

SIGNIFICANT DIFFERENCES BETWEEN THE FEDERAL AND TENNESSEE HAZARDOUS WASTE REGULATIONS

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General Notes:

A. Tennessee's Hazardous Waste Management ("HWM") Program has been authorized by the U.S. Environmental Protection Agency ("EPA") to implement within the state of Tennessee, in lieu of EPA but with EPA oversight, almost all aspects of the Federal HWM Program. This means that EPA has reviewed Tennessee's HWM regulations and found them to be equivalent or more stringent than the Federal regulations.

B. While Tennessee's on-line HWM regulations are not nearly as "user friendly" as many other states, TEC's website does make available a full Outline of its HWM regulations that includes a reference to the corresponding Federal Rule (down to the subpart = 40 CFR 2XX.xx level). There is a link to this Outline under the line "Hazardous Waste Program" when you get to the page that lists the various Tennessee HWM Rules.

C. Tennessee's rulemaking body, the Tennessee Underground Storage Tank and Solid Waste Disposal Control Board (the "TUSTSWDC Board"), has adopted Tennessee's version of the "New Definition of Solid Waste" regulations that were promulgated into the Federal regulation via final rulemakings published in the *Federal Register* on October 30, 2008 and January 13, 2015. However, these regulatory amendments are still undergoing legal review (they must be approved by Tennessee's Attorney General's Office) and are not yet effective. This analysis thus does not address those pending amendments except to note where the Tennessee regulations are not yet equivalent to the Federal rules.

D. Following are the Federal hazardous waste regulations and their Tennessee equivalents:

1. TN Rule 0400-12-01-.01 is equivalent to 40 CFR Part 260 (Hazardous Waste Management System: General)
2. TN Rule 0400-12-01-.02 is equivalent to 40 CFR Part 261 (Identification and Listing of Hazardous Waste)
3. TN Rule 0400-12-01-.03 is equivalent to 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste)
4. TN Rule 0400-12-01-.04 is equivalent to 40 CFR Part 263 (Standards Applicable to Transporters of Hazardous Waste)

5. TN Rule 0400-12-01-.05 is equivalent to 40 CFR Part 265 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)
6. TN Rule 0400-12-01-.06 is equivalent to 40 CFR Part 264 (Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities)
7. TN Rule 0400-12-01-.07 is equivalent to pertinent aspects of 40 CFR Part 270 (EPA Administered Permit Programs: The Hazardous Waste Permit Program)
8. TN Rule 0400-12-01-.08 (Fee System for Transporters, Storers, Treaters, Disposers, and Certain Generators of Hazardous Wastes and Certain Used Oil Facilities or Transporters) has no equivalent in the Federal Rules
9. TN Rule 0400-12-01-.09 is equivalent to 40 CFR Part 266 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities)
10. TN Rule 0400-12-01-.10 is equivalent to 40 CFR Part 268 (Land Disposal Restrictions)
11. TN Rule 0400-12-01-.11 is equivalent to 40 CFR Part 279 (Standards for the Management of Used Oil)
12. TN Rule 0400-12-01-.12 is equivalent to 40 CFR Part 273 (Standards for Universal Waste Management)
13. Tennessee has not adopted an equivalent to 40 CFR Part 267 (Standards for Owners and Operators of Hazardous Waste Management Facilities Operating Under a Standardized Permit)

E. The rest of this presentation focuses on those regulations that impose requirements on hazardous waste generators and transporters in Tennessee, and touches only lightly on the standards and permitting requirements for owners and operators of hazardous waste treatment, storage, and/or disposal facilities. An asterisk (*) indicates those differences I consider most significant and will address in my verbal comments.

