII) The owner/operator of a solid waste processing facility which has a solid waste storage capacity of 1000 cubic yards or greater shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner to insure the proper operation, closure, and post closure care of the facility. The types of financial assurance instruments that are acceptable are those specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116(a) and at subparagraph (3)(b) of Rule 0400-11-01-.03.

~~(XXIV)~~(XXIV) The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must include in the permit-by-rule notification a demonstration that the facility does not pose a bird hazard to aircraft. The owners or operators proposing a new solid waste processing facility that handles putrescible wastes located within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office.

~~(ii)~~2. A coal ash fill area, if:

~~(i)~~(i) The coal ash disposed of is not hazardous as defined in subparagraph (1)(c) of Rule 0400-12-01-.02 of the rules governing hazardous waste management.

~~(ii)~~(ii) The coal ash disposed of is fly ash, bottom ash, or boiler slag resulting primarily from the combustion of fossil fuel.

~~(iii)~~(iii) Disposal is limited to:

~~(i)~~(i) Coal ash in engineered structures for the following projects: a highway overpass, levee, runway, or foundation backfill.

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

~~(iv)~~(iv) The operator complies with the notification requirement of ~~part 2 of this~~ subparagraph (b) of this paragraph;

~~(v)~~(v) The fill area is constructed, operated, maintained, and closed in such a manner as to minimize:

~~(i)~~(i) The potential for harmful release of solid wastes or solid waste constituents to the environment; and

~~(ii)~~(ii) The potential for harm to the public through unauthorized or uncontrolled access;

~~(vi)~~(vi) The fill area, until development is complete, must have an artificial or natural barrier to control access of unauthorized entry.

~~(VII)~~(vii) There must be equipment available that is capable of spreading and compacting the coal ash, and capable of handling the earthwork required during the periods that coal ash is received at the fill area.

~~(VIII)~~(viii) The coal-ash fill project is designed with:

I.(I) A geologic buffer of at least three feet with a maximum saturated conductivity of 1×10^{-6} centimeters per second between the base of the fill and the seasonal high water table of the uppermost unconfined aquifer or the top of the formation of a confined aquifer, or such other protection as approved by the Commissioner taking into account site specific coal ash and soil characteristics, ambient groundwater quality, and projected flows in and around the site; and

II.(II) A ground water monitoring program approved by the department that reports sampling results to the department at least once each year. If sampling results indicate that the fill area has caused the ground water protection standards to be exceeded, the owner or operator of the facility shall commence an assessment monitoring program in accordance with regulations adopted by the board and carry-out all corrective measures specified by the Commissioner.

~~(IX)~~(ix) At the completion of the coal-ash fill project, and no later than 90 days after operations have ceased, the final cover must meet the requirement of at least 24 inches of compacted soil on the coal-ash project area, except for those areas covered by structures, asphalt, concrete (including concrete containing coal ash), or other similar barriers to water infiltration. The upper six inches of this cover shall be able to support the growth of suitable vegetation.

~~(X)~~(x) The final surface of the coal-ash fill area is graded and/or provided with drainage facilities in a manner that:

I.(I) Minimizes erosion of cover material (e.g., no steep slopes);

II.(II) Promotes drainage of precipitation falling on the area (e.g., prevents pooling);

III.(III) Provides a surface drainage system which is consistent with the surrounding area and in no way significantly adversely affects proper drainage from these adjacent lands; and

IV.(IV) The operator must take other erosion control measures (e.g., temporary mulching or seeding, silt barriers) as necessary to control erosion of the site.

~~(XI)~~(xi) Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any oils or other chemicals (other than water) for dust suppression must be approved in writing beforehand by the Department.

~~(XII)~~(xii) Prior to excavation, all bore holes drilled or dug during subsurface investigation of the site, piezometers, and abandoned wells which are either in or within 100 feet of the areas to be filled must be backfilled with a bentonite slurry or other sealant approved by the Commissioner to an elevation at least ten feet greater than the elevation of the lowest point of the fill base (including any liner), or to the ground surface if the site will be excavated less than ten feet below grade.

~~(XIII)~~(xiii) The fill area must not be located in a 100-year floodplain unless it is demonstrated to the satisfaction of the Commissioner that:

- ~~I~~(I) Location in the floodplain will not restrict the flow of the 100-year flood, nor reduce the temporary water storage capacity of the floodplain.
- ~~II~~(II) The fill area is designed, constructed, operated, and maintained to prevent washout of any solid waste.

~~(XIV)~~(xiv) There must be installed on-site a permanent benchmark (e.g., a concrete marker) of known elevation.

~~(XV)~~(xv) New coal ash fill areas and lateral expansions shall not be located in wetlands, unless the owner or operator makes the applicable demonstrations to the Commissioner as referenced at subparagraph (2)(p) of Rule 0400-11-01-.04.

~~(XVI)~~(xvi) A fill area must not be located in highly developed karst terrain (i.e., sink holes and caves).

~~(XVII)~~(xvii) The coal-ash fill project does not:

- ~~I~~(I) Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or
- ~~II~~(II) Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.

~~(XVIII)~~(xviii) Notice in Deed to Property - Except for coal ash fills on federal, state or local government owned right-of-ways, the operator must ensure that, within 90 days of meeting final cover requirements and prior to the sale or lease of the coal ash fill area property, there is recorded, a notation on the deed to the property or on some other instrument which is normally examined during a title search that will in perpetuity notify any person conducting a title search that coal ash has been placed on the property.

~~(iii)~~3. A tire storage facility, if:

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

~~(ii)~~(ii) The facility is constructed, operated, maintained and closed in a manner consistent with items (2)(k)3(i)(I) and (II) of Rule 0400-11-01-.04 and items ~~(1)(e)1(i)(III), (IV), (V), (VI), (VII), (X), (XI), (XIII), (XIV), (XVI), (XVII), (XVIII), (XIX), (XX) and (XXI)~~ of this rule subparts 1(iii), (iv), (v), (vi), (vii), (x), (xi), (xiii), (xiv), (xvi), (xvii), (xviii), (xix), (xx) and (xxi) of this subparagraph.

~~(iii)~~(iii) Contracts for disposal or recycling of the shredded tires have been established.

~~(iv)~~4. A convenience center, if:

~~(i)~~(i) The operator complies with the notification requirements of Part 2 of this subparagraph;

~~(ii)~~(ii) The operator attaches to his notification all attachments required at part (2)(b)1 of Rule 0400-11-01-.10; and

~~(iii)~~(iii) The facility is designed and operated in compliance with Rule 0400-11-01-.10.

~~(v)~~5. A transfer station, if:

- ~~(i)~~(i) The operator complies with the notification requirements of Part 2 of this subparagraph; and
- ~~(ii)~~(ii) The facility is constructed, operated, maintained, and closed in a manner consistent with items (1)(c)1(ii)(II), (III), (IV), (V), (VI), (VII), (VIII), IX, (X), (XI), (XII), (XIII), (XIV), (XV), (XVI), (XVIII), (XIX), (XX), (XXI), and (XXIV) of this rule subparts 1(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), (xx), (xxi) and (xxiv) of this subparagraph.

~~(vi)~~6. A land application facility, if:

- ~~(i)~~(i) The operator complies with the notification requirements of Part 2 of this subparagraph (b) of this paragraph;
- ~~(ii)~~(ii) The operator attaches to his notification all attachments required at subparagraph (1)(c) of Rule 0400-11-01-.13; and
- ~~(iii)~~(iii) The facility is designed and operated in compliance with Rule 0400-11-01-.13.

~~2.~~(b) The operator of a facility deemed to have a permit by rule must notify the Department in accordance with the requirements of this part subparagraph.

- ~~(1)~~1. No person shall begin operation on a new facility without having submitted notification and received written approval from the Commissioner.
- ~~(2)~~2. Notification must be submitted on forms provided by the Department and completed as per the accompanying instructions. It must include, but shall not necessarily be limited to, the following information:
 - ~~(i)~~(i) The processing and disposal activities conducted and the types of solid wastes handled;
 - ~~(ii)~~(ii) The name, mailing address, and location of the facility;
 - ~~(iii)~~(iii) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other contact person;
 - ~~(iv)~~(iv) If different from the operator, the name, mailing address, and telephone number of the landowner, along with a signed letter from such owner to the Department allowing access to the property for purposes of inspection;
 - ~~(v)~~(v) A map (e.g., U.S.G.S. 7.5 minute topographic map) which clearly indicates the location of the facility;
 - ~~(vi)~~(vi) A written narrative must be submitted that describes how the facility/operation will comply with all applicable standards listed in part 1 of this subparagraph and any other information deemed necessary by the Commissioner; and
 - ~~(vii)~~(vii) A design plan attached indicating boundaries of the site and all on-site appurtenances.
- ~~(3)~~3. The notification under subpart (ii) of this part part 2 of this subparagraph shall be revised within 30 days of a change in facility ownership with new information as necessary but at a minimum to include changes to items (ii)(III) and (IV) of this part subparts 2(iii) and (iv) of this subparagraph along with payment of the fee specified at part (2)(b)6 of Rule 0400-11-01-.07.

