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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Repeals

Chapter 1200-22-01 Priority Ranking System is repealed.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

Chapter 1200-22-02 State Grants is repealed.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

Chapter 1200-22-03 Reserved is repealed.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

Chapter 1200-22-04 State Loans is repealed.

Authority: T.C.A. §§ 68-221-201 et seq. and 4-5-201 et seq.

Chapter 1200-22-06 State Revolving Fund is repealed.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

New Rules

Chapter 0400-46-01 Priority Ranking System

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0400-46-01-.01 Priority Ranking System: General

(1) General

(a) Introduction and Purpose

This rule provides definitions of terms, general standards and procedures, and overview information applicable to these rules.

The purpose of these rules is to set forth criteria and procedures for developing and maintaining a Priority Ranking System and List for the financing of wastewater treatment works and wastewater facilities. The Priority Ranking System, as described in this rule, is the basis of eligibility determinations and potential allocations of financial assistance from the Department of Environment and Conservation. Pursuant to T.C.A. Title 68, Chapter 221, Parts 8 and 10, the State of Tennessee is authorized to provide financial assistance to local governments for the construction of wastewater treatment works and wastewater facilities identified on the Department's Project Priority List. Each project's Priority Rank is generated from the Project Criteria Points and the Priority Point Value (PPV) formula according to these rules. A potential applicant's project will be placed on the Project Priority List following its evaluation and the assignment of a Priority Rank. The process of being placed on the Project Priority List may be

initiated either by the Department or by written request from the potential applicant. The Department will maintain the Project Priority List.

(b) Use of Number and Gender

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular also include the plural; and
3. Words in the plural include the singular.

(c) Rule Structure

These rules are organized, numbered, and referenced according to the following outline form:

- (1) paragraph
 - (a) subparagraph
 - 1. part
 - (i) subpart
 - (I) item
 - I. subitem
 - A. section
 - (A) subsection

(2) Definitions and References

When used in these rules, the following terms have the meanings given below unless otherwise specified:

(a) Collector Sewer. The common lateral sewers within a publicly owned treatment system that are primarily installed to receive wastewater directly from facilities that convey wastewater from individual systems or from private property. This term also includes service connections for those facilities such as the following:

1. Crossover sewers that connect more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when they are more cost effective than parallel sewers; and
2. Pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the municipality or utility district.

This definition excludes all facilities that convey wastewater from individual structures or from private property to the public lateral sewer.

(b) Combined Sewer Overflow (CSO). The overflow discharge from a sewer line that is designed as a sanitary sewer and a storm sewer.

(c) Conventional Pollutants. The conventional pollutants in wastewater effluent are 5-day biochemical oxygen demand (BOD₅) and/or 5-day carbonaceous biochemical oxygen demand (CBOD₅), ammonia nitrogen (NH₃-N) and/or total nitrogen (N-Total), phosphorus (P), dissolved

oxygen (DO), fecal coliform and/or E. coli, total suspended solids (TSS), settleable solids (SS), and pH.

- (d) Effluent Trading Projects. Effluent or water quality trading is an innovative approach to achieve water quality goals more efficiently. Trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent or superior pollution reductions from another source at lower cost, thus achieving the same water quality improvement at lower overall cost.
- (e) Infiltration/Inflow (I/I) Correction. Procedures to reduce or eliminate infiltration/inflows that do not involve extensive excavation and/or replacement, including, but not limited to, the following:
 - 1. Pressure testing and sealing procedures;
 - 2. Limited excavation and replacement where severe infiltration/inflow problems have been documented and can be corrected. Examples of limited excavation and replacement are the replacement or repair of manhole covers, the repair of crushed pipe within an area of temporary or permanent groundwater, or the replacement or repair of a sewer segment beneath a waterway; and
 - 3. Trenchless technologies such as sliplining, pipe bursting, cured-in-place pipe, etc.
- (f) Interceptor Sewer (Interceptors). A sewer that is designed for one or more of the following purposes:
 - 1. To intercept wastewater from a final point in a collector sewer and convey the wastewater directly to a treatment facility or another interceptor;
 - 2. To replace an existing wastewater treatment facility and transport the wastewater to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - 3. To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
 - 4. To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or a treatment plant.
- (g) Local Government. A county, incorporated town or city, metropolitan government, water and/or wastewater authority, or state agency that has authority to administer a wastewater facility, or any combination of two or more of the foregoing acting jointly to construct a wastewater facility. "Local government" shall also mean any publicly-owned utility district existing on July 1, 1984, or if created after that date, any publicly-owned utility district operating a wastewater facility with at least 500 customer connections.
- (h) Major Sewer Rehabilitation. Construction that involves the removal and replacement of the existing pipes or manholes. This definition is considered applicable for this chapter under one or more of the following conditions:
 - 1. In locations where pipes or manholes have lost their structural integrity, e.g., pipes or manholes are collapsed, broken, or badly deteriorated and cracked;
 - 2. In cases where pipe size enlargement, change in grade, and/or line realignment are needed in addition to pipe deficiency corrections; or
 - 3. In cases where damages to the existing pipes or manholes have been attributed to corrosion, soil movement, an increasing traffic load, or other similar factors, and it is desirable to prevent the recurrence of these damages by replacing the existing structures with structures of better quality and greater strength.

- (i) National Pollutant Discharge Elimination System (NPDES) Permit. A permit issued by the Tennessee Department of Environment and Conservation, Division of Water Resources, to discharge treated wastewater into a body of water.
- (j) Nonpoint Source (NPS) Pollution. Pollution occurring when precipitation moves over and through the ground, picking up and carrying away pollutants, and depositing them into waters of the state.
- (k) Permit Limits. Limitations for pollutants discharged from WWTPs that are identified in an authorization, license, or equivalent control document issued by the Division of Water Resources that implements the requirements of the Tennessee Water Quality Control Act.
- (l) Planning/Design. Facilities planning consists of those necessary plans and studies directly relating to existing and future conditions and effects of wastewater facilities or treatment works as outlined in the application requirements of Rule 0400-46-06-.06. Design consists of creating those necessary bid/contract documents, plans, and specifications for the construction of wastewater facilities or treatment works consistent with the approved facilities plan and necessary to construct the proposed wastewater facilities.
- (m) Pump Station/Force Main. A pump station is a mechanical device that raises and transfers wastewater. A force main is a pipe conveyance system for wastewater that is under hydraulic pressure due to energy imparted by a pump.
- (n) Refinancing. A project previously constructed for which State Revolving Fund Loan Program funds may buy or refinance local debt obligations where the initial debt was incurred after March 7, 1985. Projects that have incurred debt using their own means of financing must have met the requirements of Chapter 0400-46-06 in order to be eligible for refinancing.
- (o) Stormwater Projects. Projects that will convey, store, and/or treat accumulated surface flow water from precipitation.
- (p) Wastewater Treatment Plant (WWTP). Any facility whose purpose is to store, treat, neutralize, stabilize, recycle, reclaim, or dispose of municipal sewage or wastewater.
- (q) Water-Quality Impaired Stream Segment. Any stream segment that has been determined by the Division of Water Resources not to meet its classified uses.

All other terms used in this chapter are as defined in Chapter 0400-46-06 unless the context requires otherwise.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-01-.02 Priority Ranking, Project Criteria Points, and Priority Point Value (PPV) Formula.

- (1) General Provisions for Priority Ranking, Project Criteria Points, and Priority Point Value (PPV) Formula.
 - (a) Purpose. The Priority Ranking System detailed in these rules has been developed to achieve optimum water quality management consistent with the goals and requirements of the Clean Water Act and the Tennessee Water Quality Control Act. Municipal wastewater treatment projects and terms, as defined in Section 212 of the Clean Water Act, such as WWTP upgrades, collection system rehabilitation, infiltration and inflow correction projects, new collector sewers, and combined sewer overflow elimination projects and nonpoint source projects, as defined in Section 319 of the Clean Water Act, may be eligible for funding in accordance with these rules.
 - (b) Priority Ranking. All proposed projects for which the potential loan recipient has requested financial assistance will be assigned Project Criteria Points based on the project criteria defined in paragraph (2) of this rule. WWTP projects may be assigned additional points based on the Priority Point Value (PPV) formula delineated in paragraph (3) of this rule.
 - (c) Combined Project Priority Ranking.

1. When a potential loan recipient operates or proposes to operate more than one WWTP, the PPV will be independently calculated for each WWTP discharge point on the basis of data specific to each WWTP's discharge point.
 2. When more than one project appears on the Priority List and those projects are an integral part of the cost-effective solution for one facility's planning area, each of the projects may be assigned the same Priority Point Value as the WWTP that will receive and treat the combined wastewater flow.
- (2) Project Criteria Points. Project Criteria Points will be assigned to individual wastewater facilities projects based on the following:
- (a) WWTP discharges to a water-quality impaired stream segment will receive 100 Project Criteria Points in addition to any other applicable Project Criteria Points. WWTP projects with a compliance schedule in the NPDES permit requiring construction will receive 50 Project Criteria Points in addition to any other applicable Project Criteria Points.
 - (b) Wastewater collection system projects with a compliance schedule in the NPDES permit requiring construction will receive 50 Project Criteria Points in addition to any other applicable Project Criteria Points.
 - (c) Nonpoint Source (NPS) pollution projects affecting a water-quality impaired stream segment will receive 100 Project Criteria Points. Other NPS pollution projects will receive 25 Project Criteria Points. NPS pollution projects may be directed toward protection or improvement of the quality of ground water, surface water, or wetlands. NPS pollution projects must be consistent with Tennessee's approved Nonpoint Source Management Program requirements and be included in the State's current EPA-approved Nonpoint Source Management Plan.
 - (d) Effluent-trading projects will receive 50 Project Criteria Points in addition to any other applicable Project Criteria Points.
 - (e) Combined Sewer Overflow (CSO) projects will receive 25 Project Criteria Points.
 - (f) Infiltration/Inflow (I/I) correction projects and major sewer rehabilitation projects will receive 25 Project Criteria Points. Construction of projects that will transport and treat I/I at the WWTP will receive 10 Project Criteria Points.
 - (g) Storm water management projects affecting a water-quality impaired stream segment will receive 100 Project Criteria Points. Storm water management projects with a compliance schedule in the NPDES permit requiring construction will receive 50 Project Criteria Points. All other storm water management projects will receive 25 Project Criteria Points.
 - (h) Collection lines to be constructed to address an existing public health problem caused by failed septic systems will receive a minimum of 40 Project Criteria Points up to a maximum of 100 Project Criteria Points. If a Department-certified septic system failure survey utilizing either color infrared aerial photography or ground inspections has been conducted in the project area, Project Criteria Points may be obtained by multiplying the percentage of failing systems by the 100-point maximum Project Criteria Points as follows:
 1. Project Criteria Points = 100 x Department-certified percent of septic systems failing
 2. Proposed projects will receive a minimum of 40 Project Criteria Points if they are in an area where a Department-certified septic system failure survey was not conducted or where the percentage of failing septic systems was less than 40 percent.
 - (i) Any wastewater project proposed for development and/or growth potential, i.e., projects that were not planned to address a water quality problem or a public health problem, will receive 5 Project Criteria Points. WWTPs that are required to serve new collectors as part of the approved facilities plan will receive the same Project Criteria Points as the collectors.