TN Rule 0400-12-01-.01 – Hazardous Waste Management System: General

1. Generally equivalent to 40 CFR Part 260
2. At -.01(2)(a) Definitions [equivalent to both 40 CFR § 260.10 and 40 CFR §270.2, with some from 40 CFR §268.2 and 40 CFR §273.9 also included]:

a. Tennessee includes a definition of “Conglomerate Waste Stream” so as to help clarify the scope of certain requirements and exclusions.

b. Tennessee’s regulations do not yet include definitions of “Contained”, “Hazardous Secondary Material”, “Hazardous Secondary Material Generator”, “Intermediate Facility”, “Land-Based Unit”, and “Remanufacturing”. These definitions were added to the Federal rule as part of the New Definition of Solid Waste rulemaking, and have not yet been promulgated into Tennessee’s rule. See General Comment C.

c. Tennessee includes a definition of “Gasification” to help clarify the scope of the exclusion provided at Rule 0400-12-01-.02(1)(d)1(xii) [equivalent to 40 CFR §261.4(a)(12)]. However, to be consistent with relatively recent changes in the Federal rules, this term and its use in the exclusion are being removed as part of Tennessee’s pending rulemaking to add the New Definition of Solid Waste provisions.

d.* Tennessee includes definitions of “On-Site Wastewater Treatment Unit” and “Off-Site Wastewater Treatment Unit”. These definitions are critical in that, unlike the Federal rules, Tennessee’s rules do not exclude “Off-Site Wastewater Treatment Units” from the interim status standards of Rule 0400-12-01-.05 [equivalent to 40 CFR Part 265], the permitting standards of Rule 0400-12-01-.06 [equivalent to 40 CFR Part 264], or the permitting requirements of Rule 0400-12-01-.07 [equivalent to 40 CFR Part 270].

e. Tennessee includes a definition of “Pollution Prevention”, defining it the same as “source reduction” under the Federal Pollution Prevention Act.

f.* Tennessee includes a definition of “Registered Engineer” or “Registered Professional Engineer” that clarifies that the individual must be authorized to perform engineering under Tennessee law.

g. In what is presumably an oversight, Tennessee does not include a definition of “Thermostat” at either Rule 0400-12-01-.01(2)(a) [equivalent to 40 CFR §260.10] or Rule 0400-12-01-.12(1)(b) [equivalent to 40 CFR §273.9].

3. At 40 CFR §260.20, the Federal rules provide procedures by which any person can petition the EPA Administrator to initiate a federal rulemaking action to *modify or revoke* any of the regulatory provisions of 40 CFR Parts 260-266, 268, or 273. Somewhat similarly, Tennessee Rule 0400-12-01-.01(3)(a)1 provides that any person can petition the Commissioner to initiate a rulemaking action *for a regulatory exclusion from* any provision in Tennessee Rules 0400-12-01-.01 through -.06, -.09, -.10, and -.12. The Tennessee rule makes it clear that the Commissioner may initiate such a Tennessee rulemaking action only with the concurrence of the TUSTSWDC Board.

4.* At 40 CFR §260.21, the Federal rules provide procedures by which any person can petition the EPA Administrator to initiate a federal rulemaking action to add an

equivalent testing or analytical method to 40 CFR Parts 261, 264, or 265. Tennessee Rule 0400-12-01-.01(3)(a)2 makes it clear that Tennessee defers that authority to EPA.

5.* At 40 CFR §260.22, the Federal rules provide procedures by which any person can petition the EPA Administrator to initiate a regulatory amendment to exclude a waste produced at a particular facility as nonhazardous even though it may meet a listing description set forth at 40 CFR Part 261 Subpart D. Tennessee Rule 0400-12-01-.01(3)(a)3 makes it clear that Tennessee also defers such “delisting” authority to EPA.

6. At 40 CFR §260.23, the Federal rules provide procedures by which any person can petition the EPA Administrator to initiate a federal rulemaking to add a hazardous waste or a category of hazardous wastes to those regulated as universal wastes under 40 CFR Part 273. Tennessee Rule 0400-12-01-.01(3)(a)4 provides similar provisions for petitioning the TDEC Commissioner for such actions, except that it is made clear that the Commissioner may initiate such a Tennessee rulemaking action only with the concurrence of the TUSTSWDC Board.