~~3.~~(c) Duty to Comply - The permittee must comply with all conditions of this permit-by-rule, unless otherwise authorized by the Department in writing. Any permit-by-rule noncompliance constitutes a violation of the Act and is grounds for the assessment of civil penalties by the Commissioner.

~~(2)~~(3) Application for a Permit

(a) General

1. Any person who is required to have a permit shall complete, sign, and submit an application to the Commissioner as described in this paragraph.
2. If the property on which a facility is located is owned by a person(s) different from the operator, then that owner(s) must also sign the permit application.
3. The Commissioner shall not issue a permit before receiving a complete application for a permit. An application for a permit is complete when the Commissioner receives an application form and any supplemental information which is completed to his satisfaction.
4. Operators shall keep records of all data and supplemental information used to complete permit applications until the end of the post-closure care period.
5. Five copies of the required permit application must be submitted to the Commissioner.
6. All reports, plans, specifications, and manuals must be prepared in proper technical format, typewritten, and bound (e.g., 3 ring loose-leaf binders).
7. All permit applications will be signed as follows:
 - (i) For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means (I) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy - or decision making functions for the corporation, or (II) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding 25 million dollars (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
 - (iii) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a federal agency includes (I) the chief executive officer of the agency, or (II) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA) or for overall compliance with environmental regulatory requirements of the agency.
8. All reports required by permits and other information requested by the Commissioner shall be signed by a person described in part 7 of this subparagraph, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (i) The authorization is made in writing by a person described in part 7 of this subparagraph;
 - (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or person of equivalent responsibility. (A duly

authorized representative may thus be either a named individual or any individual occupying a named position); and

(iii) The written authorization is submitted to the Commissioner.

9. If an authorization under part 8 of this subparagraph is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of part 8 of this subparagraph must be submitted to the Commissioner prior to or together with any reports or information to be signed by an authorized representative.

10. Any person signing a document under parts 7 or 8 of this subparagraph shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information As specified in T.C.A. § 39-16-702(a)(4), this declaration is made under penalty of perjury."

(b) Permitted Facilities - Permitted facilities shall not be subjected to public notice and public hearings when making permit modifications that are necessary to comply with rules passed subsequent to the issuance of the facility's original permit.

(c) Contents of the Permit Application

1. Contents of the Disposal Permit Application -- A complete permit application shall consist of a Part I with the applicant's disclosure statement and a Part II as described in this subparagraph.

(i) The Part I disposal permit application must be submitted on forms provided by the Department with appropriate attachments which includes a disclosure statement as required by T.C.A. 68-211-106(h). All forms must be completed as per the accompanying instructions. The Part I application must include, but shall not necessarily be limited to, the following information:

(I) The activities conducted or to be conducted by the applicant which require him to obtain a permit under this rule and the general types of wastes handled or to be handled;

(II) The name, mailing address, and location of the facility for which the application is submitted;

(III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other person who will serve as the primary contact with the Department;

(IV) If different from the applicant, the name, mailing address, and telephone number of the land owner, along with a signed letter from such owner to the Department allowing access to the property for such investigations as may be necessary to determine its suitability as a disposal facility;

(V) The name, mailing address, and telephone number of the zoning authority of jurisdiction (if any), and the current zoning status of the property; and

- (VI) A United States Geological Survey (U.S.G.S.) 7.5 minute topographic map extending one-half mile beyond the property boundaries of the facility which clearly depict:
 - I. The property boundaries;
 - II. The facility and each of its solid waste processing or disposal units and any hazardous waste treatment, storage, or disposal units (to include past waste disposal units); and
 - III. Those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundary.
 - (ii) The Part II disposal permit application shall consist of those reports, plans and specifications, or other documentation necessary to provide the information specified in paragraph (9) of Rule 0400-11-01-.04.
2. Contents of the Compost Facility Permit Application -- A complete permit application shall consist of a Part I with the applicant's disclosure statement and a Part II as described in this subparagraph.
- (i) The Part I compost facility permit application must be submitted on forms provided by the Department with appropriate attachments which includes a disclosure statement as required by T.C.A. 68-211-106(h). All forms must be completed as per the accompanying instructions. The Part I application must include, but shall not necessarily be limited to, the following information:
 - (I) The activities conducted or to be conducted by the applicant which require him to obtain a permit under this rule and the general types of wastes handled or to be handled;
 - (II) The name, mailing address, and location of the facility for which the application is submitted;
 - (III) The name, mailing address, and telephone number of the applicant and, if the applicant is a government agency, corporation, company, or partnership, that of the process agent or other person who will serve as the primary contact with the Department;
 - (IV) If different from the applicant, the name, mailing address, and telephone number of the land owner, along with a signed letter from such owner to the Department allowing access to the property for such investigations as may be necessary to determine its suitability as a composting facility;
 - (V) The name, mailing address, and telephone number of the zoning authority of jurisdiction (if any), and the current zoning status of the property; and
 - (VI) A United States Geological Survey (U.S.G.S.) 7.5 minute topographic map which clearly indicates the location of the facility.
 - (ii) The Part II compost facility permit application shall consist of those reports, plans and specifications, or other documentation necessary to provide the information specified in paragraph (5) of Rule 0400-11-01-.11. The master plan, design plan, and narrative description of the facility and operation are components of the Part II application and each must be prepared by a registered engineer. Any registered engineer herein required shall be governed by the terms of T.C.A. Title 62, Chapter 2.

(d) Recertification by Disposal Facility Permittees for Facilities Whose Initial Operation is Delayed

1. If the facility does not initiate construction and/or operation within one year of the date a permit (issued pursuant to paragraph ~~(3)~~ (4) of this rule) becomes effective, the permittee must submit a letter to the Commissioner 180 days prior to construction which either:
 - (i) Certifies that the information submitted in the permit application is still accurate and complete; or
 - (ii) Identifies those changes that have occurred in the information submitted in the permit application.
2. Such letter must be signed as set forth in part (a)8 of this paragraph.
3. Upon his receipt of such letter or other information that indicates that a change has occurred in the information submitted in the permit application, the Commissioner shall:
 - (i) Determine if cause exists under paragraph ~~(5)~~ (6) of this rule to modify, to revoke and reissue, or to terminate the permit; and
 - (ii) Take such action as he deems appropriate pursuant to paragraph ~~(5)~~ (6) of this rule.
4. The permittee may not initiate construction and/or operation unless and until authorized by the Commissioner in writing.

~~(3)~~(4) Processing the Permit

- (a) Preliminary Notices - Within 30 days after the date of receipt, the Commissioner shall issue a preliminary public notice under subparagraph (e) of this paragraph for each Part I permit application received.
- (b) Review of the Permit Application
 1. The Commissioner shall review every permit application for completeness. Upon completing the review, the Commissioner shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Commissioner shall list the information necessary to make the application complete. The Commissioner shall notify the applicant that the application is complete upon receiving the required information. After the application is completed, the Commissioner may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.
 2. When the Commissioner decides that a site visit is necessary for any reason in conjunction with the processing of an application, he shall notify the applicant and a date shall be scheduled.
- (c) Draft Permits
 1. Once an application is complete, the Commissioner shall tentatively decide whether the permit should be issued or denied.
 2. If the Commissioner tentatively decides the permit should be denied, he shall prepare a notice to deny. A notice of intent to deny the permit shall be sent to the applicant. The applicant may wish to appeal the Commissioner's decision to the Board by filing a written petition as provided at T.C.A. 68-211-113(b).
 3. If the Commissioner tentatively decides the permit should be issued, he shall prepare a draft permit as set forth in part 4 of this subparagraph.

4. A draft permit shall contain (either expressly or by reference) all applicable terms and conditions from paragraph ~~(4)~~ (5) of this rule.
5. All draft permits shall be subject to the procedures of subparagraphs (d) through (i) of this paragraph, unless otherwise specified in those subparagraphs.

