Department of State
Division of Publications
312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615.741.2650
Fax: 615.741.5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 02-24-13
Notice ID(s): 1948-1949
File Date: 2/13/13

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:	Environment and Conservation
Division:	Water Resources
Contact Person:	Bob O'Dette
Address:	6th Floor, L & C Annex 401 Church Street Nashville, Tennessee 37243-1531
Phone:	(615) 253-5319
Email:	Robert.Odette@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:	12th 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:	Beverly.Evans@tn.gov

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

Address 1:	17th Floor Conference Room A, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	04/09/13		
Hearing Time:	9:00 a.m.	X CST/CDT ___EST/EDT	

Additional Hearing Information:

This rulemaking is intended to move the rules from Chapter 1200-04-12 to Chapter 0400-40-12 and to edit the document to correct typos and incorrect references.

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, Water Resources Division; Attention: Mr. Bob O'Dette, 6th Floor, L & C Annex; 401 Church Street; Nashville, Tennessee 37243; telephone 615-532-0445 or fax 615-532-0199. However, such written comments must be received by 4:30 PM CDT, April 9, 2013, in order to assure consideration. For further information, please contact Mr. Bob O'Dette at the above address or telephone number or by e-mail at Robert.Odette@tn.gov.

Revision Type (check all that apply):

___ Amendment
X New
X 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**
0400-40-12	Silvicultural Activity Stop Work Orders
Rule Number	**Rule Title**
0400-40-12-.01	Silvicultural Activity Stop Work Orders - General
0400-40-12-.02	Silvicultural Activity Stop Work Orders - Procedures
0400-40-12-.03	Notification by Operators with a Finding of Violation
0400-40-12-.04	Penalties
0400-40-12-.05	Meetings, Appeals, and Hearings

Chapter Number	**Chapter Title**
1200-04-12	Silvicultural Activity Stop Work Orders
Rule Number	**Rule Title**
1200-04-12-.01	Silvicultural Activity Stop Work Orders - General
1200-04-12-.02	Silvicultural Activity Stop Work Orders - Procedures
0400-04-12-.03	Notification by Operators with a Finding of Violation
0400-04-12-.04	Penalties
0400-04-12-.05	Meetings, Appeals, and Hearings

(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)

Repeal

Chapter 1200-04-12
Silvicultural Activity Stop Work Orders

Chapter 1200-04-12 Silvicultural Activity Stop Work Orders is repealed.

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

New Rule

Chapter 0400-40-12
Silvicultural Activity Stop Work Orders

Table of Contents

0400-40-12-.01 Silvicultural Activity Stop Work Orders – General
0400-40-12-.02 Silvicultural Activity Stop Work Orders – Procedures
0400-40-12-.03 Notification by Operators with a Finding of Violation
0400-40-12-.04 Penalties
0400-40-12-.05 Meetings, Appeals, and Hearings

0400-40-12-.01 Silvicultural Activity Stop Work Orders - General.

(1) General

(a) Purpose, Scope and Applicability

The purpose of this Chapter is to implement the amendment to the Tennessee Water Quality Control Act, T.C.A. §§ 69-3-101 et seq., by Public Chapter 680 of the Acts of 2000. This statute gives the Commissioner new authority to alleviate pollution of waters of the state when caused by silvicultural activities due to the operator's failure or refusal to employ forestry best management practices (BMPs). Under the Act, the Commissioner of the Department of Environment and Conservation may issue a stop work order to the operator of the silvicultural activities, the order remaining in force until such time as compliance is achieved. This Chapter also implements a requirement for notification of silvicultural activities to the Commissioner of Environment and Conservation and to the Commissioner of Agriculture prior to commencement of any such activities by operators who have been formally found to have violated the Tennessee Water Quality Control Act related to silvicultural activities within the past two years.

These rules are promulgated specifically in response to the directive in § 6 of Public Chapter 680 for criteria and procedures for the issuance, appeal, and suspension of Stop Work Orders.

(b) Use of Number and Gender - As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

(c) Rule Structure - These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

(2) Definitions

When used in these rules the following terms have the meanings given below unless otherwise specified:

"Act" means P.Ch. 680 of the Acts of 2000.

"Commissioner" means the Commissioner of the Department of Environment and Conservation, or in the event of the Commissioner's absence, or a vacancy in the office of Commissioner, the Deputy Commissioner.

"Date of a finding of violation" means the date of issuance of a Commissioner's Order or Stop Work Order or the date of entry of a court order.

"Finding of violation" means a Commissioner's Order, a Stop Work Order, or a ruling, order, or judgment of a court that makes a finding that an operator has violated the Water Quality Control Act in the conduct of silvicultural activities.

"Forestry best management practices" or "BMP's" mean those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in Tennessee Department of Agriculture rules for forestry best management practices, Chapter 0800-07-02 and the interim forestry BMP's specifically identified by the Department of Agriculture pursuant to § 1 of the Act.

"Silvicultural activities" means those forest management activities associated with the harvesting of timber and including without limitation the construction of roads and trails.

"Operator" as used in context of silvicultural activities, means any person(s) that conducts or exercises control over any silvicultural activities; provided, however, that the term "operator" shall not include an owner if the silvicultural activities are being conducted by an independent contractor.

"Owner" as used in the context of silvicultural activities, means any person(s) that owns or leases land on which silvicultural activities occur or owns timber on land on which silvicultural activities occur.

