

Sunset Public Hearing Questions for
Tennessee Board of Water Quality, Oil and Gas
 Created by Section 69-3-104, *Tennessee Code Annotated*
 (Sunset Termination June 2018)

1. Provide a brief introduction to the Tennessee Board of Water Quality, Oil and Gas, including information about its purpose, statutory duties, staff, and administrative attachment.

The Water Quality Control Act states that the people of Tennessee have a right to unpolluted waters and the government of Tennessee has an obligation to take all prudent steps to secure, protect, and preserve this right. The primary duties of the board are to effectuate the purpose of the Water Quality Control Act by promulgating rules and hearing appeals regarding enforcement matters and permits issued or denied.

The Director of the Division of Water Resources, Department of Environment and Conservation, 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 current director is Tisha Calabrese Benton. The statutes that prescribe the board's duties also authorize the Commissioner of the Department of Environment and Conservation to undertake a number of functions 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 69-3-104, *Tennessee Code Annotated*. Are there any vacancies on the board? If so, what steps have been taken to fill those vacancies? **Please see below. There are no vacancies. Board appointments conform to Tenn. Code Ann. § 69-3-104 regarding the various designated interests served.**

Member	Term Expires	Representation
Dr. Gary G. Bible	09-30-2019	Oil & Gas Industry
Elaine Boyd	Ex-Officio	Commissioner's Designee, Department of Environment and Conservation
James W. Cameron, III	09-30-2018	Small Generator of Water Pollution representing Automotive Interests
Jill Davis	09-30-2018	Municipalities
Mayor Kevin Davis	09-30-2017	Counties
Derek Gernt	09-30-2019	Oil or Gas Property Owner
C. Monty Halcomb	09-30-2020	Environmental Interests
Charlie Johnson	09-30-2020	Public-at-large
Judy Manners	Ex-Officio	Commissioner's Designee, Department of Health
John McClurkan	Ex-Officio	Commissioner's Designee, Department of Agriculture
Frank McGinley	09-30-2017	Agricultural Interests
D. Anthony Robinson	09-30-2019	Manufacturing Industry

3. Section 69-3-104(d) states that the board shall have two (2) regularly scheduled meetings each year, one in October and one in April. The statute also states that special meetings may be called by the chair and that regular meetings of the panel shall be held as necessary to review permit matters. How many times did the board meet in fiscal years 2016 and 2017? How many members were present at each meeting?

In FY16, the board met 5 times. In FY17, the board met 3 times.

FY	Month	# Board Members Present	# Board Members Attended Via Telephone	Total
16	August 2015	5	6	11
16	October 2015	5	4	9
16	December 2015	7	3	10
16	February 2016	6	6	12
16	April 2016	7	2	9
17	August 2016	7	4	11
17	October 2016	6	4	10
17	April 2017	8	3	11

4. What per diem or travel reimbursements do members receive? How much was paid to board members in fiscal years 2016 and 2017? **Each board member, with the exception of Ex Officio members, is paid \$50.00 per day of service as authorized by Tenn. Code Ann. § 69-3-104(c) in addition to travel reimbursement and claims for meals and lodging. The total amount of travel reimbursements for FY16 and 17 is \$3,384.14. Additionally, the attendance stipend totaled \$2,200.00.**
5. What are the board's revenues and expenditures for fiscal years 2016 and 2017? Does the board carry a reserve balance and, if so, what is the total of that reserve balance? **The board does not directly receive revenues. The expenditures are set forth in item 4 above, and were covered by the Division of Water Resources.**
6. Is the board subject to Sunshine law requirements (Section 8-44-101, *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 meetings and making minutes available to the public? **Yes. Links to the Sunshine Notice and meeting agendas are posted on the board web page (<http://www.tennessee.gov/environment/article/board-tennessee-board-of-water-quality-oil-and-gas>), a court reporter is present for all board meetings, and copies of the minutes, once finalized, are provided upon request. In April 2017, a live stream was available for the public to view the board meeting live on the Internet.**
7. What policies and procedures are in place to address potential conflicts of interest by board members and staff? **Annual conflict of interest forms are required for each board member and board members are subject to Executive Order No. 20, issued August 31, 2012. The current form submitted by members is attached. Pursuant to Tenn. Code Ann. § 69-3-104, each board member is required to nominate an alternate to serve in the event of a conflict of interest relative to a National Pollutant Discharge Permit matter. In addition, no board**

member may participate in making any decision upon a permit or upon a case in which the municipality, firm or organization which the member represents, or by which the member is employed, or in which the member has a direct substantial financial interest, is involved.