- (j) Interceptors and pump stations will receive varying Project Criteria Points. Interceptors and/or pump stations that eliminate a WWTP discharge point that was included in an approved facilities plan will receive the same Project Criteria Points as the WWTP. Interceptors and/or pump stations proposed as part of an I/I elimination project will receive the same Project Criteria Points as the I/I elimination project. Interceptors and/or pump stations proposed as part of a collection system project will receive the same Project Criteria Points as the collection system project.
- (k) Planning/Design projects will receive Project Criteria Points based upon the proposed project type.
- (l) Section 212 projects that are also associated with the construction of nonpoint source projects shall have an additional 20 Project Criteria Points.
- (m) Section 212 projects with zoning that demonstrates preservation of greenspace shall have an additional 15 Project Criteria Points.
- (n) Section 212 projects with zoning that demonstrates riparian buffer zones of at least 150 feet shall have an additional 10 Project Criteria Points.
- (o) Section 212 projects demonstrating an enforced buffer zone ordinance shall have an additional 5 Project Criteria Points.
- (p) Refinancing projects will receive 1 Project Criteria Point.
- (q) In accordance with T.C.A. § 6-58-109(b), all State Revolving Fund projects within Counties that have an approved growth plan will receive 5 Project Criteria Points in addition to any other applicable Project Criteria Points.

(3) Priority Point Value (PPV) Formula.

The PPV formula assigns numerical points to a specific WWTP project based on the product of the Receiving Stream Hydraulic Factor (RSHF), Severity of Pollution Factor (SPF), and Water Quality Improvement Factor (WQIF), as follows:

$$PPV = (RSHF) \times (SPF) \times (WQIF)$$

- (a) The RSHF will be determined based on the ratio of plant discharge to stream flow using the following equation:

$$RSHF = 1.0 + \frac{\text{Plant Flow}}{\text{Stream Flow} + \text{Plant Flow}}, \text{ where}$$

- 1. Stream flow is the lowest stream flow measured upstream of the WWTP discharge for any 7 consecutive days in a 10-year period. The Department may allow the use of the dilution flow for impoundments.
- 2. Plant flow is the average daily flow reported on Monthly Operating Reports or Discharge Monitoring Reports submitted to and certified by the Department.

- (b) The SPF will be determined based upon whether violations of the WWTP's permit limits have occurred. The SPF will be determined using the following equation:

SPF = 1.0 + the sum of point values from the following effluent parameters:

- 1. Biochemical Oxygen Demand, 5-Day (BOD₅) and/or Carbonaceous Biochemical Oxygen Demand (CBOD₅) Violation

If the actual BOD₅ and/or CBOD₅ concentration in the WWTP effluent has exceeded the permit limit for BOD₅ and/or CBOD₅ for two consecutive months or three or more times during the last year, the project receives..... 1 point

2. Total Nitrogen (N-Total) and/or Ammonia Nitrogen (NH₃-N) Violation

If the actual N-Total and/or NH₃-N concentration in the WWTP effluent has exceeded the permit limit for N-Total and/or NH₃-N for two consecutive months or three or more times during the last year, the project receives..... 1 point

3. Phosphorous (P) Violation

If the actual P concentration in the WWTP effluent has exceeded the permit limit for P for two consecutive months or three or more times during the last year, the project receives..... 1 point

4. Dissolved Oxygen (DO) Violation

If the actual DO concentration in the WWTP effluent has been less than the minimum permit limit for DO for two consecutive months or three or more times during the last year, the project receives..... 0.5 points

5. Fecal Coliform and/or E. coli Violation

If the actual fecal coliform and/or E. coli concentration has exceeded the permit limit for fecal coliform and/or E. coli for two consecutive months or three or more times during the last year, the project receives..... 1 point

(c) The WQIF applies only to a receiving stream that is a water-quality impaired stream segment. The WQIF will be determined based on the receiving stream's designated stream-use classification(s) for recreation, fish and aquatic life, and/or domestic water supply.

The WQIF is the number obtained from the equation:

$$WQIF = 1.0 + F + G + H, \text{ where}$$

1. Recreation, denoted as F, is assigned a numerical value based upon the following:

(i) If the existing effluent violates recreational bacterial standards (Chapter 0400-40-03) and causes a significant adverse impact on the receiving waters beyond the mixing zone or precludes the actual use of the receiving waters for body contact recreation beyond the mixing zone, the recreation factor F will be assigned2 points

(ii) If there is no significant impact on recreation, F will be assigned..... 0 points

2. Fish and Aquatic Life, denoted as G, is assigned a numerical value based upon the following:

(i) If the existing effluent contains one or more conventional pollutants in excess of the permit limits established by the Department or contained in the WWTP's NPDES Permit or results in violations of the dissolved oxygen standard for fish and aquatic life (Chapter 0400-40-03) in the receiving waters beyond the mixing zone, G will be assigned..... 3 points

(ii) If there is no significant impact on fish and aquatic life, G will be assigned.....0 points

3. Domestic Water Supply, denoted as H, is assigned a numerical value based upon the following:

(i) If the existing effluent contains one or more conventional pollutants in concentrations exceeding the domestic water supply standard (Chapter 0400-40-

03) in waters affecting an existing community water treatment plant, H will be assigned..... 4 points

(ii) If there is no significant adverse impact on domestic water supply, H will be assigned..... 0 points

4. No WQIF points will be awarded for F, G, and H if the existing treatment facility is not operated and maintained properly, as determined by the Department's evaluation of the facility's operation and maintenance.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-01-.03 Program Management.

- (1) The assigned Project Criteria Points and the calculated Priority Point Value are applicable only to WWTP projects and will be summed to establish a proposed project's Priority Rank. Projects will be placed on the Priority Ranking List in ascending order by Priority Rank, i.e., in descending order by total project priority points.
- (2) When the project is placed on the Priority Ranking List, the potential loan recipient is responsible for providing a written detailed project description, a schedule of events, and an up-to-date project cost estimate to the Department. The Department may request adjustments to the cost estimate at its discretion.
- (3) The Department will use the project cost estimates on the Priority Ranking List to allocate available funds to as many potential loan recipients as possible in order to protect public health and the environment. The Department may limit the award amount per loan in order to provide funds to more potential loan recipients.
- (4) The priority of available funds will be assigned to those projects with the highest Priority Rank on the Priority Ranking List with preference given to those projects that are ready to proceed.
- (5) The Department may bypass projects on the Priority Ranking List that are not ready to proceed. The Department may also bypass projects if a completed loan application has not been received within 90 days after notification from the Department to the potential loan recipient that failure to submit the completed application will result in a bypass.
- (6) Proposed projects with a lower Priority Rank may be fundable by virtue of bypass. Preference will be given to those lower-ranked projects that are ready to proceed and that will make progress towards compliance with the enforceable requirements of the Clean Water Act and the Tennessee Water Quality Control Act.
- (7) Projects may be purged from the Priority Ranking List annually, on April 15. Projects may be reinstated to the Priority Ranking List upon the Department's receipt of a letter requesting the reinstatement. The letter must also include a written, detailed project description and an up-to-date project schedule and cost estimate.
- (8) The Department will remove a project from the Priority Ranking List prior to April 15 annually when financial assistance has been awarded or upon receipt of a written request from the potential loan recipient that they no longer want to include their project on the Priority Ranking List.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-46-02
State Grants

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0400-46-02-.06 Priority for the Obligation of Available Funds	

0400-46-02-.01 Purpose and Policy. The primary purpose of these rules is to provide financial assistance to municipalities to plan, design and construct wastewater treatment works. Such assistance shall be provided in order to meet the requirements of state laws to protect public health and water quality throughout the State of Tennessee. It is further intended that such assistance be coordinated with other state and federal programs of loans or grants for the construction of wastewater treatment works.

Authority: T.C.A. §§68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.02 Definitions. Unless the context requires otherwise as used in this chapter the following words and terms mean:

- (1) Act. The Wastewater Treatment Works Construction Grant Act of 1984, (as amended) T.C.A. §§ 68-221-801 et seq.
- (2) Ad valorem tax. A tax based upon the value of real property.
- (3) Ability to pay index (ATPI). An economic index developed by the Center for Business and Economic Research, the University of Tennessee, as certified by the Department.
- (4) Allowable costs. Fair and reasonable amount paid for eligible treatment works planning, design and construction.
- (5) Allowance. The portion of a grant for preliminary engineering or construction engineering.
- (6) Alternative technology. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed lands; containment ponds; sludge composting and drying prior to land application; self sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and onsite systems. Alternative technology also includes a wastewater collection system other than conventional system for a community with population of less than 3,500 persons, according to the 1980 federal census, or any subsequent decennial federal census. This includes, but is not limited to, small diameter pressure, gravity and vacuum sewers carrying partially or fully treated wastewater and which demonstrate a significant savings in the life cycle cost of the project when compared to an appropriate conventional technology.
- (7) Architectural or engineering (A/E). Consultation, investigations, reports, or services for projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State of Tennessee. This includes, but is not limited to, preliminary engineering and construction engineering.
- (8) Basic State grant. Award of funds under the Act calculated at 55 percent (plus any additional Innovative and/or Alternative determination), but not to exceed 75 percent of the sum of the total Step 3 allowable costs and the allowance.

- (9) Building. The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.
- (10) Building completion. The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.
- (11) Clean Water Act. The Clean Water Act, 33 U.S.C. 1251 et seq., as amended.
- (12) Collector sewer. The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service connections designed for connection with those facilities including:
 - (a) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and;
 - (b) Except as provided in subparagraph (c) of this paragraph, pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the recipient; and
 - (c) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with SAWS.
- (13) Combined sewer. A sewer that is designed as a sanitary sewer and a storm sewer.
- (14) Commissioner. The Commissioner of the Tennessee Department of Environment and Conservation or his duly authorized representatives.
- (15) Construction. The erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater treatment works, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures and other similar action necessary in the building of wastewater treatment works, and the inspection supervision of the construction of wastewater treatment works.
- (16) Construction engineering. The services provided by A/E during the building of a project, and start-up services.
- (17) Department. The Tennessee Department of Environment and Conservation.
- (18) Design allowance. The portion of a grant for the design, based on construction costs of a project which are allowable preliminary engineering costs.
- (19) Easement. The right which one person has to use the land of another for a specific purpose.
- (20) Eligible. Qualified to receive a basic State grant or EPA grant.
- (21) EPA. The United States Environmental Protection Agency.
- (22) EPA grant. The award of funds under the provisions of Title II of the Clean Water Act.
- (23) Excessive infiltration/inflow. The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.
- (24) Flow. Wastewater, as a volume or a rate, which is processed by a wastewater treatment works. The following apply:
 - (a) 24-hour flow: The total amount of wastewater that is processed by a wastewater treatment works in a 24-hour period.

