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 Phone: 615-741-2650
 Email: publications.information@tn.gov

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

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Board of Water Quality, Oil, and Gas
Division:	Water Resources
Contact Person:	Wayne Gregory
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-5420
Email:	Wayne.Gregory@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. 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-.04	Penalties

Chapter Number	Chapter Title
0400-45-06	Underground Injection Control
Rule Number	Rule Title
0400-45-06-.05	Injected Fluid Standards

Chapter Number	Chapter Title
0400-54-09	Pressure Maintenance Projects and Secondary Recovery
Rule Number	Rule Title
0400-54-09-.08	Application for Hearing

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). 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 0400-40-12
Silvicultural Activity Stop Work Orders

Repeal

Rule 0400-40-12-.04 Penalties is repealed.

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).~~

Chapter 0400-45-06
Underground Injection Control

Repeal

Rule 0400-45-06-.05 Injected Fluid Standards is repealed.

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

~~0400-45-06-.05 Injected Fluid Standards.~~

- ~~(1) — Any fluid injected into or above a USDW shall meet the following standards unless specific alternate standards are established by the Commissioner for the individual discharge based on hydrogeologic setting, character of the injectate, risk to the environment and persons utilizing the ground water resource and compliance with subparagraph (j) of this paragraph:~~

~~(a) — Dissolved oxygen~~

~~The injected fluid shall contain dissolved oxygen in at least the amount that naturally occurs in that portion of the aquifer where the injection occurs.~~

~~(b) — Oils and grease~~

~~The injected fluid shall contain no oil and grease other than that of natural origin in that portion of the aquifer where the injection occurs.~~

~~(c) — Color and turbidity~~

~~The injected fluids shall contain no color or turbidity other than that of natural origin in that portion of the aquifer where the injection occurs.~~

~~(d) — Coliform bacteria~~

~~The concentration of a fecal coliform group shall not exceed 200 per 100 ml. as a geometric mean based on a minimum of 10 samples collected from a given sampling point over a period of not more than 30 consecutive days with individual samples being collected at intervals of not less than 12 hours. For the purposes of determining the geometric mean, individual samples having a fecal coliform group concentration of less than 1 per 100 ml. shall be considered as having a~~

~~concentration of 1 per 100 ml. In addition, the concentration of the fecal coliform group in any individual sample shall not exceed 1,000 per 100 ml.~~

~~(e) — Taste and odor~~

~~The injected fluids shall have no taste or odor other than that which naturally occurs in that portion of the aquifer where the injection occurs.~~

~~(f) — pH~~

~~The injected fluids shall have a pH level as naturally occurs in that portion of the aquifer where the injection occurs or as may result from normal agricultural, or silviculture activity provided all reasonable controls are used.~~

~~(g) — Chemical constituents~~

~~The injected fluids shall be free from chemical constituents, other than those of natural origin, in that portion of the aquifer where the injection occurs, in concentrations specified in Rule 0400-45-01-19 or combinations which would be harmful to human, animal or aquatic life or detrimental to the most sensitive and governing water use. Criteria for chemical constituents contained in guidelines published by the US Environmental Protection Agency shall be considered.~~

~~(h) — Solids, floating materials and deposits~~

~~The injected fluid shall be free of distinctly visible solids, scum, foam, or oily sleek other than those of natural origin in that portion of the aquifer where the injection occurs.~~

~~(i) — Other pollutants~~

~~The injected fluid shall contain no other pollutants that may be detrimental to public health or impair the usefulness of the water for the most sensitive and governing water use.~~

~~(j) — The operation of an underground injection system shall not cause any aquifer designated as a USDW to contain any substances, whether alone or in combination with other substances, that are toxic, carcinogenic, mutagenic, or teratogenic, other than those of natural origin, at levels and conditions which violate primary drinking water standards as given in Chapter 0400-45-01 or adversely affect health of persons.~~

Chapter 0400-54-09
Pressure Maintenance Projects and Secondary Recovery

Repeal

Rule 0400-54-09-.08 Application for Hearing is repealed.

Authority: T.C.A §§ 60-1-201 et seq. and 4-5-201 et seq.

