Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-27-13
Rule ID(s): 5560 2-5560 3
File Date: 9/18/13
Effective Date: 12/17/13

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:	Water Resources
Contact Person:	Bob O'Dette
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 253-5319
Email:	Robert.Odette@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-40-12	Silvicultural Activity Stop Work Orders
Rule Number	**Rule Title**
0400-40-12-.01	Silvicultural Activity Stop Work Orders - General
0400-40-12-.02	Silvicultural Activity Stop Work Orders - Procedures
0400-40-12-.03	Notification by Operators with a Finding of Violation
0400-40-12-.04	Penalties
0400-40-12-.05	Meetings, Appeals, and Hearings

Chapter Number	**Chapter Title**
1200-04-12	Silvicultural Activity Stop Work Orders
Rule Number	**Rule Title**
1200-04-12-.01	Silvicultural Activity Stop Work Orders - General
1200-04-12-.02	Silvicultural Activity Stop Work Orders - Procedures
1200-04-12-.03	Notification by Operators with a Finding of Violation
1200-04-12-.04	Penalties
1200-04-12-.05	Meetings, Appeals, and Hearings

(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)

Repeal

Chapter 1200-04-12
Silvicultural Activity Stop Work Orders

Chapter 1200-04-12 Silvicultural Activity Stop Work Orders is repealed.

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

New Rule

Chapter 0400-40-12
Silvicultural Activity Stop Work Orders

Table of Contents

0400-40-12-.01 Silvicultural Activity Stop Work Orders – General
0400-40-12-.02 Silvicultural Activity Stop Work Orders – Procedures
0400-40-12-.03 Notification by Operators with a Finding of Violation
0400-40-12-.04 Penalties
0400-40-12-.05 Meetings, Appeals, and Hearings

0400-40-12-.01 Silvicultural Activity Stop Work Orders - General.

(1) General

(a) Purpose, Scope and Applicability

The purpose of this Chapter is to implement the amendment to the Tennessee Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., by Public Chapter 680 of the Acts of 2000. This statute gives the Commissioner new authority to alleviate pollution of waters of the state when caused by silvicultural activities due to the operator's failure or refusal to employ forestry best management practices (BMPs). Under the Act, the Commissioner of the Department of Environment and Conservation may issue a stop work order to the operator of the silvicultural activities, the order remaining in force until such time as compliance is achieved. This Chapter also implements a requirement for notification of silvicultural activities to the Commissioner of Environment and Conservation and to the Commissioner of Agriculture prior to commencement of any such activities by operators who have been formally found to have violated the Tennessee Water Quality Control Act related to silvicultural activities within the past two years.

These rules are promulgated specifically in response to the directive in § 6 of Public Chapter 680 for criteria and procedures for the issuance, appeal, and suspension of Stop Work Orders.

(b) Use of Number and Gender - As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

(c) Rule Structure - These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

(2) Definitions

When used in these rules the following terms have the meanings given below unless otherwise specified:

"Act" means P.Ch. 680 of the Acts of 2000.

"Commissioner" means the Commissioner of the Department of Environment and Conservation, or in the event of the Commissioner's absence, or a vacancy in the office of Commissioner, the Deputy Commissioner.

"Date of a finding of violation" means the date of issuance of a Commissioner's Order or Stop Work Order or the date of entry of a court order.

"Finding of violation" means a Commissioner's Order, a Stop Work Order, or a ruling, order, or judgment of a court that makes a finding that an operator has violated the Water Quality Control Act in the conduct of silvicultural activities.

"Forestry best management practices" or "BMP's" mean those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in Tennessee Department of Agriculture rules for forestry best management practices, Chapter 0800-07-02 and the interim forestry BMP's specifically identified by the Department of Agriculture pursuant to § 1 of the Act.

"Silvicultural activities" means those forest management activities associated with the harvesting of timber and including without limitation the construction of roads and trails.

"Operator" as used in context of silvicultural activities, means any person(s) that conducts or exercises control over any silvicultural activities; provided, however, that the term "operator" shall not include an owner if the silvicultural activities are being conducted by an independent contractor.

"Owner" as used in the context of silvicultural activities, means any person(s) that owns or leases land on which silvicultural activities occur or owns timber on land on which silvicultural activities occur.