8. What reports does the board prepare on its operations, activities, and accomplishments, and who receives prepared reports? Please attach copies of all such reports prepared in fiscal years 2016 and 2017. **The board reports its activities and accomplishments through its meeting minutes which are available to the public. An example is attached.**
9. What were the board's major accomplishments in fiscal years 2016 and 2017? **The board provides a vital service by in the promulgation of rules, hearing of public comments and the hearing and settling of appealed civil enforcement orders and permit appeals. In 2016, the board began the latest Triennial Review process to review Tennessee's water quality standards and requested data relating to civil enforcement orders and permit appeals to track the work of the department. The board was scheduled to hear a Petition for Declaratory Order in February 2017 that was ultimately dismissed. The board fulfilled its responsibility to provide the public an opportunity to address the board regarding water quality related matters at each of its April and October meetings.**
10. Has the board exercised its power to establish and adopt standards of quality for all water of the state as authorized in Section 69-3-105(a), *Tennessee Code Annotated*? If so, where and how are those standards set forth? **Yes. Rule Chapters 0400-40-03 and 0400-40-04.**
11. Has the board exercised its authority to promulgate rules and regulations as authorized in Section 69-3-105(b), (c), (h), and (j), and in Section 69-3-131, *Tennessee Code Annotated*? If so, please cite the references. **Yes, as follows:**

69-3-105(b)	Rule Chapters 0400-40-03 and 0400-40-04
69-3-105(c)	none
69-3-105(h)	Rule Chapter 0400-40-05
69-3-105(j)	Rule Chapter 0400-45-06
69-3-131	Rule 0400-40-07-.04(a)(4) (provides for emergency aquatic resource alteration permits)

12. What actions, if any, have been taken related to Section 69-3-105(d), authorizing public hearings related to classifying and reclassifying waters of the state, et al? **The board formally kicked off the Triennial Review process at its December 2016 meeting. This process includes revision of all water quality standards, including classifications.**
13. What steps has the board taken to formulate and adopt a state water quality plan, as authorized in Section 69-3-105(e), *Tennessee Code Annotated*? **The state water quality plan is implemented through Rule Chapters 0400-40-03 and 0400-40-04. Pursuant to these rules, the Division of Water Resources prepares Total Maximum Daily Load plans on a watershed level to address impaired waters.**
14. What actions has the board taken in fiscal years 2016 and 2017 related to Section 69-3-105(f), regarding hearing appeals? **The Board requested, and has been given, updates on the status of each decision by an administrative law judge. No party to such a decision has appealed that decision to the board in fiscal years 2016 and 2017, and the board has not chosen to take up any such appeal.**

15. Has the technical secretary carried out surveys, research, and investigations into all aspects of water use and water quality as authorized in Section 69-3-105(g)?

The board has not directed the technical secretary to do so. Nonetheless, the Division of Water Resources does prepare Total Maximum Daily Load documents and has focused on nutrient management studies during fiscal years 2016 and 2017.

16. In fiscal years 2016 and 2017, have any appeals been filed with the board under the provisions Section 69-3-105(i), *Tennessee Code Annotated*? If yes, please provide information about the appeals filed. **Yes, the following 18 permit appeals have been filed:**

