

PUBLIC NOTICE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243

Proposed General Permit for Recreational Prospecting
Notice of Public Hearing 2014-005

TO WHOM IT MAY CONCERN

Where the Commissioner finds that a category of activities or discharges would be appropriately regulated under a general permit, the Commissioner may use a general permit to authorize alterations to waters for specific categories of activities that are substantially similar in nature and that result in no more than an insignificant or de-minimis degradation of water quality. Notice of coverage by the division of activities that qualify under general permits may also serve as a §401 Water Quality Certification pursuant to *The Clean Water Act*.

GENERAL PERMIT DESCRIPTION

The Division of Water Resources has drafted and proposes to issue a general Aquatic Resource Alteration Permit for recreational prospecting in Tennessee's waters. This general permit would authorize various methods of recreational prospecting for gold or other precious and semi-precious ores, metals, and minerals in the waters of Tennessee. It would establish limits of work and notification procedures required for approval. The draft permit can be reviewed at any of the Department's offices, at the following web site <http://www.tn.gov/environment/ppo/#water>, or by sending a request in writing to the above address or by email to water.permits@tn.gov.

For the purposes of this general permit, recreational prospecting is divided into two categories or classes. The classification is based on whether the prospecting is done manually or mechanically. The two classes have different limits and conditions under which the work may be carried out.

Class 1 includes non-mechanized forms of prospecting including, but not limited to: pans, hand-powered sucker tubes, portable hand sluices and rocker boxes.

Class 2 includes mechanized forms of prospecting including, but not limited to: dredges, highbankers, powered sluices and trommels.

The division's other ARAP general permits will expire on June 30, 2015. The division proposes to limit the duration of this general permit to one year with an expiration date of June 30, 2015. The recreational prospecting general permit would, if appropriate, be re-issued in cycle with the re-issuance of the other general permits.

PERMIT CONSIDERATIONS

In deciding whether to issue this permit, the department will consider all comments of record and the requirements of applicable federal and state laws. The department will also consider loss of waters or habitat, diminishment in biological diversity, cumulative or secondary impacts to water resources, and adverse impact to unique, high quality, or impaired waters.

LOCATION

Certain surface waters within the state of Tennessee.

ANTI-DEGRADATION DETERMINATION

In accordance with the Tennessee Anti-degradation Statement (Rule 0400-40-03-.06), the division has determined that activities conducted under this general permit will not result in more than de minimis degradation to water quality.

NOTICE AND PUBLIC HEARINGS

The purpose of this notice is to inform interested parties of this draft permit and to ask for comments and information necessary to determine possible impacts to water quality. Persons wishing to comment on the proposal are invited to submit written comments to the department or to attend one of the scheduled public hearings listed below. All comments must be received by May 27, 2014. Comments will become part of the record and will be considered in the final decision.

The department will hold public hearings on this draft general permit on May 15, 2014, utilizing video conferencing to connect each grand division of the state, with Knoxville as the primary hearing location (TDEC staff will also be present in Middle and West Tennessee in advance of the Presentation and Public Hearing to answer questions during the Open House Information Sessions):

Date May 15, 2014

East Tennessee Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921
4:00 p.m. EDT – Open House Information Session
6:00 p.m. EDT – Presentation & Public Hearing (primary hearing location)

Middle Tennessee Fleming Training Center
2022 Blanton Dr,
Murfreesboro, TN 37129
3:00 p.m. CDT – Open House Information Session
5:00 p.m. CDT – Presentation & Public Hearing (join Knoxville presentation and hearing by videoconference.)

West Tennessee Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
3:00 p.m. CDT – Open House Information Session
5:00 p.m. CDT – Presentation & Public Hearing (join Knoxville presentation and hearing by videoconference.)

Persons wishing to comment on or object to the issuance of the general permit are invited to deliver oral or written comment at the public hearing. The hearing officer will limit all testimony to relevant water quality issues and may limit testimony in the interest of time. However, all persons desiring to speak will be given an opportunity to do so. Written testimony will be accepted following the hearing and will be considered part of the official record. Please submit

comments in writing to the division at the address printed below. The comments must be received by May 27, 2014. After considering all public comments, the division will publish a final permit decision and a notice of the division's determinations.

Interested persons may obtain additional information or inspect and copy related documents during business hours at the division's offices.