- (b) Design flow: The wastewater flow that is used in the design of individual components of wastewater treatment works and to which suitable peaking factors have been applied.
 - (c) Peak flow: The largest amount of wastewater that is processed by the wastewater treatment works in 24-hour period.
 - (d) Domestic flow: The portion of the 24-hour flow that consists primarily of sanitary wastes and that originates from residential-type sources.
 - (e) Commercial flow: That part of the 24-hour flow, sanitary as well as process, that originates from commercial sources as restaurants, motels, institutions, offices, airports, laundries, etc.
 - (f) Industrial flow: That part of the 24-hour flow, sanitary as well as process, which originates from an industry.
 - (g) Infiltration: Water other than wastewater than enters a sewer system, including sewer service connections and foundation drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
 - (h) Inflow: Water other than wastewater that enters a sewer system, including sewer service connections, from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.
- (25) Individual systems. Privately owned alternative wastewater treatment works, including but not limited to dual waterless/gray water systems, serving one or more principal residences, or small commercial establishments. Normally, these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. The systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.
- (26) Industrial user. Any non-governmental, non-residential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:
- | | |
|-------------|---------------------------------------------------------------------|
| Division A. | Agriculture, Forestry, and Fishing |
| Division B. | Mining |
| Division D. | Manufacturing |
| Division E. | Transportation, Communications, Electric, Gas and Sanitary Services |
| Division I. | Services |
- (27) Infiltration/Inflow correction. Techniques which eliminate excessive infiltration/inflow. This definition refers to excessive infiltration/inflow reduction techniques that do not involve extensive excavation and/or replacement. Techniques considered to be infiltration/inflow correction include but are not limited to the following:
- (a) Pressure testing and sealing procedures;
 - (b) Excavation and replacement where documented and severe infiltration/inflow problems can be corrected. Specific examples are replacing or repairing manhole covers, repairing crushed pipe within an area of temporary or permanent ground water and replacement or repair of a sewer segment beneath a waterway.
 - (c) Sliplining.
- (28) Innovative technology. Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant

advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.

- (29) Interceptor sewer. A sewer which is designed for one or more of the following purposes:
- (a) to intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - (b) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - (c) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
 - (d) To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
- (30) Major rehabilitation. Techniques which involve the removal of the existing pipes or manholes from the ground and replacing them with new ones. This definition is considered applicable for this chapter under one or more of the following conditions:
- (a) In locations where pipes or manholes have lost their structural integrity, such as pipes or manholes which are collapsed, crushed, broken or badly deteriorated and cracked;
 - (b) In cases where pipe size enlargement, change in grade and/or line realignment are needed in addition to pipe deficiency corrections; or
 - (c) In cases where the causes of damages to the existing pipes or manholes, including but not limited to corrosion, soil movement, and increasing traffic load, have been identified and it is desirable to prevent the recurrence of these damages by replacing the existing structures with new ones having better quality and greater strength.
- (31) Municipality. Any utility district existing on July 1, 1984, county, incorporated town or city, or metropolitan government which has authority to administer a wastewater treatment works, or any combination of two (2) or more of the foregoing, acting jointly to construct a wastewater treatment works.
- (32) Non-excessive infiltration. The quantity of flow which is less than 120 gallons per capita per day, domestic base flow plus infiltration, or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effective analysis.
- (33) Non-excessive inflow. The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include but are not limited to surcharging, backups, bypasses, and overflows.
- (34) Operation and maintenance. Activities required to assure the dependable and economical function of treatment works.
- (a) Operation is the control of the unit processes and equipment which make up the treatment works. This include financial and personnel management records, laboratory control, process control, safety and emergency operation planning.
 - (b) Maintenance is the preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.
- (35) Planning/design. Facilities planning consists of those necessary plans and studies which directly relate to wastewater facilities or treatment works needed to comply with the requirements of Rules 0400-46-02-.08 and 0400-46-06-.06. Design consists of those necessary drawings, plans and specifications which directly relate to wastewater facilities or treatment works needed to comply with the approved facilities plan.

- (36) Preliminary engineering. The preparation of facilities plans, preparation of engineering plans, writing specifications, value engineering, and related similar activities.
- (37) Principal residence. The habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.
- (38) Priority ranking list. A list generated through the State Priority Ranking System rules pursuant to T.C.A. § 68-221-804 by which the Department ranks in descending order of priority all applicants for state and federal grants for construction of wastewater treatment works.
- (39) Project. The activities or tasks the Commissioner identifies in the contract agreement for which the recipient may expend, obligate or commit funds.
- (40) Project schedule. A timetable specifying the dates of key project events including but not limited to, the following: submittal of plans and specifications, advertising for bidding, notice to proceed, and building completion.
- (41) Replacement. Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.
- (42) Reserve capacity. Capacity to treat, store, transport or dispose of more wastewater than the demand on the system at the time of construction.
- (43) Sanitary sewer. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
- (44) Small alternative wastewater system (SAWS). Projects using the following types of alternative technology in small communities: on-site treatment systems, non-conventional collection systems, and any one of the twenty-one systems described in the EPA Publication FRD-10 (1980).
- (45) Small community. Any municipality with a population of 3,500 persons or less, in accordance with 1980 federal census or any subsequent federal decennial census.
- (46) State. State of Tennessee.
- (47) State revolving fund (SRF) assistance grant. A grant made to a municipality in addition to an SRF loan for the financing of the building of wastewater treatment works.
- (48) State revolving fund (SRF) Loan. Loan program as established in the Wastewater Facilities Act of 1987.
- (49) Step 1. Planning phase of a treatment works including related services and supplies which result in a 201 Facilities Plan.
- (50) Step 2. Design phase of a treatment works including related services and supplies.
- (51) Step 3. Building phase of a treatment works including related services and supplies.
- (52) Storm sewer. A sewer designed to carry only storm waters, surface runoff, street wash waters and drainage.
- (53) Supplemental State grant. A grant made to a municipality in addition to the basic State grant under the provisions of this chapter or in addition to an EPA grant both made to municipalities for the financing of the construction of wastewater treatment works.
- (54) Useful life. The period during which a wastewater treatment works operates. This is not design life which is the period during which a wastewater treatment works is planned and designed to operate.

- (a) For purposes of analyzing cost-effectiveness, the components of a wastewater treatment works shall have a useful life as follows:
 - 1. Land-permanent;
 - 2. Wastewater conveyance structures including but not limited to collection systems, outfall pipes, interceptors, force mains, and tunnels - 50 years;
 - 3. Other structures, including but not limited to plant building, concrete process tankage, basins, and lift station structures - 50 years;
 - 4. Process equipment - 20 years; and
 - 5. Auxiliary equipment - 15 years.
- (b) Other useful life periods will be acceptable when sufficient justification can be provided to the Commissioner. Where a system or a component is for interim service, the anticipated useful life shall be reduced to the period of interim service.
- (55) User. A single municipal, domestic, commercial or industrial connection to a wastewater treatment works.
- (56) User charge. A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt retirement, operation and maintenance, and replacement of such works.
- (57) Utility district. A publicly owned utility district existing on July 1, 1984, or if created after that date, comprising at least five hundred (500) customer connections.
- (58) Value engineering. A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost savings without sacrificing the reliability or efficiency of the project.
- (59) Wastewater treatment works. Any facility whose purpose is to store, treat, neutralize, stabilize, recycle, reclaim or dispose of municipal wastewater, including treatment or disposal plant, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof and their appurtenances which are necessary to accomplish the foregoing purposes; also included in this definition are collection systems which are to be built, repaired or extended for the purpose of ameliorating or correcting a pollution problem existing at the time of the application for the grant; providing, that collection systems, or parts thereof, otherwise are excluded from this definition and are not eligible for grants under the Act and this chapter.

Authority: T.C.A. §§68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.03 Basic State Grants

- (1) General Provisions.
 - (a) The basic State grant share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement. Except as provided elsewhere in this rule, the basic State grant share shall be 55 percent of allowable costs for grant assistance awarded after July 1, 1984.
 - (b) The basic State grant share for eligible treatment or unit processes and techniques that the Commissioner determines meet the definition of innovative or alternative technology shall be 20 percent greater than the basic State grant share under subparagraph (a) of this paragraph, but in no event shall the total basic State grant be greater than 75 percent. This increased basic State grant share depends on the availability of funds from the reserve except where the municipality is eligible for a supplemental State grant.

- (c) Municipalities receiving an EPA grant shall not be eligible for a basic State grant but may be eligible for a supplemental State grant.
 - (d) The municipality is responsible for using competitive bidding for all construction contracts where practicable. This is accomplished by placing an advertisement for bids in a regional newspaper. The advertisement should run at least four (4) weeks prior to the bid date. The advertisement should be placed in the "Legal" classification of the newspaper and run for three (3) consecutive days, excluding holidays and weekends.
 - (e) Basic and supplemental State grants shall be increased or decreased immediately after the building contract has been executed by the municipality where the initial contract cost is more or less than the amount of the original grant. State grant increases shall depend upon the availability of funds for the purpose and shall not be made prior to the execution of the building contract by the municipality and the contractor.
- (2) Preliminary Engineering (PE) Grant.
- (a) Where a municipality builds a wastewater treatment works using its own finances, the Commissioner may award a grant for preliminary engineering. Such grants shall be at the rate of 80% of the calculated design allowance based on construction costs of the project and shall be paid at the time of initiation of building of the project and such time shall be on or after July 1, 1984.
 - (b) Any municipality receiving a grant under the provisions of this rule and subsequently receiving funds for preliminary engineering from other state or federal sources shall refund such grant to the State. Municipalities previously receiving such grants shall not be eligible for preliminary engineering grant allowances. If the municipality has received an advance of allowance from the EPA, the PE grant award will be reduced by the amount of that advance.
 - (c) Allowances for a PE grant will be calculated as follows:
 1. The design allowance will be determined in accordance with Tables 1 and 2 of this rule;
 2. Table 2 is to be used only in the event that the recipient received a Step 1 grant from the federal government;
 3. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building costs per bid documents;
 4. The amount of the allowance will be computed only once for each project, and will not be adjusted for subsequent construction cost increases or decreases; and
 5. The recipient shall be reimbursed for preliminary engineering upon receipt of signed pay requests.

TABLE I
Allowance for Facilities
Planning and Design

Building Cost	Allowance as a percentage of building cost*
\$100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3537
200,000	13.1023
250,000	12.6832
300,000	12.3507
350,000	12.0764
400,000	11.8438

500,000.....	11.4649
600,000.....	11.1644
700,000.....	10.9165
800,000.....	10.7062
900,000.....	10.5240
1,000,000.....	10.3637
1,200,000.....	10.0920
1,500,000.....	9.7692
1,750,000.....	9.5523
2,000,000.....	9.3682
2,500,000.....	9.0686
3,000,000.....	8.8309
3,500,000.....	8.6348
4,000,000.....	8.4684
5,000,000.....	8.1975
6,000,000.....	7.9827
7,000,000.....	7.8054
8,000,000.....	7.6550
9,000,000.....	7.5248
10,000,000.....	7.4101
12,000,000.....	7.2159
15,000,000.....	6.9851
17,500,000.....	6.8300
20,000,000.....	6.6984
25,000,000.....	6.4841
30,000,000.....	6.3142
35,000,000.....	6.1739
40,000,000.....	6.0550
50,000,000.....	5.8613

*Use straight line interpolation between values.