(d) Fact Sheets

1. A fact sheet shall be prepared for every draft permit (or notice to deny the permit).
2. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit to include, when applicable:
 - (i) A brief description of the type of facility or activity which is the subject of the draft permit;
 - (ii) The type and quantity of wastes which are proposed to be or are being disposed of;
 - (iii) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the permit application;
 - (iv) Reasons why any requested waivers or alternatives to required standards do or do not appear justified.
 - (v) A description of the procedures for reaching a final decision on the draft permit, including:
 - (I) The beginning and ending dates of the comment period under subparagraph (e) of this paragraph and the address where comments will be received;
 - (II) Procedures for requesting a public hearing; and
 - (III) Any other procedures by which the public may participate in the final decision; and
 - (vi) Name and telephone number of a person to contact for additional information.
3. The Commissioner shall send this fact sheet to the applicant and, upon request, to any other person.

(e) Public Notices and Public Comments

1. Scope
 - (i) An applicant shall give public notice, as prepared and directed by the Commissioner that the following actions have occurred:
 - (I) A permit application as described in subparagraph (a) of this paragraph has been received;
 - (II) A draft permit has been prepared under part (c)3 of this paragraph or a new draft permit prepared under subparagraph ~~(5)(6)~~(a) or ~~(5)(6)~~(b) of this rule;

- (III) A public hearing has been scheduled under subparagraph (g) of this paragraph; or
 - (IV) A change of ownership.
- (ii) No public notice is required when a request for a permit modification, revocation and reissuance, or termination is denied under paragraph ~~(5)~~ (6) of this rule. Written notice of that denial shall be given to the permittee.
 - (iii) Public notices may describe more than one permit or permit action.
 - (iv) An applicant shall provide proof of the completion of all notices required to be given by the Commissioner within 10 days following conclusion of the public notice procedures.
 - (v) The Commissioner shall give a public notice that a notice of intent to deny an original permit has been prepared under part (c)2 of this paragraph.
2. Timing
- (i) Public notice of the preparation of a draft permit or a notice of intent to deny an original permit shall allow at least 45 days for public comment.
 - (ii) Public notice of a public hearing shall be given at least 15 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
3. Methods - Public notice of activities described in subpart 1(i) of this subparagraph shall be given by all of the following:
- (i) By posting in a public place (e.g., post office, library, health department, etc) of the municipalities nearest the site under consideration; and
 - (ii) By publication of a notice in a daily or weekly local newspaper of general circulation as designated by the Commissioner; and
 - ~~(iii)~~ By delivery to the county legislative body in which a proposed landfill is located and by delivery to the governing body of any municipality in which the proposed landfill is located or which is within one mile of such proposed landfill; and
 - ~~(iii)~~(iv) By any other method deemed necessary or appropriate by the Commissioner to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Such additional notices shall be the financial responsibility of the Commissioner. The Commissioner is financially responsible for newspaper notices in excess of one in each county where coverage is deemed necessary.
4. Contents
- (i) General Public Notices - Except for the preliminary public notices described in subparagraph (a) of this paragraph, all public notices issued under this part shall contain the following minimum information:
 - (I) Name, address and phone number of the office processing the permit action for which notice is being given;
 - (II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

- (III) A brief description of the business conducted at the facility or activity described in the permit application including the size and directions from a state highway or interstate, and/or a map (e.g., a sketched or copied street map if the location is remote or not easily accessible) to the facility and type of waste accepted;
 - (IV) A brief description of the comment procedures required by subparagraphs (f) and (g) of this paragraph, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision;
 - (V) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of draft permits and fact sheets;
 - (VI) A description of the time frame and procedure for making a final determination on this facility application approval or disapproval;
 - (VII) If the notice is announcing a public hearing it will state the time and location of the hearing and make reference to any prior public notice issued for each site.
 - (VIII) Any additional information considered necessary or proper.
- (ii) Public Notices for Public Hearing - In addition to the general public notice described in subpart (i) of this part, the public notice of a public hearing shall contain the following information:
 - (I) Reference to the dates of previous public notices relating to the permit action;
 - (II) Date, time, and place of the public hearing; and
 - (III) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures.
 - (IV) A concise statement of the issues raised by the persons requesting the hearing.
 - (iii) Preliminary Notices - The preliminary public notice described in subparagraph (a) of this paragraph shall contain the following information:
 - (I) The information from items (i)(I), (II), (III), (V), (VI), and (VII) of this part; and
 - (II) A brief description of the permitting procedures that will be followed, focusing especially upon the opportunities for public participation in the process.
- (f) Public Comments and Requests for Public Hearings - During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in subparagraph (j) of this paragraph.
 - (g) Public Hearings

1.
 - (i) The Commissioner shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in a draft permit(s).
 - (ii) The Commissioner may also hold a public hearing at his discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
 - (iii) The Commissioner shall hold a public hearing whenever he receives written notice of significant public concern or opposition to a draft permit and a request for a hearing, within 45 days of public notice under subpart (e)2(i) of this paragraph.
 - (iv) Public hearing held pursuant to this rule shall be at a location convenient to the nearest population center to the subject facility.
 - (v) Public notice of the hearing shall be given as specified in subparagraph (e) of this paragraph.
 2. Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under subparagraph (e) of this paragraph shall automatically be extended to the close of any public hearing under this subparagraph. The hearing officer may also extend the comment period by so stating at the hearing.
 3. A tape recording or written transcript of the hearing shall be made available to the public.
- (h) Reopening of the Public Comment Period
1. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit action, the Commissioner may (at his discretion or as directed by the Board) take one or more of the following actions:
 - (i) Prepare a new draft permit, appropriately modified, under subparagraph (c) of this paragraph;
 - (ii) Prepare a fact sheet or revised fact sheet under subparagraph (d) of this paragraph and reopen the comment period under subparagraph (e) of this paragraph; or
 - (iii) Reopen or extend the comment period under subparagraph (e) of this paragraph to give interested persons an opportunity to comment on the information or arguments submitted.
 2. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under subparagraph (e) of this paragraph shall define the scope of the reopening.
 3. Public notice of any of the actions of part 1 of this subparagraph shall be issued under subparagraph (e) of this paragraph.
- (i) Final Permit Decision
1. After the close of the public comment period under subparagraph (e) of this paragraph on a draft permit (including a notice of intent to deny a permit), the Commissioner shall issue a final permit decision. The Commissioner shall notify the applicant and each person who has submitted a written request for notice of the final permit decision. For the purposes of this subparagraph, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

2. A final permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.

(j) Response to Comments

1. At the time that a final permit decision is issued under subparagraph (i) of this paragraph, the Commissioner shall issue a response to comments. This response shall:
 - (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 - (ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.
2. The response to comments shall be made available to the public.

- (k) Appeals - If, in his final permit decision under subparagraph (i) of this paragraph, the Commissioner denied the permit or issued it subject to conditions with which the permit applicant disagrees, the applicant may appeal the decision to the Board as set forth in T.C.A. § 68-211-113. If the Commissioner fails to take any action on a permit application within 45 days after it was submitted to him, the permit applicant may appeal to the Board as set forth in T.C.A. § 68-211-113.

~~(4)~~(5) Terms of the Permit

- (a) Conditions Applicable to all Permits - The following conditions apply to all permits, and shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this subparagraph must be included in the permit.
1. Duty to Comply - The permittee must comply with all conditions of this permit, unless otherwise authorized by the Department in writing. Any permit noncompliance constitutes a violation of the Act and is grounds for termination, revocation and/or reissuance, or modification of the permit and/or the assessment of civil penalties by the Commissioner.
 2. Need to Halt or Reduce Activity Not a Defense - It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
 3. Duty to Mitigate - In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.
 4. Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
 5. Permit Actions - This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

6. Property Rights - This permit does not convey any property rights of any sort, or any exclusive privilege.
7. Duty to Provide Information - The permittee must furnish to the Commissioner, within a reasonable time, any information which the Commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to the Commissioner, upon request, copies of records required to be kept by this permit. All records, including a copy of the permit and the approved Part I and Part II application, must be maintained at the facility or other locations as approved by the Commissioner.
8. Inspection and Entry - The permittee shall allow the Commissioner, or an authorized representative, to:
 - (i) Enter at any reasonable time the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (iii) Inspect at any reasonable time any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit (Note: If requested by the permittee at the time of sampling, the Commissioner shall split with the permittee any samples taken.);
 - (iv) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location; and
 - (v) Make photographs for the purpose of documenting items of compliance or noncompliance at waste management units, or where appropriate to protect legitimate proprietary interests, require the permittee to make such photos for the Commissioner.
9. Monitoring and Records
 - (i) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - (ii) The permittee shall retain records of all required monitoring information. 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 the post-closure care period as well. This period may be extended by request of the Commissioner at any time.
 - (iii) Records of monitoring information shall include:
 - (I) The date, exact place, and time of sampling or measurements;
 - (II) The individual(s) who performed the sampling or measurements;
 - (III) The date(s) analyses were performed;
 - (IV) The individual(s) who performed the analyses;
 - (V) The analytical techniques or methods used (including equipment used); and
 - (VI) The results of such analyses.

