

Sunset Public Hearing Questions for
Underground Storage Tanks and Solid Waste Disposal Control Board
 Created by Section 68-211-111, *Tennessee Code Annotated*
 (Sunset termination June 2014)

1. Provide a brief introduction to the Underground Storage Tanks and Solid Waste Disposal Control Board, including information about its purpose, statutory duties, staff and administrative attachment.

The primary duties of the Underground Storage Tanks and Solid Waste Disposal Control (UST-SWDC) Board are promulgating rules and hearing appeals regarding enforcement matters and permits issued or denied. The Director of the Division of Solid and Hazardous Waste Management serves as Technical Secretary for the Board and additional staff as needed assist the Technical Secretary with the administrative tasks necessary for the board to function. The Acts that set the Board's duties also give a number of functions to the Commissioner such as making decisions on permit applications and issuing enforcement orders.

2. Provide a list of current board members and describe how membership complies with Section 68-211-111, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the board? If so, what steps have been taken to fill the vacancies?

See below for the names of board members, their term expiration date and who they represent. Board members are appointed by the Governor. There are currently no vacancies on the board.

Dr. Warren Anderson	09-30-2015	Environmental Interests
Elaine Boyd	Ex-Officio	Commissioner's Designee, Dept. of Environment and Conservation
Marty Calloway	09-30-2014	Petroleum Business with at least 15 Underground Storage Tanks
Stacey Cothran	09-30-2015	Solid/Hazardous Waste Management Industry
Kenneth Donaldson	09-30-2016	Municipal Government
Dr. George Hyfantis, Jr.	09-30-2014	Institution of Higher Learning
Bhag Kanwar	09-30-2016	Single Facility with less than 5 Underground Storage Tanks
Jared Lynn	09-30-2013	Manufacturing experienced with Solid/Hazardous Waste
David Martin	09-30-2013	Working in a field related to Agriculture

Beverly Philpot	09-30-2014	Manufacturing experienced with Underground Storage Tanks/Hazardous Materials
DeAnne Redman	09-30-2013	Petroleum Management Business
Mayor A. Franklin Smith, III	09-30-2015	County Government
Jimmy West	Ex-Officio	Commissioner's Designee, Economic and Community Development
Mark Williams	09-30-2016	Small Generator of Solid/Hazardous Materials representing Automotive Interests

3. Does membership include a member who is sixty years of age or older?

Yes (3)

A member who is a racial minority?

Yes (3)

A member who is female?

Yes (4)

4. The effective date for the combination of the previously existing boards into the Underground Storage Tanks and Solid Waste Disposal Control Board was in October 2012. What is the current status of the consolidation and what expected or unexpected obstacles, if any, have been encountered? Is consolidation complete and, if not, when is completion anticipated?

The consolidation is complete. The combined board began meeting in December, 2012. The Board appears to be functioning smoothly with minimal difficulties and obstacles.

5. What per diem and/or travel reimbursement do members receive?

Per §68-211-111(h) and the Department of Finance and Administration Comprehensive Travel Regulations (Policy 8), board members are paid \$50 per day for each meeting attended in addition to travel reimbursement and accompanying expenses for parking and overnight travel if submitted.

How much was paid to board members to date since the board was formed in October 2012? **\$2,855.92**

6. What were the board's revenues (by source) and expenditures (by object) to date since the board was formed in October 2012?

The board does not generate revenue. As noted above, expenditures to date total \$2,855.92.

7. *Tennessee Code Annotated*, Section 68-211-111(g) requires the board to hold at least six regular meetings each calendar year. How many times has the board met to date since it was formed in October 2012, and how many members were present at each meeting?

The Board has held three meetings to date with attendance as follows: December, 2012 - thirteen members present; February, 2013 - fourteen members present; April, 2013 – nine members present.

8. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes and public access to minutes? If so, what procedures does the board have for informing the public of its meetings, who keeps the official minutes of board meetings and what steps are taken to make the minutes available to the public?

