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Sequence Number: 02-26-13
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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 1200-04-10 to Chapter 0400-40-10 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**
0400-40-10	National Pollutant Discharge Elimination System General Permits
Rule Number	**Rule Title**
0400-40-10-.01	General
0400-40-10-.02	Definitions
0400-40-10-.03	Permits

Chapter Number	**Chapter Title**
1200-04-10	National Pollutant Discharge Elimination System General Permits
Rule Number	**Rule Title**
1200-04-10-.01	General
1200-04-10-.02	Definitions
1200-04-10-.03	Permits
1200-04-10-.04	Repealed
1200-04-10-.05	Repealed
1200-04-10-.06	Repealed
1200-04-10-.07	Repealed

(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 1200-04-10
National Pollutant Discharge Elimination System General Permits

Chapter 1200-04-10 National Pollutant Discharge Elimination System General Permits is repealed.

Authority: T.C.A. §§ 69-1-117 and 4-5-201 et seq.

New Rules

Chapter 0400-40-10
National Pollutant Discharge Elimination System General Permits

Table of Contents

0400-40-10-.01 General
0400-40-10-.02 Definitions
0400-40-10-.03 Permits

0400-40-10-.01 General

This chapter states the manner in which the Department may issue general permits in accordance with § 402 of the Clean Water Act (33 U.S.C. § 1342) and T.C.A. § 69-3-108.

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

0400-40-10-.02 Definitions

(1) "Act" means the Tennessee Water Quality Control Act, as amended, T.C.A. § 69-3-101 et seq.

(2) "Category of Sources" means either (1) Storm water point sources; or (2) A category of point sources other than storm water point sources, or a category of treatment works treating domestic sewage, if the sources all:

(a) Involve the same or substantially similar types of operations;

(b) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(c) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(d) Require the same or similar monitoring; and

(e) In the opinion of the Director, are controlled more appropriately under a general permit than under individual permits.

(3) "General Permit" means a permit issued under the Act and this rule authorizing discharges from a category of sources within a geographical area.

(4) "Geographical Area" means existing geographic or political boundaries such as:

(a) Designated planning areas under §§ 208 and 303 of the Federal Clean Water Act;

(b) Sewer districts or sewer authorities;

(c) City, County, or State political boundaries;

(d) State highway systems;

(e) Standard metropolitan statistical areas as defined by the Office of Management and Budget;

(f) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

(g) Any other appropriate division or combination of boundaries.

(5) "Individual Permit" means a permit issued under the Act to a specified person to conduct a discharge at a specified location.

(6) "Notice of Intent (NOI)" means a written notice by a discharger to the Director that he wishes his discharge to be authorized under a general permit.

(7) Terminology not specifically defined herein shall be defined in accordance with the Tennessee Water Quality Control Act of 1977, T.C.A. § 69-3-101 et seq., and the rules adopted thereunder.

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

0400-40-10-.03 Permits

(1) Purpose of a Permit:

A permit is a license to conduct an activity which is regulated under T.C.A. § 69-3-108 in strict compliance with the conditions and limitations contained within the permit. T.C.A. § 69-3-108 explicitly states when a permit is required and what activities shall be unlawful without a permit. In addition, T.C.A. § 69-3-108 states that under no circumstances shall the Commissioner issue a permit for an activity which would cause a condition of pollution, either by itself or in combination with others. No permit shall be issued which will violate any provision of §§ 301, 302, 303, 306, or 307 of the Federal Water Pollution Control Act, or of the Tennessee Water Quality Control Act of 1977, or otherwise result in a condition of pollution. Where the Commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, he may issue such a permit.

(2) Administration

(a) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of T.C.A. subsections 69-3-108(e) through (j).

(b) Requiring an individual permit.

1. Notwithstanding the provisions of this rule, the Director may require any person to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this rule. Cases where an individual NPDES permit may be required include the following:

(i) The discharger is not in compliance with the conditions of the general NPDES permit;

(ii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works;

(iii) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(iv) A Water Quality Management plan containing requirements applicable to such

point sources is approved;

(v) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(vi) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit;

(vii) The discharge is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

(I) The location of the discharge with respect to waters of the State of Tennessee;

(II) The size of the discharge;

(III) The quantity and nature of the pollutants discharged to waters of the State of Tennessee; and

(IV) Other relevant factors.

2. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under T.C.A. subsection 69-3-108(a), with reasons supporting the request to the Director.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is terminated on the effective date of the individual permit.

4. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(c) Degree of Waste Treatment Required.

All pollutants shall receive such treatment or corrective action so as to insure compliance with the terms and conditions of the issued permit and with the following, whenever applicable:

1. Effluent limitations established by the EPA pursuant to §§ 301, 302, 306, 307, 308, 318, and 405 of the Federal CWA;

2. Criteria and standards for Best Management Practices established by EPA pursuant to Section 304(e) of the Federal CWA;

3. Notwithstanding parts 1 and 2 of this subparagraph, more stringent effluent limitations may be required as deemed necessary by the Director (i) to meet any existing Federal laws or regulations, or (ii) to insure compliance with any applicable State water quality standards, effluent limitations, treatment standards, or schedule of compliance;

4. Calculations and specifications of effluent limits and standards shall be made in accordance with the provisions of Federal Regulations, 40 CFR 122.45 (1995). [See paragraph (3) of this rule for text of cited Federal Regulations.]

(d) Notice of Intent (NOI)

1. Conditions for NOI to be covered by a general permit shall be established in the general

permits and operate in lieu of application requirements. A general permit shall specify whether or not an NOI must be submitted for a facility to obtain coverage under the general permit.

2. A general permit shall specify the time period, after an NOI is submitted, or after the general permit is issued, when coverage under the general permit is effective.