10. Reporting Requirements

- (i) The permittee shall give notice to the Commissioner as soon as possible of any planned physical alterations or additions to the permitted facility.
- (ii) Monitoring results shall be reported at the intervals specified in the permit.
- (iii) The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any release, discharge, fire, or explosion from the permitted solid waste facility which could threaten the environment or human health outside the facility. Such report shall be made to the Tennessee Emergency Management Agency, using 24-hour toll-free number ,1/800/262-3300.
- (iv) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Commissioner, it shall promptly submit such facts or information.

11. Periodic Survey of Disposal Facility

- (i) Within 60 days of his receipt of the written request of the Commissioner to do so, the permittee shall cause to be conducted a survey of active and/or closed portions of his facility in order to determine if operations (e.g., cut and fill boundaries, grades) are being conducted in accordance with the approved design and operational plans. The permittee must report the results of such survey to the Commissioner within 90 days of his receipt of the Commissioner's request.
- (ii) The Commissioner may request such a survey:
 - (I) If he has reason to believe that operations are being conducted in a manner that significantly deviates from the approved plans; and/or
 - (II) As a periodic verification (but no more than annually) that operations are being conducted in accordance with the approved plans.
- (iii) Any survey performed pursuant to this part must be performed by a qualified land surveyor duly authorized under Tennessee law to conduct such activities.

(b) Facility - Specific Permit Conditions

- 1. In addition to the conditions required in all permits (subparagraph (a) of this paragraph), the Commissioner shall, as required on a case-by-case basis, establish conditions in permits pursuant to this subparagraph.
- 2. Each permit shall include such terms and conditions as the Commissioner determines are:
 - (i) Necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in this Chapter, (Note: In satisfying this provision, the Commissioner may incorporate applicable requirements of these rules directly into the permit or establish other permit conditions that are based on these rules.); and
 - (ii) Otherwise necessary to protect human health and the environment.
- 3. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. Subparagraph ~~(3)~~(4)(h) of this

rule provides a means for reopening permit proceedings at the discretion of the Commissioner when applicable new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in paragraph ~~(5)~~ (6) of this rule.

4. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

(c) Duration of Permits - Permits shall be effective for the operating life of the facilities.

(d) Effect of a Permit

1. A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in paragraph ~~(5)~~ (6) of this rule.
2. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
3. The issuance of a permit does not authorize the permittee to injure persons or property or to invade other private rights, or to violate any local law or regulations.

~~(5)~~(6) Transfer, Modification, Revocation and Reissuance, and Termination of Permits

(a) Transfer of Permits

1. A permit may be transferred by the permittee to a new operator only if the permit has been modified or revoked and reissued (under subparagraph (b) of this paragraph) to identify the new permittee and incorporate such other requirements (e.g., financial requirements) as may be necessary under the Act or this rule. A permit transfer may be performed as a minor modification, but does require the preparation and issuance of a public notice.
2. (i) For the purpose of this Chapter, the "owner or operator" of a processing, storage or disposal facility has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A "change of ownership" occurs whenever this ultimate authority to control the activities and the policies of the facility is transferred to another individual, group, or legal entity.
(ii) A "change of ownership" also occurs whenever there is a change in the legal form under which the controlling entity is organized.
(iii) Transactions constituting a change of ownership include, but are not limited to, the following:
 - (I) Sale or donation of the facility's legal title;
 - (II) Lease of the entire facility's real and personal property;
 - (III) A sole proprietor becomes a member of a partnership or corporation, succeeding him as the new operator;
 - (IV) A partnership dissolves;
 - (V) One partnership is replaced by another through the removal, addition or substitution of a partner;

- (VI) A general partnership becomes a limited partnership, or limited partnership becomes general;
 - (VII) Two (2) or more corporations merge and the originally-permitted corporation does not survive;
 - (VIII) Corporations consolidate;
 - (IX) A non-profit corporation becomes a general corporation, or a for-profit corporation becomes non-profit.
 - (X) Transfers between levels of government; and
 - (XI) Corporate stock transfers or sales, when the controlling interest is transferred.
- (iv) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
- (I) Changes in the membership of a corporate board of directors or board of trustees;
 - (II) Two (2) or more corporations merge and the originally-permitted corporation survives;
 - (III) Changes in the membership of a non-profit corporation; and
 - (IV) Transfer between departments of the same level of government.

3. Changes in the ownership or operational control of a facility may be made as a modification with prior written approval of the Commissioner in accordance with part (b)2 of this paragraph. The new owner or operator must submit a transfer of ownership form no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the Commissioner. When a transfer of ownership or operational control occurs, the old owner or operator of the disposal facility shall comply with the financial assurance requirements of paragraph (3) of Rule 0400-11-01-.03 and likewise, the owner or operator of a composting facility shall comply with the financial assurance requirements of subparagraph (2)(p) of Rule 0400-11-01-.11 until the new owner or operator has demonstrated that he or she is complying with the requirements of that rule. The new owner or operator must demonstrate compliance with the referenced financial requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the Commissioner by the new owner or operator of compliance with the referenced financial requirements, the Commissioner shall notify the old owner or operator that he or she no longer needs to comply with the referenced financial requirements as of the date of demonstration.

(b) Modification or Revocation and Reissuance of Permits

1. General - Except as otherwise provided in these rules, permits may only be modified or revoked and reissued for the reasons shown in parts 3, 4, or 5 of this subparagraph and only according to the procedures set forth in part 2 of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
2. Procedures
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, and required

reports) indicating that modification or revocation and reissuance of the permit may be in order, he may determine whether or not one or more of the causes listed in parts 3, 4, or 5 of this subparagraph exist.

- (ii) If the Commissioner determines cause exists, he may proceed to modify or revoke and reissue the permit accordingly, subject to the limitations of part 6 of this subparagraph. If a permit modification satisfies the criteria in part 5 of this subparagraph for "minor modifications", the permit may be modified without following further the procedures of this part, except for subpart (vi) of this part.
 - (iii) If the Commissioner determines cause does not exist under parts 3, 4, or 5 of this subparagraph, he shall not modify or revoke and reissue the permit. If the modification or revocation and reissuance was requested by the permittee, the Commissioner shall give to the permittee such notice as is required by T.C.A. § 4-5-320.
 - (iv) If the Commissioner tentatively decides to cause a major modification or revoke and reissue a permit, he shall prepare a draft permit under subparagraph ~~(3)~~ (4)(c) of this rule incorporating the proposed changes. This draft permit shall be processed as set forth in paragraph ~~(3)~~ (4) of this rule. The Commissioner may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Commissioner shall require the submission of a new application.
 - (v) In a permit modification under this part, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this part, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
 - (vi) No minor modification to a permit shall be made under subpart (ii) of this part, and no draft permit shall be prepared under subpart (iv) of this part, until the permittee has been given such notice as is required by T.C.A. § 4-5-320.
3. Causes for Modification - The following are causes for modification but not revocation and reissuance of permits. However, the following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees:
- (i) There are changes to the permitted facility which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
 - (ii) The Commissioner has received information which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance.
 - (iii) The standards or regulations on which the permit was based have been substantially changed by legislation or promulgation of amended standards or regulations or by judicial decision after the permit was issued.
 - (iv) A major modification of a closure plan or post-closure plan is required.
 - (v) To include conditions applicable to units at a facility that were not previously included in the facility's permit.

