

**RULES
OF THE
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
WATER RESOURCES DIVISION**

**CHAPTER 0400-46-04
STATE LOANS**

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0400-46-04-.01 PURPOSE.

The primary purpose of the "Construction of Sewage Treatment Works Act" (T.C.A. § 68-221-201 et seq.) is to provide repayable loans to local units of government to stimulate the construction and improvement of needed sewage treatment systems in order to provide the citizens of Tennessee an effective pollution abatement program for the State's rivers, lakes, streams, and groundwater. In making these loans available, the State is in no way attempting to assume the responsibilities of local governmental units to provide adequate sewerage services for the people. As the funds are sufficient to meet only a part of the total need, the State in making loans places emphasis on compliance with the Clean Water Act, 33 USC § 1251 et seq., as amended. Emphasis is placed on the following:

- (1) The provision of loans for municipalities without sewage treatment works;
- (2) The availability of grants and loans from other sources;
- (3) The creation of efficient wastewater treatment systems; and
- (4) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, planning, and efficient operation and management.

Authority: T.C.A. §§ 68-221-201 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-04.

0400-46-04-.02 DEFINITIONS.

As used in this chapter:

- (1) Commissioner. The Commissioner of the Tennessee Department of Environment and Conservation, his duly authorized representatives, and in the event of his absence or of a vacancy in the office of Commissioner, the deputy Commissioner.
- (2) Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works.
- (3) Department. The Tennessee Department of Environment and Conservation.
- (4) Eligible Project. A project for construction of sewage treatment works which:

(Rule 0400-46-04-.02, continued)

- (a) In the judgment of the Commissioner is either eligible for pollution abatement assistance or required to be undertaken by a federal or state agency, whether or not federal or state funds are then available;
 - (b) Conforms with applicable rules and regulations of the Department; and
 - (c) In the judgment of the Commissioner, is necessary for the accomplishment of the State's policy of water quality as established by the Tennessee Board of Water Quality, Oil and Gas pursuant to T.C.A. § 69-3-105.
- (5) Loan. State funds extended to a municipality to be repaid by said municipality excluding any federal or state pollution abatement assistance.
 - (6) Municipality. Any county, town, city, or special district empowered to provide municipal sewage collection and treatment services, or any combination of two (2) or more of the foregoing acting jointly in connection with an eligible project.
 - (7) Sewage Treatment Works. Any facility for the purpose of collecting, transporting, or treating municipal sewage.
 - (8) User. The owner, tenant or occupant of any lot or parcel of land connected to a sanitary sewer, or for which a sanitary sewer line is available if a municipality levies a sewer charge on the basis of such availability.

Authority: T.C.A. §§ 68-221-201 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-04.

0400-46-04-.03 DETERMINATION OF ELIGIBILITY.

- (1) Applicants.
 - (a) Only municipalities as defined in this chapter shall be eligible for loans to assist in financing the cost of construction of sewage treatment works.
 - (b) The applicant shall certify to the satisfaction of the Commissioner all of the following:
 - 1. The applicant is a municipality as defined in this chapter;
 - 2. The applicant has the financial capacity to provide its share of the project costs. To the extent these project costs are to be provided on a pay-as-you-go basis, the full amount indicated from this source shall be represented by cash on hand and/or may be expected to be included in the applicant's annual budget for the years in which payments under the project contract will be due. To the extent that borrowed funds are anticipated, the applicant shall certify that the additional debt, together with the applicant's existing debt, is within the debt limitation provisions of the general laws of the State;
 - 3. The applicant has complied and/or will comply with all applicable laws, rules, regulations and ordinances of the State; and
 - 4. As determined from the detailed engineering report and other available information, the estimated revenues to be derived from the project under the applicant's proposed schedule of fees and charges will provide for proper operation, maintenance, administration, reasonable expansion of the system and repayment of present and proposed indebtedness. For this purpose, if the project

(Rule 0400-46-04-.03, continued)

described in the application is to be an integral part of an existing system, the revenues to be derived from operation of the entire system shall be utilized in determining the adequacy of the applicant's proposed schedule of fees and charges.

(2) Applications and Loan Program Agreements.

- (a) An application for a State loan shall be in the form of a letter from the municipality and include one of the following:
 - 1. A detailed engineering report; or
 - 2. An Environmental Protection Agency grant; or
 - 3. A Tennessee basic State grant; or
 - 4. Plans and Specifications approved by the Commissioner.
- (b) Eligible projects receiving favorable review will be recommended by the Commissioner to the Tennessee Local Development Authority for a program loan. The applicant shall complete all program loan documents required by the Tennessee Local Development Authority. The terms and provisions of the program loan shall be established.
- (c) The awarding of a loan shall be based upon the recommendation of the Commissioner, the applicant's compliance with this chapter, and the applicant's completion and submission of all documents required by the Tennessee Local Development Authority, subject to the approval of the State Funding Board.

(3) Costs.

- (a) Project Costs. Eligible project costs shall include but not be limited to: actual costs of construction of facilities; actual costs of equipment and appurtenances; actual costs of engineering, legal, and fiscal services related to the project; actual costs of purchase or acquisition of real property or interests therein; and actual costs caused by change orders and the costs of meritorious contractor claims provided the costs are within the scope of the project.
- (b) Limitations. Eligible costs are limited to the extent that any one project shall not be awarded a loan which exceeds 25% of the total funds appropriated by the Legislature in that funding year.
- (c) Exclusions. Ineligible costs shall include but not be limited to: recurring annual expenditures for administration, repairs, and operation and maintenance of any waste water treatment system. Costs caused by the municipality's mismanagement or by the vicarious liability for the improper action of others shall not be eligible. These costs must be excluded from the applicant's share of the total construction costs. Costs incurred prior to the approval of the application will not be eligible with the exception of reasonable costs involved in completing the documents for the application.

(4) Inspections.

- (a) The municipality shall be responsible for continuous and sufficiently frequent inspections by qualified inspectors during the building of the project to ensure that the project complies with approved plans and specifications.

(Rule 0400-46-04-.03, continued)

- (b) The Commissioner will conduct interim building inspections to determine compliance with approved plans and specifications and the loan agreement, as appropriate.
 - (c) The interim inspection reports may be used for determining the amount of the loan payment.
 - (d) The municipality shall notify the Commissioner in writing when the project is complete so that operation and maintenance and final inspections can be conducted by the Commissioner.
- (5) Payments.
- (a) Invoices and requests for payment shall be submitted by the municipality to the Commissioner on a monthly basis.
 - (b) The Commissioner will certify all proper payment requests to the Tennessee Local Development Authority for payment as to eligibility and conformance with the approved plans and specifications.

Authority: T.C.A. §§ 68-221-201 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-04.

0400-46-04-.04 PROJECT CLOSEOUT.

- (1) Upon proper project completion, the Commissioner will certify to the Tennessee Local Development Authority construction completion and project start-up.
- (2) The official project loan files, held at the Department, will be administratively closed out and retained for three (3) years from the close out date.

Authority: T.C.A. §§ 68-221-201 et seq. and 4-5-201 et seq. **Administrative History:** Original rule filed September 16, 2013; effective December 15, 2013. Rule originally numbered 1200-22-04.