TABLE 2
Allowance for Design only

Building cost	Allowance as a percentage of building cost*
\$100,000 or less.....	8.5683
120,000.....	8.3808
150,000.....	8.1570
175,000.....	8.0059
200,000.....	7.8772
250,000.....	7.7668
300,000.....	7.4991
350,000.....	7.3602
400,000.....	7.2419
500,000.....	7.0485
600,000.....	6.8943
700,000.....	6.7666
800,000.....	6.6578
900,000.....	6.5634
1,000,000.....	6.4300
1,200,000.....	6.3383
1,500,000.....	6.1690
1,750,000.....	6.0547
2,000,000.....	5.9574
2,500,000.....	5.7983
3,000,000.....	5.6714
3,500,000.....	5.5664
4,000,000.....	5.4769

5,000,000.....	5.3306
6,000,000.....	5.2140
7,000,000.....	5.1174
8,000,000.....	5.0352
9,000,000.....	4.9637
10,000,000.....	4.9007
12,000,000.....	4.7935
15,000,000.....	4.6655
17,500,000.....	4.5790
20,000,000.....	4.5054
25,000,000.....	4.3851
30,000,000.....	4.2892
35,000,000.....	4.2097
40,000,000.....	4.1421
50,000,000.....	4.0314

*Use Straight line interpolation between values

(3) Allowances.

(a) Allowances for Planning and Design will be provided under the following conditions:

1. Step 3 grant agreements will include an allowance for facilities planning and design of the project;
2. The estimated and final design allowance will be determined in accordance with Tables 1 and 2 of this rule;
3. Table 2 is to be used only in the event that the recipient received a Step 1 grant from the federal government;
4. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building cost multiplied by the appropriate eligible grant percentage. Specifically, the initial allowable building cost is the allowable cost of the following:
 - (i) The initial award amount of all prime subagreements for building the project;
 - (ii) The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project; and
 - (iii) The purchase price of eligible real property; and
 - (iv) The purchase price of eligible equipment.
5. The estimated allowance is to be based on the estimate of the initial allowable building cost;
6. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases;
7. For any Step 3 project, the recipient may request payment of 50 percent of the State grant share of the estimated allowance immediately after notification of grant award. Final payment of the state grant share of the allowance may be requested in the first payment after the recipient has awarded all prime subagreements for building the project, received the Commissioner's approval for force account work, and completed the acquisition of all eligible real property;
8. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change

orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs provided in subparagraph (b) of this paragraph; and

9. If the municipality has received an advance of allowance from EPA, the design allowance will be reduced by the amount of that advance.

(b) The allowance for Step 3 A/E services shall be calculated under the following conditions:

1. The estimated and final allowance for construction engineering will be determined in accordance with Table 3 of this rule.
2. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building costs multiplied by the appropriate eligible grant percentage. The allowable building costs are defined in part (a)4 of this paragraph.
3. The estimated allowance is to be based on the estimate of the initial allowable building cost.
4. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.
5. The recipient shall be reimbursed for A/E Services by monthly invoice.

TABLE 3
Allowance for Construction Engineering

Building Cost	Allowance as a percentage of building cost*
\$100,000 or less	8.0500%
	\$8,050.00
200,000	7.5929%
	\$15,186.00
300,000	7.3488%
	\$22,046.00
400,000	7.1849%
	\$28,729.00
500,000	7.0627%
	\$35,313.00
1,000,000	6.7083%
	\$67,083.00
2,000,000	6.3878%
	\$127,757.00
2,500,000	6.2911%
	\$157,277.00
3,000,000	6.2142%
	\$186,425.00
3,500,000	6.1506%
	\$215,271.00
4,000,000	6.0966%
	\$243,863.00
4,500,000	6.0497%
	\$272,237.00
5,000,000	6.0084%
	\$300,419.00
10,000,000	5.7500%
	\$575,000.00
15,000,000	5.6089%

*Use straight line interpolation between values.

(4) Innovative and Alternative (I/A) Technologies.

- (a) Projects or portions of projects using unit processes or techniques which the Commissioner determines to be innovative or alternative technology in accordance with this rule may receive an additional 20% grant on the eligible I/A portions as determined by the Commissioner.
- (b) A project will be determined to have an alternative technology if it is listed under the definition of alternative technology in Rule 0400-46-02-.02.
- (c) A project will be determined to have an innovative technology if present worth cost of the eligible portions of the treatment works excluding conventional sewer lines is at least 15% less than that for the most cost effective alternative which does not incorporate innovative wastewater treatment processes and techniques; i.e., is no more than 85% of the present worth of the most cost-effective non-innovative alternative.
- (d) In the present worth cost comparisons in subparagraph (c) of this paragraph, the following apply:
 - 1. The non-innovative alternative must be clearly identified. Where an upgrading or expansion of an existing treatment works is encountered, only the portions associated with the increased capacity or level of treatment shall be considered in the cost analysis;
 - 2. The cost-effectiveness of the non-innovative alternative will be judged against the best available state-of-the-art cost information;
 - 3. The basis of the comparison is the present worth cost of the proposed innovative technology versus the lowest present worth cost of the non-innovative systems considered;
 - 4. The cost comparison between the proposed innovative and non-innovative alternatives must be made on a completed treatment works basis, grant eligible portions excluding conventional sewer lines, even though the proposed potentially innovative portion is a sub-system or component;
 - 5. In the comparative analysis, both systems must provide equivalent levels of pollutant control. Equivalency of the following factors shall be considered:
 - (i) Design minimum effluent quality standards;
 - (ii) System reliability with respect to effluent quality and residual disposal;
 - (iii) Residual treatment and disposal;
 - (iv) Level of toxic material control; and
 - (v) Environmental benefit
 - 6. For cases where innovative sub-system components are analyzed or aggregated in the total plant cost comparison, only the cost of the innovative components and the appurtenant non-innovative equipment uniquely necessary for the proper functioning of the candidate innovative technology shall be included as a part of the component cost; and
 - 7. A component is uniquely necessary if it would have to be modified or replaced to correct a failure of the innovative system.

- (e) In the total system cost comparison, the present worth cost of the proposed design with innovative components must be a minimum of 15% less than that of the most cost effective non-innovative alternatives to qualify as innovative technology.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.04 Supplemental State Grants.

(1) General Provisions.

- (a) Municipalities receiving basic State grants on or after July 1, 1984, may be eligible for supplemental State grants. Municipalities receiving EPA grants for projects on or after April 18, 1985, may be eligible for supplemental State grants.
- (b) The amount of the supplemental State grant shall be based on the same allowable costs as the basic State grant or EPA grant. In no case shall the basic State grant plus the supplemental State grant or the EPA grant plus the supplemental State grant exceed 90% of the allowable costs of the project. All supplemental state grant awards shall not exceed \$500,000.
- (c) Supplemental State grants shall be increased or decreased immediately after the building contract has been executed by the municipality where the initial contract cost is more or less than the amount of the original grant. Supplemental State grant increases shall depend upon the availability of funds for the purpose and shall not be made prior to the execution of the building contract by the municipality and the contractor.

(2) Supplemental State Grant Amount Determination.

The Ability to Pay Indices (ATPI) is to be used in determining the amount of the supplemental State grants along with the corresponding percentage as stated below. The ATPI, as certified by the Department, is listed both by counties and towns. To be eligible for a supplemental State grant a municipality must have an ATPI of 97.63 or less.

The ranges of ATPI's and their corresponding percentage are shown below:

ATPI Range	Supplemental Grant Percentage
97.63 to 95.00	5
94.99 to 93.00	10
92.99 to 90.00	15
89.99 to 85.00	20
84.99 to 82.00	25
81.99 to 77.00	30
Below 77.00	35

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.05 State Revolving Fund (SRF) Assistance Grant.

(1) General Provisions.

- (a) Municipalities (except utility districts created after July 1, 1984) receiving State Revolving Fund construction loans pursuant to T.C.A. § 68-221-1001 et seq., on or after January 1, 1989, may be eligible for an SRF Assistance grant provided the municipality has not received any other form of state assistance pursuant to T.C.A. § 68-221-801 et seq.
- (b) The SRF Assistance grant may be awarded to those small communities which have a population of 3500 or less and an ATPI of 110 or less.
- (c) Grants made under this rule may only be awarded after a community has received an SRF construction loan. The grant recipient must adhere to all grant conditions and terms of the loan agreement. Additionally, failure to obtain Department approval for plans and specifications within

six months or to initiate construction of the project within twelve months of grant award shall constitute ground for termination of the grant.

- (d) The priority for obligating funds pursuant to this chapter shall be based upon the date of loan approval for the project, provided the recipient has applied for such assistance.
 - (e) Grants to be awarded under this rule are contingent upon the availability of funds for that purpose.
- (2) Grant Amount.
- (a) The amount of the SRF Assistance grant may be based on reasonable estimated building costs. The final amount of the grant will be determined once based on actual building costs and will not be adjusted for subsequent cost increases or decreases.
 - (b) The amount of an SRF Assistance grant shall be 20% of the eligible building cost funded by the SRF loan which is the sum of the initial award amounts for all building contracts less the Reserve Capacity Cost Ratio (RCCR) except as provided in subparagraph (c) of this paragraph.
 - (c) In no case shall the amount of the SRF Assistance grant exceed 20% of the eligible SRF loan building cost of \$500,000, whichever is less. Any municipality receiving a grant under the provisions of this rule and subsequently receiving other forms of federal assistance may have the grant reduced to an amount based on 20% of the eligible building cost funded by the SRF loan.
 - (d) The SRF Assistance grant shall be based on building cost alone and will include provisions for reimbursement of other project uses.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.06 Priority for the Obligation of Available Funds.

(1) General.

The State will award financial assistance to municipalities for the construction of wastewater treatment works under the provisions of T.C.A. §§ 68-221-801 et seq., only for projects on the Priority Ranking List.

(2) Delayed Supplemental State Grants.

When State funds are insufficient to make supplemental State grants in any year, such supplemental State grants may be made from appropriations in later years with the oldest funded projects having first priority.

(3) Partial Grants Prohibited.

When there are insufficient funds to make a grant for a project on the priority list, a partial grant shall not be made and a project shall not be bypassed because of insufficient funds for the purpose of funding a project for which available funds would be adequate. The partial funding of a grant amendment is also prohibited.

(4) Priorities for the Obligation of State Funds.

The priority for the obligation of State funds appropriated for the purpose of implementing the provisions of T.C.A. § 68-221-801, et seq. and T.C.A. § 68-221-1001, et seq., shall be in accordance with the following:

- (a) The first priority shall be to provide the required 20% match for the State Revolving Fund's capitalization grant received annually from the EPA.

- (b) On any given date after obligations under the first priority have been met, the balance of available funds may be obligated under a second priority, which is to provide small low income communities with SRF Assistance grants.
- (c) When the second priority for funds has been met, the balance of available funds may be obligated under a third priority which is to provide increases as necessary for existing state grants.
- (d) When the third priority for funds has been met, any balance of available funds will be provided to subsidize the low interest rates of approved SRF loan projects.
- (e) When the fourth priority for funds has been met, the balance of available funds may be obligated under a fifth priority which is for the purpose of making supplemental State grants to EPA grants as provided in Rule 0400-46-02-.04. Obligations under the fourth priority shall have been met when supplemental State grants have been made for all EPA projects which will be funded in a given Federal fiscal year or the amount required for supplemental State grant has been determined by the preparation of EPA grant offers, but such grants have not been accepted by municipalities. Within this priority the funding shall be based on the priority ranking of the EPA grant projects which is determined by the priority ranking list.
- (f) When the fifth priority for funds has been met, any balance of available funds may be used for basic State grants under the provisions of this chapter or basic State grants plus supplemental State grants may be used.