"Stop Work Order" means an order issued by the Commissioner of the Department of Environment and Conservation requiring the operator to immediately cease part or all silvicultural activities.

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

0400-40-12-.02 Silvicultural Activity Stop Work Orders – Procedures.

(1) Procedures

(a) Upon receipt by either the Tennessee Department of Environment and Conservation (TDEC) or Tennessee Department of Agriculture (TDA) of a complaint alleging that water pollution has occurred as a result of silvicultural activities, either TDEC or TDA, or both will conduct an investigation of the complaint.

(b) The operator will be given the opportunity to employ forestry best management practices, or other such remedial actions as are necessary, to come into compliance prior to commencing to obtain a Stop Work Order, except when the Commissioner deems otherwise necessary to address water pollution.

(c) Following a joint investigation or site visit by TDEC and/or TDA, if a stop work order is deemed necessary to abate pollution of waters of the State, TDEC shall begin procedures to issue a stop work order when all of the following criteria are met:

1. An operator has failed or refused to use forestry best management practices (BMP); and

2. A point source discharge has been created as a result of failure or refusal to use BMPs; and

3. Waters of the State have been polluted as a result of silvicultural activities.

(d) A request for stop work order will be completed by TDEC staff, and a stop work order will be submitted to the Commissioner for his consideration. The Commissioner of the Department of Environment and Conservation may issue the stop work order against the operator, following consultation with the Commissioner of Agriculture.

(e) The Stop Work Order

1. The stop work order shall contain at a minimum the following information:

(i) The name and address of the operator;

(ii) The name and address of the owner if different than the operator;

(iii) The location of the silvicultural activity;

(iv) The waterbody affected by the pollution;

(v) a description of the failure or refusal to use BMPs;

(vi) the nature of the point source discharge created by the activity; and

(vii) a description of the water pollution which has occurred.

2. The Stop Work Order will be hand delivered to the operator and the owner on the site or their last known addresses, if they are in the state. If they are out of state, it will be sent by certified mail, return receipt requested.

3. The stop work order shall require that the operator cease the silvicultural activities that are contributing to such pollution. This may include all of the silvicultural activities if they all contribute to the pollution.

4. The stop work order shall remain in effect until the operator installs forestry best management practices that eliminate existing pollution and prevent further pollution associated with the silvicultural activities.

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

0400-40-12-.03 Notification by Operators with a Finding of Violation.

(1) No operator with a finding of violation that has not been overturned or reversed on appeal shall begin silvicultural activities within two years of the date of the finding of violation unless the operator has filed a written notification of the start of said silvicultural activities with the Commissioner of Agriculture and with the Commissioner of Environment and Conservation as required by paragraph (2) of this rule.

(2) At least ten (10) days prior to commencement of silvicultural activities, the operator with such a finding of violation shall file a written notification with the Commissioner of Agriculture and with the Commissioner of the Department of Environment and Conservation. Such notification shall include the following information:

(a) The name and address of the owner, and the name and address of the operator, if different than the owner; and

(b) The location of the silvicultural activities and estimated acreage; and

(c) The anticipated beginning date for, and the anticipated duration of, the silvicultural activities.

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).

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

0400-40-12-.05 Meetings, Appeals, and Hearings.

(1) An appeal or request for hearing of any stop work order issued by the Commissioner of the Department of Environment and Conservation shall be made to the Board of Water Quality, Oil and Gas in writing by the operator and filed with the Commissioner of the Department of Environment and Conservation within thirty (30) days of receipt of notice of the Stop Work Order.

(2) If an appeal or hearing is requested, the operator shall also be afforded the opportunity to meet with the Commissioner of the Department of Environment and Conservation or, at the Commissioner's option, meet with the Deputy or Assistant Commissioner, within three (3) working days after the hearing request is filed, to discuss the alleged violation and show cause why a stop work order should not have been issued. Such a meeting shall be an informal event in the nature of a settlement discussion and shall not be a contested case within the meaning of the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq.

(3) If, as a result of such a meeting, the Commissioner, or if the meeting was with the Deputy or Assistant Commissioner, such deputy or assistant commissioner decides to make any modification or revocation of the stop work order, it shall be accomplished in writing after consultation with the Commissioner of the Department of Agriculture. Both the Stop Work Order and any document modifying or revoking it shall be public records.

(4) If the Commissioner, or if such meeting was held with the Deputy or Assistant Commissioner, such deputy or assistant commissioner upholds the stop work order, it shall remain in effect until resolution of the appeal or the operator comes into compliance.

(5) If no request for hearing is made within thirty (30) days of receipt of the Stop Work Order, the stop work order becomes final and not subject to review. The Commissioner may seek injunctive relief in a court of competent jurisdiction, if necessary, to enforce any final order.

(6) If an operator who files a request for a hearing before the Board of Water Quality, Oil and Gas either does not seek the informal meeting described in paragraphs (2) through (4) of this rule, or is not satisfied with the result of such a meeting, the matter shall be resolved through the process for contested case hearings before the Board under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.

Authority: T.C.A. §§ 69-3-101 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: 2/12/13

Signature: Sandra K. Dudley

Name of Officer: SANDRA K. DUDLEY

Title of Officer: DIRECTOR, WATER RESOURCES

BETH B. SMITH
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.
My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: 2-12-13

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

Department of State Use Only

Filed with the Department of State on: 2/13/13

Tre Hargett
Secretary of State

RECEIVED
2013 FEB 13 PM 3:54
OFFICE OF SECRETARY OF STATE