The Board is subject to Sunshine Law requirements and meets those obligations via Internet postings and multiple website listings published through the TDEC Webmaster. Additionally, public notices are mailed and/or sent via e-mail based on a TDEC Public Participation Request Mail list which is updated regularly keeping current those persons who have requested board information.

Meeting minutes are kept by staff of the Solid Waste Management Division. They prepare, finalize, and distribute draft meeting minutes. Once minutes are voted on and approved by the Board, they are finalized for the record and made available to the public as requested.

9. What were the major accomplishments of the board to date since the board was formed in October 2012? Specifically describe the board's role in providing input on comprehensive goals for the system of solid waste management programs throughout the state.

Specific goals achieved by the board since its inception include:

- ***Administrative organization including the selection of board chairs and vice-chairs and determination of the annual election cycle;***
- ***Promulgation of solid waste rules which clarified the implementation of the Jackson Law;***
- ***Promulgation of updated hazardous waste regulations to bring Tennessee's rules current with EPA regulations on academic laboratories, analytical results of treatment residues, and treatability studies that impact time-sensitive waste shipping alternatives;***
- ***Promulgation of minor changes to the solid waste planning process that lay the groundwork for rule changes to come; and***
- ***Resolution of an appeal on case number involving ThyssenKrupp Elevator Manufacturing Company in Hardeman County.***

As the board is new, and not all members of the board have technical expertise across all aspects of the board's purview, the board also received presentations from the Division of Underground Storage Tanks as well as the Division of Solid Waste Management. These presentations were provided to assist all board members with understanding the goals, authority, and funding mechanisms associated with each program.

10. Section 68-211-832(c), *Tennessee Code Annotated*, authorizes the board to promulgate and enforce rules and regulations pertaining to grants for investigation and corrective action at landfills causing contamination of ground water in Tennessee. Have such rules and regulations been promulgated? If so, please cite the reference.

Rules promulgated by the two predecessor boards remain in effect until the newly-combined board modifies them. No rules have been promulgated at this time on the subject of §68-211-832(c). The Division has prepared grant guidance based on statutory language that has been sufficient for awarding and administering two small grants authorized by this statute.

11. Section 68-211-1015(b), *Tennessee Code Annotated*, authorizes the board to promulgate rules and regulations to develop management standards for used oil recycling and collection in Tennessee. Have such rules and regulations been promulgated? If so, please cite the reference.

No new rules have been promulgated, but the previous board issued rules that were developed and promulgated under Rule 0400-12-01-.08 Fee system for Transporters, Stors, Treaters, Disposers, and Certain Generators of Hazardous Wastes and Certain Used Oil Facilities and Transporters (Renumbered from [1200-01-11-.08](#)) and Rule 0400-12-01-.11 Standards for the Management of Used Oil (Renumbered from [1200-01-11-.11](#)).

The Tennessee Legislature passed the "Used Oil Collection Act of 1993" in 1993. Regulations incorporating the requirements of that Tennessee legislation, and the U.S. Environmental Protection Agency's (EPA) 40 CFR Part 279, went into effect on February 13, 1994 and have been periodically updated and improved since then. These regulations can be found in Tennessee Rule 0400-12-01-.11. Tennessee's used oil recycling efforts have been a recognized success with literally thousands of Tennessee businesses, organizations, and local communities participating in this effort. Tens of thousands of Tennessee citizens, on an individual level, also collect their used oil and turn it in for recycling. In addition, the Division's Solid Waste Assistance Program assists local communities and counties with numerous used oil grants.

12. Section 68-211-861(g), *Tennessee Code Annotated*, authorizes the board to adopt a rule promoting recycling and waste reduction. Has such a rule been promulgated? If so, please cite the reference.