Authority: T.C.A. §§68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.07 Eligibility

- (1) Municipalities may receive assistance under the Act for the construction of wastewater treatment works.
- (2) Grants shall be made only for those wastewater treatment works projects that qualify for funding based on the Department's priority ranking list.
- (3) Basic State grants cannot be used to fund any project for which a federal EPA grant was awarded.
- (4) No portion of a grant may be used to acquire land or pay any costs associated with the acquisition of land; provided, however, that expenditures for land that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment may be eligible for grant participation.
- (5) No grant under the Act shall be made to provide reserve capacity except in eligible interceptors and collection systems for communities with population less than 3,500 according to the 1980 Federal Census or any subsequent federal decennial census.
- (6) Treatment units and appurtenances that are necessary to meet the requirements of the Commissioner shall be eligible for grant participation.
- (7) Any work done prior to the date of basic State grant award shall be ineligible unless approved in writing by the Commissioner prior to initiation of such work.
- (8) Replacement costs requiring additional grant funds will not be made available for failed, inoperative or otherwise inadequate wastewater treatment works which were considered and funded as Innovative or Alternative technology.
- (9) Any contractor or A/E debarred by either the State or the Federal government cannot participate in a project which involves state funds governed by this rule.
- (10) Participation in the purchase of land shall be limited to the cost determined by a Certified Appraiser. Where the cost exceeds \$100,000 a second appraisal is required and final eligibility shall be determined by the Commissioner.

- (11) A municipality may use its own manpower and/or equipment to build all or part of the project. The method by which this is to be accomplished must be approved by the Commissioner. When the project costs exceed \$25,000, prior approval by the Commissioner shall be obtained.
- (12) Upon award of the building contract under a basic State grant and at the time of increasing or decreasing the grant amount as the result of such award, a contingency item may be included in the grant amount not to exceed 5% of the building cost.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.08 Grant Applications

- (1) Applicants for all grant assistance must submit applications on forms provided by the Commissioner.
- (2) The Commissioner shall review grant applications to ensure that they are completed and shall inform the application in writing of the determination.
- (3) A complete basic State grant application for the building of the treatment works will consist of at least the following:
 - (a) An approved facilities plan;
 - (b) Certification of adequate public participation;
 - (c) Final construction drawings and specifications;
 - (d) Project schedule; and
 - (e) If Step 3 assistance includes acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage system, and an explanation of the intended method of acquiring the real property.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.09 Related Grant Application Requirements.

These requirements exclude SRF Assistance grants. The SRF Assistance grant application requirements shall be in accordance with the loan application procedures under Rule 0400-46-06-.06.

- (1) Facilities Planning.
 - (a) General. Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to protect water quality and public health. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology, the selected alternative is cost effective i.e., is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. For sewerred communities with a population of 10,000 or less, consideration must be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, land disposal or overland-flow land treatment; and for the unsewerred portions of communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.
 - (b) Facilities Plan contents. A completed facilities plan must include:

1. A description of both the proposed treatment works and the completed waste treatment system of which it is a part;
2. A cost-effective analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effective analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effective analysis. A cost effective analysis must include:
 - (i) The description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant users and industries intending to increase their flows or relocated in the area, documenting capacity needs and characteristics for existing or projected flows;
 - (ii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;
 - (iii) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;
 - (iv) A consideration of systems with revenue generating applications;
 - (v) An evaluation of opportunity to reduce the use of energy or to recover energy; and
 - (iv) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users.
3. Demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system;
4. An analysis of the potential open space and recreation opportunities associated with the project;
5. An evaluation of the environmental impacts of alternatives;
6. An evaluation of the water supply implications of the project;
7. A concise description of the selected alternative with an appropriate level of detail, and at least the following;
 - (i) Relevant design parameters;
 - (ii) Estimated capital building and operation and maintenance costs, and a description of the manner in which local costs will be financed;
 - (iii) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;
 - (iv) Cost impacts on wastewater system users; and

(v) Institutional and management arrangements necessary for successful implementation.

8. The facilities plan shall be submitted to the Commissioner for review. Potential grant applicants must confer with Department reviewers in the initial stages of the facilities planning process.

(2) Sewer Use Ordinance

(a) The applicant's sewer use ordinance shall prohibit any new connections from inflow sources into the treatment works and shall require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works not contain toxins or other pollutants in amounts of concentrations that endanger public safety and physical integrity of the treatment works or preclude the selection of the most cost-effective alternative for wastewater treatment sludge disposal.

(b) After July 1, 1984, no Step 3 grant pursuant to the Act shall be made unless the following pretreatment requirements have been satisfied:

1. A sewer use ordinance in accordance with the format prescribed 40 CFR Part 403 must have been submitted and approved by the Commissioner and adopted by the recipient; and

2. The applicant must document to the satisfaction of the Commissioner that pretreatment facilities have been constructed or that legally binding commitments exist between the applicant and any discharger(s) to the recipient's proposed wastewater treatment facilities which ensure that pretreatment will be provided on or before the date of completion of the proposed wastewater treatment facilities. For the purpose of this paragraph pretreatment shall be defined as that level of treatment required by each discharger to the recipient's sewerage system which is necessary to meet the Publicly Owned Treatment Work (POTW) protection criteria for POTW unit operations including the collection system.

(3) User Charge System

(a) General. Unless a grant is solely for the acquisition of eligible land, the applicant for a basic State grant or a supplemental State grant must obtain the Commissioner's approval for its user charge system. If the applicant has a user charge system in effect at the time of the application, the applicant shall demonstrate that it meets the provisions of this paragraph or amend it as required by these provisions.

(b) Scope of the user charge. The user charge system shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the facility shall pay for such increased cost. The user charge system must be designed to produce adequate revenues to provide for the following expenditures:

1. Operation and maintenance expenses;

2. Debt retirement; and

3. Depreciation of the wastewater treatment works over its useful life, unless the generally accepted accounting principles do not require such.

(c) Actual use. A recipient's user charge system shall be based on actual use, or estimated use, of wastewater treatment services. Each user or user class must pay its proportionate share of the costs described in the subparagraph (b) of this paragraph incurred in the recipient's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.

- (d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Commissioner, of the rate and that portion of the user charge that is attributable to wastewater treatment services.
- (e) Financial Management System. Each user charge system must include a financial management system that will accurately account for revenues generated by the system and expenditures for the items in subparagraph (b) of this paragraph. This financial management system shall be based on an adequate budget identifying the basis for determining the annual operation and maintenance expenses, debt retirement, depreciation of the wastewater treatment works, and reserve account contributions.
- (f) Charges for operation and maintenance for infiltration/inflow. The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users, be distributed among all users based upon either of the following:
 - 1. In the same manner that it distributes the costs for their actual use; or
 - 2. Under a system which uses one of any combination of the following factors on a reasonable basis:
 - (i) Flow volume of users;
 - (ii) Land area of the user, and ad valorem; or
 - (iii) Number of hookups or discharges of the users.
- (g) Use of revenue. After completion of a project, revenue from the project including but not limited to, sale of a treatment-related-by-products; lease of the land; or sale of crops grown on the land purchased under the grant agreement, shall proportionately reduce all user charges.
- (h) Adoption of system. The user charge system must be legislatively enacted by the recipient. If the project will serve two or more municipalities, the recipient shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which cost are allocated, the formula by which costs are allocated and the manner in which the cost allocation system will be administered. The Department may waive this requirement provided the applicant can demonstrate:
 - 1. That such an agreement is already in place; or
 - 2. Evidence of historic service relationships for water supply, wastewater or the other services among the affected communities regardless of the existence of formal agreements; and
 - 3. That the financial strength of the supplier agency is adequate to continue the project even if one or more of the proposed customer agencies fail to participate.
- (i) Inconsistent agreements. The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of these provisions.
- (j) Previous debt. The reserve account required under this rule shall be not be used toward offsetting debts incurred prior to the funding of the project.
- (k) Approval of user charge system. Plans and specifications for the project will not be approved until the recipient has developed an approvable user charge system. If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the recipient must obtain the Commissioner's approval of its user charge system. If the recipient has a user charge system in effect, the recipient shall demonstrate to the Commissioner's satisfaction that it meets the requirements of this provision.

- (4) Easements. The recipient must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications will be approved by the Commissioner.
- (5) Plans and Specifications. All plans and specifications must be in accordance with the Facilities Plan/Engineering Report as approved by the Department, and should be consistent with the State Design Criteria for Sewage Works.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.10 Grant Agreement

- (1) The grant agreement will be a legally binding contract between the State and the recipient. The agreement will contain general conditions and may, if necessary, contain special conditions.
- (2) The general conditions will be requirements of law, regulations and policies of the State of Tennessee relative to the Act as defined under this chapter.
- (3) The special conditions of the grant agreement will relate to specific provisions unique for an individual project to include, but not limited to, time schedules, and performance requirements.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

0400-46-02-.11 Grants Administration and Grant Conditions

- (1) Project By-Pass. The Commissioner may by-pass the funding of projects on the fundable portion of the priority list as follows:
 - (a) The potential recipient submits to the Commissioner a written statement endorsing the by-pass; or
 - (b) The potential recipient fails to submit information within the time frame required by certified, written notice from the Commissioner.
- (2) Grant Amendments. Grant amendments may be made in circumstances that include, but are not limited to the following:
 - (a) Grant amendments may be made to basic State grants to cover the difference between the original construction cost estimate and the contract price.
 - (b) Grant amendments may be made to cover the provisions of paragraph (6) of this rule.
 - (c) Grant amendments may be made to basic State grants to cover increased eligible cost for Step 3 engineering services or engineering services during initiation of operation.
 - (d) Grant amendments may be made to supplemental grants to reflect changes in eligible cost.
- (3) Inspections.
 - (a) The recipient shall provide continuous inspections during building by qualified inspectors in sufficient numbers to insure the project complies with approved plans and specifications.
 - (b) The Commissioner will conduct interim building inspections to determine compliance with approved plans and specifications and grant agreement, as appropriate.
 - (c) The interim inspection reports may be used for determining the amount of the Step 3 grant payment.
 - (d) The recipient shall notify the Commissioner in writing when the building of the project is complete so that operation and maintenance and final inspections can be made by the Commissioner.

(4) Operation and Maintenance.

- (a) The recipient must assure economical and effective operation and maintenance, including replacement, of the treatment works.
- (b) The Commissioner shall not pay more than 90 percent of the Basic State grant share of any project unless the recipient has furnished and the Commissioner has approved an operation and maintenance manual.

(5) Grant Payments.