7. At 40 CFR §§260.30, 260.31, and 260.33, the Federal rules have long provided criteria and procedures by which the EPA Administrator can make case-by-case determinations that the following recycled materials are not a solid waste: (a) Materials that are accumulated speculatively without sufficient amounts being recycled; (b) Materials that are reclaimed and then reused within the original production process in which they were generated; and (c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered. Tennessee provides equivalent criteria and similar procedures at Rule 0400-12-01-.01(4). However, in 2015 40 CFR §§260.30, 260.31, and 260.33 were amended to add three additional exclusions for hazardous secondary materials being reclaimed and to revise certain criteria and procedures. Tennessee’s regulations do not yet include these changes, which are part of the changes associated with the New Definition of Solid Waste. See General Comment C.

7. At 40 CFR §§260.32 and 260.33, the Federal rules have long provided criteria and procedures by which the EPA Administrator may issue a variance classifying an enclosed device using controlled flame combustion as a boiler even the device does not otherwise meet the definition of boiler. Tennessee provides equivalent criteria and similar procedures at Rule 0400-12-01-.01(5), except that §260.33 now contains certain new conditions and procedures as revisions from the New Definition of Solid Waste rulemakings that have not yet been promulgated into Tennessee’s rules. See General Comment C.

8. The Federal regulations at 40 CFR §§260.34, 260.42, and 260.43 were added as part of the New Definition of Solid Waste rulemakings in 2008 and 2015 which have not yet been promulgated into Tennessee rules. See General Comment C.

9. At 40 CFR §§260.40 and 260.41, the federal regulations have long provided criteria and procedures by which the EPA Administrator may decide on a case-by case

basis that persons accumulating or storing certain exempt recyclable materials should be subject to additional regulations. Tennessee provides equivalent criteria and similar procedures at Rule 0400-12-01-.01(6).

10.* At Rule 0400-12-01-.01(3)(b), Tennessee provides that “any person may petition the Commissioner for a variance from any provision of these rules” (presumably meaning any provision of Rule Chapter 0400-12-01). This rule specifies the procedures to be followed and certain conditions that apply to such variances once issued, *but this is an administrative decision by the Commissioner rather than a rulemaking action.*

11.* Tennessee Rule 0400-12-01-.01(7) establishes the unique Tennessee requirements for managing and preventing the release of Proprietary Information submitted to TDEC pursuant to Tennessee’s HWM rules. These Tennessee rules are effectively equivalent to those Federal rules included or referenced at 40 CFR §260.2.

TN Rule 0400-12-01-.02 – Identification and Listing of Hazardous Waste

1. Strongly equivalent to 40 CFR Part 261 – Tennessee intends to regulate the same universe of hazardous wastes as under the Federal regulations.

2. Tennessee Rule -.02(1)(a)3(iv) regarding the definition of “reclaimed” is equivalent to 40 CFR §261.1(c)(4) except that the Federal rule includes a second sentence added as part of the New Definition of Solid Waste rulemakings and that has not yet been promulgated into Tennessee’s regulations. See General Comment C.

3. Tennessee Rule -.02(1)(b)1(i) is equivalent to 40 CFR §261.2(a)(1) except that the Federal rule includes a reference to non-waste determinations at 40 CFR §§260.30 and 260.34, language that was added as part of the New Definition of Solid Waste rulemakings and that has not yet been promulgated into Tennessee’s regulations. See General Comment C.

4. Tennessee Rule -.02(1)(b)3(iii) is equivalent to 40 CFR §261.2(c)(3) except that the Federal rule includes references to exclusions at 40 CFR §§261.4(a) that were added as part of the New Definition of Solid Waste rulemakings and that have not yet been promulgated into Tennessee’s regulations. Tennessee’s version of Table 1 is similarly deficient in column 3. See General Comment C.

5. Tennessee does not yet have an equivalent to 40 CFR §261.2(g) since that provision was added as part of the New Definition of Solid Waste rulemakings. See General Comment C.

