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Sequence Number: 11-08-23
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File Date: 11/14/2023

Notice of Rulemaking Hearing

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

Agency/Board/Commission:	Underground Storage Tanks and Solid Waste Disposal Control Board
Division:	Solid Waste Management
Contact Person:	Jeremy Hooper
Address:	William R. Snodgrass TN Tower 312 Rosa L. Parks Avenue, 14th Floor Nashville, Tennessee 37243
Phone:	615-686-7847
Email:	Jeremy.Hooper@tn.gov

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:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	615-532-0200 Hearing-impaired callers may use the TN Relay Service 1-800-848-0298
Email:	kathryn.reitz@tn.gov

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

Address 1:	Conference Room A, 3 rd Floor
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue
City:	Nashville, Tennessee
Zip:	37243
Hearing Date:	01/09/2024
Hearing Time:	10:00 AM <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Alternate Hearing Option

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Additional Hearing Information:

If it is hard for you to read, speak, or understand English, TDEC may be able to provide translation or interpretation services free of charge. Please contact Janelle Starke at (615) 906-2950 for more information.
Si le resulta difícil leer, hablar o entender inglés, TDEC puede proporcionar servicios de traducción o interpretación sin cargo. Comuníquese con *Janelle Starke* al (615) 906-2950 para obtener más información.

These rules are proposed to amend Chapter 0400-11-01 Solid Waste Processing and Disposal. The majority of the proposed amendments are to correct, clarify, or remove unclear and unnecessary requirements. These changes include:

- Clarifying the difference between major and minor landfill modifications to clarify permitting requirements and improve Division of Solid Waste Management (DSWM) work flow;
- Defining appurtenances and associated buffer requirements;
- Clarifying the permitting process;
- Clarifying the fee schedule and regulatory timelines;
- Updating, at the request of the Department of Health, the definition of “medical waste” to reduce unnecessary costs for the medical community; and
- Making it clear that a permittee must notify DSWM within 24 hours if a fire as occurred at its facility.

Other rule changes bring the rules for transfer stations and landfills in line with existing industry and department practices. This includes:

- Requiring a roof on transfer stations that manage putrescible waste;
- Reducing scenarios in which DSWM would allow a leachate pipe to penetrate the bottom liner of a landfill; and
- Adding requirements for secondary containment of leachate.

An initial set of draft rules has been prepared for public review and comment and may also be accessed for review using at <https://www.tn.gov/environment/ppo-public-participation/ppo-public-participation/ppo-waste>.

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Solid Waste Management; Attention: Jeremy Hooper, William R. Snodgrass TN Tower, 312 Rosa L. Parks Avenue, 14th Floor, Nashville, Tennessee 37243; telephone (615) 686-7847, email: Jeremy.Hooper@tn.gov. However, such written comments must be received by 4:30 PM Central Time, January 12, 2024, in order to assure consideration. For further information, please contact Jeremy Hooper at the above address or telephone number, or by e-mail.

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
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.01	Solid Waste Disposal Control System: General

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-.07	Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste
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 <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Chapter 0400-11-01
Solid Waste Processing and Disposal

Amendments

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by deleting the definition of “Medical wastes” and substituting instead the following new definition for “Medical wastes”:

“Medical wastes” means the following solid wastes:

- (a) Wastes generated by hospitalized patients who are isolated to protect others from diseases caused by pathogens. Pathogens are a microorganism (including bacteria, viruses, parasites, and fungi) or other agent, such as a proteinaceous infectious particle (prion) that can cause disease in humans or animals.
- (b) Cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;
- (c) Waste human blood and blood products such as serum, plasma, and other blood components;
- (d) Pathological wastes (i.e., tissues, organs, body parts, and body fluids) that are removed during surgery and autopsy;
- (e) All discarded sharps (e.g., hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades) used in patient care or that have come into contact with infectious agents during use in medical, research, or industrial laboratories;
- (f) Contaminated carcasses, body parts, and bedding of animals that were intentionally exposed to pathogens in research, in the production of biologicals, or in the in vivo testing of pharmaceuticals; or
- (g) The following wastes from patients known to be infected with blood-borne disease:
 - 1. Contaminated wastes from surgery and autopsy (e.g., soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves);
 - 2. Wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents (e.g., specimen containers, slides and cover slips, disposable gloves, lab coats, and aprons);
 - 3. Wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposal equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and lab coats; or
 - 4. Discarded equipment and parts that were used in patient care, medical and industrial laboratories, research, and in the production and testing of certain pharmaceuticals and that may be contaminated with infectious agents.

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

Paragraph (2) of Rule 0400-11-01-.01 Solid Waste Disposal Control System: General is amended by adding in alphabetical order the definitions of “appurtenance” and “completeness determination” to read as follows:

“Appurtenance” means ponds, roads, ditches, buildings, borrow areas and stockpiles, cut slopes, fill slopes, and other structures, accessories, or items associated with a disposal facility.