- (a) Documentation. The Commissioner shall pay the State grant share of the appropriate allowance, preliminary and/or construction engineering and/or the allowable project costs incurred and as certified and documented in accordance with Tennessee Outlay Report and Request for Reimbursement for Construction Programs Form as provided by the Commissioner.
- (b) Failure to comply with Plans and Specifications. Payments shall be limited to eligible work that complies with plans and specifications approved by the Commissioner.
- (c) Adjustment. The Commissioner may at any time review and audit requests for payment and make adjustments for, but not limited to, mathematical errors, items not built or purchased, unacceptable construction, and construction not in accordance with plans and specifications.
- (d) Refunds, Rebates and Credits. The State grant share of any refunds, rebates, credits, or other amounts, including any interest, that accrue to, or are received by the recipient of the project, and that are properly allocable to costs for which the recipient has been paid under a grant, must be credited to the State. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the recipient securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Commissioner.
- (e) Release. By its acceptance of final payment, the recipient releases and discharges the State, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Commissioner and the recipient.
- (f) Closure. The grant shall be closed at the end of the performance evaluation period per paragraph (7) of this rule as determined by the Commissioner and final audit by the Comptroller of the Treasury. No additional grant payments shall be made after the grant is closed. The findings of the audit shall be used in determining the final grant amount by the Commissioner.
- (g) Files and Records. All files and records pertaining to the project shall be maintained by the recipient throughout the project and made accessible to the Commissioner and the Comptroller. These files and records must be retained by the recipient for at least three (3) years after project closure.

(6) Change Orders.

- (a) Change in the Step 3 project work, except as provided in subparagraph (b) of this paragraph that are consistent with objectives of the project and that are within the scope of the grant agreement, do not require the execution of a formal grant amendment before the recipient's implementation of the change. However, the Commissioner will determine the eligibility and reasonableness of cost for all change orders funded with a basic grant, or a grant increase.
- (b) The recipient must receive from the Commissioner a grant amendment before implementing changes which:
 - 1. Alter the type of wastewater treatment provided by the project; or
 - 2. Significantly delay or accelerate the project schedule.

- (7) Project Performance.
- (a) The recipient shall notify the Commissioner in writing of the actual date and initiation of operation.
 - (b) The recipient shall hire an individual or firm with proven expertise in wastewater treatment plant operation and maintenance to provide the following services during the start-up period following the initiation of operation:
 - 1. Direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;
 - 2. Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and
 - 3. Advise the recipient whether the project is meeting the project performance standard.
 - (c) Immediately after the start-up period, the recipient shall certify to the Commissioner whether the project meets the project performance standards. If the Commissioner or the recipient concludes that the project performance standards are not met, the recipient shall submit the following:
 - 1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;
 - 2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and
 - 3. The schedule date for certifying to the Commissioner that the project is meeting the project performance standards.
 - (d) The recipient shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.
 - (e) Reservation of Rights.
 - 1. Nothing in this rule prohibits the recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; and
 - 2. Nothing in this rule affects the Department's right to take remedial action, including but not limited to administrative enforcement action and actions for breach of contract against a recipient that fails to carry out its obligations under this chapter.
- (8) Effect of Approval or Certification of Documents. Review or approval of facilities plans, design drawings and specifications or other documents by or for the Commissioner does not relieve the recipient of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits, and good management practices.
- (9) Value Engineering. During the design of the project, the Commissioner will determine when and to what degree value engineering will be conducted. Those value engineering determinations recommended by the Commissioner shall be implemented and eligibility shall be limited to a project scope that includes those value engineering determinations.

If any provision of this regulation or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications of the regulation which can be given effect without the invalid provision, and to that end the provisions of this regulation declared to be severable.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

New Rules

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.

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:
 - (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.

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 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.
 - (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.

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.

New Rules

Chapter 0400-46-06 State Revolving Fund

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0400-46-06-.01 Introduction

The purpose of the "Wastewater Facilities Act of 1987" enacted by the General Assembly of the State of Tennessee, (amended T.C.A. Title 68, Chapter 221, Part 10) is to facilitate statewide compliance with State and Federal water quality standards; to provide local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities construction through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health; and to establish fiscal self-sufficiency of wastewater facilities. It is intended that the revolving loan program be used in coordination with State and Federal assistance programs.

Authority: T.C.A. §§ 68-221-1001 et seq., 68-221-1005, and 4-5-201 et seq.

0400-46-06-.02 Definitions. As used in these rules:

- (1) Act. The Wastewater Facilities Act of 1987, T.C.A. §§ 68-221-1001 et seq.
- (2) Alternative technology. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants or recover energy. Specifically, alternative technology includes land application of effluent sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed lands; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and onsite systems. Alternative technology also includes a wastewater collection system other than conventional system. This includes, but is not limited to, small diameter pressure, gravity and vacuum sewers carrying partially or fully treated wastewater and which demonstrate a significant savings in the life cycle cost of the project when compared to an appropriate conventional technology.
- (3) Authority. The Tennessee Local Development Authority as created by T.C.A. Title 4, Chapter 31.
- (4) Best Management Practices. A practice or combination of practices which has been determined to be the most effective and practicable means of preventing or reducing water pollution to a level compatible with water quality goals.
- (5) Borrower. Local government which has entered into a loan agreement with the Authority and the Department to fund a wastewater treatment facility.
- (6) Clean Water Act. The Water Pollution Control Act of 1972, PL 92-500, as amended 33 U.S.C. §§ 1251 et seq., and rules and regulations promulgated thereunder.
- (7) Collector Sewer. Lateral sewers within a publicly owned treatment system, which are primarily installed to receive and convey wastewater for treatment. Service connections designed for connection with those facilities including:

- (a) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side; and,
- (b) Pumping units and pressurized lines serving individual structures or groups of structures when such units are owned and maintained by the borrower.

This definition excludes facilities which convey wastewater on private property to the public lateral sewer.

- (8) Combined sewer. A sewer that is designed as a sanitary sewer and a stormwater sewer.
- (9) Construction. The erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater facilities, including preliminary planning to determine the economic feasibility of wastewater treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures, and other similar action necessary in the building of wastewater facilities, and the inspection supervision of the construction of wastewater treatment works.
- (10) Department. The Tennessee Department of Environment and Conservation.
- (11) Depreciation. An element of expense resulting from the use of long-lived assets. It is conventionally measured by allocating the expected net cost of using the asset (original cost less estimated salvage value) over its estimated useful life in a systematic and rational manner.
- (12) Director. The Director of the Division of Water Resources within the Department.
- (13) Enforceable requirements of the Clean Water Act. Those conditions or limitations of permits issued under Sections 402 or 404 of the Clean Water Act or T.C.A. § 69-3-108 which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under Section 309 of the Clean Water Act or the Water Quality Control Act. If a permit has not been issued, or where no permit applies, the term shall include the requirements necessary to meet the provisions of the T.C.A. § 69-3-101 et seq.
- (14) EPA. The United States Environmental Protection Agency.
- (15) Excessive infiltration/inflow. The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.
- (16) Infiltration/Inflow Correction. Techniques which eliminate excessive infiltration/inflow. This definition refers to excessive infiltration/inflow reduction techniques that do not involve extensive excavation and/or replacement. Techniques considered to be infiltration/inflow correction include but are not limited to the following:
 - (a) Pressure testing and sealing procedures;
 - (b) Excavation and replacement where documented and severe infiltration/inflow problems can be corrected. Specific examples are replacing or repairing manhole covers, repairing crushed pipe within an area of temporary or permanent groundwater and replacement or repair of a sewer segment beneath a waterway; and,
 - (c) Trenchless technologies such as sliplining.
- (17) Initiation of operation. The date when all but minor components of a project have been built, all treatment equipment is operational and the project is capable of functioning as designed and constructed.
- (18) Innovative technology. Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.
- (19) Interceptor sewer. A sewer which is designed for one or more of the following purposes:

- (a) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - (b) To replace an existing wastewater facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - (c) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
 - (d) To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or to a wastewater plant.
- (20) Local Government. A county, incorporated town or city, metropolitan government, or state agency which has authority to administer a wastewater facility, or any combination of two or more of the foregoing acting jointly to construct a wastewater facility. "Local government" shall also mean any publicly owned utility district existing July 1, 1984, or if created after that date, any publicly owned utility district operating a wastewater facility and comprising at least 500 customer connections.
- (21) Major rehabilitation. Techniques which involve the removal of the existing pipes, pumps, or manholes from the ground and replacing them with new ones under one or more of the following conditions:
- (a) In locations where pipes or manholes have lost their structural integrity, such as pipes or manholes which are collapsed, crushed, broken, or badly deteriorated and cracked;
 - (b) In cases where pipe size enlargement, change in grade and/or line realignment are needed in addition to pipe deficiency corrections; or
 - (c) In cases where the causes of damages to the existing pipes or manholes, including but not limited to corrosion, soil movement, and increasing traffic load, have been identified and it is desirable to prevent the recurrence of these damages by replacing the existing structures with new ones having better quality and greater strength.
- (22) Nonexcessive infiltration. The quantity of flow which is less than 120 gallons per capita per day, domestic base flow plus infiltration, or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effective analysis.
- (23) Nonexcessive inflow. The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include but are not limited to surcharging, backups, bypasses, and overflows.
- (24) Nonpoint Source (NPS) Pollution. Pollution emitting from sources other than point source.
- (25) Operation and Maintenance. Activities required to assure the dependable and economical function of treatment works.
- (a) Operation is the control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management records laboratory control, process control, safety and emergency operation planning.
 - (b) Maintenance is the preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.
- (26) Planning/Design Facilities planning consists of those necessary plans and studies which directly relate to wastewater facilities or treatment works needed to comply with the requirements of Rules 0400-46-06-.06 and 0400-46-06-.08. Design consists of those necessary drawings, plans and specifications which directly relate to wastewater facilities needed to comply with the approved facilities plan.
- (27) Priority Ranking List. A numerical listing of wastewater facility projects by priority points generated through the State Priority Ranking System, Chapter 0400-46-01, for which the State is authorized to provide financial assistance pursuant to T.C.A. Title 68, Chapter 221, Parts 8 and 10.

- (28) Project. The activities or tasks the Department identifies in the loan agreement for which the borrower may expend, obligate or commit funds.
- (29) Project Performance Standards. Performance and operational requirements applicable to the project, including the enforceable requirements of the Clean Water Act, and the design criteria upon which the plans and specifications are based.
- (30) Project schedule. A timetable specifying the dates of key project events including but not limited to, the following: submittal of facility plan, submittal of plans and specifications, advertising for bidding, notice to proceed, and project completion.
- (31) Security. That which is determined by the Authority to be acceptable to secure a loan to a local government under this Act and includes but is not limited to revenues of the facility, ad valorem taxes, state-shared taxes, letters of credit or bond insurance.
- (32) State Revolving Fund (SRF) Loan. Loan program as established in the Wastewater Facilities Act of 1987.
- (33) Useful life. The period during which a wastewater facility operates; this is not design life which is the period during which a wastewater facility is planned and designed to operate.
 - (a) For purposes of a cost-effective analysis the components of a wastewater facility shall have a useful life as follows:
 - 1. Land - permanent;
 - 2. Wastewater conveyance structures, including, but not limited to, collection system, outfall pipes, interceptors, force mains, and tunnels - 50 years;
 - 3. Other structures, including, but not limited to, plant building, concrete process tankage, basins, and lift station structures - 50 years;
 - 4. Process equipment - 20 years; and,
 - 5. Auxiliary equipment - 15 years.
 - (b) Other useful life periods will be acceptable when sufficient justification can be provided to the Department. Where a system or a component is for interim service, the anticipated useful life shall be reduced to the period of interim service.
- (34) User. A single municipal, domestic, commercial or industrial connection to a wastewater facility.
- (35) User charge. A charge levied on users of a wastewater facility, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt retirement, operation and maintenance, and depreciation of such works.
- (36) Value Engineering. A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.
- (37) Wastewater facility. Any facility, including the reserve capacity thereof, whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of wastewater, including treatment or disposal plants, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof and their appurtenances which are necessary to accomplish the foregoing purposes. "Wastewater facility" shall also include best management practice projects for controlling nonpoint sources of water pollution and the planning or replanning requirements of designated management authorities.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

0400-46-06-.03 Priority.

