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Sequence Number: 10-13-11
 Notice ID(s): 11674-11674
 File Date: 10/18/2011

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Water Supply
Contact Person:	Tom Moss
Address:	6 th Floor, L & C Tower 401 Church Street Nashville, Tennessee 37243-1549
Phone:	615-532-0170
Email:	<u>Tom.Moss@tn.gov</u>

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

ADA Contact:	ADA Coordinator
Address:	12 th Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	<u>Beverly.Evans@tn.gov</u>

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

Address 1:	Ruth Neff Conference Room – Side B 17 th Floor, L & C Tower	
Address 2:	401 Church Street	
City:	Nashville, Tennessee	
Zip:	37243	
Hearing Date :	12/13/11	
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Address 1:	Knoxville Environmental Field Office Large Conference Room	
Address 2:	3711 Middlebrook Pike	
City:	Knoxville, TN	
Zip:	37921-5602	
Hearing Date :	12/14/11	
Hearing Time:	9:00 a.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Address 1:	Jackson Environmental Field Office	
Address 2:	1625 Hollywood Drive	
City:	Jackson, TN	
Zip:	38305	
Hearing Date :	12/16/11	

Hearing Time: 1:00 p.m.

CST/CDT EST/EDT

Additional Hearing Information:

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

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

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

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

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

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

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

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

The "Draft" rules may also be accessed for review using <http://tn.gov/environment/dws/ppo/>

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation
Division of Water Supply
6th Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243-1549
(615) 532-0170

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

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Water Supply; Attention: Tom Moss, 6th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1549; telephone 615-532-0191 or fax 615-532-0503. However, such written comments must be received by 4:30 PM CST, December 15, 2011, in order to assure consideration. For further information, please contact Tom Moss at the above address or telephone number or by e-mail at Tom.Moss@tn.gov.

Revision Type (check all that apply):

Amendment

New

Repeal

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

Chapter Number	Chapter Title
0400-45-08	Water Registration Requirements
Rule Number	Rule Title
0400-45-08-.01	Authority
0400-45-08-.02	Purpose
0400-45-08-.03	Scope
0400-45-08-.04	Definition
0400-45-08-.05	Registration Requirements
0400-45-08-.06	Ownership/Operational Rights
0400-45-08-.07	Measurement Methods and Standards
0400-45-08-.08	Classification of Water Uses
0400-45-08-.09	Points of Withdrawal and Return Location/Source Identification
0400-45-08-.10	Record Maintenance
0400-45-08-.11	Change of Person Responsible for Withdrawal
0400-45-08-.12	Compliance and Civil Penalties
0400-45-08-.13	Confidentiality of Data

Chapter Number	Chapter Title
1200-05-08	Water Registration Requirements
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1200-05-08-.01	Authority
1200-05-08-.02	Purpose
1200-05-08-.03	Scope
1200-05-08-.04	Definition
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1200-05-08-.07	Measurement Methods and Standards
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1200-05-08-.09	Points of Withdrawal and Return Location/Source Identification
1200-05-08-.10	Record Maintenance
1200-05-08-.11	Change of Person Responsible for Withdrawal
1200-05-08-.12	Compliance and Civil Penalties
1200-05-08-.13	Confidentiality of Data

(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://tn.gov/sos/rules/1360/1360.htm>)

Repeal

Chapter 1200-04-08 Water Registration Requirements is repealed.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-45-08 Water Registration Requirements

Table of Contents

0400-45-08-.01 Authority
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0400-45-08-.07 Measurement Methods and Standards
0400-45-08-.08 Classification of Water Uses
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0400-45-08-.11 Change of Person Responsible for Withdrawal
0400-45-08-.12 Compliance and Civil Penalties
0400-45-08-.13 Confidentiality of Data

0400-45-08-.01 Authority.

- (1) These rules and regulations are issued under the authority of T.C.A. §§ 69-7-301 et seq., as amended.
- (2) The Department of Environment and Conservation, Division of Water Supply is responsible for the supervision of water withdrawal registration.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.02 Purpose.

- (1) The purpose of these rules and regulations is to provide guidelines for the interpretation of T.C.A. § 69-7-301 et seq. and to set out the procedures to be followed by the Department in carrying out the Tennessee Water Resources Information Act. These rules and regulations set out the procedures and requirements for registering a water withdrawal.
- (2) Where the terms "shall" and "must" are used, practice and usage is sufficiently standardized to indicate a mandatory requirement, insofar as any complaint action by the Department is concerned. Other items, such as "should", "recommend", "preferred", and the like, indicate desirable procedures or methods.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.03 Scope.

These rules shall apply to all persons withdrawing water from either a surface water or ground water source if the average withdrawal is 10,000 gallons or more a day for any purpose, except those excluded by the Act and listed below:

- (1) A person may withdraw water for agricultural purposes without having registered the withdrawal. If a person withdraws water for agricultural purposes and another purpose, the water used for agriculture shall not count towards the calculation of whether the withdrawal exceeds an average of ten thousand

(10,000) gallons or more per day. For purposes of this part, "agricultural purposes" shall mean use in the production or harvesting of an agricultural product, including, but not limited to, irrigation of crops, vines, production of hay, turf production and nursery stock production as defined at T.C.A. § 43-1-112, and watering of poultry or livestock.