No new rules have been promulgated, but the previous board issued some rules. In 2012, the Board passed a set of rules dealing with Waste Reduction and Recycling

(Rule 0400-11-01-.09 - Waste Reduction Disposal Goal and Rule 0400-11-01-.10 - Convenience Centers/County Public Collection Receptacles). The purpose of these changes was to make minor modifications to the rules in preparation for additional rule changes to come. A second rule package addressing qualitative assessment, non-compliance and reporting requirements for waste reduction and recycling is expected to be presented to the Board in June, 2013.

The citation above is for the solid waste program but similar rules have been promulgated by the Board for the hazardous waste program. This guidance has been incorporated in numerous places in our state regulations. For the hazardous waste program, one place where recycling and waste reduction is specifically encouraged is in Tennessee's used oil regulations, which has as its premise the recycling of all collected used oil. The vast majority of this used oil goes for either energy recovery or re-refining back into commercial oil type products. It is only in very rare instances that used oil is not recycled (usually due to abnormal quality problems). Another place where waste reduction and recycling is encouraged is in Tennessee's Universal Waste regulations found at Rule 0400-12-01-.12 for recycling batteries, mercury, and fluorescent lamps (bulbs). The hazardous waste regulations also encourage waste reduction and recycling in Rule 0400-12-01-.02 through numerous exclusions and exemptions for recycling and reuse. These provisions encourage Tennessee generators to recycle and reuse materials in order to reduce their regulatory liability and hazardous waste fees. Tennessee's hazardous waste fee system, found at Rule 0400-12-01-.08 also encourages waste reduction and recycling.

13. Section 68-212-203(a), Tennessee Code Annotated, authorizes the board to promulgate rules and regulations to assess remedial action fees pertaining to generation and management of hazardous waste in Tennessee. Have such rules and regulations been promulgated? If so, please cite the reference.

No new rules have been promulgated, but the previous board promulgated rules assessing remedial action fees pertaining to the generation and management of hazardous waste have been promulgated under Rule 0400-01-13-.03 REMEDIAL ACTION FUND. Rules promulgated by previous boards remain in effect until the newly-combined board modifies them.

The question above pertains to Part 2 of the Hazardous Waste Management Act. It should also be noted that the Board has also promulgated fees under Part 1 of the Tennessee Hazardous Waste Management Act. These fees can be found in Rule 0400-12-01-.08.

14. Section 68-215-107(f), Tennessee Code Annotated, authorizes the board to promulgate rules and regulations pertaining to the construction and operations of petroleum underground storage tanks in Tennessee. Have such rules and regulations been promulgated? If so, please cite the reference.

No new rules have been promulgated, but the predecessor Underground Storage Tank board issued rules that were developed and promulgated for underground

storage tanks in Chapter 0400-18-01. The new fee structure decreased the annual fee from \$250 per storage compartment in each tank to \$125 per storage compartment in each tank beginning with the 2013 fee cycle. The rule filing can be seen at http://tn.gov/sos/rules_filings/10-23-12.pdf. The rule became effective on January 21, 2013, and it can found in 0400-1-18-10(3)(c) and (d) on pages 120 and 121 at <http://www.tn.gov/sos/rules/0400/0400-18/0400-18-01.20130121.pdf>.

15. What reports does the board prepare on its operations, activities and accomplishments and who receives the reports? Please attach copies of all such reports issued to date since the board was formed in October 2012.

The Board does not prepare reports or other publications, other than minutes of its monthly meetings, which are available to the public.

16. Does the board have any policies in place to address potential conflicts of interest by board members, board employees, or other state employees who work with the board in any capacity?

Yes, each member is required to provide a signed Ethics and Conflict of Interest Statement annually as prescribed by the Office of General Counsel. Additionally, the board is admonished by an Administrative Law Judge before every hearing to disclose any conflicts they may have involving a prospective case.

17. Describe any items related to the board that require legislative attention and your proposed legislative changes.

Currently, there are no issues identified that need legislative action.

18. Should the board be continued? To what extent and in what ways would the absence of the board endanger the public health, safety or welfare?

