

## **CHAPTER 0400-30-17 CONFLICT OF INTEREST**

### **0400-30-17-.01 Purpose and Intent**

- (1) It is the purpose of this chapter to address requirements for the state air pollution control board imposed through the federal Clean Air Act as amended (42 USC §§ 7401 et. seq.) with respect to the composition of the board and conflict-of-interest provisions in hearing cases involving permits and enforcement and also to adopt a conflict of interest policy required by T.C.A § 68-201-105(e).. Conflict of interest described at 42 USC § 7428 is addressed in Rules 0400-30-17-.02 and 0400-30-17-.03. Conflict of interest described at 42 USC § 7429(e) is addressed in Rule 0400-30-17-.04. The conflict of interest policy required by T.C.A. § 68-201-105(e) is addressed in Rule 0400-30-17-.05.

Authority: T.C.A. §§68-201-105 and 4-5-201 et seq. Administrative History: Original rule file May 15, 1996; effective September 27, 1996.

### **0400-30-17-.02 Protecting the Public Interest**

- (1) The Board shall at its first meeting in a calendar year or after receiving a new member determine that it has at least a majority of members who represent the public interest and who do not derive any significant portion of their income from persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03.
- (2) Definitions
  - (a) “Represent the public interest” means not owning a controlling interest in, having 5% or more of his or her capital invested in, serve as attorney for, act as a consultant for, serve as officer or director of, or hold any other official or contractual relationship with, either a person subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03, or a trade or business association of which such a person is a member.
  - (b) “Significant portion of income” means 10% or more of gross personal income for a calendar year, including retirement benefits, consultant fees, and stock dividends, except that it shall mean 50% or more of gross personal income for a calendar year if the recipient is over 60 years of age and receiving such a portion pursuant to retirement, pension, or similar arrangement. For purpose of this subparagraph, income derived from mutual-fund payments, or from other diversified investments as to which the recipient does not know the identity of the primary sources of income, shall be considered part of the recipient’s gross personal income but shall not be treated as income derived from persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03.

- (c) “Persons subject to permits or enforcement orders under this rule division, 0400-30 or rule division 1200-03” includes any individual, corporation, partnership, or association who holds, is an applicant for, or is subject to any permit, or who is or may become subject to any enforcement order under this rule division, 0400-30 or rule division 1200-03, except that it does not include:
1. An individual who is or may become subject to an enforcement order by reason of his or her ownership or operation of a motor vehicle,
  2. Any department or agency of a state, local, or regional government; or
  3. Any individual who is involved in the program of an institute of higher learning whose duties do not include the institute’s compliance with this rule division, 0400-30 or rule division 1200-03.
- (3) Upon the request of the Technical Secretary, members of the Board shall provide the necessary information needed to determine compliance with paragraph (1) of this rule.
- (4) In the event that the board cannot make a finding that at least a majority of the board as constituted by appointment of its members meets the requirements required by the Clean Air Act, as amended, at § 128 (42 USC § 7428), then the Technical Secretary shall notify the Governor of the board’s failure to make a determination that at least a majority of its membership meets § 128 requirements. The Technical Secretary shall also advise and make recommendations regarding corrective action necessary to allow the board to be qualified under § 128 including substitutionary appointments of a member or members. The board shall not act to hear contested cases until it has determined that it can do so consistent with § 128.

**0400-30-17-.03 CONFLICT OF INTEREST ON THE PART OF THE BOARD AND TECHNICAL SECRETARY**

- (1) Definition - A “conflict of interest” occurs when a Board member or the Technical Secretary takes an action in the performance of their duties that singularly benefits a source when the Board member or the Technical Secretary has a significant portion of their personal income derived from the operations of said source.
- (a) The term “significant portion of personal income” shall mean any one or more of the following situations as it relates to the personal income of a Board member or Technical Secretary:
1. When the Technical Secretary or the Board Member receives more than \$5,000 annually in investment income from the source. Said investment is limited to those that arise from the purchase of shares of stock in the source that were purchased on the open market and

generally available to any person at that price.

2. When the Technical Secretary or Board Member receives more than \$100 annually due to a private investment made in the source. Said private investment is one where the purchase of stock or interest in a partnership was made directly with the source and such opportunity was not generally available to the public as a whole.
  3. When the Technical Secretary or Board Member receives a salary in any amount from the source for services rendered.
  4. When the Technical or Board Member sells or is about to sell property or equipment to the source. For the purposes of this part, equipment does not include consumer goods that are offered to the public at the same price offered to the source.
  5. When the Technical Secretary or Board Member buys or is about to buy property or equipment from the source. For the purposes of this part, equipment does not include consumer goods that can be purchased by the public at the same price the source offered to the Technical Secretary or Board Member.
  6. When the Technical Secretary or Board Member has taken out a loan from the source in any amount unless:
    - (i) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
    - (ii) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;
- (b) The actual or potential receipt of penalties, judgments, grant awards, or fees by the State of Tennessee as a result of promulgated rules, orders by

the Technical Secretary, Board orders, judgments awarded in a court of law, or grant applications to government or private entities shall not identify the State of Tennessee as a *source* as that term is used in this paragraph. If a specific case involves a *source of pollution* owned or operated by state or federal government, the Technical Secretary or Board member shall have a *conflict of interest* only if a significant portion of his or her income is derived from the operation of that *source of pollution*.

- (c) For the additional purpose of defining a conflict of interest, the Board recognizes the Department's conflict of interest policy governing Department employees.
  