6. Tennessee Rule -.02(1)(d)1(i) include a “Comment” clarifying the applicability of the domestic sewage exclusion.

7.* Unlike 40 CFR §261.4(a)(1), Tennessee Rule -.02(1)(d)1(xiii) and -.02(1)(d)1(xiv) provide conditional exclusions (from classification as a solid waste) for petroleum tank bottom waters (the water phase which accumulates in operating petroleum tanks) that

are legitimately recycled for petroleum product. Subpart (xiii) is applicable to the owner or operator of the petroleum facility, and subpart (xiv) is applicable to the owner or operator of the recycling facility. However, TDSWM is seeking to remove these two exclusions as part of their promulgation of the New Definition of Solid Waste provisions so as to avoid potential inconsistencies. See General Comment C.

8. Tennessee's regulations currently still contain the Comparable/Syngas Fuel Exclusion language at Rules -.02(1)(d)1(xviii) and -.02(6)(a) that formerly resided at 40 CFR §§ 261.4(a)(16) and 261.38 before EPA was required by federal court order to remove them from the Federal rules. Tennessee is seeking to also remove these provisions so as to be no less stringent than the Federal rules. These deletions are included with the proposed amendments that incorporate the New Definition of Solid Waste. See General Comment C.

9. The Federal regulations at 40 CFR §261.4(a)(23), (24), and (27) provide conditional exclusions from classification as a solid waste for certain hazardous secondary materials. These exclusions were added as part of the New Definition of Solid Waste rulemakings and have not yet been promulgated into Tennessee's regulations. See General Comment C.

10. Tennessee Rule -.02(1)(d)2(ii)(II) provides a conditional exclusion for waste pesticides residues a farmer disposes on his own farm. The Federal rules include this exclusion as a hazardous waste generator standard at 40 CFR §262.70.

11.* Tennessee's rules do not currently include the provisions of 40 CFR §261.4(b)(4) which excludes certain wastes generated primarily from the combustion of coal or other fossil fuels, along with certain wastes from processes that support the combustion of coal or other fossil fuels that are co-disposed with the combustion wastes. However, Tennessee is seeking to include this exclusion in the current rulemaking to add the New Definition of Solid Waste provisions to the Tennessee rules. See General Comment C.

12. Tennessee's regulatory provisions at Rule -.02(1)(d)3(i) for "Hazardous Wastes Which Are Exempted From Certain Regulations" are identical with the Federal rule at 40 CFR §261.4(c), but Rule -.02(1)(d)3(ii) clarifies that such hazardous wastes are still subject to the generator notification and annual reporting requirements of Rule 0400-12-01-.03.

13. Tennessee Rule -.02(1)(e)3(viii) provides that when a generator is making determinations of the quantity of hazardous waste he generates, he need not include hazardous waste that is managed immediately upon generation in a collection system (sewer system) where the wastewaters will mix with sanitary wastes at any point before reaching a POTW. This eighth exclusion is not included in the equivalent Federal rule at 40 CFR §261.5(c).

14.* Tennessee Rule -.02(1)(e)7 and 40 CFR §261.5(g) both provide the conditions that a Conditionally Exempt Small Quantity Generator must meet in order for his/her

hazardous waste to be excluded from full regulation under Rule 0400-12-01-.03 and 40 CFR Part 262. However, the Tennessee rule at subpart (iv) includes additional requirements for management of containers with liquids, requiring the CESQG to always keep containers holding volatile hazardous waste liquids closed except when it is necessary to add or remove waste, and to never open, handle, or store a container holding hazardous waste liquids in a manner which may rupture the container or cause it to leak.

15.* Tennessee Rule -.02(1)(f) and 40 CFR §261.6 provide equivalent Requirements for Recyclable Material (hazardous wastes that are recycled) except that the Tennessee rule at part 5 requires that generators of recyclable materials must notify the TDSWM describing the recyclable materials they generate, how such materials are generated, and how they are managed.

16. The Federal rules include substantive additional requirements at 40 CFR Part 261 Subparts H, I, J, M, AA, BB, and CC that were promulgated as part of the New Definition of Solid Waste rulemakings and for which equivalent Tennessee rules have not yet been promulgated. See General Comment C.