The Tennessee Department of Environment and Conservation is committed to principles of equal opportunity, equal access and affirmative action. Individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Contact for services should be made no less than ten days in advance to allow time to provide such aid or services. Contact the ADA Coordinator at 1-866-253-5827 for further information. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Tennessee Department of Environment and Conservation

General Permit for Recreational Prospecting



Effective Date: June 30, 2014

Expiration Date: June 30, 2015

Activities Covered by this Permit

This general permit authorizes various methods of recreational prospecting for gold or other precious and semi-precious ores, metals, and minerals in the waters of Tennessee. For the purposes of this general permit, prospecting is divided into two categories or classes. The classification is based on whether the prospecting is done manually or mechanically. The two classes have different limits and conditions under which the work may be carried out.

Class 1 includes non-mechanized forms of prospecting including, but not limited to: pans, hand-powered sucker tubes, portable hand sluices and rocker boxes.

Class 2 includes mechanized forms of prospecting including, but not limited to: dredges, highbankers, powered sluices and trommels.

Obtaining Permit Coverage

Class 1 activities do not require the submission of a Notice of Intent (NOI) or written authorization from the Division of Water Resources prior to commencement of work. Although written authorization is not required, the activities under this class shall be performed in accordance with all limitations, terms, conditions and requirements of this general permit.

Class 2 activities may obtain coverage by submitting a signed and completed NOI, along with any other required information, to the division. Each NOI shall apply to only one operator and only to qualifying prospecting equipment owned by that operator. Work shall not commence until a written Notice of Coverage (NOC) from the division is received. A NOI may request coverage for up to three locations totaling one mile or less of stream with no more than one-half mile in any single stream. As noted above, not all activities may be eligible for coverage under this general permit and coverage may be denied when appropriate.

A fee as established in Rule 0400-40-11-.02 will be assessed to applicants intending to conduct Class 2 activities under this general permit. An annual maintenance fee as established in Rule 0400-40-11-.02 will be assessed to those individuals holding general permit coverage for Class 2 activities unless a Notice of Termination is received prior to the one-year anniversary of the NOC. A Notice of Termination form is included as Attachment 1.

Limitations of this Permit

This general permit does not cover land-based prospecting or mining operations or commercial operations. In-stream activities not described in this general permit may require an individual

permit under *The Tennessee Water Quality Control Act of 1977* or at the discretion of the Director of the Division of Water Resources. No property rights or rights of ingress or egress are conveyed by coverage under this general permit nor does it supersede any local, state or federal restrictions associated with zoning, parks, natural areas, wilderness areas, wildlife management areas or other designated use areas.

Any authorization under this general permit is valid until the expiration date indicated on a specific Notice of Coverage (NOC). If an NOC expiration date coincides with the date the General Permit is modified, reissued, or revoked, and you have commenced or are under contract to commence this activity before the expiration date, you may have up to twelve (12) months from the date of the modification, reissuance, or revocation of the General Permit to complete the activity under the present terms and conditions of this general permit.

Class 1 Special Conditions

This class covers non-mechanized forms of prospecting including, but not limited to: pans, hand-powered sucker tubes, portable hand sluices and rocker boxes. In addition to the General Requirements, the following requirements apply to this class of prospecting activities:

- (1) Class 1 prospecting is not permitted in any stream or segment thereof, with a wetted width of less than thirty (30) feet, that is designated by the state or federal government as containing threatened or endangered aquatic species, aquatic species deemed in need of management or designated as being critical habitat.
- (2) Class 1 prospecting shall not occur in any stream reach with a wetted width of less than five (5) feet at the spot of the activity.
- (3) Disturbance of stream banks is prohibited. All digging activities shall be conducted at least two (2) feet from the water's edge.
- (4) Hand operated tools no larger than a #2 shovel may be used to excavate material.
- (5) All reject material shall remain in the stream. Concentrates may be removed for later, off-site, processing.
- (6) Panning operations shall maintain a distance of two hundred (200) feet between sites as measured along the stream channel.
- (7) Sluices shall maintain a distance of two hundred (200) feet between operations as measured along the stream channel. Only one sluice may be in use at a given site.
- (8) Sluice dams shall be constructed so that upstream/downstream boat, or other access, is not obstructed.
- (9) All sluice dams shall be broken down daily and the disturbed stream substrate returned as close to its original location as possible.
- (10) The use of pry bars, chisels, wedges, shovels, etc. to break layers of bedrock is not permitted. Loose rock may be moved and returned to its original position but competent bedrock shall not be disturbed.

