

UNDERGROUND INJECTION CONTROL STATUTES RELATED TO FINANCIAL ASSURANCE

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69-3-105. Duties and authority of the board.

(a) (1) The board has and shall exercise the power, duty, and responsibility to establish and adopt standards of quality for all waters of the state.

(2) The general assembly recognizes that, due to various factors, no single standard of quality and purity is applicable to all waters of the state or to different segments of the same waters. It also recognizes the suitability of certain geologic formations for the placement of fluids and other substances through underground injection; provided, that adequate protection can be afforded the geologic formations. The board shall classify all waters of the state and adopt water quality standards pursuant to such classifications. Such classifications shall be made in accordance with the declaration of policy and purpose in § 69-3-102. In preparing the classification of waters and the standards of quality mentioned above, the board shall give consideration to:

(A) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the water;

(B) The character of the land bordering, overlying or underlying the waters of the state and its particular suitability for particular uses, with a view to conserving the value of that land, encouraging the most appropriate use of the same for economic, residential, agricultural, industrial, recreational and conservation purposes;

(C) The past, present, and potential uses of the waters for transportation, domestic and industrial consumption, recreation, fishing and fish culture, fire prevention, the disposal of sewage, industrial and other wastes, and other possible uses.

(3) The state water quality plan provided for in subsection (e) shall contain standards of quality and purity for each of the various classes of water in accordance with the best interests of the public. In preparing such standards, the board shall give due consideration to all physical, chemical, biological, bacteriological, or radiological properties that may be necessary for preserving the quality and purity of the waters of the state.

(4) The board may amend and revise such standards and classifications, including revisions to improve and upgrade the quality of water.

(b) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, promulgate after due notice and enforce rules and regulations that the board deems necessary for the proper administration of this part, the prevention, control, and abatement of pollution, or the

modification of classifications and the upgrading of the standards of quality in accordance with subsection (a).

(c) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate, after due notice, all necessary rules and regulations for the purpose of controlling the discharge of sewage, other wastes, and other substances from any boats.

(d) Prior to classifying or reclassifying waters of the state, or adopting, amending, or revising standards of quality for waters of the state, or promulgating, adopting, modifying, or repealing rules and regulations, or adopting, amending, or revising water quality plans, or area-wide waste treatment plans, the board shall conduct, or cause to be conducted, public hearings in connection therewith. Notice of any public hearing shall be given not less than thirty (30) days before the date of such hearing and shall state the date, time, and place of hearing, and the subject of the hearing. Any such notice shall be published at least once in one (1) newspaper of general public circulation circulated within the area of the state in which the water affected is located. Any person within the area of the state in which the water affected is located may contact the board and request to be placed on a notification registry, which includes such person's full name, mailing address, and telephone number. The board shall notify in writing all persons on such notification registry as to the date, time, and place of hearing, and the subject of the hearing, ten (10) days before the hearing. Any person who desires to be heard relative to water quality matters at any such public hearing shall give notice thereof in writing to the board on or before the first date set for the hearing. The board is authorized to set reasonable time limits for the oral presentation of views by any person at any such public hearing.

(e) (1) The board has and shall exercise the power, duty, and responsibility to proceed without delay to formulate and adopt a state water quality plan, which shall consist of the following:

(A) Water quality standards as outlined in subsection (a);

(B) Water quality objectives for planning and operation of water resource development projects, for water quality control activities, and for the improvement of existing water quality;

(C) Other principles and guidelines deemed essential by the board for water quality control; and

(D) A program of implementation for those waters that do not presently meet established water quality standards.

(2) The state water quality plan shall be reviewed at least biennially and may be revised. During the process of formulating or revising the state water quality plan, the board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

(f) (1) The board has and shall exercise the power, duty, and responsibility to:

(A) Hear appeals from orders issued and penalties or damages assessed by the commissioner, or permit issuances, denials, revocations or modifications by the commissioner;

(B) Affirm, modify, or revoke such actions or orders of the commissioner;

(C) Issue notices of such appeals and subpoenas requiring attendance of witnesses and the production of evidence;

(D) Administer oaths; and

(E) Take such testimony as the board deems necessary.