TN Rule 0400-12-01-.03 – Notification Requirements and Standards Applicable to Generators of Hazardous Waste

1. Equivalent to but more stringent than 40 CFR Part 262.

2.* Tennessee Rule -.03(2) imposes Notification requirements on generators (both LQGs and SQGs) that are both broader in applicability and much more detailed than required under Federal law and regulations [40 CFR §262.12(b)].

3.* Tennessee Rule -.03(5)(b) requires generators (both LQGs and SQGs) to file Annual Reports detailing how much hazardous waste they generated and how it was managed.

4.* Tennessee Rule -.03(6) requires generators (both LQGs and SQGs) to have and maintain a Hazardous Waste Reduction Plan that meets certain requirements, and requires that Annual Progress reports be developed and maintained.

5.* Tennessee Rule -.03(1)(c)3 requires generators (both LQGs and SQGs) to offer his hazardous waste only to transporters who have a valid hazardous waste transporter permit issued by TDSWM

6. Because it is appropriately administered by the Federal government (EPA and other agencies), Tennessee has not adopted 40 CFR Part 262 Subpart H (Transboundary Movement of Hazardous Wastes for Recovery within the OECD). However, the Tennessee rules do include references to the Federal rule.

7. Tennessee's requirements for making a Hazardous Waste Determination at Rule -.03(1)(b) are essentially the same as those at 40 CFR §262.11 except that the State rule

at part 5 exempts a generator from having to make to make a determination on individual wastewater streams in cases where the generator makes a determination on the conglomerate waste stream.

8.* Tennessee's requirements for a generator's Use of the Manifest at -.03(3)(d) are essentially identical to those at 40 CFR §262.23 except that the State rule at subpart 1(i) requires the generator to ensure, before signing the manifest, that the transporter name and EPA Identification number on the manifest are the same as the name and EPA identification number on the Tennessee Hazardous Waste Transporter Permit issued by the TDSWM.

9. Tennessee Rule -.03(4)(e) includes in part 1 language not present in 40 CFR §262.34 that clarifies the meaning of the term "accumulate" for purposes of subparagraph (4)(e). Tennessee Rule -.03(4)(e)4 further clarifies that a generator who removes waste from a product or raw material storage tank, a product or raw material transport vehicle or vessel, a manufacturing process unit, or an associated non-waste-treatment manufacturing unit directly into or onto a transport vehicle for immediate transportation to a TSDF is not (for that purpose) considered to be "accumulating" such waste.

10.* Tennessee Rule -.03(4)(e)2 provides essentially the same conditions on a Large Quantity Generator accumulating hazardous wastes for the permit-exempt 90-day period as 40 CFR §262.34(a) except that the Tennessee rule imposes the additional requirements set forth in items 10.a and 10.b below. Similarly, Tennessee Rule -.03(4)(e)6 provides essentially the same conditions on a Small Quantity Generator accumulating hazardous waste for the permit-exempt 180 days as 40 CFR §262.34(d) except that the Tennessee rule also imposes the additional requirements set forth in items 10.a and 10.b below.

a. Subpart -.03(4)(e)2(iv) additionally imposes the General Inspection Requirements of Tennessee Rule 0400-12-01-.05(2)(f)1, 3, and 4 [equivalent to 40 CFR §265.15(a), (c), and (d) – these include requirements to inspect the accumulation unit, to remedy any deterioration or malfunction revealed by the inspection, and to record inspections in a log or summary and to keep such inspection records for at least 3 years.;

b. Subpart -.03(4)(e)2(v) additionally requires that, where tanks are used, the generator must maintain adequate records to verify that the accumulation time is less than the allowed period.

11. Tennessee Rule -.03(4)(e)12 clarifies that if a generator accumulates hazardous waste in a unit that is fully subject to applicable requirements of Rule 0400-12-01-.05 (i.e., an interim status facility) or Rule 0400-12-01-.06 (i.e., a permitted facility), then he/she must manage such accumulated wastes fully in accordance with those applicable requirements (i.e., the separate and less stringent management standards allowed for generator accumulation units do not apply if a hazardous waste management facility

operator accumulates the hazardous wastes he generates from on-site activities in an interim status or permitted unit).