"Stop Work Order" means an order issued by the Commissioner of the Department of Environment and Conservation requiring the operator to immediately cease part or all silvicultural activities.

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

0400-40-12-.02 Silvicultural Activity Stop Work Orders – Procedures.

(1) Procedures

(a) Upon receipt by either the Tennessee Department of Environment and Conservation (TDEC) or Tennessee Department of Agriculture (TDA) of a complaint alleging that water pollution has occurred as a result of silvicultural activities, either TDEC or TDA, or both will conduct an investigation of the complaint.

(b) The operator will be given the opportunity to employ forestry best management practices, or other such remedial actions as are necessary, to come into compliance prior to commencing to obtain a Stop Work Order, except when the Commissioner deems otherwise necessary to address water pollution.

(c) Following a joint investigation or site visit by TDEC and/or TDA, if a stop work order is deemed necessary to abate pollution of waters of the State, TDEC shall begin procedures to issue a stop work order when all of the following criteria are met:

1. An operator has failed or refused to use forestry best management practices (BMP); and

2. A point source discharge has been created as a result of failure or refusal to use BMPs; and

3. Waters of the State have been polluted as a result of silvicultural activities.

(d) A request for stop work order will be completed by TDEC staff, and a stop work order will be submitted to the Commissioner for his consideration. The Commissioner of the Department of Environment and Conservation may issue the stop work order against the operator, following consultation with the Commissioner of Agriculture.

(e) The Stop Work Order

1. The stop work order shall contain at a minimum the following information:

(i) The name and address of the operator;

(ii) The name and address of the owner if different than the operator;

(iii) The location of the silvicultural activity;

(iv) The waterbody affected by the pollution;

(v) a description of the failure or refusal to use BMPs;

(vi) the nature of the point source discharge created by the activity; and

(vii) a description of the water pollution which has occurred.

2. The Stop Work Order will be hand delivered to the operator and the owner on the site or their last known addresses, if they are in the state. If they are out of state, it will be sent by certified mail, return receipt requested.

3. The stop work order shall require that the operator cease the silvicultural activities that are contributing to such pollution. This may include all of the silvicultural activities if they all contribute to the pollution.

4. The stop work order shall remain in effect until the operator installs forestry best management practices that eliminate existing pollution and prevent further pollution associated with the silvicultural activities.

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

0400-40-12-.03 Notification by Operators with a Finding of Violation.

(1) No operator with a finding of violation that has not been overturned or reversed on appeal shall begin silvicultural activities within two years of the date of the finding of violation unless the operator has filed a written notification of the start of said silvicultural activities with the Commissioner of Agriculture and with the Commissioner of Environment and Conservation as required by paragraph (2) of this rule.

(2) At least ten (10) days prior to commencement of silvicultural activities, the operator with such a finding of violation shall file a written notification with the Commissioner of Agriculture and with the Commissioner of the Department of Environment and Conservation. Such notification shall include the following information:

(a) The name and address of the owner, and the name and address of the operator, if different than the owner; and

(b) The location of the silvicultural activities and estimated acreage; and

(c) The anticipated beginning date for, and the anticipated duration of, the silvicultural activities.

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

0400-40-12-.04 Penalties.

(1) As provided in T.C.A. § 69-3-136, if an operator fails to give the notice required by Rule 0400-40-12-.03 and T.C.A. § 69-3-134, or to comply with a stop work order issued pursuant to Rule 0400-40-12-.02 and T.C.A. § 69-3-133, the Commissioner may assess civil penalties against the operator of up to $10,000 per day for each day such failure continues pursuant to T.C.A. § 69-3-115(a)(1)(E).

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

0400-40-12-.05 Meetings, Appeals, and Hearings.

(1) An appeal or request for hearing of any stop work order issued by the Commissioner of the Department of Environment and Conservation shall be made to the Board of Water Quality, Oil and Gas in writing by the operator and filed with the Commissioner of the Department of Environment and Conservation within thirty (30) days of receipt of notice of the Stop Work Order.

