

**RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER RESOURCES**

**0400-43-01
MINERAL TEST HOLES**

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0400-43-01-.01 DEFINITIONS.

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Act" means the Mineral Test Hole Regulatory Act, T.C.A. Title 60, Chapter 1, Part 5.
- (2) "Board" means the Tennessee Board of Water Quality, Oil and Gas.
- (3) "Department" means the Tennessee Department of Environment and Conservation.
- (4) "Mineral" means any substance with economic value whether organic or inorganic that can be extracted from the earth, but excluding oil and gas.
- (5) "Mineral test hole" or "test hole" means any hole in excess of one hundred (100) feet drilled during the exploration for minerals but excludes auger drilling in surficial or otherwise unconsolidated material, drilling in conjunction with mining or quarrying operations (i.e., blast holes), and drill holes for the exploration of oil and/or gas, water, structural foundations, and seismic surveys.
- (6) "Natural brine" means naturally occurring mineralized water other than potable or fresh water.
- (7) "Operator" means the person, whether owner or not, supervising or responsible for drilling, operating, repairing, abandoning or plugging of test holes subject to this chapter.
- (8) "Owner" means the person who has or attains the right to drill, convert or operate any test hole subject to this chapter.
- (9) "Person" means any individual, corporation, company, association, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative or private organization of any kind.
- (10) "Pollution" means such alteration of the physical, chemical, biological, bacteriological, or radiological properties of the waters, soils, animal, fish and aquatic life or surface property of this state, as will:
 - (a) Result or will likely result in harm, potential harm, or detriment to the public health, safety, or welfare;
 - (b) Result or will likely result in harm, potential harm, or detriment to the health of animals, birds, fish or aquatic life;

(Rule 0400-43-01-.01, continued)

- (c) Render or will likely render the waters, soils, animal, fish and aquatic life or surface property substantially less useful for domestic municipal, industrial, agricultural, recreational, or other reasonable uses; or
 - (d) Leave or will likely leave the waters in such condition as to violate any standards of water quality established by the Board.
- (11) "Supervisor" means the Commissioner of the Tennessee Department of Environment and Conservation or the Commissioner's designee.

Authority: T.C.A. §§ 4-5-201 et seq. and 60-1-501 et seq. **Administrative History:** Original rules filed January 4, 2017; effective April 4, 2017.

0400-43-01-.02 BOND.

- (1) Amount of bond

A bond is required to be in force for a test hole in the name of the owner or operator from the time a drilling permit is granted until the test hole is abandoned in accordance with this chapter. The bond for an individual test hole shall be for the sum of one thousand dollars (\$1,000). An individual test hole bond shall be released upon the proper plugging of the test hole and the filing with the Supervisor of a Plug and Abandon Report.

- (2) Blanket bond

In lieu of an individual bond, any owner or operator may file with the Supervisor a blanket bond in the sum of ten thousand dollars (\$10,000) covering up to twenty-five (25) test holes to be drilled by the principal in the bond with the acceptance and approval by the Supervisor. A blanket bond shall be released upon the proper plugging of all test holes covered by the bond, and the filing of Plug and Abandon Reports with the Supervisor. A surety may notify the Supervisor in writing by registered mail, that the owner or operator is no longer authorized by the surety to obtain permits under said bond. If or when all test holes permitted under said bond have been abandoned in accordance with this chapter, the Supervisor shall release the bond.

- (3) Relief of Responsibility

An owner or operator's bond and other responsibilities to a test hole or test holes shall be relieved upon approval by the Supervisor of a successor's application for a bond and the tendering of authorization by the permittee requesting the Supervisor to approve the successor's application.

- (4) Execution of bond-exception

Acceptable bond instruments include: a bond or bonds executed by a corporate surety authorized to do business in Tennessee and that is among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury, irrevocable letters of credit, personal bonds supported by certificates of deposit or personal bonds supported by cash or certified check. The wording of all instruments must be identical to the wording furnished by the Department's Division of Financial Responsibility.