12.* Tennessee Rule -.03(5)(a) provides essentially the same generator recordkeeping requirements as 40 CFR §262.40 except that the Tennessee rule at part 3 expands and clarifies the Hazardous Waste Determination records that must be kept by Tennessee generators. Generators are required to also clearly document the basis for hazardous waste determinations based on “generator knowledge”.

13.* Tennessee Rule -.03(5)(c) provides essentially the same generator Exception Reporting requirements as 40 CFR §262.42 except that the Tennessee rule at subpart 1(iii) specifies that the Exception Report from Large Quantity Generators must be submitted to the Commissioner within 5 days after the 45-day period expires.

14.* The Federal rules at 40 CFR §262.44 substantially limit the Recordkeeping and Reporting responsibilities applicable to Small Quantity Generators. However, the equivalent Tennessee rule at -.03(5)(d) is more stringent, relieving the Small Quantity Generator only of the LQG Exception Reporting requirement and the requirement to maintain copies of Exception Reports.

TN Rule 0400-12-01-.04 – Requirements Applicable to Transfer Facilities and Permit Requirements and Standards Applicable to Transporters of Hazardous Waste

1. Equivalent to but more stringent than 40 CFR Part 263

2.* Tennessee Rule -.04(2) requires each person who transports in Tennessee a hazardous waste that originates or terminates in Tennessee must have a valid Tennessee Hazardous Waste Transporter Permit obtained from the TDSWM. Such permits must be applied for and obtained, and then be annually renewed to remain valid.

3.* Tennessee Rule -.04(1)(c) imposes requirements on Transfer Facilities that go far beyond the simple 10-day limitation established by 40 CFR §263.12. Tennessee additionally requires the operator of a transfer facility to:

- a. Obtain an installation identification number from TDSWM;
- b. Maintain a log of specified information regarding all shipments of hazardous waste entering or leaving the facility, including additional information if hazardous wastes are mixed at the facility by placing them in a single container;
- c. Retain the logged information for a period of 3 years;
- d. Comply with the following standards from Rule 0400-12-01-.05:
 - i. Personnel Training requirements of Rule -.05(2)(g);

- ii. Use and Management of Containers requirements of Rule -.05(9), except for subparagraphs (e) and (i); and
- iii. Security requirements of Rule -.05(2)(e).

TN Rule 0400-12-01-.05 – Interim Status Standards Applicable to Owners and Operators of Existing Hazardous Waste Treatment, Storage, and Disposal Facilities

1. I did not thoroughly evaluate the equivalency of this Rule, but know from experience that it closely tracks the language at 40 CFR Part 265 for nearly all of the standards. I did check the provisions that the “Accumulation Time” provisions at Rule 0400-12-01-.03(4)(e) make applicable to LQGs and SQGs and found them to be essentially identical to the equivalent portions of 40 CFR Part 265.
2. There are significant differences in the Financial Assurance standards for closure and post-closure care at Rule -.05(8), mostly relating to the instruments use.
3. There is a Tennessee-added “Co-management of Other Materials” provision at Rule -.05(2)(k).

TN Rule 0400-12-01-.06 – Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

1. I did not thoroughly evaluate the equivalency of this Rule, but know from experience that it closely tracks the language at 40 CFR Part 264 for nearly all of the standards.
2. There is a Tennessee-added “Waiver” provision at Rule -.06(1)(d) that provides that the Commissioner can waive any standard in the Rule if the owner or operator can demonstrate to the satisfaction of the Commissioner that the standard is inapplicable, inappropriate, or unnecessary to his facility or equaled in effect by other procedures or mechanisms utilized at his/her facility.
3. There are again significant differences in the Financial Assurance standards for closure, post-closure care, and liability coverage at Rule -.06(8), mostly relating to the instruments used.
4. There is again the Tennessee-added “Co-management of Other Materials” provision at Rule -.06(2)(k).

