

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 12-11-08
Rule ID(s): 3919
File Date: 12/17/08
Effective Date: 03/02/09

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Environment and Conservation <u>OIL & GAS BOARD</u>
Division:	Water Pollution Control
Contact Person:	Michael K. Burton
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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.)

Chapter Number	Chapter Title
1040-02-02	Permits
Rule Number	Rule Title
1040-02-02-.02	Drilling Permits

(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>)

Chapter 1040-02-02
Permits

Amendment

Paragraph (1) of Rule 1040-02-02-.02 Drilling Permits is amended by deleting it in its entirety and substituting the following so that, as amended, it shall read as follows:

- (1) Applications for a permit to drill a well for oil and gas shall be made on Application for Permit to Drill (Form P-AD-1) and submitted to the Supervisor's office for approval. The application shall be accompanied by two (2) copies of a location plat, bond, organization report, and a fee of five hundred dollars (\$500.00). The application shall give the name and address of the drilling contractor, if known; otherwise notification shall be made by letter to the Supervisor as soon as determined. The application shall also include a plan for erosion control, prevention of pollution of surface waters, and reclamation of all areas disturbed by the operations, including access roads. The plan shall conform to the requirements of Rule 1040-02-09-.05. The plan must be sufficiently detailed to allow a gas and oil field inspector to locate the site of the facilities to be constructed and estimate the expected environmental impact, but does not have to include detailed engineering design drawings. The Supervisor may require modifications in the operator's plan if such modifications are necessary to prevent pollution or to promote reclamation. Upon approval, the operator's plan shall be a condition of the permit. Failure to comply with the plan shall be grounds for revocation of the permit and forfeiture of the bond.

Authority: T.C.A §§ 60-1-101 et seq., 60-1-202, 60-1-204 and 68-203-101 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)
Jim Washburn	X				
Brian Hensley	X				
Will Martin	X				
Christ Marsh	X				
Bill Ray	X				
Chuck Head	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Oil and Gas Board (board/commission/ other authority) on 03/04/2008 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/21/07

Notice published in the Tennessee Administrative Register on: 12/15/07

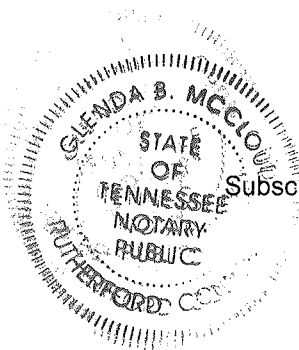
Rulemaking Hearing(s) Conducted on: (add more dates). 01/17/08

Date: 10/7/08

Signature: Chuck Head

Name of Officer: Chuck Head

Title of Officer: Chairman of the State Oil and Gas Board



Subscribed and sworn to before me on: October 7, 2008

Notary Public Signature: Glenda B. McCloud

My commission expires on: January 24, 2008

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

12-11-08
Date

Department of State Use Only

Filed with the Department of State on:

12/17/08

Effective on:

3/2/09

Riley C. Darnell

Riley C. Darnell
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

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 shall 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.

The public notice for these rulemaking hearing rules was published in the December 15, 2007, Tennessee Administrative Register. A public hearing was held on January 17, 2008, and the comment period closed on January 31, 2008. No comments were received at the public hearing or during the public comment period.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (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 are approximately 20 to 25 small active businesses that will be affected by the change. However, there are several hundred small business operators who are inactive at this time and have not receive a permit in several years or even decades.

- (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 will be no additional administrative cost to the permit applicant. The only change is the amount of the required fee.

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

The impact will be minable based on the overall cost of drilling and permitting an oil and gas well. The impact of a fee increase would be approximately 0.7% at the most for which a permit is received.

- (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 are no other alternatives at this time. The increase in the fee amount is necessary to fund extra personnel to address the increase in permit applications submitted and the additional regulatory oversight required.

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

This particular fee increase is generally higher than surrounding states by about \$100.00 to \$150.00. However, surrounding states such as Kentucky require additional fees for other permits such as tank batteries and gas lines for which the State of Tennessee does charge making this specific fee comparable with all of the fees collected by surrounding states.

- (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.

An exemption would cause great harm in having the necessary state personnel to address permitting and inspection needs of the State of Tennessee, even though most of the operators in oil and gas industry are considered small business owners.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

Rule 1040-02-02-.02(1) has been amended to increase the oil and gas permit application fee from \$150.00 to \$500.00.

- (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 rule amendment is promulgated under the authority of Oil and Gas Act T.C.A. §§ 60-1-101 et seq., 60-1-202, and 60-1-204, and the Tennessee Environmental Protection Fund Act §§ 68-203-101 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;

This rule amendment affects all active operators in oil and gas industry.

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

The Division 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 fee increase will allow an additional \$140,000 to \$150,000 to the Division of Water Pollution Control based on a steady number of permits of approximately 400 to 420 permits per year.

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

Paul Schmierbach,
Division of Water Pollution Control
Knoxville Environmental Field Office
(865) 594-5529

Don Owens
Division of Water Pollution Control
Knoxville Environmental Field Office
(865) 594-5527

Michael K. Burton (615) 532-0166
Supervisor of the Tennessee Oil and Gas Board
Division of Water Pollution Control
Nashville Central Office

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

Alan Leiserson
Legal Services Director
TDEC Office of General Counsel
(615) 532-0131

Michael K. Burton
Supervisor of the Tennessee Oil and Gas Board
Division of Water Pollution Control
Nashville Central Office
(615) 532-0166

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

Alan Leiserson
Legal Services Director
TDEC Office of General Counsel
20th Floor, L & C Tower
Nashville, Tennessee 37243
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401 Church Street
Nashville, TN 37243
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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

The Division is not aware of any additional information requests.