- (a) Certificates of deposit used to meet the requirements of this rule must meet the following requirements:

(Rule 0400-43-01-.02, continued)

1. The certificate of deposit shall be registered as follows, except that the phrase "Corporation XYZ" should be replaced by the name of the owner/operator: "Corporation XYZ and Tennessee Department of Environment and Conservation or Tennessee Department of Environment and Conservation".
2. The institution holding the funds shall be a commercial financial institution regulated by a federal agency or regulated by the Tennessee Department of Financial Institutions.
3. The certificate of deposit shall be automatically annually renewed with the earned interest released to the principal as accrued.
4. The original certificate of deposit or documentation of the deposit approved by the Department's Division of Financial Responsibility shall be submitted to and held by the Department.
5. Accompanying the certificate of deposit or approved documentation shall be a letter from an officer of the issuing financial institution on the institution's letterhead that contains the certificate of deposit number, the name of the owner/operator, the date the certificate of deposit was issued, and the following statement:

"Notwithstanding any contrary term or condition of the above described Certificate of Deposit, [INSERT NAME OF FINANCIAL INSTITUTION] (the "Financial Institution") hereby covenants, warrants and represents that said Certificate of Deposit shall not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Financial Institution. The Financial Institution further agrees that it shall not release the Certificate of Deposit or the proceeds thereof to anyone other than to the Tennessee Department of Environment and Conservation (the "Department") without the written consent of the Department."

- (b) Letters of credit used to meet the requirements of this rule must be issued by an institution which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(5) Notice of noncompliance

If the requirements with respect to proper plugging upon abandonment and submission of all required records and data on a test hole or test holes have not been met within the time limit set by the Department, the Supervisor shall cause a Notice of Noncompliance to be served upon the operator or owner and to the surety, if any, executing the bond filed by said operator or owner. Said Notice shall be mailed by certified mail to the owner or operator's address as set out in the application for a permit, to the agent for the surety, if any, at the agent's address, if known, and to the surety company, if any, at the address provided to the Tennessee Department of Commerce and Insurance for receipt of notices. The Notice shall specify in what respects the operator or owner has failed to comply with this rule or orders of the Department and shall order said operator or owner to comply in accordance therewith within sixty (60) days after service of said Notice. The surety, if any, shall be afforded the opportunity to act on behalf of the operator or owner within the time set forth in the Notice with regard to the proper plugging of the test hole or test holes and submission of required drilling records.

(6) Forfeiture

(Rule 0400-43-01-.02, continued)

Should the operator or owner, or surety, fail to comply fully with the order of the Notice of Noncompliance within the sixty (60) day requirement, then the bond shall be forfeited to the Department. Where possible, the Department, at its election, may use the monies so forfeited to plug the affected test hole or test holes.

(7) Cancellation of Bond

- (a) An owner or operator must provide that their financial assurance mechanism may not cancel, terminate or fail to renew except for failure to pay for such financial instrument. If there is a failure to pay for the financial instrument, the issuing institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Department. The cancellation must not be final for one hundred eighty (180) days after the Department's and owner or operator's receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility mechanism within ninety (90) days of receipt of notice of cancellation.
- (b) If the owner or operator fails to provide alternate financial assurance and obtain written approval of such assurance from the Department during the ninety (90) days following receipt by both the owner or operator and the Department of a notice of cancellation of this bond, the Supervisor shall collect the full amount of the financial assurance instrument from the financial institution and deposit this amount in a fund within the state treasury reserved for financial assurance cash bonds. If the owner or operator subsequently replaces the financial instrument with an alternate third-party financial instrument and obtains the Supervisor's written approval of such instrument, the amount held as a cash bond will be returned to the owner or operator.

Authority: T.C.A. §§ 4-5-201 et seq. and 60-1-501 et seq. **Administrative History:** Original rules filed January 4, 2017; effective April 4, 2017.

0400-43-01-.03 PERMITS.

(1) Permit required

- (a) A permit is required from the Supervisor before any person drills a test hole as described in the Act.
- (b) No activity related to a test hole may be commenced pursuant to this rule before a permit for such activity has been issued by the Supervisor. Furthermore, any activity related to a test hole that a person may do, or may have done, will be at the person's own risk.
- (c) Permits shall not in any way be construed as a certification by the state of Tennessee that any property interest in the premises covered by a permit is vested in the permittee; they are issued solely under the provisions of the Act for the purposes recited in the Act and this chapter.
- (d)
 - 1. Any permit issued on or after the effective date of this rule shall expire two (2) years from the date the permit is issued.
 - 2. Except as provided in paragraph (6) of Rule 0400-43-01-.05, a Plug and Abandon Report, or a certification that a test hole was not drilled, must be submitted to the Department for each test hole covered by a permit no later than sixty (60) days after the expiration date of the permit, unless a new permit for the test hole is issued by the Supervisor.