TN Rule 0400-12-01-.07 – Permitting of Hazardous Waste Treatment, Storage, and Disposal Facilities

1. I did not thoroughly evaluate the equivalency of this Rule, but know from experience that it is effectively equivalent to pertinent portions of 40 CFR Parts 270 and 124 but does have significant differences – particularly in some public participation requirements.

TN Rule 0400-12-01-.09 – Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities

1. I did not thoroughly evaluate the equivalency of this rule, but my quick scan could identify no significant differences between the Tennessee standards and those in 40 CFR Part 266.

TN Rule 0400-12-01-.10 – Land Disposal Restrictions

1. I did not thoroughly evaluate the equivalency of this Rule (which I do not like), but I understand that it is intended to exactly track the pertinent requirements of 40 CFR Part 268.

TN Rule 0400-12-01-.11 – Standards for the Management of Used Oil

1. I did not thoroughly evaluate the equivalency of this Rule with its Federal counterpart at 40 CFR Part 279, but there are significant differences.

TN Rule 0400-12-01-.12 – Standards for Universal Waste Management

1. Closely equivalent to 40 CFR Part 273 although organized somewhat differently
- 2.* Tennessee Rule -.12(8) includes Standards for the Owner or Operator of a Universal Waste Lamp Crusher System. This paragraph (8) has no parallel in 40 CFR Part 273. Accompanying these standards are a provision for Small Quantity Handlers of universal waste lamps at Rule -.12(2)(d)4(ii), and a similar provision for Large Quantity Handlers of universal waste lamps at Rule -.12(3)(d)4(ii), that allows such handlers to “treat mercury-containing lamps for volume reduction at the site where they are generated under the provisions of paragraph (8).
3. Tennessee Rule -.12(1)(c)1 and 40 CFR §273.8(a) both identify types of wastes that persons may manage, at their option, under the Universal Waste Management standards. However, at subpart (iii), the Tennessee rule specifies that non-hazardous waste that are of the same type as the identified universal wastes may additionally be so managed. This clearly allows, for example, used fluorescent tubes to be managed as

universal wastes even if the generator does not know whether they would meet the Toxicity Characteristic for mercury.

4. Unlike the equivalent Federal Rule at 40 CFR §273.9, Tennessee's list of Definitions at Rule -.12(1)(b) for some reason does not include a definition of the term "thermostat".

5. Both Tennessee Rule -.12(1)(b) and 40 CFR §273.9 include definitions of "Universal Waste Handler" that exclude persons engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility. However, the Tennessee rule provides the following parenthetical exception: "(except under the provisions of part (4)(b)2 of this rule)". Presumably, this exception acknowledges that a universal waste transporter or universal waste transfer facility could become a universal waste handler as a result of responding to a release.

6. Tennessee Rules -.12(2)(e)5 and -.12(3)(e)5 allow – for intra-state use only – Small Quantity Handlers and Large Quantity Handlers of Universal Waste Lamps to label or mark lamps, or the containers in which such lamps are contained, with the phrases "Universal Waste – Bulbs", or "Waste Bulbs", or "Used Bulbs" in addition to the phrases "Universal Waste – Lamps", "Waste Lamps", or "Used Lamps" allowed by the equivalent Federal rules at 40 CFR §§273.14(e) and 273.34(e).

7. Both Tennessee Rule -.12(3)(j)1(i) and 40 CFR §273.39(a)(i) require that the record for each shipment of universal waste received by a Large Quantity Handler must include the name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent. However, the Tennessee rule excludes from this requirement pesticide collection programs operated under the authority of the Tennessee Department of Agriculture provided the pesticides are received by a universal waste handler for proper management.

8. Unlike the equivalent Federal Rule at 40 CFR §273.39(c), Tennessee Rule -.12(3)(i)3 allows a Large Quantity handler organization with multiple locations across the state to retain their universal waste records at an in-state consolidation point.