“Completeness determination” means the acknowledgement that an application addresses all requirements but does not mean that the contents are technically adequate.

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

Subitem I of item (I) of subpart (iii) of part 1 of subparagraph (c) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- I. For an incinerator, a copy of the notification required by part (2)(c)2 of this rule that contains the information required by subparts (i) through (v); and

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq., and 4-5-201 et seq.

Item (I) of subpart (vii) of part 2 of subparagraph (c) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (I) Documentation to the department that the applicant submitted a copy of the notification required by part (2)(c)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 that may affect the public health, safety, or welfare.

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

Subpart (iii) of part 3 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (iii) Comply with items 1(i)(II), (III), (IV), (V), (VI), (IX), (X), (XII), (XIII), and (XVI) of this subparagraph, and item 1(ii)(I) of this subparagraph;

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq., and 4-5-201 et seq.

Part 5 of subparagraph (b) of paragraph (2) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

5. Transfer stations.

- (i) An owner or operator of a transfer station must comply with items 1(i)(I) through (XV) of this subparagraph, and item 1(ii)(I) of this subparagraph.
- (ii) In addition to subpart (i) of this part, an owner or operator of a transfer station that manages putrescible solid waste must:
 - (I) Operate tipping areas within an enclosed building or covered area consisting of:
 - I. An impermeable floor;
 - II. Roof; and
 - III. At least three walls that are capable of confining all solid waste within the building or covered area;
 - (II) Construct and maintain the enclosed building or covered area to prevent precipitation from reaching solid waste inside the structure; and
 - (III) Ensure all solid waste is contained in the tipping area.

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

Subpart (iii) of part 10 of subparagraph (a) of paragraph (5) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

- (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 that could threaten the environment or human health outside the facility. Such report shall be made to the Commissioner and to the Tennessee Emergency Management Agency, using 24-hour toll-free number 1-800-262-3300.

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

Parts 1 and 2 of subparagraph (b) of paragraph (6) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities are amended by deleting them in their entirety and substituting instead the following:

1. 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, the Commissioner 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, the Commissioner 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 notify the permittee in writing.
- (iv) If the Commissioner tentatively decides to issue a major modification or revoke and reissue a permit, the Commissioner 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 issued under subpart (ii) of this part until the permittee has been given written notice and an opportunity to comment.

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

Part 5 of subparagraph (b) of paragraph (6) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by deleting it in its entirety and substituting instead the following:

5. Permit Modifications.

- (i) 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 that will not alter the expected impact of the facility on the public, public health, or the environment.
- (ii) The following changes constitute major modifications:
 - (I) An increase in any final contour elevations;
 - (II) An increase in capacity;
 - (III) An increase in maximum stormwater runoff at an existing outfall or the development of a new outfall;
 - (IV) A modification to a facility-specific condition contained in a permit;
 - (V) A modification that constitutes a waiver from a standard or requirement of this chapter; and
 - (VI) Other changes deemed major by the Commissioner.

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

Subpart (vi) of part 1 of subparagraph (t) of paragraph (2) 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.

- (vi) The certification statement in part (3)(a)10 of Rule 0400-11-01-.02 and submitted

as required by part (3)(a)8 of Rule 400-11-01-.02.

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

Subpart (v) of part 2 of subparagraph (t) of paragraph (2) 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.

- (v) The certification statement in part (3)(a)10 of Rule 0400-11-01-.02 and submitted as required by part (3)(a)8 of Rule 0400-11-01-.02.

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

Part 5 of subparagraph (a) of paragraph (3) 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 substituting instead the following:

- 5. A total site buffer with no constructed appurtenances within 50 feet of the property line, except for groundwater monitoring wells, piezometers, landfill gas monitoring wells, utility poles, underground and above-ground lines and pipes (e.g., gas, water, electric), fences, permitted entrances and exits, and similar appurtenances approved by the Commissioner.

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

Part 1 of subparagraph (a) of paragraph (4) of Rule 0400-11-01-.04 Specific Requirements for Class I, II, III, and IV Disposal Facilities is amended by adding a new subpart (vii) following subpart (vi) to read as follows:

- (vii) Designed and constructed with sumps and side slope risers as part of its leachate removal system and in a manner that minimizes penetrations through the liner. Where penetrations of the liner are approved by the Commissioner, they must be properly sealed to prevent leakage and, wherever possible, be designed with access to allow repair of damaged seals.