(Rule 0400-43-01-.03, continued)

(2) Drilling permits

- (a) Single test hole permit applications for a permit to drill a test hole shall be made on the Application for Permit to Drill and submitted to the Department for approval by the Supervisor. The application shall be accompanied by:

1. A map indicating the location of the test hole proposed in the application;
2. An application fee of one hundred dollars (\$100); and
3. A comprehensive Bond Identification Form.

The application shall also include the name and address of the drilling contractor, if any. If the contractor is unknown at the time of application, then the information must be provided by letter to the Supervisor as soon as determined but prior to beginning drilling operations.

- (b) Applications for a blanket permit must be submitted to the Supervisor for approval and shall include all of the information required by subparagraph (a) of this paragraph, including a map that indicates the location of all test holes proposed. A blanket permit may cover up to a maximum of twenty-five (25) holes.

- (c) A drilling permit can only be amended with the prior written approval of the Supervisor.

Authority: T.C.A. §§ 4-5-201 et seq. and 60-1-501 et seq. **Administrative History:** Original rules filed January 4, 2017; effective April 4, 2017.

0400-43-01-.04 HOLE LOCATION MAPS.

Test hole locations shall be plotted on the appropriate topographic map or maps. A copy of that portion of the map showing the test hole location is acceptable provided the topographic map name and/or number is shown on the copy; each proposed hole shall have a discrete identifier. If required by the Supervisor, a plat must accompany the application for a permit.

Authority: T.C.A. §§ 4-5-201 et seq. and 60-1-501 et seq. **Administrative History:** Original rules filed January 4, 2017; effective April 4, 2017.

0400-43-01-.05 HOLE ABANDONMENT.

(1) Plugging Holes

All test holes which are to be abandoned shall be plugged in accordance with the procedures outlined herein.

(2) Plugging procedure for Middle Tennessee

- (a) In all areas where exploration may encounter gas, set NX casing (3½" OD) at least six (6) feet into bedrock. Procedure: fill test hole with cement, drive in casing, let set up and then drill out cement. Drill hole with gate valve at surface in order to control the test hole if gas is encountered.
- (b) Based on industry experience, the following method has been found to be most satisfactory for protecting fresh water zones:

(Rule 0400-43-01-.05, continued)

1. Place an effective plug at top of Knox formation and one (1) bag cement across unconformity = + 40' plug.
2. Come up test hole to a depth of approximately two hundred (200) feet below lowest adjacent surface terrain. Place effective plugs every sixty (60) feet followed by cement all the way to surface.

(3) Plugging procedure for the Cumberland Plateau

Shallow test holes less than four hundred (400) feet deep or less than one thousand (1,000) feet from the outcrop not encountering underground water shall be plugged by filling or covering the test hole adequately with surface material as a safety precaution. Test holes more than four hundred (400) feet deep or more than one thousand (1,000) feet from the outcrop shall set effective plugs twenty-five (25) feet below each coal seam encountered and fill the test hole with cement to twenty-five (25) feet above the coal seam. Sufficient plugs must be efficiently placed in number and properly located as to prevent commingling of oil, gas, salt water, and fresh water from one zone to another.

(4) Plugging procedure for East Tennessee

Use six (6) to nine (9) bags of cement poured into the bottom of a test hole and extending upward at the rate of sixty (60) feet per bag of cement up to the chert matrix layer. This will bring the cemented test hole above any potential contaminated water in the East Tennessee District. Then one (1) bag of cement will be used to case the top of the test hole.

(5) Alternative plugging procedures for all areas

The entire test hole bore may be filled with suitable grout or cement from the bottom of the test hole to the ground surface or by other methods approved, in writing, by the Supervisor on a case by case basis.

(6) Plug and Abandon Report

A Plug and Abandon Report reporting all activity associated with the test hole performed under the permit must be filed with the Department for approval by the Supervisor within thirty (30) days after completing the activity unless permission has been obtained by the Supervisor to keep a test hole open.

Authority: T.C.A. §§ 4-5-201 et seq. and 60-1-501 et seq. **Administrative History:** Original rules filed January 4, 2017; effective April 4, 2017.

0400-43-01-.06 RULES OF PROCEDURE FOR HEARING CONTESTED CASES.

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter 1360-04-01.

Authority: T.C.A. §§ 4-5-201 et seq. and 60-1-501 et seq. **Administrative History:** Original rules filed January 4, 2017; effective April 4, 2017.