(2) If an appeal or hearing is requested, the operator shall also be afforded the opportunity to meet with the Commissioner of the Department of Environment and Conservation or, at the Commissioner's option, meet with the Deputy or Assistant Commissioner, within three (3) working days after the hearing request is filed, to discuss the alleged violation and show cause why a stop work order should not have been issued. Such a meeting shall be an informal event in the nature of a settlement discussion and shall not be a contested case within the meaning of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq.

(3) If, as a result of such a meeting, the Commissioner, or if the meeting was with the Deputy or Assistant Commissioner, such deputy or assistant commissioner decides to make any modification or revocation of the stop work order, it shall be accomplished in writing after consultation with the Commissioner of the Department of Agriculture. Both the Stop Work Order and any document modifying or revoking it shall be public records.

(4) If the Commissioner, or if such meeting was held with the Deputy or Assistant Commissioner, such deputy or assistant commissioner upholds the stop work order, it shall remain in effect until resolution of the appeal or the operator comes into compliance.

(5) If no request for hearing is made within thirty (30) days of receipt of the Stop Work Order, the stop work order becomes final and not subject to review. The Commissioner may seek injunctive relief in a court of competent jurisdiction, if necessary, to enforce any final order.

(6) If an operator who files a request for a hearing before the Board of Water Quality, Oil and Gas either does not seek the informal meeting described in paragraphs (2) through (4) of this rule, or is not satisfied with the result of such a meeting, the matter shall be resolved through the process for contested case hearings before the Board under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
James W. Cameron III	X				
Jill E. Davis				X	
Mayor Kevin Davis	X				
Derek Gernt				X	
John Guoynes	X				
C. Monty Halcomb	X				
Chuck Head	X				
Charlie R. Johnson	X				
Judy Manners	X				
John McClurkan	X				
Frank McGinley				X	
D. Anthony Robinson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 06/18/2013, 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: 02/13/13

Rulemaking Hearing(s) Conducted on: (add more dates). 04/09/13

CAROL L. GRICE STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Date: June 18, 2013

Signature: James W. Cameron III

Name of Officer: James W. Cameron III

Title of Officer: Chairman

Subscribed and sworn to before me on: June 18, 2013

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.

RE Cooper Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

8-23-13

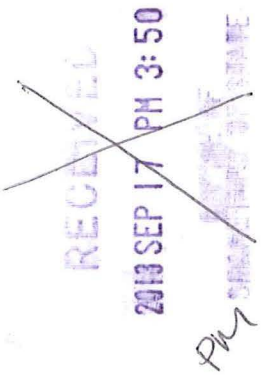
Date

Department of State Use Only

Filed with the Department of State on: 9/18/13

Effective on: 12/17/13

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.

There were no comments received during the comment period.

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.

This rulemaking is intended to move the rules from Chapter 1200-04-12 to Chapter 0400-40-12 and to edit the document to correct typos and incorrect references.

(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.

There is no impact to small businesses and consumers resulting from this rulemaking.

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

There are no additional costs associated with this rulemaking.

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

There is no impact to small businesses and consumers resulting from this rulemaking.

(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.

There is no impact to small businesses resulting from this rulemaking.

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

There is no meaningful comparison with any federal or state counterparts for this rulemaking.

(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.

To accomplish the goal of this rulemaking an exemption of small businesses is not possible.

Impact on Local Governments

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

The Department does not anticipate that this rulemaking will have an impact on 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;

This rulemaking is intended to move the rules from Chapter 1200-04-12 to Chapter 0400-40-12 and to edit the document to correct typos and incorrect references.

(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;

This rulemaking is being promulgated under the authority of T.C.A. §§ 69-3-101 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;

There is no impact to persons, organizations, corporations or governmental entities resulting from this rulemaking. Consequently, there was no support or rejection of this rule.

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

The Department is not aware of any.

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

This rulemaking will have no fiscal impact on state and local governments.