~~0400-54-09-.08 Application for Hearing.~~

~~Any owner may apply for a hearing before the Board to obtain relief from unjust and unreasonable costs assessed by the project operation, provided he shows that he has either conferred or attempted to confer with the operator for the purpose of settling the dispute prior to making application to the Board.~~

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Gary G. Bible (Oil and Gas Industry)					
Elaine Boyd (Commissioner's Designee, Department of Environment and Conservation)					
Mayor Kevin C. Davis (Counties)					
Dodd Galbreath (Environmental Interests)					
Brent Galloway Oil or Gas Property Owner					
Charlie R. Johnson (Public-at-large)					
Judy Manners (Commissioner's Designee, Department of Health)					
John McClurkan (Commissioner's Designee, Department of Agriculture)					
Frank McGinley (Agricultural Interests)					
Neal Whitten (Manufacturing Industry)					
Terry Wimberley (Municipalities)					
Vacant (Small Generator of Water Pollution representing Automotive Interests)					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Water Quality, Oil, and Gas on _____ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: _____

Signature: _____

Name of Officer: Jennifer Dodd

Title of Officer: Technical Secretary

Agency/Board/Commission: Board of Water Quality, Oil, and Gas

Rule Chapter Number(s): 0400-40-12, 0400-45-06, 0400-54-09

All proposed 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.

Jonathan Skrmetti
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (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.

No small businesses will be impacted by the repeal of these rules. Each rule was identified through the retrospective rule review process as lacking statutory authority or being redundant, and none are currently applied in practice.

- (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 reporting, recordkeeping, or other administrative costs resulting from this rulemaking.

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

No small businesses or consumers will be impacted by 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.

This rulemaking is the least burdensome, intrusive, or costly way to achieve the stated purpose.

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

The Department is not aware of state or federal 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.

No small businesses will be impacted by this rulemaking.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rulemaking will not result in an increase in expenditures or a decrease in revenues for 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;

The Department of Environment and Conservation is repealing rules that were identified through the retrospective rule review as lacking statutory authority or redundant, as follows:

- Rule 0400-40-12-.04 purports to authorize the assessment of civil penalties for violations that predate issuance of a silvicultural stop work order. This rule is inconsistent with T.C.A. § 69-3-120(g), which exempts “forestry activity” from the provisions of the Water Quality Control Act, and with T.C.A. § 69-3-139(d), which authorizes civil penalties only for violations of a silvicultural stop work order.
- Rule 0400-45-06-.05 is redundant with the groundwater classifications and standards within Rule 0400-40-03-.07.
- Rule 0400-54-09-.08 purports to allow an oil and gas owner to appeal “unjust and unreasonable costs” assessed by the project operator to the Board of Water Quality, Oil, and Gas. There is no statutory authority for this Board to resolve a private monetary dispute, so this rule must be repealed.

- (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;

Rule 0400-40-12-.04 conflicts with T.C.A. §§ 69-3-120(g) and -139(d) and its repeal is appropriate. The absence of statutory authority for the Board of Water Quality, Oil, and Gas to resolve a private monetary dispute makes repeal of Rule 0400-54-09-.08 prudent.

- (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;

The repeal of Rule 0400-54-09-.08 theoretically could affect persons subject to a silvicultural stop work order. However, the Department’s legal review has prevented application of civil penalties to such orders due to the conflict with the applicable statutes.

Oil and Gas owners and operators are affected by the repeal of Rule 0400-54-09-.08. The Department is not aware of any support or opposition to the repeal of this rule. However, it is appropriate to repeal the rule due to the lack of statutory authority for the rule.

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

The Board is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this rule.

- (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;

There is no increase or decrease in state and local government revenues and expenditures resulting from this rulemaking.

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

Stephanie Durman
Office of General Counsel
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor

Nashville, Tennessee 37243
Stephanie.Durman@tn.gov

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

Alli Williamson
Legislative Liaison
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) 253-5339
Alli.F.Williamson@tn.gov

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

- (1) A description of the action proposed, the purpose of the action, the legal authority for the action and the plan for implementing the action.

The Board of Water Quality, Oil, and Gas is repealing rules that were identified through the retrospective rule review as either lacking statutory authority or being redundant.
- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This rulemaking is the least-cost method for achieving the stated purpose.
- (3) A comparison of the cost-benefit relation of the action to nonaction.

This rulemaking enables the Board to eliminate a redundant rule and rules beyond statutory authority.
- (4) A determination that the action represents the most efficient allocation of public and private resources.

This rulemaking is an efficient allocation of public and private resources.
- (5) A determination of the effect of the action on competition.

This rulemaking will not impact competition.
- (6) A determination of the effect of the action on the cost of living in the geographical area in which the action would occur.

This rulemaking will not impact the cost of living in any geographic area.
- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

This rulemaking will not impact employment in any geographic area.
- (8) The source of revenue to be used for the action.

This rulemaking is being accomplished with existing revenue.

(9) A conclusion as to the economic impact upon all persons substantially affected by the action, including an analysis containing a description as to which persons will bear the costs of the action and which persons will benefit directly and indirectly from the action.

This rulemaking will not have an economic impact on any person.