- (2) Nonrecurring withdrawals of water, including, but not limited to, the filling of a swimming pool from a residential water well and accidental withdrawals caused by failure of pipes or equipment.
- (3) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided it is not done on a regular or recurring basis.
- (4) The purchase of water from a utility by a customer, including other water utilities, does not constitute a withdrawal.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.04 Definitions.

- (1) "Act" means the Tennessee Water Resources Information Act.
- (2) "Board" means the Water Quality Control Board of the Tennessee Department of Environment and Conservation.
- (3) "Commissioner" means the Commissioner of the Department of Environment and Conservation, the Commissioner's duly authorized representative and, in the event of the Commissioner's absence or a vacancy in the office of Commissioner, the deputy Commissioner of Environment and Conservation.
- (4) "Consumptive water use" means that portion of water that becomes incorporated into the product, consumed by humans or livestock, that is lost to evaporation or transpiration, or is otherwise removed from the local hydrologic environment from which it was obtained.
- (5) "Department" means the Tennessee Department of Environment and Conservation. The terms "state," "department" and "division" are often used interchangeably in these rules and regulations.
- (6) "Dewatering" means the withdrawal of water to facilitate construction or extraction of earth materials.
- (7) "Division" means the Division of Water Supply. The terms "state", "department" and "division" are often used interchangeably in these rules and regulations.
- (8) "Emergency Water Use" means the withdrawal of water, for a period not exceeding thirty days, for the purpose of fire fighting, hazardous substance waste spill response, or other emergency withdrawal of water as determined by the Department.
- (9) "Ground Water" means any water beneath the surface of the ground, including those under the direct influence of surface water, and includes any water from any well, cave, and spring.
- (10) "Person" means any individual, corporation, company, limited liability company partnership, association, group, utility district, federal, state or local government agency, or any combination of them.
- (11) "Public Utility" means any person engaged in the operation of a public water supply system whether serving domestic or commercial water uses or any combination.
- (12) "Recurring" means the withdrawal of water more than 4 days a year.
- (13) "Return Point" means the surface or ground water location where water withdrawn and used is returned or discharged.
- (14) "Source" means a location where surface or ground water is available, including, but not limited to, a water well, cave, spring, stream, river, lake, or impoundment.

- (15) "Surface Water" means any water located on the land surface that includes creeks, streams, rivers, lakes, and impoundments. It does not include ponds and impoundments that are not located on a stream and that are privately owned by the person withdrawing water where the water is returned to the same impoundment.
- (16) "Use" means the purpose for which any withdrawal is made.
- (17) "Withdraw" means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction. This does not include nonrecurring withdrawals including, but not limited to, the filling of a swimming pool from a residential water well or the accidental withdrawal caused by failure of pipes or equipment.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.05 Registration Requirement.

- (1) Initial Registration - No person shall withdraw an average of ten thousand (10,000) or more gallons of water per day from a surface water or a ground water source unless the withdrawal is currently registered with the commissioner. Such registration shall be on forms furnished, upon request, by the commissioner. Any person required to submit a registration of withdrawal shall provide at a minimum to the commissioner the following information:
 - (a) An identification of all the withdrawal and return points. The withdrawal and return points shall be identified by name of source and facility and county in which the withdrawal and return points are located;
 - (b) The anticipated or proposed volume, frequency and times of year water is to be withdrawn;
 - (c) The volume of the average and maximum withdrawal shall be reported in million gallons per day;
 - (d) The use or uses for which the water withdrawn is applied as specified in Rule 0400-45-08-.08, Classification of Water Uses.
 - (e) The estimated volume of water returned at each return point. Return points include, but are not limited to, municipal or industrial wastewater discharges, stream discharges, subsurface disposal, etc.
 - (f) The person completing and submitting the registration shall sign the form attesting to the accuracy of the information submitted.
- (2) Annual Renewal - Any person who causes such a withdrawal shall annually renew their registration of such water withdrawal with the commissioner on forms provided for the purpose on or before February 15 of every year. Information reported shall include the user's name, address, sources and locations of withdrawal, volume of water withdrawn each calendar month for the previous twelve months, maximum day withdrawal and the month in which it occurred, method of withdrawal measurement, and any change in volume or points of withdrawal. Forms developed by the person withdrawing water may be used if prior approval is obtained from the department.
- (3) Public water systems may comply with the annual water withdrawal registration requirements by providing water pumpage information to the department on a monthly basis.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.06 Ownership/Operational Rights.

Persons withdrawing water from a source shall comply with all other laws, rules and regulations, and policies of the State. These specifically include, but are not limited to, the Interbasin Transfer Act, the Water Quality Control Act, and the Safe Drinking Water Act.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.07 Measurement Methods and Standards.