- (vi) When a land treatment unit is not achieving adequate treatment under its current permit conditions.
4. Causes for Modification or Revocation and Reissuance - The following are causes to modify or, alternatively, revoke and reissue a permit:
 - (i) Cause exists for termination under subparagraph (c) of this paragraph and the Commissioner determines that modification or revocation and reissuance is appropriate.
 - (ii) The Commissioner has received notification of a proposed transfer of the permit.
 5. Minor Modification of Permits - Upon the consent of the permittee, the Commissioner may modify a permit to make the corrections or allowances for those changes in the permitted activity deemed by the Commissioner to be a minor modification without following the procedures of paragraph ~~(3)~~ (4) of this rule. A minor modification is a change in the plans for a facility which will not alter the expected impact of the facility on the public, public health, or the environment. Major modifications shall include at least changes in final contour elevations, increase in capacities, changes in direction of site drainage, and other changes deemed major by the Commissioner.
 6. Facility Siting - Suitability of the facility location will not be reconsidered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of the permit issuance.
- (c) Termination of Permits
1. General - Permits may be terminated only for the reasons shown in part 3 of this subparagraph and only according to the procedures set forth in part 2 of this subparagraph. This process may be initiated either by the Commissioner or at the request of the permittee. All such requests from the permittee shall be in writing and shall contain the reasons for the request.
 2. Procedures
 - (i) When the Commissioner receives a request from the permittee or other information (e.g., complaints, inspection findings, monitoring data, reports) indicating that termination of the permit may be in order, he may determine whether or not one or more of the causes listed in part 3 of this subparagraph exist.
 - (ii) If the Commissioner determines cause exists, he may proceed to terminate the permit.
 - (iii) If the Commissioner tentatively decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared and processed under paragraph ~~(3)~~ (4) of this rule.
 - (iv) No notice of intent to terminate shall be issued under subpart (iii) of this part until the permittee has been given such notice as is required by T.C.A. § 4-5-320.
 3. Causes for Termination - The following are causes for terminating a permit during its term, or for denying a permit renewal application:
 - (i) Noncompliance by the permittee with any condition of the permit which the Commissioner deems to be significant noncompliance, repeated noncompliance, and/or failure to comply with the Division's compliance schedule relative to permit conditions;

- (ii) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;
- (iii) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination; or
- (iv) The request of the permittee, providing he has complied with all closure and post-closure requirements in the permit conditions.
- (v) The permittee's failure to file and maintain financial assurance in the amount required by Rule 0400-11-01-.03 and subparagraph (2)(p) of Rule 0400-11-01-.11.
- (vi) Non-payment of any fees owed to the Department.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., 68-211-801 et seq., Chapter 210 of the Private Acts of 1990, and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new subparagraph (y) to read as follows:

(y) Scenic Rivers, Buffalo River

1. The facility shall not be located within two miles of the center of a Class II scenic river, nor within two miles of the center of such a river in an adjacent upstream county, notwithstanding the fact that the river is not designated as a scenic river in the upstream county, if the river is designated as a Class II scenic river in the adjacent downstream county; and provided further that the facility shall not be located within five miles of the center of the Buffalo River in Lewis County.
2. The river segments that are Class II scenic rivers are those that have been designated by the General Assembly in Tenn. Code Ann. §11-13-104. At this time those are:
 - (i) Blackburn Fork -- That segment downstream from a point one and one-half (1 ½) miles downstream from the county road at Cummings Mill to its confluence with Roaring River.
 - (ii) Buffalo River -- The entire river, except that portion which lies within Wayne, Perry, Humphreys and Lewis counties.
 - (iii) Collins River -- That segment which lies within the Savage Gulf natural-scientific area.
 - (iv) Duck River -- That segment of the Duck River beginning at Iron Bridge Road at river mile 136.4 extending continuously to a point upstream to the boundary of Marshall County at river mile 173.7.
 - (v) Harpeth River -- The entire river except that segment lying north of Highway 100 and south of Interstate 40 in Davidson County; and except those segments located in Cheatham, Dickson and Williamson counties.
 - (vi) Roaring River -- That segment downstream from a point two (2) miles downstream from State Route 136, to its confluence with the Cordell Hull Lake.
 - (vii) Spring Creek -- That segment between State Highway 136 and Waterloo Mill, and that segment downstream from the Overton-Jackson county line to its confluence with Roaring River.

Authority: T.C.A. §§ 68-211-101 et seq., §11-13-111, Chapter 169 of the Private Acts of 1990, and 4-5-201 et seq.

Part 4 of subparagraph (a) of paragraph (5) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by deleting it in its entirety and replacing it with a new part to read as follows:

4. The minimum frequency of monitoring shall be quarterly and the operator shall keep records to comply with the monitoring and records requirements at part ~~(4)~~ (5)(a)9 of Rule 0400-11-01-.02; and monitoring shall include at least the following locations:
 - (i) Underneath or in the low area of each on-site building;
 - (ii) At locations along the boundary as shown in the permit;
 - (iii) At any potential gas problem areas, as revealed by dead vegetation or other indicators; and
 - (iv) At any other points required by the permit.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.10 Convenience Centers / County Public Collection Receptacles is amended by deleting it in its entirety and replacing it with a new part to read as follows:

1. Convenience centers must meet the permit by rule requirements at ~~subpart (1)(c)1(iv)~~ part (2)(a)4 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:
 - (i) The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (3) of this rule.
 - (ii) A design plan attached indicating boundaries of the site and all appurtenances.
 - (iii) A site location map is submitted on a USGS Topo map.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

- (1) General
 - (a) Purpose - The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to operate a composting facility or offer for sale compost in Tennessee.
 - (b) Scope/Applicability
 1. The requirements of this rule apply as specified to operators of composting facilities in Tennessee. Except as specifically provided elsewhere in these rules, no facility may compost solid waste without a permit as provided in paragraph ~~(2)~~ (3) of Rule 0400-11-01-.02. Composting facilities, subject to a full permit on the effective date of this rule, must submit a part I and part II permit application to describe how it will comply with this rule. The application must be filed within 180 days of the effective date of this rule and implemented upon approval. The Division will not charge an application fee, nor require public notice of the application for facilities which already have permit-by-rule for composting.

2. Compost produced from the solid waste classification criteria outside the State of Tennessee, which is used or sold for use within the state, shall comply with subparagraphs (4)(a), (b) and (c) of this rule.
3. Composting facilities that process domestic sludge as a feedstock shall also comply with all other applicable federal or state laws regarding sludge management.
4. The following facilities or activities are not subject to the requirement to have a permit.
 - (i) Backyard composting and the resulting compost;
 - (ii) Normal farming operations. For the purpose of this rule, composting of only landscaping/land clearing waste, hereafter referred to as landscaping waste, or manure by persons on their own property for their own use on that property as part of agronomic or horticultural operations will be considered normal farming operations;
5. A composting facility processing up to 10,000 cubic yards per year of only landscaping waste and manure may receive a permit pursuant to ~~subparagraph (4)(c)~~ paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing.
6. A composting facility processing only landscaping waste may receive a permit pursuant to ~~subparagraph (4)(c)~~ paragraph (2) of Rule 0400-11-01-.02 Permits by Rule, for Solid Waste Processing.
7. A processing facility composting sewage sludge that is one acre or less in size may apply for a permit by rule pursuant to ~~subparagraph (4)(c)~~ paragraph (2) of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (2) of Rule 0400-11-01-.11 Requirements for Compost and Composting Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

- (2) General Facility Standards - Unless specifically noted otherwise, the standards of this paragraph shall apply to all compost facilities subject to a permit as provided at paragraph ~~(2)~~ (3) of Rule 0400-11-01-.02.
 - (a) Performance Standards - The facility must be located, designed, constructed, and maintained, and closed in such a manner as to minimize to the extent practicable:
 1. The propagation, harborage, or attraction of birds, flies, rodents, or other vectors;
 2. The potential for releases of solid waste, solid waste constituents, or other potentially harmful material to the environment except in a manner authorized by state law;
 3. The exposure of the public to potential health and safety hazards through uncontrolled or unauthorized public access;
 4. The presence of odors that constitute a nuisance.
 - (b) Control of Access and Use
 1. The facility shall have a natural or an artificial barrier which completely surrounds the active portion of the facility and must have a means to control entry, at all times, through the gate or other entrances to the active portion of the facility.
 2. If open to the public, the facility shall have clearly visible and legible signs at the points of public access which indicate the hours of operation, the types of waste materials that either will or will not be accepted, emergency telephone numbers, schedules of charges (if applicable), and any other necessary information.

3. The facility shall have paved (paved includes compacted stone) access roads and parking areas. Traffic control signs shall be provided as necessary.
4. The facility shall have trained personnel present and on duty during operating hours to assure compliance with operational requirements and to prevent entry of unauthorized wastes.
5. There shall be no scavenging.
6. Scales for weighing all waste received at the facility shall be provided, unless the Commissioner approves an alternative method of measurement.

(c) Leachate Collection

1. The facility shall have a leachate collection and removal system that is designed, constructed, and maintained such that all leachate from the waste receiving, storage, processing, and curing areas is collected. All washdown, stormwater or other water coming into contact with solid waste or compost must be collected and properly managed.
2. Leachate shall be reused in the process or otherwise properly managed as per all applicable laws and rules.