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

Part 7 of subparagraph (a) of paragraph (4) 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 substituting instead the following:

- 7. The leachate collection and removal system must, at a minimum, meet the following requirements:
 - (i) The leachate collection and removal system must be designed, constructed, operated, and maintained such that the leachate depth over the liner does not exceed one foot as calculated referencing the infiltration volume of the 25-year 24-hour storm through the intermediate cover;
 - (ii) Leachate interception surfaces and associated piping must be designed, constructed, operated, and maintained to function without clogging throughout the scheduled post-closure care period;
 - (iii) Leachate collection reservoirs, including tanks, must:
 - (I) Be constructed and maintained such that collected leachate is contained;
 - (II) Have sufficient capacity to store the volume of leachate expected to be generated in 30 days, or other adequate provisions approved by the Commissioner; and
 - (III) Have a reliable and convenient means of detecting the level of collected leachate in the reservoir and of sampling such leachate; and
 - (iv) Leachate tanks must include a secondary containment system, that may consist of dikes, liners, pads, ponds, impoundments, curbs, ditches, sumps, or other

systems capable of containing the liquid stored, that are:

- (I) Designed to contain 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater;
- (II) Using best engineering practices, constructed of a materials compatible with the liquid being stored, and
- (III) While in use, maintained to be adequately sealed against leakage.

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

Part 6 of subparagraph (b) of paragraph (7) 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 substituting instead the following:

- 6. All ground water monitoring parameters for Class II facilities will be selected and established in the permit for new facilities, and for existing facilities, the parameters will be established in the permit modification for the new closure/post-closure care plan required in subpart (2)(b)2(ii) of Rule 0400-11-01-.03.

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

Subparagraph (d) of paragraph (8) 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 substituting instead the following:

- (d) Post-Closure Care Period - For Class I and Class II disposal facilities, post-closure care must continue for 30 years after the date of final completion of closure of the disposal facility or facility parcel unless a shorter period is established in the approved closure/post-closure care plan. For Class III and IV disposal facilities, post-closure care must continue for two years after the date of final completion of closure of the facility or facility parcel. The post-closure care period may be reduced or extended based on cause by amendment of the approved closure/post-closure care plan as provided in subparagraph (2)(d) of Rule 0400-11-01-.03.

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

Subparagraph (b) of paragraph (2) of Rule 0400-11-01-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste is amended by deleting it in its entirety and substituting instead the following:

(b) Fee Schedule

1. Class I and Class II Disposal Facilities

(i) New Permit

- (I) Hydrogeologic Report \$ 4,000
- (II) Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04) \$ 6,000

(ii) Lateral Expansions

- (I) Hydrogeologic Report \$ 4,000
- (II) Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04) \$ 6,000

(iii) Vertical Expansions

	Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04)	\$ 6,000
(iv)	All other major modifications that do not result in an increase in airspace	\$2,000
2.	Class III Disposal Facilities	
(i)	New Permit, Lateral, and Vertical Expansions	\$ 3,000
(ii)	All other major modifications that do not result in an increase in airspace	\$2,000
3.	Processing Facility	\$ 1,000
4.	Special Waste Evaluation	\$ 300
5.	Transfer Station	\$ 500
6.	Transfer of Ownership	\$ 1,000
7.	Special Waste Recertification	\$ 150

Authority: T.C.A. §§ 4-5-201, et seq.; 68-211-101, et seq.; 68-211-801, et seq.; and 68-203-101, et seq.

Subparagraphs (a) and (b) of paragraph (6) of Rule 0400-11-01-.07 Fee System for Non-Hazardous Disposal and Certain Non-Hazardous Processors of Solid Waste are amended by deleting them in their entirety and substituting instead the following:

- (a) A completeness determination must be reviewed and the applicant notified within the following time frames:
 - 1. Hydrogeologic Report for Disposal Facilities 30 days
 - 2. Engineering Plans, Narrative Description, and Closure/Post-Closure (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04) for Disposal & Compost Facilities 45 days
- (b) Permit application shall be acted upon (issued or denied) by the Department within the following time after the ~~application is~~ hydrogeological report and engineering plans, narrative description, and closure/post-closure are certified to be complete:
 - 1. Disposal Facility
 - (i) Class I 270 days
 - (ii) Class II 270 days
 - (iii) Class III 240 days
 - 2. Processing Facility
 - (i) Permit By Rule 90 days
 - (ii) Compost Facility 120 days
 - 3. Major Modification
 - (i) Regulatory Requirement 180 days

- (ii) All other major modifications not covered under part 1 of this subparagraph: 240 days
- 4. Minor Modifications
 - (i) Engineering Plans, Narrative Description, and Closure/Post-Closure Review (i.e., subparagraphs (9)(b) through (d) of Rule 0400-11-01-.04) 90 days
 - (ii) Reserved.
- 5. Waste Evaluation 30 days

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

Part 4 of subparagraph (b) of paragraph (1) of Rule 0400-11-01-.13 Requirements for Land Application Facilities is amended by deleting it in its entirety and substituting instead for the following:

- 4. Land application of all other solid wastes will be subject to subpart (1)(b)3(xxi) of Rule 0400-11-01-.02.

Authority: T.C.A. §§ 4-5-201, et seq. and 68-211-101, 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: November 14, 2023

Signature: _____

Name of Officer: Lisa A. Hughey

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

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Filed with the Department of State on: 11/14/2023

Tre Hargett

Tre Hargett
Secretary of State

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