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Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission:	Underground Storage Tanks and Solid Waste Disposal Control Board
Division:	Solid Waste Management
Contact Person:	Jeremy Hooper
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Statement of Necessity:

In December 2018, Chronic Wasting Disease (CWD) was confirmed in 10 deer harvested by hunters in Hardeman County and Fayette County, Tennessee. CWD is a transmissible disease that affects all cervids, including white-tailed deer and elk native to Tennessee. A misfolded protein called a prion causes the disease. Prions are difficult to destroy and are transmitted through direct animal-to-animal contact and contact with feces, saliva, urine, contaminated environments, and infected carcass parts. Long after infected carcasses decompose, the soil around the remains stay infectious, possibly exposing other cervids.

The United States Centers for Disease Control and Prevention (CDC) and the World Health Organization have reviewed available scientific data and concluded that there is no strong evidence for the occurrence of CWD in humans and that there is no known incidence of a human being infected with CWD prions. The CDC does recommend that humans not consume cervids known to be CWD positive.

The Tennessee Fish and Wildlife Commission ("Commission") promulgated emergency rules in 2018 and permanent rules in 2019 authorizing the establishment of management zones (designated counties), prohibiting export of carcasses, parts, and products from a zone, and prohibiting the feeding of animals by humans in a zone in order to limit the spread of CWD. However, due to the highly contagious nature of CWD, as of this date the disease has spread to seven counties. Four at-risk counties have been designated. The Tennessee Wildlife Resource Agency's disease management strategy focuses on harvesting of cervids in the designated counties, proactive testing for the disease in harvested cervids, and the emergency rule measures described.

The Tennessee Wildlife Resources Agency (TWRA) notified the Department of Environment and Conservation (TDEC) that private Class I municipal solid waste disposal facilities ("landfills") would no longer accept cervid carcasses that could not be demonstrated to be non-detect for CWD through testing. This policy has resulted in no landfill available for carcass management in the designated zones due to the time required to receive test results and the inability to transport carcasses across borders. In January 2020, the Commission authorized TWRA to expend one million dollars to purchase an incinerator for the appropriate management of carcasses. TWRA has initiated the process of acquiring and installing the incinerator; however, the incinerator is not anticipated to be operational until early 2021. Therefore, an alternative management mechanism is needed as 2020 cervid harvesting seasons have initiated and harvesting is a primary component of TWRA's CWD management strategy.

The Underground Storage Tanks and Solid Waste Disposal Control Board (“Board”) is charged with promulgating rules governing the operation and maintenance of solid waste facilities, operations, and sites and is authorized, through the rulemaking process, to establish exemptions from the requirements of title 68, chapter 211, part 1, and permits-by-rule for classes of activities subject to the requirements of part 1; provided, that it is demonstrated to a reasonable degree of certainty that design or operating practices will prevent degradation of the environment and will adequately protect the public health, safety, and environment. Tenn. Code Ann. §§ 68-211-106 and 68-211-107. Tennessee Code Annotated section 4-5-208 authorizes emergency rules to protect the public health, safety or welfare from an immediate danger. The Board has determined that indiscriminate, unmanaged disposal of cervid carcasses is an immediate danger to the public health, safety, or welfare as there is evidence that prions spread through contact with carcasses and a healthy, appropriately managed cervid population is beneficial to the public welfare. A volume of deceased animals lying exposed on the surface of the ground poses a known risk to public health and safety, as well as the environment, due to other pathogens. Therefore, appropriately managed burial is a solution that will prevent degradation of the environment while adequately protecting the public health, safety, and environment. The Board recognizes that incineration is a preferred method of CWD management and anticipates that TWRA will continue development of incineration as a primary management method unless and until additional appropriate methods are demonstrated to be effective solutions.

Rule(s) Revised (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
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.02	Permitting of Solid Waste Storage, Processing, and Disposal Facilities

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 0400-11-01
Solid Waste Processing and Disposal

Amendments

Part 3 of subparagraph (b) of paragraph (1) of Rule 0400-11-01-.02 Permitting of Solid Waste Storage, Processing, and Disposal Facilities is amended by adding a new subpart (xxiii) to read as follows:

- (xxiii) Sites operated by the Tennessee Wildlife Resources Agency for burial of the remains of deceased North American cervids harvested from a county qualifying as a positive Chronic Wasting Disease or high risk Chronic Wasting Disease county in accordance with Rule 1660-01-34-.01 ("carcasses"), provided that the following conditions are met:
 - (I) The site is chosen in consultation with and approved by the Commissioner in writing;
 - (II) The site is constructed and operated through the use of burial trenches (as opposed to an open pit) with at least one foot of compacted clay liner horizontally along the bottom and vertically along the sides of the site, unless the Commissioner determines that a thicker compacted clay liner is necessary to protect human health and the environment;
 - (III) The site is covered each operating day;
 - (IV) The portion of the site where carcasses are buried does not exceed one acre in size, unless otherwise approved by the Commissioner;
 - (V) The site is only utilized for burial of carcasses during the timeframe approved by the Commissioner in writing, not to exceed six months, unless an extension is requested in writing and granted by the Commissioner;
 - (VI) The site is secured through adequate gates, fences, and any other measures necessary to prevent unauthorized entry, exclude wildlife, and control vectors;
 - (VII) The site is closed in accordance with Rule 0400-11-01-.04(8)(g) or as otherwise deemed necessary by the Commissioner;
 - (VIII) The site is operated and closed in accordance with any other conditions imposed by the Commissioner in writing as are deemed necessary to protect human health and the environment, including without limitation the installation of groundwater monitoring wells.