(d) Waste Management

1. The type [defined at part (4)(a)1 of this rule] and source of solid waste to be received shall be determined and categorized for review. This listing shall be updated as appropriate.
2. The type and source of any additives to be used in the production of compost shall be specified.
3. The facility's waste inspection procedures shall be established to prevent the receipt of unauthorized or unacceptable waste. Inspection of all loads received is required.
4. Contingency operations shall identify proper management of all waste in the event of equipment failure, facility disaster, or receipt of unauthorized material such as oil, hazardous waste, etc.
5. The surfaces for all waste receiving areas, storage areas, and processing and curing areas shall be paved to minimize release of any contaminants to the groundwater. The paved areas shall be capable of withstanding wear and tear during normal operations. The standards for surfaces for facilities shall be as follows:
 - (i) Facilities receiving waste types categorized as solid waste or landscaping waste and manure shall utilize a surface of asphalt or concrete or other surface approved by the Commissioner.
 - (ii) Facilities receiving only the landscape waste type may utilize a surface of compacted gravel or the surfaces authorized in subpart (i) of this part.
6. Landscaping waste shall be stored separately from other solid waste at the facility. Solid waste shall be stored in a manner to prevent vectors. Unusable material must be identified and removed within 48 hours.
7. Recovered materials removed from the solid waste stream shall be stored in a manner that prevents vector problems and shall be sent to a vendor or processor at least every thirty (30) days.

- (e) Fire Safety
 - 1. No open burning is allowed.
 - 2. The facility shall have, on-site and continuously available, properly maintained fire suppression equipment capable of controlling accidental fires. If available, local fire fighting service shall be acquired.
- (f) Litter Control - Fencing and/or other control shall be provided to confine loose waste to the area designated for storage or processing: Accidental dispersal from the designated areas shall be recovered daily.
- (g) Personnel Facilities - There shall be provided:
 - 1. A building or other shelter which is accessible to facility personnel which has adequate heating and light.
 - 2. Potable water for washing and drinking.
 - 3. Toilet facilities.
- (h) Communication - The facility shall have available during operating hours equipment capable of summoning emergency assistance as needed.
- (i) Operating Equipment - The facility shall have on-site operational and monitoring equipment capable of maintaining the waste processing as designed.
- (j) Dust Control - The operator must take dust control measures as necessary to prevent dust from creating a nuisance or safety hazard to adjacent landowners or to persons engaged in supervising, operating, and using the site. The use of any dust suppressants (other than water) must be approved in writing beforehand by the Department.
- (k) Run-on/Run-off Control
 - 1. The operator shall design, construct, and maintain a run-on control system capable of preventing the 25 year, 24 hour storm from flowing onto all operational and storage areas.
 - 2. The operator shall design, construct, and maintain a run-off management system capable of minimizing impact to adjoining properties during the 25 year, 24 hour storm.
 - 3. Run-off shall be managed separately from leachate unless otherwise approved by the Commissioner.
- (l) Endangered Species - Facilities shall be located, designed, constructed, operated, maintained, closed, and cared for during the post-closure care period in a manner that does not:
 - 1. Cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife; or
 - 2. Result in the destruction or adverse modification of the critical habitat of endangered or threatened species.
- (m) Location in Floodplains- Facilities shall not be located in a 100-year floodplain, unless the demonstration is made to the Commissioner as required at subparagraph (2)(n) of Rule 0400-11-01-.04.
- (n) Wetlands - The facility shall not be located in a wetland unless the demonstration is made to the Commissioner as required at subparagraph (2)(p) of Rule 0400-11-01-.04.

- (o) Closure - The facility must meet closure requirements described herein. The facility is finally closed by removal of all solid wastes and solid waste residues for proper disposal. The operator must notify the Commissioner in writing of his completion of closure of the facility. Such notification must include a certification by the operator that the facility has been closed by removal of all the solid waste and residues. Within 21 days of the receipt of such notice the Commissioner shall inspect the facility to verify that closure has been completed. Within 10 days of such verification, the Commissioner shall approve the closure in writing to the operator. Closure shall not be considered final and complete until such approval has been made.
- (p) The owner/operator of a compost facility permitted pursuant to paragraph ~~(2)~~ (3) of Rule 0400-11-01-.02 shall file with the Commissioner a performance bond or equivalent cash or securities, payable to the State of Tennessee. Such financial assurance is intended to ensure that adequate financial resources are available to the Commissioner to insure 30 days operation and proper closure of the facility. The types of financial assurance instruments that are acceptable are those which are specified in subparagraph (3)(d) of Rule 0400-11-01-.03. Such financial assurance shall meet the criteria set forth in T.C.A. § 68-211-116 and at subparagraph (3)(b) of Rule 0400-11-01-.03.
- (q) Compost from facilities subject to a full permit in this rule must meet the appropriate criteria for "compost disinfection" as defined in definitions at Rule 0400-11-01-.01.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and replacing it with a new paragraph to read as follows:

(1) General

- (a) Purpose – The purpose of this rule is to establish procedures, documentation, and other requirements which must be met in order for a person to design, construct and operate a land application facility in Tennessee.
- (b) Scope/Applicability
 1. The requirements of this rule apply to land application facilities in Tennessee. Except as specifically provided elsewhere in these rules, no person may land apply solid waste without a permit as provided in part (1)(b)1 of Rule 0400-11-01-.02.
 2. The land application of landscaping and landclearing wastes and farming wastes are exempt from the permit requirements of this rule.
 3. The land application of solid wastes from food processing facilities are subject to the requirements to have a permit-by-rule.
 4. Land application of all other solid wastes will be subject to subpart (1)(b)3(xxii) of Rule 0400-11-01-.02.
- (c) Notification Requirements – The operator must comply with the notification requirements of ~~subpart (1)(c)1(vi)~~ (2)(a)4 of Rule 0400-11-01-.02. The operator must make attachments to the notification as follows:
 1. The operator attaches a written narrative to his notification describing the specific manner in which the facility complies with paragraph (2) of this rule.
 2. The operator attaches any sampling, monitoring, or other plans required by these rules or by the Commissioner.
 3. The operator of an existing permit-by-rule land application facility must modify the notification if:

- (i) Adding a waste stream from a new generator, or a waste stream from an existing generator which has not been previously approved for land application at that site; or
- (ii) Adding new acreage to the land application operations.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Warren Anderson				X	
Marty Calloway	X				
Stacy Cothran	X				
Kenneth L. Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Bhag Kanwar	X				
Jared L. Lynn	X				
David Martin	X				
Beverly Philpot	X				
DeAnne Redman				X	
Mayor Franklin Smith, III	X				
Mark Williams	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Underground Storage Tank and Solid Waste Disposal Control Board on 12/04/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/07/11

Rulemaking Hearing(s) Conducted on: (add more dates). 02/16/12

Date: December 4, 2012

Signature: _____

Name of Officer: Kenneth L. Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

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

Comment: A commenter submitted comments about the current rules and not the amendments. Under the Rules 0400-11-01-.02(1)(b)3(ii), (vi) and (vii), the commenter is concerned that the State does not regulate: (ii) junkyards, (vi) construction/demolition wastes..... and (vii) burning of solid wastes.....under a permit.

Under (ii), hazardous materials and chemicals are present within equipment that is sent to junkyards. This material is left outside where years of weatherization breaks the various components down and allows for them to contaminate the ground and possibly surface waters during run-off events. Without a permit to hold the owner to some kind of accountability, how does the state intend to protect the environment and water sources? Are junkyards somehow managed under another program? They are likely to become mini remedial sites if not controlled from the outset.

Under (vi), the allowance of construction or demolition debris to be buried without a permit will result in ground subsidence issues for future owners and potentially contaminated sources to migrate into water systems. Without a permit how does the state intend to protect the public from hazardous materials like paints, lead, debris, asbestos materials (not known by the contractor), oils, and garbage in general that could leach into wells or other water systems?

Under (vii), without a permit for burning of solid wastes (which may include hazardous chemicals [plastics, metals..]) for energy recovery, how does the state intend to control hazardous emissions into the atmosphere? Seems like a permit would at least make known the owners responsibility for controlling hazardous emissions.

Response: These amendments are intended to bring clarity to all parties, including the local boards, as to how the various statutes applicable to local approvals are being interpreted and administered. However, regarding these issues:

The current regulations at Rule 0400-11-01-.02(1)(b)3(ii) exempts junkyard permitting. Junkyards and Automobile Graveyards are regulated by the Department of Transportation at T.C.A. §§ 54-20-101 through 205.

The current regulations at Rule 0400-11-01-.02(1)(b)3(vi) exempt from a permit construction/demolition wastes at facilities which are on/site of generation and have a fill area of less than one acre in areal extent when completed. "Construction/demolitions wastes" means wastes, other than special wastes, resulting from construction, remodeling, repair, and demolition of structures and from road building. Such wastes include but are not limited to bricks, concrete, and other masonry materials, soil, rock and lumber, road spoils, rebar, paving materials. Hazardous materials, such as lead based paint and debris, friable asbestos waste, and oils are considered special wastes and must be reported to the Department prior to disposal.