Class 2 Special Conditions

This class covers mechanized forms of prospecting including, but not limited to: dredges, highbankers, powered sluices and trommels. In addition to the General Requirements, the following requirements apply to this class of prospecting activities:

- (1) Class 2 prospecting is not permitted in any stream, or segment thereof, designated by the state or federal government as containing threatened or endangered aquatic species, aquatic species deemed in need of management or designated as being critical habitat.
- (2) All operations must take place in-stream. Operating on stream banks or in the floodplain is not allowed.
- (3) Operations shall not be conducted within five (5) feet of the water's edge.
- (4) Operation in streams with a watershed area smaller than 100 square miles upstream of the area of operation is not permitted. A listing of acceptable streams is available from the department.
- (5) The permit number shall be prominently displayed on any in-stream equipment, using two (2) inch or larger characters and numbers.
- (6) Pump engines shall not exceed eight (8) horsepower.
- (7) All engines shall be equipped with a muffler and spark arrestor.
- (8) The dredge or vacuum hose intake opening may not exceed 4 inches in diameter.
- (9) All operations shall maintain a distance of two hundred (200) feet between sites as measured along the stream channel. Only one mechanized form of prospecting may be in use at a given site.
- (10) All fueling or servicing operations shall be performed at least twenty-five (25) feet away from the stream or wetlands. Propane powered equipment is excluded from this requirement.
- (11) Blaster nozzles may only be used underwater.
- (12) Operations shall not be conducted within fifty (50) feet of any bridge supports, other road crossings, weirs, docks, ramps or other public and private structures.
- (13) No visible color contrast, or plume, shall be visible in the stream greater than three hundred (300) feet downstream of the equipment discharge.
- (14) Operations shall be conducted so that upstream/downstream boat, or other recreational access, is not obstructed.
- (15) The use of pry bars, chisels, wedges, shovels, etc. to break layers of bedrock is not permitted. Loose rock may be moved and returned to its original position but competent bedrock shall not be disturbed.

General Conditions

The following requirements apply to all classes of prospecting described in this permit:

- (1) Prospecting is not permitted in [streams designated as Outstanding Natural Resource Waters](#).
- (2) Prospecting is not permitted in [streams listed on the Division of Water Resources' 303d list for siltation, channel alteration or contaminated sediments](#).
- (3) Prospecting is not permitted in any [stream, or segment thereof, managed for brook trout](#).
- (4) All disturbance (i.e., excavation) shall be conducted at, or below, the water surface.
- (5) Disturbance of terrestrial vegetation shall be minimized; removal is not permitted.
- (6) All reject material shall be replaced as close to its original location as possible. Holes shall be filled and no piles of material shall remain. No material from the streambed shall be placed on the stream bank.
- (7) No chemical processing of materials shall be conducted in, or within two hundred (200) feet of, a stream, wetlands or in any area where chemicals or waste are likely to enter waters of the state.
- (8) All operations shall take place during daylight hours.
- (9) When moving between different waters, equipment shall be [cleaned in accordance with guidelines furnished by the Tennessee Wildlife Resources Agency](#) to minimize the spread of undesirable flora or fauna.
- (10) All activities shall be accomplished in conformance with the approved plans, specifications, data and other information submitted in support of the NOI and the limitations, requirements and conditions set forth herein.
- (11) All activities shall be carried out in such a manner as will prevent violations of water quality criteria as stated in Rule 1200-4-3-.03 of the Rules of the Tennessee Department of Environment and Conservation. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits or turbidity impairs the usefulness of waters of the state for any of the uses designated by Rule 1200-4-4. These uses include: fish and aquatic life (including trout streams and naturally reproducing trout streams), livestock watering and wildlife, recreation, irrigation, industrial water supply, domestic water supply and navigation.
- (12) The applicant is responsible for obtaining the necessary authorization pursuant to applicable provisions of §10 of the Rivers and Harbors Act of 1899; §404 of The Clean Water Act and §26a of The Tennessee Valley Authority Act, as well as any other federal, state or local laws.
- (13) This permit does not authorize access to private property. Arrangements concerning the use of private property shall be made with the landowner.
- (14) This permit does not authorize the discharge of any waste, or other substances that may be harmful to humans, terrestrial or aquatic life, into waters of the state.

- (15) Adverse impact to formally listed state or federal threatened or endangered species or their critical habitat is prohibited.
- (16) This permit does not authorize impacts to cultural, historic or archaeological features or sites.
- (17) This general permit expires July 15, 2015.

Supplemental Requirements

The following additional requirements apply to all Tennessee Wildlife Resources Agency (TWRA) properties including, but not limited to, Wildlife Management Areas (WMA's), TWRA public hunting lands, property leased by TWRA for any purpose, and/or TWRA river access and boat launch areas:

- (1) Class 1 (non-mechanized) activities are not permitted in any stream with a wetted width of less than twenty (20) feet.
- (2) Class 2 (mechanized) activities are not permitted on any of the TWRA lands listed above.

Sandra Dudley, Ph. D., P.E.
Director, Division of Water Resources