Authority: T.C.A. §§ 68-211-106(a)(2) and 4-5-201 through -231.

* 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)
Stacey Cothran (Solid/Hazardous Waste Management Industry)					
Pat Flood, P.E. (Commissioner's Designee, Dept. of Environment and Conservation)					
Dr. George Hyfantis, Jr. (Institution of Higher Learning)					
Alan M. Leiserson (Environmental Interests)					
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)					
David Martin (Working in a field related to Agriculture)					
Jeff McCormick (Municipal Government)					
Richard "Ric" Morris (Single Facility with less than 5 Underground Storage Tanks)					
William "Will" Ownby (Manufacturing experienced with Underground Storage Tanks/Hazardous Waste)					
Brian Parnell (Petroleum Business with at least 15 Underground Storage Tanks)					
DeAnne Redman (Petroleum Management Business)					
The Honorable Bob Rial (County Government)					
Jimmy West (Commissioner's Designee, Dept. of Economic and Community Development)					
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)					

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: _____

Signature: _____

Name of Officer: Stacey Cothran

Title of Officer: Board Chair

Agency/Board/Commission: Underground Storage Tanks and Solid Waste Disposal Control Board

Rule Chapter Number(s): Chapter 0400-11-01

All emergency 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.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective for: _____ **days*

Effective through: _____

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett
Secretary of State

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly.)

The Board does not anticipate an impact on local governments from this rulemaking.

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 rule amendment adds an exemption from solid waste permitting for burial sites for North American cervids (i.e., the deer family) operated by the Tennessee Wildlife Resource Agency (TWRA) within a county qualifying as “positive CWD” or “high risk CWD.” The amendment also specifies standards for appropriate burial.

- (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;

There are no federal laws or regulations or state laws or regulations mandating promulgation of the rule amendment. Tennessee Code Annotated section 4-5-208 specifies requirements for emergency rules and Tennessee Code Annotated sections 68-211-106 and 68-211-107 authorize the Underground Storage Tanks and Solid Waste Disposal Control Board to promulgate the rule amendment.

- (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;

Persons, organizations, corporations, or governmental entities most directly affected by this rule, include cervid hunters and processors and the Tennessee Wildlife Resource Agency (TWRA). The Board has not received any indication from these persons or TWRA that they object to the rule amendment.

- (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 the rule or the necessity to promulgate the 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;

The rule amendment is unlikely to lead to an increase or decrease in state and local revenues and expenditures.

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

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

Blair Beaty
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
615-253-2027
Blair.Beaty@tn.gov

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

Economic Impact Statement [Tenn. Code Ann. § 4-33-104(b)]

- (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 rule amendment adds an exemption from solid waste permitting for burial sites for North American cervids (i.e., the deer family) operated by the Tennessee Wildlife Resource Agency (TWRA) within a county qualifying as a “positive CWD” or “high risk CWD.” The amendment also specifies standards for appropriate burial. Continued hunting is necessary to appropriately manage the cervid population and to limit continued spread of Chronic Wasting Disease (CWD). Carcasses must be appropriately managed to prevent spread of CWD and the exposure to other pathogens. Because incineration and other management methods are not available, burial is needed for the 2020 hunting season.

Tennessee Code Annotated section 4-5-208 specifies requirements for emergency rules and Tennessee Code Annotated sections 68-211-106 and 68-211-107 authorize the Underground Storage Tanks and Solid Waste Disposal Control Board to promulgate the rule amendment. It is anticipated that the Department of Environment and Conservation will provide consultation and oversight in implementation of the rule.

- (2) A determination that the action is the least-cost method for achieving the stated purpose.

This action is the least-cost method for achieving the stated purpose.

- (3) A comparison of the cost-benefit relation of the action to nonaction.

This action will enable continued management of cervid carcasses preventing potential negative health effects from improperly managed carcasses, including increasing prevalence of CWD. In addition, White-tailed deer are Tennessee’s most economically important big game species. Activities associated with hunting support rural small businesses. Increasing the spread of CWD increases the counties in the state that will see a negative impact.

- (4) A determination that the action represents the most efficient allocation of public and private resources.

This action represents the most efficient allocation of public and private resources as it is the only feasible option currently available to manage cervid carcasses in the CWD counties.

- (5) A determination of the effect of the action on competition.

This action will not affect 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.

Cost of living in the geographical area in which the action would occur will not be affected.

- (7) A determination of the effect of the action on employment in the geographical area in which the action would occur.

It is not anticipated that the action will affect employment in the short-term. In the long-term, actions that decrease CWD prevalence will have a positive impact on employment in hunting-impacted industries.

(8) The source of revenue to be used for the action.

The rule amendment and rule implementation can be accommodated with existing resources.

(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.

The rule amendment will prevent inappropriate management of cervid carcasses and potential health impacts from other pathogens. The rule amendment will allow management of CWD to continue in the CWD counties. Containing CWD benefits the hunting economy which includes, but is not limited to, small businesses in rural areas, sporting goods businesses, hotels, and restaurants.