The current regulations at Rule 0400-11-01-.02(1)(b)3(vii) exempts from a permit the burning of solid wastes for energy recovery or processing of solid wastes to produce a fuel or processing of solid wastes for materials recovery, provided such burning or processing occurs on the site of generation or at a site owned or operated by the same corporation or subsidiaries of such corporation. This exemption does not exempt the burning or process from Air Pollution Control regulations which are applicable.

- Comment: A commenter asked if this rule change changes to the powers of the Local Boards, allowing TDEC staff to reject them if they are determined to be "arbitrary and capricious". The commenter believes that it would be wrong for the TDEC staff to make these decisions and if the decision is made by the TDEC staff or a board that the decision made by the Regional Board is arbitrary and capricious then the application should be returned to the Regional Board.
- Response: These amendments are intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. These amendments are not adding or diminishing the authority of any party currently granted by statute nor is it intended to add new procedures.
- Comment: The commenter asked if the law states that a local government must "opt in" to the Jackson Law, does that mean that it must do so for each application submitted or can a government "opt in" in general, choosing to send in an approval or disapproval for only those applications they are interested in.
- Response: If a local government 'opts in', or adopts, the Jackson law, all new landfill or lateral expansion permits must have local approval as prescribed by the law before TDEC can continue the permit process. It is the responsibility of the local government to act on each application within the time restraints under the law.
- Comment: The commenter wanted to know how local governments "opt in" and asked if the Department could provide detailed instructions and/or links to the paperwork for opting in.
- Response: T.C.A. § 68-211-707 states the provisions of the Jackson Law "only apply in any county or municipality in which [the Jackson Law] is approved by a two-thirds vote of the appropriate legislative body." Once the local legislative body adopts the Jackson Law, the local government must notify the department in writing that it has done so and include a copy of the ordinance or resolution.
- Comment: From proposed Rule 0400-11-01-.02(1)(c)2(iii): "...that local government was aware of the approved...", the commenter believes that the rule seems to say that if an application was filed after 1989 then the person/company filing the application for the landfill need only show that the "...local government was aware of and approved (the project)...". However, the required documents listed under this point only indicated that the local government was aware of the application, these documents in no way indicate that they approved it.
- Response: The applicant must provide the local government adopting the Jackson law with the information required by proposed subparagraph (1)(c) of Rule 0400-11-01-.02 and then submit evidence to the Department of the application's or notification's (in case of permit by rule processing facilities) approval, denial, or local government's failure to act.
- Comment: A commenter was of the opinion that ninety days is not enough time for local governments to assess the application and turn in a decision under the Jackson Law. Assessment takes quite a long time and money. In most cases, it takes quite a long time to muster political support to convince local officials to side with ordinary citizens and not wealthy applicants, especially where kick backs are common place. Would your department consider 180 days?
- Response: Ninety days are required by T.C.A. §§ 68-211-814(b)(2) for municipal solid waste regions to make a decision after receiving a complete application to determine if the proposed landfill or incinerator is consistent with the region's solid waste plan. The Jackson Law addresses county legislative bodies and municipal governing bodies and not municipal solid waste regions. T.C.A. subsection 68-211-704(a) requires the county legislative body, the municipal governing body or both such entities to approve or disapprove the proposed new construction for solid waste disposal by landfilling or solid waste processing by landfilling within 30 days after notice and an opportunity for a public hearing has been provided in accordance with T.C.A. § 68-211-703. The Department does not believe it has the authority to extend this timeline.
- Comment: A commenter was concerned about a specific application (Roberta Landfill in Scott Co, TN) that was approved by the Division of Solid Waste Management, but was not yet approved by the

Division regulating the water ways (because this extension to the landfill will be built over a stream that empties into the Big South Fork and is a source for drinking water in KY). What are our rights now under the Jackson Law? Has the time run out?

Response: Scott County's initial adoption (July 17, 1989) of the Jackson Law provisions has expired. A January 21, 2003 letter from the Division of Solid Waste Management to Scott County requested a copy of resolution re-adopting the Jackson Law. Presently the requested documentation has not been received. When an application for a municipal solid waste disposal facility or a solid waste processing by landfilling facility is received by the Division, it is the practice of the Division to check for the applicability of the Jackson Law, and, if needed, the local government will be requested to consider the adoption or re-adoption of the Jackson Law provisions or provide documentation that it has done so.

Comment: A commenter was concerned about the following language: "for purposes of this part [(c)1] only, "complete application" means an application that is deemed complete by the solid waste region for its purposes of determining whether a proposed landfill or incinerator is consistent with the region's solid waste plan."

Most plans do not currently have such a definition, and it would lead to inconsistent application. I believe the rules should be consistent with current practice of a Part 1 and a map of the location. In addition, the definition should not be the "technical completeness" definition of a Part II.

Response: The Department agrees with the commenter and the definition of "complete application" has been revised to clarify the level of information needed for landfill and incinerator proposals to be considered complete for the purposes of obtaining regional approval in accordance with T.C.A. 68-211-814(b)(2).

Comment: Two commenters were concerned about proposed Rule 0400-11-01-.02(1)(c)2(ii) and recommended the rule be amended to provide the county with ninety days to notify the Department as opposed to sixty days as many county commissions only meet quarterly; provide direct written notice be sent to the county mayor and chair of the county legislative body by the Department at the time of the preliminary public notice to ensure that the county promptly receives actual notice; and clarify that even if the county does not provide notice within the ninety day window, the county is still authorized to approve or disapprove the landfill or facility pursuant to the Jackson Law.

When making decisions members of county legislative bodies and mayors often take into consideration, along with the research they do themselves, the information and concerns they receive from their constituents. By nature, the process of receiving information and concerns from constituents takes time. We feel as though the above suggested language strikes a proper balance between representatives' desires to value the concerns of their constituents and the need for an efficient permitting process.

Response: The Department agrees that a ninety day notification period is reasonable to meet the needs of county commissioners that meet on a quarterly basis and has revised the proposed language.

In addition, the Department agrees that direct written notice be sent to the appropriate local authorities and the regulations have been amended accordingly.

However, the Department disagrees with the commenters that the county legislative body or municipal governing body should be able to render a decision on the proposal after missing the decision deadline. There must be fairness in establishing a point beyond which, for a given application, the Jackson Law may not be adopted.

Comment: A commenter questioned the rule numbering used in the notice and asked if the statutory cites used in Rules 0400-11-01-.02(1)(c)2(v) and (vi) were correct.

Response: On October 4, 2011, the Solid Waste Disposal Control Board adopted the number change for these rules from Chapter 1200-01-07 to Chapter 0400-11-01. The rule number change will be effective before this rulemaking is completed. The Department agrees with commenter regarding

the proper statutory citation used in proposed Rules 0400-11-01-.02(1)(c)2(v) and (vi) and has revised the amendments to correct all citations used.

Comment: Paragraph (2) of Rule 0400-11-01-.04 has been amended by adding a new subparagraph (y) to specifically identify protective requirements for Class II Scenic Rivers that have been designated by the General Assembly in T.C.A. § 11-13-104 including Blackburn Fork, Buffalo River, Collins River, Duck River, Harpeth River, Roaring River, and Spring Creek. A commenter was concerned that there was no mention of Wild and Scenic Rivers or a National River in these regulatory amendments. Due to the significance of the Big South Fork National River and the Obed Wild and Scenic River for protecting biological communities, water quality and recreational opportunities the commenter suggested that these two streams be added to the new subparagraph.

Response: These amendments are intended to bring clarity to all parties, including the local boards, as to how the various statutes applicable to local approvals are being interpreted and administered and are not intended to expand regulatory authority by adding additional streams to the list contained in the proposed Rule 0400-11-01-.04(2)(y). Under the Scenic Rivers Act, only the General Assembly can designate scenic rivers. This change would require a law to be passed.

Comment: A commenter suggested that special protection should be specified the new proposed Rule 0400-11-01-.04(2)(y) for the Obed River and the Big South Fork of the Cumberland River, Clear Creek, Daddy's Creek, Clear Fork River, and New River which are the core of National Park System Units. This protection should specify that landfills cannot be placed within two miles of these streams and not less than a mile from tributaries of these streams. These rivers are so important for recreation, and as job producers for Morgan, Scott, Fentress and Cumberland Counties, that it seems ridiculous to allow landfills near them. Any simple economic impact study would show that landfills would have a negative impact on the communities depending on these streams for drinking water and recreation.

Response: These amendments are intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered and are not intended to expand regulatory authority by adding additional streams to the list contained in the proposed Rule 0400-11-01-.04(2)(y). Under the Scenic Rivers Act, only the General Assembly can designate scenic rivers. This change would require a law to be passed.