The commissioner shall accept a recognized method of measuring the quantities of water withdrawn. Recognized methods of measuring the quantity of surface water withdrawn which are acceptable include any of the following:

- (1) Flow meters accurate to within ten percent of calibration in accordance with the manufacturer's recommendations;
- (2) The rated capacity of the pump in conjunction with the use of an hour meter, electric meter or log;
- (3) Any standard or method employed by the United States Geological Survey in determining water withdrawals;
- (4) Any other method found to provide reliable water withdrawal data approved by the Department. Any person desiring to use an alternate method of measuring the volume of water withdrawal shall make a written request to the department. The request must describe the procedure to be used and furnish information on the accuracy of the method.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.08 Classification of Water Uses.

The following water use classifications shall be used when registering water withdrawals. Persons not covered by this Act that voluntarily register their water withdrawals should use the following water use classification.

- (1) domestic water supply, including municipal water supplies
- (2) irrigation of crops and nursery stock
- (3) livestock watering
- (4) production (including harvesting) of an agricultural product
- (5) navigation (lock usage and flow augmentation)
- (6) thermoelectric power production, including cooling purposes (excludes hydroelectric)
- (7) recreational use
- (8) commercial, institutional or other general public use
- (9) industrial uses include manufacturing processing, washing, and cooling, but excludes mining related uses (defined below)
- (10) hydroelectric power generation (provided none of it is used consumptively)
- (11) mining (where water is used to wash or process an ore)
- (12) dewatering (mining, quarry rock production, and other operations where water is withdrawn in other to conduct another activity.)
- (13) any other use not defined above

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.09 Points of Withdrawal and Return Location/Source Identification.

- (1) The point(s) of withdrawal and return shall be located at a minimum using any one of the following methods:

- (a) Located on a 7.5 minute USGS topographic map.
 - (b) Coordinates obtained with a GPS unit (in decimal format).
 - (c) The name of the stream or river and river mile from the mouth of the river as shown on a 7.5 minute USGS topographic map.
 - (d) The name of the municipal or industrial wastewater plant.
 - (e) The name of the source and county where the intake, well or spring is located and the name of the source or discharge point and county where water is returned. Water returned through multiple private subsurface disposal systems only have to identify the county where the discharge takes place.
- (2) State Driller Tag Number or other State Identification Number, if one has been assigned or public water system (PWS) entry point ID.
 - (3) Multiple points of withdrawal may be further identified and designated as W1, W2, W3 and so forth for reporting purposes. Multiple points of return may be further identified as R1, R2, R3, and so forth.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.10 Record Maintenance.

Persons subject to the water withdrawal provisions of these rules shall retain on their premises or at a convenient location near their premises the following records:

- (1) Copies of Registrations of Withdrawals for the past three (3) years.
- (2) All records and documents, including worksheets, pumpage records, etc., used to calculate the amount of water withdrawn.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.11 Change of Person Responsible for Withdrawal.

Any change of person responsible for water withdrawn shall be reported to the Department within 60 days.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

0400-45-08-.12 Compliance and Civil Penalties.

- (1) Any person who
 - (a) fails to file a water withdrawal registration, or
 - (b) fails to timely file a water withdrawal registration, or
 - (c) fails to submit a true and accurate information on any registration form or report required by the Act and these rules has incurred a violation and is subject to an Order, including a penalty of up to \$7,500 per day per violation as provided in the Act. Each day such violation continues is a separate violation.
- (2) Any person who attempts to prevent or not to allow the commissioner's agents to enter at a reasonable time upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this part has incurred a violation and is subject to an Order, including a penalty of up to \$7,500 per day of violation as provided in the Act. Each day such violation continues is a separate violation.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

- (1) If specifically requested by the person registering the withdrawal and if it is deemed necessary by the commissioner to protect trade secret information as defined in T.C.A. § 47-25-1702, the commissioner shall keep such trade secret information confidential. To effectuate this provision, the registrant must submit specifically precluded data on separate forms using forms which are coded in such a manner as to conceal the identity of the facility or registrant.
- (2) If an applicant makes a request for confidential treatment, the Division shall treat the information as confidential pending a determination of whether it qualifies and any review of that determination as provided herein. If the Division determines that any information is not entitled to confidential treatment for any reason, it shall inform the person in writing. A request for an informal review by the Commissioner or a designee may be filed within 30 days of receipt of the letter denying confidential treatment. The informal review shall not be conducted as a contested case under T.C.A. § 4-5-101 et seq. The Commissioner shall issue a written determination after the informal review. If no timely request for review is filed or upon the expiration of thirty days after the Commissioner's written determination that the information is not entitled to confidential treatment, the Division may cease to treat the information as confidential.

Authority: T.C.A. §§ 69-7-301 et seq., and 4-5-201 et seq.

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

Date: October 18, 2011

Signature: _____

Name of Officer: Alan Schwendimann

Title of Officer: Director



Subscribed and sworn to before me on: 18th October, 2011

Notary Public Signature: _____

My commission expires on: 12-22-2013

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Filed with the Department of State on: _____

10/18/11

Tre Hargett

Tre Hargett
Secretary of State

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