SS-7039 (October 2011)

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RDA 1693

- (1) General. The Authority will award loans to local governments for planning, design and construction of wastewater facilities under the provisions of T.C.A. Title 4, Chapter 31; Title 7, Chapter 82; and Title 68, Chapter 221, only for projects on the Priority Ranking List.
- (2) Obligation of SRF Loans. Funds will be allocated to projects based on the list established by the Priority Ranking Rules, Chapter 0400-46-01.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

0400-46-06-.04 Eligibility.

- (1) Loans shall be made only to local governments that:
 - (a) Have the authority to operate a wastewater facility that is on the Priority Ranking List.
 - (b) In the opinion of the Authority, demonstrate tangible financial capability to assure sufficient revenues to operate and maintain the wastewater facility for its useful life and to repay the loan;
 - (c) Pledge security as required by the Authority for repayment of the loan;
 - (d) Agree to adjust periodically fees and charges for services of the wastewater facility in order that loan payments and costs of the wastewater facility are timely paid;
 - (e) Certify to comply with a plan of operation approved by the Department regarding the quality, compensation, and number of facility personnel for the life of the loan;
 - (f) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the facility's financial records; and
 - (g) Provide such assurances as are reasonably requested by the Authority and the Department.
- (2) Projects funded in whole or part from the SRF must be consistent with plans developed under Section 205, 208, 303(e) or 319 of the Clean Water Act.
- (3) Loans may be made to provide local governments with funds to conduct facilities planning and design.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

0400-46-06-.05 Uses of the Fund.

The SRF shall only be used:

- (1) To make loans; and,
- (2) To pay program administration costs (not to exceed 4% of the annual federal capitalization grant).

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

0400-46-06-.06 Application Procedure.

- (1) Applicants for SRF loans must submit an application on forms furnished by the Department.
- (2) The Department shall review the loan application to ensure that it is complete and shall inform the applicant in writing of the determination and/or other information required.
- (3) The Department shall submit recommendations for loans to the Authority.

- (4) A facilities plan must be submitted and approved by the Department before approval of any loans which do not include planning. Potential loan applicants should confer with Departmental reviewers in the initial stages of the facilities planning process. A facilities plan shall contain the following information:
- (a) identification of the planning area boundaries and characteristics, the existing problems and needs and problems for the next 20 or more years;
 - (b) demonstration that each sewer system is not or will not be subject to excessive infiltration/inflow;
 - (c) systematic identification, screening, study, evaluation, and cost-effective analysis of conventional technologies, as well as innovative, and alternative technologies;
 - (d) adequate evaluation of the environmental impacts of alternatives to support the cost-effective analysis;
 - (e) if collection lines are included, establishment of whether they are for replacement or major rehabilitation necessary to the total integrity and performance of the wastewater treatment works servicing the community, or they are for a new collection system in an existing or planned wastewater treatment capacity;
 - (f) documentation on the project's consistency with the approved elements of any applicable water quality management plan approved under Section 208 or 303(e) of the Clean Water Act; and,
 - (g) a concise description of the selected alternative with an appropriate level of detail.
- (5) User charge system.
- (a) General. The borrower of an SRF loan must obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect at the time of the application, the borrower shall demonstrate that it meets the provisions of this paragraph or amend it as required.
 - (b) Rates. The user charge rate must produce adequate revenues to provide for the following expenditures:
 - 1. Operation and maintenance expenses;
 - 2. Interest; and
 - 3. Depreciation or principal payment, whichever is greater.These costs shall be reviewed by the borrower on an annual basis as a part of the budget process and the rates adjusted accordingly for the life of the loan.
 - (c) Operating deficits. The user charge system will require maintenance of user rate structures necessary to fund the current expenditures in subparagraph (b) of this paragraph, and to liquidate any retained earnings deficit over a period of time to be determined by the Department.
 - (d) Rate resolution.
 - 1. Prior to loan approval, the applicant shall provide the Department with an adopted resolution which proposes a user rate that meets the requirements of the user charge system described in subparagraph (b) of this paragraph.
 - 2. Prior to ninety percent payment of loan proceeds, the local government shall submit for Departmental approval the enacted user rate which meets the requirements described in subparagraph (b) of this paragraph.
- (6) Intermunicipal agreements. If the project will serve two or more local governments, the borrower shall obtain Department approval of executed intermunicipal agreements prior to loan approval. These agreements may be in the form of contracts or other legally binding instruments necessary for the

financing, construction, operation and maintenance of the proposed treatment works. At a minimum, it must include the basis upon which costs are allocated.

(7) Plans and Specifications.

- (a) Plans and Specifications. All plans and specifications must be in accordance with the Facilities Plan/Engineering Report as approved by the Department, and should be consistent with the State Design Criteria for Sewage Works. The borrower must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications for a construction loan will be approved by the Department.
- (b) Sewer Use Ordinance. All borrowers who do not have a Sewer Use Ordinance (SUO) in effect at the time of application are required to obtain the Department's approval of an enacted SUO prior to the approval of plans and specifications for the project. The SUO must protect the technical and financial integrity of the collection and treatment system including provisions for the control of inflow/infiltration, toxicity, and maximum system use by all eligible customers.
- (c) Pretreatment Program. If the borrower does not have a pretreatment program approved by the Department and the proposed project will result in the discharge of industrial wastes into the collection system, then an industrial survey in accordance with 40 CFR 403.8(f)(2)(i) (as amended) must be conducted. Results of the survey are to be submitted to the Division of Water Resources to determine if a pretreatment program must be developed.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

0400-46-06-.07 Conditions.

(1) Federal Requirements. During the period the SRF is capitalized by EPA grant money, any project funded must meet the following requirements:

- (a) Title II Requirements. Projects must comply with the applicable requirements of Title II of the Clean Water Act cited in 40 CFR 35.3135 (f)(1) (as amended).
- (b) Environmental Review. An environmental review of the proposed project meeting the requirements of 40 CFR 35.3140 (as amended) must be conducted.
- (c) Other Federal Authorities. Projects must comply with other applicable federal authorities cited in 40 CFR 35.3145 (as amended).

(2) Loan Agreement.

- (a) The loan agreement will be a legally binding contract between the State and the borrower. The agreement will contain general conditions and may, if necessary, contain special conditions.
- (b) The general conditions will be requirements of law, regulations and policies of the State.
- (c) The special conditions of the loan agreement will relate to specific provisions unique for an individual project including, but not limited to, time schedules and performance requirements.

(3) Loan Amendments. A loan amendment must be approved by the Department and the Authority and shall be required when the final cost of the project is determined to be greater than the total amount approved in the loan agreement.

Loan amendments may be made to the original contract to include but not be limited to differences between the original construction cost estimate and the contract price.

(4) Procurement. Procurement transactions for equipment and construction must be conducted in a manner providing full and open competition consistent with the standards of 40 CFR 31.36 (as amended). The Department will review proposed procurement transactions for equipment and construction which exceed

\$25,000 prior to contract award. SRF loan participation for any project costs may be limited to amounts determined reasonable by the Department.

- (5) Inspections. During project construction the borrower shall provide continuous inspection by qualified inspectors in sufficient numbers to ensure the project complies with approved plans and specifications.

The Department will conduct interim inspections to determine compliance with approved plans and specifications and loan agreement, as appropriate.

The borrower shall notify the Department in writing within 30 days of Initiation of Operation so that an operation and maintenance inspection and final inspection can be made by the Department.

- (6) Loan Payments.

(a) Documentation. The Department shall review and certify the loan share of the appropriate project costs incurred and as certified and documented in the borrower's most recent payment request which includes proper invoices to support costs. The payment will be in accordance with Request For Disbursement of Funds form as provided by the Department. The Authority shall pay the loan share of the project costs as certified by the Department.

(b) Non-Compliance. Payments shall be limited to work that complies with approved plans, specifications, and project schedules as determined by the Department.

(c) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.

(d) Release. By its acceptance of final payment, the borrower releases and discharges the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.

- (7) Files and Records. All files and records pertaining to the project shall be maintained by the borrower throughout the project and made accessible to the Department and the Comptroller. These files and records must be retained by the borrower for at least three years after construction completion.

- (8) Change Orders. Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan agreement do not require the execution of a formal loan amendment, however; where the change order will result in the expenditure of more funds than the loan amount, a loan amendment must be executed prior to the implementation of the changes. The Department will determine the reasonableness of cost for all change orders.

- (9) Project Performance.

(a) The borrower shall notify the Department in writing within 30 days of the actual date of Initiation of Operation.

(b) Following written notification to the recipient, the Department may unilaterally designate an Initiation of Operation date if the recipient fails to submit a reasonable date.

(c) One year after the date of Initiation of Operation, the borrower shall certify to the Department in writing whether or not the wastewater facility meets its project performance standards.

(d) The borrower shall take corrective action necessary to bring a project into compliance with the project performance standards.

- (10) Reservation of Rights. Nothing in this rule:

(a) Prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or,

- (b) Affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this chapter.
- (11) Effect of Approval or Certification of Documents. Review or approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the borrower of its responsibility to properly plan, design, build and effectively operate and maintain the wastewater facilities as required by law, regulations, permits and good management practices. The Department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other subagreement documents.
- (12) Value Engineering. During the design of the project the Director will determine when and to what degree value engineering will be conducted. Those value engineering determinations recommended by the Director shall be implemented by the local government and loan eligibility will be limited accordingly.
- (13) Operation and Maintenance Manual. Prior to ninety percent payment of loan proceeds, all construction loan borrowers shall submit to the Department a draft Operation and Maintenance Manual for its approval as to adequacy and completeness. This shall apply only to loans for wastewater treatment plants. A final, plant-specific Operation and Maintenance Manual shall be submitted to the Department for its approval one year after Initiation of Operations.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

0400-46-06-.08 Financing Method.