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

Robert O'Dette
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
(615) 253-5319

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

Jenny Howard
Deputy General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243

(615) 532-0131 Jenny.Howard@tn.gov

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

The Department is not aware of any.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

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

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Bob O'Dette
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11th Floor Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 253-5319
Email:	Robert.Odette@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
_X_ Repeal

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

Chapter Number	**Chapter Title**
0400-40-12	Silvicultural Activity Stop Work Orders
Rule Number	**Rule Title**
0400-40-12-.01	Silvicultural Activity Stop Work Orders - General
0400-40-12-.02	Silvicultural Activity Stop Work Orders - Procedures
0400-40-12-.03	Notification by Operators with a Finding of Violation
0400-40-12-.04	Penalties
0400-40-12-.05	Meetings, Appeals, and Hearings

Chapter Number	**Chapter Title**
1200-04-12	Silvicultural Activity Stop Work Orders
Rule Number	**Rule Title**
1200-04-12-.01	Silvicultural Activity Stop Work Orders - General
1200-04-12-.02	Silvicultural Activity Stop Work Orders - Procedures
1200-04-12-.03	Notification by Operators with a Finding of Violation
1200-04-12-.04	Penalties
1200-04-12-.05	Meetings, Appeals, and Hearings

(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)

Repeal

Chapter 1200-04-12
Silvicultural Activity Stop Work Orders

Chapter 1200-04-12 Silvicultural Activity Stop Work Orders is repealed.

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

New Rule

Chapter 0400-40-12
Silvicultural Activity Stop Work Orders

Table of Contents

0400-40-12-.01 Silvicultural Activity Stop Work Orders – General
0400-40-12-.02 Silvicultural Activity Stop Work Orders – Procedures
0400-40-12-.03 Notification by Operators with a Finding of Violation
0400-40-12-.04 Penalties
0400-40-12-.05 Meetings, Appeals, and Hearings

~~1200-4-12-.01~~ 0400-40-12-.01 Silvicultural Activity Stop Work Orders - General.

(1) General

(a) Purpose, Scope and Applicability

The purpose of this ~~rule~~ Chapter is to implement the amendment to the Tennessee Water Quality Control Act, ~~Tennessee Code Annotated,~~ T.C.A. §§ 69-3-101 et seq., by Public Chapter 680 of the Acts of 2000. This statute gives the Commissioner new authority to alleviate pollution of waters of the state when caused by silvicultural activities due to the operator's failure or refusal to employ forestry best management practices (BMPs). Under the Act, the Commissioner of the Department of Environment and Conservation may issue a stop work order to the operator of the silvicultural activities, the order remaining in force until such time as compliance is achieved. This ~~rule~~ Chapter also implements a requirement for notification of silvicultural activities to the Commissioner of Environment and Conservation and to the Commissioner of Agriculture prior to commencement of any such activities by operators who have been formally found to have violated the Tennessee Water Quality Control Act related to silvicultural activities within the past two years.

These rules are promulgated specifically in response to the directive in § 6 of Public Chapter 680 for criteria and procedures for the issuance, appeal, and suspension of Stop Work Orders.

(b) Use of Number and Gender - As ~~U~~used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

(c) Rule Structure - These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

(2) Definitions

When used in ~~this rule~~ these rules the following terms have the meanings given below unless otherwise specified:

"Act" means P.Ch. 680 of the Acts of 2000.

"Commissioner" means the ~~c~~Commissioner of the Department of Environment and Conservation, or in the event of the ~~c~~Commissioner's absence, or a vacancy in the office of ~~c~~Commissioner, the ~~d~~Deputy ~~c~~Commissioner.

"Date of a finding of violation" means the date of issuance of a Commissioner's Order or Stop Work Order or the date of entry of a court order.

"Finding of violation" means a Commissioner's Order, a Stop Work Order, or a ruling, order, or judgment of a court that makes a finding that an operator has violated the Water Quality Control Act in the conduct of silvicultural activities.

"Forestry best management practices" or "BMP's" mean those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in Tennessee Department of Agriculture rules for forestry best management practices, ~~Rule~~ Chapter 0800-07-02 and the interim forestry BMP's specifically identified by the Department of Agriculture pursuant to § 1 of the Act.

"Silvicultural activities" means those forest management activities associated with the harvesting of timber and including without limitation the construction of roads and trails.

"Operator" as used in context of silvicultural activities, means any person(s) that conducts or exercises control over any silvicultural activities; provided, however, that the term "operator" shall not include an owner if the silvicultural activities are being conducted by an independent contractor.

"Owner" as used in the context of silvicultural activities, means any person(s) that owns or leases land on which silvicultural activities occur or owns timber on land on which silvicultural activities occur.