Matter #	Permit Number	Name	Status	Type	County	Referred to OGC
WPC17-0076	SOP-00021	Garlington Pointe Subdivision	Pending	Permit Appeal	Roane	26-Jun-17
WPC17-0050	-	Sandy Creek Farms	Closed	Permit Appeal	Jackson	10-May-17
WPC17-0044	TN0067539	AUB - North Mouse Creek STP	Pending	Permit Appeal	McMinn	28-Apr-17
WPC17-0039	NRS16.124	Hotel Development	Pending	Third Party Permit Appeal	Davidson	13-Apr-17
WPC17-0038	-	Lot 112 North Huron Bay Subdivision	Pending	Permit Appeal	Hamilton	12-Apr-17
WPC17-0027	TN0060054	Cane Creek Park	Pending	Permit Appeal	Putnam	27-Feb-17
WPC16-0113	SOP-06035	Tennessee Wastewater Systems, Inc. - Summit View Resor	Open	Third Party Permit Appeal	Sevier	23-Nov-16
WPC16-0106	TNS000000	State of Tennessee	Open	Third Party Permit Appeal	Statewide	2-Nov-16
WPC16-0097	TN0081566	US Nitrogen, LLC / Yara North America, Inc.	Open	Third Party Permit Appeal	Greene	14-Oct-16
WPC16-0095	NRS16.268	Wades Grove	Closed	Permit Appeal	Williamson	6-Oct-16
WPC16-0091	TN0056103	Columbia STP	Open	Third Party Permit Appeal	Maury	3-Oct-16
WPC16-0090	TN0056103	Columbia STP	Open	Permit Appeal	Maury	27-Sep-16
WPC16-0084	NRS14.305	Interstate Drive Retail Development - Wetland Connected	Open	Third Party Permit Appeal	Putnam	30-Aug-16
OGC16-0231	NRS 14.305	Interstate Drive Retail Development - Wetland Connected	Closed	Third Party Permit Appeal	Putnam	28-Aug-16
WPC15-0143	TN0079804	Horse Creek Rock, Inc.	Non-Suit	Permit Appeal	Hardin	3-Dec-15
WPC15-0137	TNS000000	State of Tennessee	Closed	Permit Appeal	Statewide	1-Dec-15
WPC15-0121	SOP-99038	Water & Wastewater Authority of Wilson County - Logue	Pending	Permit Appeal	Wilson	25-Sep-15
WPC15-0119	TN0020117	Gatlinburg STP	Closed	Third Party Permit Appeal	Sevier	25-Sep-15

17. Describe any items related to the board that require legislative attention and any proposed legislative changes. **None.**

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

Yes. The board provides a vital service by ensuring representation of various stakeholder constituencies through its citizen members while securing, protecting, and preserving water quality by promulgating rules, providing a forum for public comments, and hearing and settling appealed civil enforcement orders and permit appeals.

19. Please list all board programs or activities that receive federal financial assistance. Include the amount of federal funding received by program/activity.

The board does not receive federal financial assistance.

20. Please list all board contracts and include information about the services provided and the amount of the contract. **N/A.**

21. Please provide a list of current staff members by name and job title.

The board does not have dedicated staff. Administrative support for the board is provided by the Department of Environment and Conservation, primarily through the Division of Water Resources.

**ETHICS AND CONFLICT OF INTEREST STATEMENT
FOR
MEMBERS OF THE WATER QUALITY, OIL AND GAS BOARD**

1.
 - i. Pursuant to T.C.A. § 69-3-104(b), no member of the board who receives, or during the previous two years has received, a significant portion of his or her income directly or indirectly from national pollutant discharge system (NPDES) permit holders or applicants shall participate in making any decision on an appeal of an NPDES permit matter.
 - ii. Pursuant to T.C.A. § 4-5-302, any board member is subject to disqualification for bias, prejudice, or any cause for which a judge may be disqualified.
 - iii. Pursuant to T.C.A. § 69-3-104(h), no member of the board shall participate in making any decision upon a permit or upon a case in which the municipality, firm or organization which the member represents, or by which the member is employed, or in which the member has a direct substantial financial interest, is involved.
2. Each board member shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
 - i. Using public office for private gain;
 - ii. Losing complete independence or impartiality;
 - iii. Making a government decision outside of official channels; or
 - iv. Affecting adversely the confidence of the public in the integrity of the government.
3. Use of information. No board member shall, directly or indirectly:
 - i. Use, disclose, or allow the use of official information which was obtained through or in connection with his or her appointment to the board and which has not been made available to the general public for the purpose of furthering the private interest or personal profit of any person, including the board member; or
 - ii. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her board appointment.
4. Use of government property. No board member shall make use of the facilities, equipment, personnel, or supplies of the State or its agencies for private use or gain, except to the extent that the use is *de minimus* or is lawfully available to the general public.

5. Each board member will avoid all known conflicts of interest, and to the extent the board member becomes aware of a conflict of interest in connection with any matter brought before the board, the board member will disclose such conflict to the other board members, Administrative Law Judge, and/or other appropriate person(s) and will further recuse himself or herself from participating in any consideration of the matter.

6. No board member will participate in decisions or actions involving individuals in his or her immediate family, individuals employed by the board member or the board member's business or any other matter in which the board members participation may create an appearance of bias or impropriety.