Comment: A commenter is of the opinion that the solid waste regulatory process will never be a comprehensive, and hence credible, state-controlled process until all of the state regulatory agencies responsible for water quality, are involved. Also the state should perform an unbiased economic impact statement on a landfill before they issue an approval. The commenter is also of the opinion that the state of Tennessee should not allow out-of-state waste to be deposited in Tennessee. The reason this is happening is that Tennessee does not restrict landfill operators from accepting out-of-state waste. Landfills are profitable and the more waste the more profit. Most of the out-of-state waste comes from states that have far more comprehensive regulations than Tennessee has. It's just basic economics: it costs less to deposit your waste in Tennessee than to build your own landfill. The other states are happy, the Tennessee landfill owners are happy and the citizens of Tennessee are left with an expensive clean up in case of a leaking landfill.

Response: These issues go beyond the scope of this rulemaking, which is intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. These issues and concerns can be addressed through a future rulemaking action, to the extent allowed by decisions of the U.S. Supreme Court on interstate commerce.

Comment: A commenter believes that the Department should strike the proposed amendments dealing with local approvals under the Jackson Law and replace it with the following:

"TDEC staff will develop a package of procedures and responsibilities of Regional board members and interested parties including citizens. These training materials and guidelines shall be on-going with training available at suitable meetings and for any

Region facing a vote. TDEC shall research any city or citizens to determine past compliance with the Jackson Law.”

Response: The Department does not agree with the commenter that the proposed amendments addressing the applicability of the Jackson Law should be replaced with the suggested language. The suggestion of the commenter goes beyond the scope of this rulemaking, which is intended to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered.

Comment: A commenter is of the opinion that:

- (a) the Division of Solid Waste Management has not developed a productive and successful regulatory method for solid waste. Regulations are not based on the content of solid waste. Regulations and reports should be based on the type of waste and how it is composted or recycled;
- (b) the state needs rules and regulations which apply throughout the state – fast food, schools, universities, and business;
- (c) the state does not need local mandates – composting and recycling construction waste is market driven;
- (d) TDEC is developing solid waste regulations in discrete packages. This is a risky practice which could be interpreted to eliminate public input;
- (e) written comments should be posted; and
- (f) the Department has failed to write adequate regulations that are based on the content and source of the waste.

Response: These comments are beyond the scope of this rulemaking. The Department believes that the current regulations are consistent with the intent of the legislature and that there is not an attempt to eliminate any public input into these regulations.

Comment: The commenter asked if the US EPA or some other party pressing the Department for these rules.

Response: With these amendments the Department intends to bring clarity to all parties as to how the various statutes applicable to local approvals are being interpreted and administered. This rulemaking was initiated by the Department.

Comment: The commenter is of the opinion that the General Assembly did not intend the Jackson Law to apply to the siting of new solid waste processing facilities which are not located on land where there is disposal of solid waste by filling and covering. There are many solid waste processing facilities that are freestanding facilities located nowhere near a landfill. At these processing facilities, there is no “disposal of solid waste by filling and covering.” Since that is the definition of “landfill” or “landfilling” in the Jackson Law and since T.C.A. § 68-211-701 and subsection 68-211-704(a) apply only to “solid waste processing by landfilling,” it is clear that the Jackson Law was not intended to apply to freestanding solid waste processing facilities not operated on the site of a landfill where there is “disposal of solid waste by filling and covering.”

Response: The Department agrees and is adding language accordingly.

Comment: A commenter pointed out that subparts (1)(c)2(v) and (viii) of Rule 0400-11-01-.02 as revised would not clearly recognize the court’s approval as a means to proceed with the permitting process in accordance with T.C.A. subsection 68-211-704(c).

Response: The Department agrees and amended the regulatory language accordingly.

Issues Raised by the Attorney General's Office

After these rule amendments were adopted by the Solid Waste Disposal Control Board, we received advice from the Attorney General's Office that they would not approve the rules because of issues summarized below regarding certain of the provisions addressing Tenn. Code Ann. Sections 68-211-701 to -707 (the Jackson Law). The rules were revised accordingly and then the board adopted the revised rules.

- The Board does not have the authority to limit the Jackson Law so that it applies only to processing facilities located at landfills. The Court of Appeals ruled in *Profill Development, Inc. v. Dills*, 960 S.W. 2d 17, 26-27 that it applied to all solid waste processing facilities.
- The adopted rules required that local governments have adopted the Jackson Law within 90 days of receiving either a preliminary public notice for a landfill permit application or a permit by rule notification for a processing facility. The Jackson Law requires that this option be available to the local government until the time the Department issues a public notice tentatively approving the issuance of a solid waste permit.
- The adopted rule authorizes the Department to review an application if the "local government(s) fails to act." In contrast to the provision in Part 8 on approval by a solid waste region, the Jackson Law places no time limit on local governments to provide the public notice which in turn starts the thirty day time limit running to approve or disapprove a permit or permit by rule.
- The adopted rule provided that local approval under the Jackson Law would be necessary when there was a proposed change in the waste received at a landfill that would require a change in landfill classification. This was based on the provision in the Jackson Law that stated that "type of waste to be disposed at the landfill" was a factor to be considered. Although this rationale was not sufficient, a similar provision would be within the authority of the board if defines a 'new solid waste landfill' as that term is used in §68-211-105(h).
- It was recommended to delete the reference to classification in the provision addressing Chapter 210 of the Private Acts of 1990.

The Attorney's General's Office also recommended a change in the certification statement that is required on applications and reports while the other changes were being made.

Regulatory Flexibility Addendum

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

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

These amendments apply to future landfills and facilities that process solid waste by landfilling. Currently, these types of facilities are owned by local governments or large businesses. It is very difficult for the Department to estimate the number of small businesses that will be impacted by these amendments since small businesses have shown little to no interest in pursuing permits to operate new landfills or facilities that process solid waste by landfilling. Furthermore, this rule only clarifies existing statutory requirements, it does not impose new costs.

Types or types of small businesses: Operators of solid waste disposal and processing facilities and businesses that are subject to T.C.A. §§ 68-211-101 et seq. or the rules promulgated thereunder.

Estimate of the number of small businesses: There are currently 148 operating landfills, 89 processing facilities, 3 coal ash facilities, and 1 compost facility affected by these rule amendments. Currently, there are also 55 local governments which have adopted the "Jackson Law" provisions and would be affected by the amendments.

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

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments.

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

The rule amendment is proposed to help clarify the different provisions in different laws for local approval of landfills, processing facilities and local applicable site restrictions. It also seeks to clarify how the local approval process fits into TDEC's current permitting process.

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

The "Jackson Law" is already effective by statute. By incorporating the amendments into the regulations, small businesses and consumers should be more aware of the current local approval process and make it more efficient in the Department permitting process.

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

The federal rules at 40 CFR 258 for municipal solid waste disposal do not address local approval issues.

States bordering Tennessee – Kentucky, North Carolina, Georgia, Alabama, and Arkansas have local approval regulatory language in varying degrees of complexity reflecting that state's statutory language. In each state, local approval is a vital part of the beginning of the permit application process.

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

Exemption from regulatory requirements would not be possible under the under current state and local statutory language.

Impact on Local Governments

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

The rule amendments proposed will have no impact beyond the current statutory language that is currently in effect for local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule amendment changes are to make clear to TDEC staff, applicants, local governments, and concerned citizens the different provisions in different laws for local approval of landfills or processing facilities and also applicable site restrictions. They are also to make clear how the local approval processes fit into the TDEC permitting process.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are promulgated under the authorities of T.C.A. §§ 68-211-101 et seq., 68-211-701 et seq., and 4-5-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The existing statutory requirements that are clarified by this rule apply to existing landfills and facilities that process solid waste by landfilling that seek to expand or to new landfills and facilities that process solid waste by landfilling. Some of them made comments on details and some changes were made in response to those comments. None urged rejection of the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Attorney General has issued a great many opinions regarding solid waste issues. Most are not applicable to the subject of this rule's amendment. Two that are somewhat relevant are No. 93-27 stating that the Jackson Law is constitutional and No. 96-074 which says the Jackson Law does apply to lateral expansions of landfills permitted after June 2, 1989.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The amendment should have no increase or decrease from the current process. The Department is seeking to put our current process into the regulations for clarity.

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

Greg Luke
Division of Solid Waste Management
5th Floor, L & C Tower, 401 Church Street
Nashville, TN 37243
Phone: (615) 532-0874

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

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
Alan.Leiserson@tn.gov

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

The Board is not aware of any additional information requested by the committee.