"Stop Work Order" means an order issued by the Commissioner of the Department of Environment and Conservation requiring the operator to immediately cease part or all silvicultural activities.

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

~~1200-4-12-.02~~ 0400-40-12-.02 Silvicultural Activity Stop Work Orders – Procedures.

(1) Procedures

(a) Upon receipt by either the Tennessee Department of Environment and Conservation (TDEC) or Tennessee Department of Agriculture (TDA) of a complaint alleging that water pollution has

occurred as a result of silvicultural activities, either TDEC or TDA, or both will conduct an investigation of the complaint.

(b) The operator will be given the opportunity to employ forestry best management practices, or other such remedial actions as are necessary, to come into compliance prior to commencing to obtain a Stop Work Order, except when the Commissioner deems otherwise necessary to address water pollution.

(c) Following a joint investigation or site visit by TDEC and/or TDA, if a stop work order is deemed necessary to abate pollution of waters of the State, TDEC shall begin procedures to issue a stop work order when all of the following ~~three (3)~~ criteria are met:

1. An operator has failed or refused to use forestry best management practices (BMP); and

2. A point source discharge has been created as a result of failure or refusal to use BMPs; and

3. Waters of the State have been polluted as a result of silvicultural activities.

(d) A request for stop work order will be completed by TDEC staff, and a stop work order will be submitted to the Commissioner for his consideration. The Commissioner of the Department of Environment and Conservation may issue the stop work order against the operator, following consultation with the Commissioner of Agriculture.

(e) The Stop Work Order

1. The stop work order shall contain at a minimum the following information:

   (i) The name and address of the operator;

   (ii) The name and address of the owner if different than the operator;

   (iii) The location of the silvicultural activity;

   (iv) The waterbody affected by the pollution;

   (v) a description of the failure or refusal to use BMPs;

   (vi) the nature of the point source discharge created by the activity; and

   (vii) a description of the water pollution which has occurred.

2. The Stop Work Order will be hand delivered to the operator and the owner on the site or their last known addresses, if they are in the state. If they are out of state, it will be sent by certified mail, return receipt requested.

3. The stop work order shall require that the operator cease the silvicultural activities that are contributing to such pollution. This may include all of the silvicultural activities if they all contribute to the pollution.

4. The stop work order shall remain in effect until the operator installs forestry best management practices that eliminate existing pollution and prevent further pollution associated with the silvicultural activities.

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

~~1200-4-12-.03~~ 0400-40-12-.03 Notification by Operators with a Finding of Violation.

(1) No operator with a finding of violation that has not been overturned or reversed on appeal shall begin silvicultural activities within two years of the date of the finding of violation unless the operator has filed a

written notification of the start of said silvicultural activities with the Commissioner of Agriculture and with the Commissioner of Environment and Conservation as required by paragraph ~~1200-4-12-.03~~ (2) of this rule.

(2) At least ten (10) days prior to commencement of silvicultural activities, the operator with such a finding of violation shall file a written notification with the Commissioner of Agriculture and with the Commissioner of the Department of Environment and Conservation. Such notification shall include the following information:

(a) The name and address of the owner, and the name and address of the operator, if different than the owner; and

(b) The location of the silvicultural activities and estimated acreage; and

(c) The anticipated beginning date for, and the anticipated duration of, the silvicultural activities.

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

~~1200-4-12-.04~~ 0400-40-12-.04 Penalties.

(1) As provided in ~~§ 5 of the Act~~ T.C.A. § 69-3-136, if an operator fails to give the notice required by Rule ~~1200-4-12-.03~~ 0400-40-12-.03 and ~~§ 3 of the Act~~ T.C.A. § 69-3-134, or to comply with a stop work order issued pursuant to Rule ~~1200-4-12-.02~~ 0400-40-12-.02 and ~~§ 2 of the Act~~ T.C.A. § 69-3-133, the Commissioner may assess civil penalties against the operator of up to $10,000~~.00~~ per day for each day such failure continues pursuant to ~~Tennessee Code Annotated,~~ T.C.A. § 69-3-115(a)(1)(E).