(2) Any of the powers enumerated in subdivision (f)(1) may be exercised on behalf of the board by any member or members thereof appointed by the chair, or by a hearing officer designated by the chair, subject to review by the board.

(g) The board has and shall exercise the power, duty, and responsibility to require the technical secretary to carry out surveys, research, and investigations into all aspects of water use and water quality.

(h) (1) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate all necessary rules and regulations for the purpose of establishing and administering a comprehensive permit program that will enable the department of environment and conservation to be designated by the United States environmental protection agency as authorized to issue permits under the national pollutant discharge elimination system established by § 402 of the Federal Water Pollution Control Act, P.L. 92-500.

(2) Such rules and regulations shall include provisions for:

(A) Forms and procedures for permit applications;

(B) Public notice and opportunity for public hearing on permit applications;

(C) Promulgation and application in permits of effluent standards and limitations, water quality standards, schedules of compliance, and such other terms and conditions as are necessary to implement this part;

(D) Monitoring and inspecting effluent discharges or treatment facilities and recording and reporting the results;

(E) Enforcement of this part, rules and regulations promulgated under it, and the terms and conditions of permits; and

(F) Adoption and enforcement of permits that have been issued by the United States environmental protection agency pursuant to § 402 of the Federal Water Pollution Control Act, P.L. 92-500.

(i) Upon receiving a petition for permit appeal, the board has the power, duty, and responsibility to hold a contested case hearing concerning the commissioner's issuance or denial of a permit. During this hearing, the board shall review the commissioner's permit decision and may reverse or modify the decision upon finding that it does not comply with any provisions of this part. A petition for permit appeal may be filed, pursuant to this subsection (i), by the permit applicant or by any aggrieved person who participated in the public comment period or gave testimony at a formal public hearing whose appeal is based upon any of the issues that were provided to the commissioner in writing during the public comment period or in testimony at a formal public hearing on the permit application. Additionally, for those permits for which the department gives public notice of a draft permit, any permit applicant or aggrieved person may base a permit appeal on any material change to conditions in the final permit from those in the draft, unless the material change has been subject to additional opportunity for public comment. Any petition for permit appeal under this subsection (i) shall be filed with the board within thirty (30) days after public notice of the commissioner's decision to issue or deny the permit. Notwithstanding the provisions of §§ 4-5-223 or 69-3-118(a), or any other provision of law to the contrary, this subsection (i) and the established procedures of Tennessee's antidegradation statement, found in the rules promulgated by the department, shall be the exclusive means for obtaining administrative review of the commissioner's issuance or denial of a permit.

(j) The board has and shall exercise the power, duty, and responsibility to adopt, modify, repeal, and promulgate all necessary rules and regulations that the board deems necessary relating to the underground placement of fluids and other substances that do or may affect the waters of the state.

(k) (1) Notwithstanding any other provisions of this title to the contrary, waters that are in areas of swamped-out bottomland hardwoods or swamped-out cropland shall be classified as protective of wildlife and humans that may come into contact with them, and shall maintain standards applicable to all downstream waters, but shall not be classified for the protection of fish and aquatic life.

(2) As used in this subsection (k):

(A) "Swamped-out bottomland hardwood" means an area subject to inundation or ponding of surface water that has resulted, or is resulting, in timber mortality or stress. The term does not include areas with a dominance of cypress or tupelo gum trees or areas in which the majority of the timber died prior to 1970; and

(B) "Swamped-out cropland" means an area that was previously in row crop cultivation or pasture, but can no longer be used for such purpose due to inundation or ponding of surface water. "Swamped-out cropland" does not include wetland areas that have not been cultivated or in pasture since 1970 because of inundation or ponding of surface water.

(l) The board has and shall exercise the power to adopt rules creating a system of incentives for alternatives to discharges to surface waters, such as land application and beneficial re-use of the wastewater.

(m) The commissioner shall develop and submit to the board proposed rules necessary for accurate and consistent wet weather conveyance determinations. These rules shall include at a minimum:

(1) Standard procedures for making stream and wet weather conveyance determinations that take into consideration biology, geology, geomorphology, precipitation, hydrology and other scientifically based principles; and

(2) A certification program for department staff and other persons who wish to become certified hydrologic professionals.