- (2) Declaration - Prior to the issuance of a permit, variance or an enforcement order that requires an action on their part, the Technical Secretary or a Board member shall issue a statement that declares any conflict of interest that they may have in the matter. Statements by the Technical Secretary shall be written and delivered to the Chairman or Vice-Chairman of the Board. Statements by Board members shall be verbal and made part of the Board Meeting minutes. No Board Member or the Technical Secretary shall be required to quantify their conflict of interest or make a detailed explanation of their conflict unless they wish to make a detailed disclosure. For the purpose of this chapter, a "yes" or "no" declaration is sufficient and that is required only if a conflict of interest is present.
  
- (3) Rulemaking Exclusion - It is recognized that the Board's make-up is such that certain interest groups are represented by each Board member. To that end, a Board member supporting rule-making for their interest group as a whole will not be viewed as having a conflict of interest for such advocacy. However, industry-specific rule-making that would relax an otherwise general emission standard or procedural requirement for a source that causes a Board member to have a conflict of interest shall be subject to a disclosure of conflict of interest by Board members.
  
- (4) Procedure When a Conflict of Interest is Encountered -
  - (a) Procedure for the Technical Secretary - In the event that the Technical Secretary has a conflict of interest, his actions in such matters shall be subject to ratification by the Board. The Board shall have the power to affirm, modify or set aside the proposed actions of the Technical Secretary. Upon ratification, the Technical Secretary's action shall become final.
    - 1. Any timelines for action placed upon the Technical Secretary or Department in this rule division, 0400-30 or rule division 1200-03, shall be extended by the amount of time needed to bring the

proposed action to the Board for review and ratification. Deadlines for action imposed by federal regulations of the United States Environmental Protection Agency are not eligible for such extension. Similarly, deadlines specifically imposed in Tennessee statutes are not eligible for such extension.

- (b) Procedure for Board Members - In the event that a Board member has a conflict of interest, the following procedures shall apply:
  - 1. If a Board member has a conflict of interest as that term is defined in this chapter, the Board member shall answer “abstain” when voting in any roll call vote upon a matter before the Board for a decision.

Authority: T.C.A. §§68-201-105 and 4-5-201 et seq. Administrative History: Original rule file May 15, 1996; effective September 27, 1996.

#### **0400-30-17-.04 CONFLICT OF INTEREST IN THE PERMITTING OF MUNICIPAL SOLID WASTE INCINERATION UNITS**

- (1) No permit for a solid waste incineration unit that combusts municipal waste shall be issued by the Technical Secretary if he is responsible in whole or part, for the design and construction or operation of the unit. In the event that the Technical Secretary faces such a permit decision, the procedures of subparagraph (4)(a) of Rule 0400-30-17-.03 shall apply to his development of a draft permit for Board ratification.
- (2) No permit for a solid waste incineration unit that combusts municipal solid waste shall be approved or denied by a Board member that is a person responsible in whole or part, for the design and construction or operation of the unit. Any vote by such Board member on such unit shall be answered by “abstain”.

Authority: T.C.A. §§68-201-105 and 4-5-201 et seq. Administrative History: Original rule file May 15, 1996; effective September 27, 1996.

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#### **0400-30-17-.05 Policy of Ethics and the Avoidance of Conflicts of Interest**

- (1) The Policy of the Board
  - (a) No member of the board shall participate in making any decision concerning a permit, enforcement case, 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, or is

in any way a conflict of interest as defined by Rules 0400-30-17-.03 and 0400-30-17-.04.

- (b) Each member of the board shall avoid any action, whether or not specifically prohibited by statute or regulation, which might result in or create the appearance of:
  - 1. Using public office for private gain;
  - 2. Losing complete independence or impartiality;
  - 3. Making a government decision outside of official channels; or
  - 4. Affecting adversely the confidence of the public in the integrity of the government.
- (c) No member of the board shall, directly or indirectly:
  - 1. 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 or any person, including the board member; or
  - 2. Engage in a financial transaction as a result of, or primarily relying upon, information obtained through his or her appointment to the board.
- (d) No member of the board 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 minimis or it's lawfully available to the general public.
- (e) Each member of the board shall avoid all known conflicts of interest, and to the extent the member of the board becomes aware of a conflict of interest in connection with any matter brought before the board, the member of the board shall disclose such conflict to the other members of the board, Administrative Law Judge, and/or other appropriate person(s) and will further recuse himself or herself from participating in any consideration of the matter.
- (f) No member of the board shall participate in discussions or actions involving individuals in his or her immediate family, individuals employed by the member of the board or the member of the board's business or any other matter in which the member of the board's participation may create an appearance of bias or impropriety.
- (g) When a member of the board is in doubt as to the proper interpretation of this rule, he or she shall seek the advice of the Department's Office of General Counsel.

- (2) Each member of the board during the first meeting of the board each calendar year, or the member's first attendance of a board meeting of the calendar year, shall:
- (a) Make a written disclosure of financial interests or other possible conflicts of interest;
  - (b) Acknowledge in writing that they have read and understand all aspects of this rule; and
  - (c) State as a condition of serving as a member of the board that he or she is not in conflict with the conditions of this rule.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

	<b>Date Submitted to EPA</b>	<b>Date Approved by EPA</b>	<b>Federal Register</b>
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2 <sup>nd</sup> Revision	OCT 9, 2013	APR 2, 2014	79 FR 18453