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

~~1200-4-12-.05~~ 0400-40-12-.05 Meetings, Appeals, and Hearings.

(1) An appeal or request for hearing of any stop work order issued by the Commissioner of the Department of Environment and Conservation shall be made to the Board of Water Quality, Oil and Gas ~~Control Board~~ in writing by the operator and filed with the Commissioner of the Department of Environment and Conservation within thirty (30) days of receipt of notice of the Stop Work Order.

(2) If an appeal or hearing is requested, the operator shall also be afforded the opportunity to meet with the Commissioner of the Department of Environment and Conservation or, at the Commissioner's option, meet with the ~~d~~Deputy or ~~a~~Assistant ~~c~~Commissioner, within three (3) working days after the hearing request is filed, to discuss the alleged violation and show cause why a stop work order should not have been issued. Such a meeting shall be an informal event in the nature of a settlement discussion and shall not be a contested case within the meaning of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq.

(3) If, as a result of such a meeting, the Commissioner, or if the meeting was with the ~~d~~Deputy or ~~a~~Assistant ~~c~~Commissioner, such deputy or assistant commissioner decides to make any modification or revocation of the stop work order, it shall be accomplished in writing after consultation with the Commissioner of the Department of Agriculture. Both the Stop Work Order and any document modifying or revoking it shall be public records.

(4) If the Commissioner, or if such meeting was held with the ~~d~~Deputy or ~~a~~Assistant ~~c~~Commissioner, such deputy or assistant commissioner upholds the stop work order, it shall remain in effect until resolution of the appeal or the operator comes into compliance.

(5) If no request for hearing is made within thirty (30) days of receipt of the Stop Work Order, the stop work order becomes final and not subject to review. The Commissioner may seek injunctive relief in a court of competent jurisdiction, if necessary, to enforce any final order.

(6) If an operator who files a request for a hearing before the Board of Water Quality, Oil and Gas ~~Control Board~~ either does not seek the informal meeting described in paragraphs (2) through (4) of this rule, or is not satisfied with the result of such a meeting, the matter shall be resolved through the process for

contested case hearings before the Board under the Uniform Administrative Procedures Act, T.C.A. §§ ~~4-5-101~~ 4-5-301 et seq.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
James W. Cameron III	X				
Jill E. Davis				X	
Mayor Kevin Davis	X				
Derek Gernt				X	
John Guoynes	X				
C. Monty Halcomb	X				
Chuck Head	X				
Charlie R. Johnson	X				
Judy Manners	X				
John McClurkan	X				
Frank McGinley				X	
D. Anthony Robinson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Water Quality, Oil and Gas on 06/18/2013, 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: 02/13/13

Rulemaking Hearing(s) Conducted on: (add more dates). 04/09/13

Date: June 18, 2013

Signature: _____

Name of Officer: James W. Cameron III

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.

There were no comments received during the comment period.

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.

This rulemaking is intended to move the rules from Chapter 1200-04-12 to Chapter 0400-40-12 and to edit the document to correct typos and incorrect references.

(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.

There is no impact to small businesses and consumers resulting from this rulemaking.

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

There are no additional costs associated with this rulemaking.

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

There is no impact to small businesses and consumers resulting from this rulemaking.

(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.

There is no impact to small businesses resulting from this rulemaking.

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

There is no meaningful comparison with any federal or state counterparts for this rulemaking.

(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.

To accomplish the goal of this rulemaking an exemption of small businesses is not possible.

Impact on Local Governments

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

The Department does not anticipate that this rulemaking will have an impact on 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;

This rulemaking is intended to move the rules from Chapter 1200-04-12 to Chapter 0400-40-12 and to edit the document to correct typos and incorrect references.

(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;

This rulemaking is being promulgated under the authority of T.C.A. §§ 69-3-101 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;

There is no impact to persons, organizations, corporations or governmental entities resulting from this rulemaking. Consequently, there was no support or rejection of this rule.

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

The Department is not aware of any.

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

This rulemaking will have no fiscal impact on state and local governments.

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

Robert O'Dette
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
(615) 253-5319

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

Jenny Howard
Deputy General Counsel
Office of General Counsel

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

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243

(615) 532-0131
Jenny.Howard@tn.gov

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

The Department is not aware of any.