3. An NOI shall be on forms as may be prescribed and furnished by the Director.

(e) Signatory Requirements

1. Any NOI submitted to the Director shall be signed as follows:

(i) For a corporation: by a responsible corporate officer. For the purpose of this subpart, a responsible corporate officer means:

(I) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(II) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(iii) For a municipality, State, Federal, or other public facility: by either a principal executive officer or ranking elected official. For purposes of this subpart, a principal executive officer of a Federal agency includes:

(I) the chief executive officer of the agency, or

(II) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. All reports required by the permit or information submitted to the Director shall be signed by a person designated in part 1 of this subparagraph or a duly authorized representative of such person, if:

(i) The representative so authorized is responsible for the overall operation of the facility from which the discharge originated, e.g., a plant manager, superintendent or person of equivalent responsibility;

(ii) The authorization is made in writing by the person designated under part 1 of this subparagraph; and

(iii) The written authorization is submitted to the Director.

3. Any changes in the written authorization submitted to the Director under part 2 of this subparagraph which occur after the issuance of a permit shall be reported to the Director by submitting a copy of a new written authorization which meets the requirements of parts 1 and 2 of this subparagraph.

4. Any person signing any document under parts 1 or 2 of this subparagraph shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my

inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(f) Receipt and use of NOI's and data shall be in accordance with Rule 0400-40-01-.07.

(g) Notice of NPDES General Permits

1. The Director shall give public notice of his or her intent to issue a general permit:

   (i) the notice shall set forth the means by which one may comment on the draft general permit and shall give the public a comment period of at least 30 days;

   (ii) the Director shall consider all comments received from the public during the comment period;

   (iii) when the general permit is issued, or when the decision is made not to issue the permit, the Director shall prepare and make available to the public a set of responses to comments received during the comment period; and

   (iv) the Director shall schedule at least one public hearing on the general permit, and give at least 30 days notice of the hearing, and receive comments for at least 10 days after the hearing.

2. Public notices in part 1 of this subparagraph shall be given by mailing a copy of the notice to the following persons:

   (i) EPA Region IV;

   (ii) any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (or other permit under the Clean Air Act), NPDES, § 404, or sludge management permit;

   (iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources, the Tennessee Valley Authority, the Advisory Council on Historic Preservation, and the Tennessee Historical Commission, including any affected States;

   (iv) any State agency responsible for plan development under CWA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service; and

   (v) persons on a mailing list developed by including on the list those who request in writing to be on the list; by soliciting persons for area lists from participants in past permit proceedings in that area; and by notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals.

3. Public notices in part 1 of this subparagraph shall be given by publication in a daily or weekly newspaper within the area described in the general permit coverage; in the case of statewide general permits, in daily newspapers in Memphis, Nashville, Chattanooga and Knoxville.

4. The Director shall provide notice of the proposed NPDES general permit action to facilities and activities it knows to be potentially affected by the general permit action, and also to known agencies, associations, and other umbrella organizations for those facilities or activities.

5. Public notices issued under this subparagraph shall contain the following minimum information:

(i) name and address of the Division and any section within the Division responsible for processing the permit action for which notice is being given;

(ii) a brief description of the activity addressed in the general permit, and the area of coverage of the permit;

(iii) name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft general permit and rationale sheet;

(iv) a brief description of the procedures for comment, the time and place of the hearing, and other procedures by which the public may participate in the final permit decision; and

(v) in addition to information described in subparts (i) through (iv) of this part, public notice of hearings shall contain reference to the date of previous public notices relating to the permit; date, time and place of the hearing; and a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

6. In addition to the general public notice described in part 5 of this subparagraph, persons identified in subparts 2(i) through (iv) of this subparagraph shall be mailed a copy of the draft permit and rationale sheet.

(h) Public Participation in NPDES General Permits

1. The public may comment on conditions of draft general permits by written comment during the public notice and comment period, by written or oral comments at public hearings, and by written comment within 10 days of a public hearing.

2. As provided at subparagraph (2)(b) of this rule, any interested person may petition the Director to require an individual NPDES permit for an individual facility or activity otherwise covered under a general permit.

(i) Terms and Conditions of Permits.

General Permits issued shall be subject to the terms and conditions of paragraph (4) of Rule 0400-40-01-.05.

(j) Duration of Permits.

General Permits shall be issued for a fixed term, not to exceed 5 years, which shall be stated in the permit.

(3) Text of Cited Federal Regulations

40 CFR § 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

(a) Outfalls and discharge points. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(k) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

(b) Production-based limitations.

(1) in the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

(2) (i) Except in the case of POTWs or as provided in paragraph (b)(2)(ii) of this section, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(ii) (A) (1) The Director may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(2) For the automotive manufacturing industry only, the Regional Administrator shall, and the State Director may establish a condition under paragraph (b)(2)(ii)(A)(1) of this section if the applicant satisfactorily demonstrates to the Director at the time the application is submitted that its actual production, as indicated in paragraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(B) If the Director establishes permit conditions under paragraph (b)(2)(ii)(A) of this section:

(1) The permit shall require the permittee to notify the Director at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(2) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Director under paragraph (b)(2)(ii)(B)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(3) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(c) Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of "total recoverable metal" as defined in 40 CFR Part 136 unless:

(1) An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or

(3) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

(d) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

(e) Non-continuous discharges. Discharges which are not continuous, as defined in § 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/1 zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(f) Mass limitations.

(1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

(i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) Pollutants in intake water.

(1) Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(i) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(ii) The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(2) Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(3) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(4) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(5) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(h) Internal waste streams.

(1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 122.44(i) shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(i) Disposal of pollutants into wells, into POTWs or by land application. Permit limitations and standards shall be calculated as provided in § 122.50. (Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2040-0077).

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

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