Yes. The board provides a vital service in the adoption of rules, hearing of public comments and the hearing and settling of appealed civil enforcement orders and permit appeals.

19. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

Federal financial assistance includes:

- (1) Grants and loans of Federal funds,*
- (2) The grant or donation of Federal Property and interests in property,*

- (3) *The detail of Federal personnel,*
- (4) *The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and*
- (5) *Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.*

28 C.F.R. Sec. 42.102(c)]

The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)]

Because TDEC receives federal funds, the department handles its compliance with Title VI with one system for the whole department.

If the board does receive federal assistance, please answer questions 21 through 28. If the board does not receive federal assistance, proceed directly to question 27.

20. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.

TDEC has a Title VI Plan that is developed for and applicable to all TDEC programs.

21. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.

TDEC has a Title VI Coordinator and Complaint Officer.

Coordinator: Costin Shamble (615-253-8337) - Facilitate Title VI compliance activities; review data and make recommendations of actions to enhance Title VI compliance; conduct Title VI training programs; compile Department's Title VI Implementation Plan; represent TDEC at meetings on Title VI.

Interim Complaint Officer: Hoda Guirguis (615-253-3400) - Receives Title VI complaints; conducts an investigation of complaints; facilitates a remedy of Title VI concerns; makes recommendation(s) of actions needed to resolve complaint.

22. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.

TDEC is required to submit an annual Title VI Implementation Plan to the Tennessee Human Rights Commission. Additionally, the Plan is submitted to and reviewed by the Title VI Legislative Sub-Committee of the State Legislature. A public hearing is conducted annually on the Plan. Disadvantaged business participation is submitted to the Environmental Protection Agency.

23. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.

Internally within TDEC:

- ***Mandatory Civil Rights training of TDEC staff included Title VI***
- ***TDEC Title VI brochure distributed to Department staff***
- ***Periodic discussions with staff, Title VI related actions/activities***
- ***Staff participation in training programs offered by state and federal agencies***

External actions by TDEC:

- ***Participation in Community Title VI workshops and conferences***
- ***Contract language includes Title VI compliance***
- ***Posting of Civil Rights posters***
- ***Distribution of Title VI brochure***

24. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.

Minority participation in TDEC programs and activities is reviewed by the Title VI Coordinator. Activities reviewed include: representation on boards, disadvantaged business participation, and public participation. Meetings with the Commissioner's staff are held to discuss minority participation issues at least quarterly. Disadvantaged business participation is submitted quarterly to the Environmental Protection Agency. A compilation of TDEC's minority outreach and participation is reviewed routinely and compiled annually.

25. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).

TDEC did not receive any Title VI Complaints during fiscal year 2010-2011 or fiscal year 2011-2012.

Complaint procedure:

Complaints must be filed in writing. The complaint should be filed on TDEC's complaint form. The division director of the program will forward the complaint to the Title VI Complaint Officer.

TDEC will make a prompt investigation when a complaint or other information indicating a violation is received. If the investigation indicates a violation of Title VI, TDEC will notify the recipient and will attempt to resolve the matter informally. If the investigation indicates that a violation did not occur, TDEC will notify the recipient and the complainant in writing.

The Title VI Complaint Officer will submit findings and conclusions to TDEC Civil Rights Champions. The Assistant Commissioner will issue a decision on the investigation findings and conclusions. Decisions made by the Assistant Commissioner can be appealed to the Commissioner within 30 days of receipt of the decision.

A complaint may be filed with the appropriate Federal agency no later than 180 calendar days after the alleged discrimination occurred.

Citizen suits remain an option in this process.

TDEC's toll free hotline (1-888-891-8332), accessible statewide, is maintained and available for complaints.

26. Please provide a breakdown of current board staff by title, ethnicity, and gender.

N/A

27. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

The Commissioner has the authority to enter into contracts under all of the different statutes applicable to this board.