7. Questions on interpretation of this statement.

When a board member is in doubt as to the proper interpretation of this conflict of interest statement, he or she is expected to seek the advice of the Department of Environment and Conservation's Office of General Counsel.

Signature of Board Member

Date

Please Print Name

**TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS
THE NASHVILLE ROOM, 3RD FLOOR, WILLIAM SNODGRASS TENNESSEE
TOWER
NASHVILLE, TENNESSEE**

Summary of Action on Agenda Items of the

October 18, 2016

Meeting of the Tennessee Board of Water Quality, Oil and Gas

**Members Present: Gary Bible,
James Cameron, Kevin Davis,
Monty Halcomb, Judy Manners,
John McClurkan**

**Members Phone-In: Jill Davis, Derek
Gernt, Frank McGinley**

**Members Not Present: Elaine Boyd,
Charlie Johnson**

**Chair: James Cameron
Technical Secretary:
Tisha Calabrese Benton**

**TN. DEPT. OF ENV. & CONSERVATION
APR 27 2017
DIVISION OF WATER RESOURCES**

Introduction by Tisha Calabrese Benton

Agenda Item 1. Presentation of Meeting Minutes

Mr. Cameron presented the August meeting minutes. Mr. Halcomb advised of an error on page 3 under Agenda Item 7. Mr. Halcomb confirmed that he had seconded the motion to approve the amendments. Ms. Warren advised that she would make correction and present for a signature to Mr. Cameron.

Motion to approve: Monty Halcomb

Second: Gary Bible

Vote : Unanimous approval of board members present and attending by telephone

Agenda Item 2. Interstate Drive Petition for Declaratory Order

Ms. Stephanie Durman presented to the board further information regarding the Declaratory Order. She advised that the petition was filed on August 28, 2016 and Secretary of State Administrative Procedures Division has asked that this item be added to the docket. Ms. Durman asked that the board convene a contested case and set a hearing date of February 21-22, 2017. She also stated that if no hearing occurs, the Interstate Drive Petition for Declaratory Order will be considered as declined. Ms. Durman also advised that if any member of the permit panel has a conflict that they should appoint a representative to stand-in on their behalf.

Motion to convene contested case and set hearing for February 21-22, 2017: Judy Manners

Second: Monty Halcomb

Vote: Unanimous approval of board members present and attending by telephone.

Agenda Item. 3.

Mr. Greg Denton provided a brief recap of the presentation he gave to the board in August. He advised that since August, he and other staff members have developed a hybrid approach to complete the Triennial Review. A public hearing will be held on December 15, 2016 at 1:00pm CST. Mr. Denton provided a list of all locations that will be set up to allow the public to attend a teleconference as well. He advised that this is a great opportunity to solicit input from the public that the Division can use to create revisions for 2017. He also invited all board members to attend this hearing. There will be a second hearing (date tbd) and all comments from both hearings will be combined for a submittal to the EPA.

Agenda Item. 4. Public Comment

There were no members of the public present to make comments. Mr. Cameron advised that he and Mr. Halcomb had met with the Deputy Commissioner earlier in the morning to discuss how the board can best meet statutory obligations. Mr. Cameron also advised that it is his desire to bring more credibility to the board. He encouraged all members of the board to continue to be proactive and to begin requesting more information from the Division. Tisha thanked Mr. Cameron for the interest and expertise of the board. She also advised that the Division is currently reviewing guidance as well as policies and how it relates to rules. She stated that she anticipates an update in April to the board. Mr. Halcomb advised that he also would like to be more engaged. He also requested an organizational chart for the Division.

Agenda Item. 6. Other Business

Mr. Cameron opened the floor for discussion of other business and there were no further items to discuss.

Motion to adjourn meeting: James Cameron

Second: No second; however Frank McGinley spoke up to advise that he had conferenced and wanted Mr. Cameron to know he had attended.

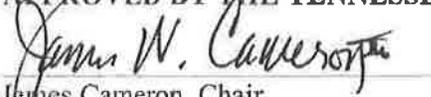
Vote: No Vote

SUBMITTED.


Tisha Calabrese Benton,
Technical Secretary

4/24/17
Date

APPROVED BY THE TENNESSEE BOARD OF WATER QUALITY, OIL AND GAS.


James Cameron, Chair
Tennessee Board of Water Quality, Oil and Gas

4/24/17
Date