- (1) A construction loan, including loans made solely for equipment, shall be made for a period of time not to exceed 20 years or the useful life, whichever is shorter.
- (2) A Planning and Design loan shall not exceed five years.
- (3) Repayment of the interest of the loan will begin upon reimbursement to borrower of costs incurred.
- (4) Repayment of the principal amount of the construction loan shall begin within 90 days after Initiation of Operation, or within 120 days after the borrower has borrowed 90 percent of the approved loan amount, whichever event occurs earlier.
- (5) Repayment of the principal amount of loans other than construction loans must begin within two years of loan approval or within 120 days after the borrower has borrowed 90 percent of the approved loan amount, whichever event occurs earlier.
- (6) The interest rates for SRF loans shall be fixed for the duration of the loan.
- (7) The Department shall utilize the most current Ability to Pay Index (ATPI) developed by the University of Tennessee Center for Business and Economic Research to determine interest rates for SRF borrowers. Interest rates shall not exceed market values according to appropriate Bond Buyers Index. Local governments which fall within the lower scale of the ATPI will be offered the lower interest rate.
- (8) The Department will recommend interest rates to the Authority.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 05-29-2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/13/13

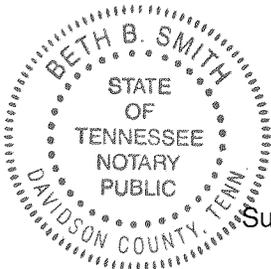
Rulemaking Hearing(s) Conducted on: (add more dates). 04/09/13

Date: 5-29-13
Robert Martineau

Signature: Robert Martineau

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner



Subscribed and sworn to before me on: May 29, 2013

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter
8-29-13
Date

Department of State Use Only

Filed with the Department of State on: 9/16/13

Effective on: 12/15/13

Tre Hargett
Tre Hargett
Secretary of State

2013 SEP 16 AM 8:12

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rulemaking is intended to move the rules from Chapters 1200-22-01, 1200-22-02, 1200-22-04 and 1200-22-06 to Chapters 0400-46-01, 0400-46-02, 0400-46-04 and 0400-46-06 respectively, repeal Chapter 1200-22-03, which is currently reserved, and to edit the rules to correct typos and incorrect references.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The State Revolving Fund (SRF) Loan Program provides low-interest loans that help communities, utility districts, and water and wastewater authorities finance projects that protect Tennessee's ground and surface waters and public health. There is no cost to these entities as a result of this rulemaking.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are no additional costs associated with this rulemaking.

- (3) A statement of the probable effect on impacted small businesses and consumers.

There is no impact to small businesses and consumers resulting from this rulemaking.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There is no impact to small businesses resulting from this rulemaking.

- (5) A comparison of the proposed rule with any federal or state counterparts.

There is no meaningful comparison with any federal or state counterparts for this rulemaking.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

To accomplish the goal of this rulemaking an exemption of small businesses is not possible.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate that this rulemaking will have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking is intended to move the rules from Chapters 1200-22-01, 1200-22-02, 1200-22-04 and 1200-22-06 to Chapters 0400-46-01, 0400-46-02, 0400-46-04 and 0400-46-06 respectively, repeal Chapter 1200-22-03, which is currently reserved, and to edit the rules to correct typos and incorrect references.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rulemaking is being promulgated under the authority of T.C.A. §§ 68-221-201 et seq., 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The State Revolving Fund (SRF) Loan Program provides low-interest loans that help communities, utility districts, and water and wastewater authorities finance projects that protect Tennessee's ground and surface waters and public health. None of these entities urged adoption or rejection of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking will have no fiscal impact on state and local governments.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Robert O'Dette
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
(615) 253-5319

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard
Deputy General Counsel
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
SS-7039 (October 2011)

William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0131
Jenny.Howard@tn.gov

- (l) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: _____

Rule ID(s): _____

File Date: _____

Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Bob O'Dette
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 11 th Floor Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 253-5319
Email:	Robert.Odette@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0400-46-01	Priority Ranking System
Rule Number	Rule Title
0400-46-01-.01	Priority Ranking System: General
0400-46-01-.02	Priority Ranking, Project Criteria Points, and Priority Point Value Formula
0400-46-01-.03	Program Management

Chapter Number	Chapter Title
0400-46-02	State Grants
Rule Number	Rule Title
0400-46-02-.01	Purpose
0400-46-02-.02	Definitions
0400-46-02-.03	Basic State Grants
0400-46-02-.04	Supplemental State Grants
0400-46-02-.05	SRF Assistance Grant
0400-46-02-.06	Priority for the Obligation of Available Funds
0400-46-02-.07	Eligibility
0400-46-02-.08	Grant Application
0400-46-02-.09	Related Grant Application Requirements
0400-46-02-.10	Grant Agreement
0400-46-02-.11	Grant Administration and Grant Conditions

Chapter Number	Chapter Title
0400-46-04	State Loans
Rule Number	Rule Title
0400-46-04-.01	Purpose
0400-46-04-.02	Definitions
0400-46-04-.03	Determination of Eligibility
0400-46-04-.04	Project Closeout

Chapter Number	Chapter Title
0400-46-06	State Revolving Fund
Rule Number	Rule Title
0400-46-06-.01	Introduction
0400-46-06-.02	Definitions
0400-46-06-.03	Priority
0400-46-06-.04	Eligibility
0400-46-06-.05	Uses of the Fund
0400-46-06-.06	Application Procedure
0400-46-06-.07	Conditions
0400-46-06-.08	Financing Methods

Chapter Number	Chapter Title
1200-22-01	Priority Ranking System
Rule Number	Rule Title
1200-22-01-.01	Priority Ranking System: General
1200-22-01-.02	Priority Ranking, Project Criteria Points, and Priority Point Value Formula
1200-22-01-.03	Program Management
1200-22-01-.04	Reserved

Chapter Number	Chapter Title
1200-22-02	State Grants
Rule Number	Rule Title
1200-22-02-.01	Purpose and Policy
1200-22-02-.02	Definitions
1200-22-02-.03	Basic State Grants
1200-22-02-.04	Supplemental State Grants
1200-22-02-.05	SRF Assistance Grant
1200-22-02-.06	Priority for the Obligation of Available Funds
1200-22-02-.07	Eligibility
1200-22-02-.08	Grant Application
1200-22-02-.09	Related Grant Application Requirements
1200-22-02-.10	Grant Agreement
1200-22-02-.11	Grant Administration and Grant Conditions

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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Repeals

Chapter 1200-22-01 Priority Ranking System is repealed.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

Chapter 1200-22-02 State Grants is repealed.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

Chapter 1200-22-03 Reserved is repealed.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

Chapter 1200-22-04 State Loans is repealed.

Authority: T.C.A. §§ 68-221-201 et seq. and 4-5-201 et seq.

Chapter 1200-22-06 State Revolving Fund is repealed.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

New Rules

Chapter 0400-46-01 Priority Ranking System

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~~1200-22-01-.01~~ 0400-46-01-.01 Priority Ranking System: General

(1) General

(a) Introduction and Purpose

This rule provides definitions of terms, general standards and procedures, and overview information applicable to these rules.

The purpose of these rules is to set forth criteria and procedures for developing and maintaining a Priority Ranking System and List for the financing of wastewater treatment works and wastewater facilities. The Priority Ranking System, as described in this rule, is the basis of eligibility determinations and potential allocations of financial assistance from the Department of Environment and Conservation. Pursuant to T.C.A. Title 68, Chapter 221, Parts 8 and 10, the State of Tennessee is authorized to provide financial assistance to local governments for the construction of wastewater treatment works and wastewater facilities identified on the Department's Project Priority List. Each project's Priority Rank is generated from the Project Criteria Points and the Priority Point Value (PPV) formula according to these rules. A potential applicant's project will be placed on the Project Priority List following its evaluation and the assignment of a Priority Rank. The process of being placed on the Project Priority List may be

initiated either by the Department or by written request from the potential applicant. The Department will maintain the Project Priority List.

(b) Use of Number and Gender

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular also include the plural; and
3. Words in the plural include the singular.

(c) Rule Structure

These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

I. subitem

A. section

(A) subsection

(2) Definitions and References

When used in ~~Rules 1200-22-01-.01 through .03~~ these rules, the following terms have the meanings given below unless otherwise specified:

(a) Collector Sewer. The common lateral sewers within a publicly owned treatment system that are primarily installed to receive wastewater directly from facilities that convey wastewater from individual systems or from private property. This term also includes service connections for those facilities such as the following:

1. Crossover sewers that connect more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when they are more cost effective than parallel sewers; and
2. Pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the municipality or utility district.

This definition excludes all facilities that convey wastewater from individual structures or from private property to the public lateral sewer.

(b) Combined Sewer Overflow (CSO). The overflow discharge from a sewer line that is designed as a sanitary sewer and a storm sewer.

(c) Conventional Pollutants. The conventional pollutants in wastewater effluent are 5-day biochemical oxygen demand (BOD₅) and/or 5-day carbonaceous biochemical oxygen demand (CBOD₅), ammonia nitrogen (NH₃-N) and/or total nitrogen (N-Total), phosphorus (P), dissolved

oxygen (DO), fecal coliform and/or E. coli, total suspended solids (TSS), settleable solids (SS), and pH.

- (d) Effluent Trading Projects. Effluent or water quality trading is an innovative approach to achieve water quality goals more efficiently. Trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent or superior pollution reductions from another source at lower cost, thus achieving the same water quality improvement at lower overall cost.
- (e) Infiltration/Inflow (I/I) Correction. Procedures to reduce or eliminate infiltration/inflows that do not involve extensive excavation and/or replacement, including, but not limited to, the following:
 - 1. Pressure testing and sealing procedures;
 - 2. Limited excavation and replacement where severe infiltration/inflow problems have been documented and can be corrected. Examples of limited excavation and replacement are the replacement or repair of manhole covers, the repair of crushed pipe within an area of temporary or permanent groundwater, or the replacement or repair of a sewer segment beneath a waterway; and
 - 3. Trenchless technologies such as sliplining, pipe bursting, cured-in-place pipe, etc.
- (f) Interceptor Sewer (Interceptors). A sewer that is designed for one or more of the following purposes:
 - 1. To intercept wastewater from a final point in a collector sewer and convey the wastewater directly to a treatment facility or another interceptor;
 - 2. To replace an existing wastewater treatment facility and transport the wastewater to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - 3. To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
 - 4. To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or a treatment plant.
- (g) Local Government. A county, incorporated town or city, metropolitan government, water and/or wastewater authority, or state agency that has authority to administer a wastewater facility, or any combination of two or more of the foregoing acting jointly to construct a wastewater facility. "Local government" shall also mean any publicly-owned utility district existing on July 1, 1984, or if created after that date, any publicly-owned utility district operating a wastewater facility with at least 500 customer connections.
- (h) Major Sewer Rehabilitation. Construction that involves the removal and replacement of the existing pipes or manholes. This definition is considered applicable for this Chapter under one or more of the following conditions:
 - 1. In locations where pipes or manholes have lost their structural integrity, e.g., pipes or manholes are collapsed, broken, or badly deteriorated and cracked;
 - 2. In cases where pipe size enlargement, change in grade, and/or line realignment are needed in addition to pipe deficiency corrections; or
 - 3. In cases where damages to the existing pipes or manholes have been attributed to corrosion, soil movement, an increasing traffic load, or other similar factors, and it is desirable to prevent the recurrence of these damages by replacing the existing structures with structures of better quality and greater strength.

- (i) National Pollutant Discharge Elimination System (NPDES) Permit. A permit issued by the Tennessee Department of Environment and Conservation, Division of Water ~~Pollution Control Resources~~, to discharge treated wastewater into a body of water.
- (j) Nonpoint Source (NPS) Pollution. Pollution occurring when precipitation moves over and through the ground, picking up and carrying away pollutants, and depositing them into waters of the state.
- (k) Permit Limits. Limitations for pollutants discharged from WWTPs that are identified in an authorization, license, or equivalent control document issued by the Division of Water ~~Pollution Control Resources~~ that implements the requirements of the Tennessee Water Quality Control Act.
- (l) Planning/Design. Facilities planning consists of those necessary plans and studies directly relating to existing and future conditions and effects of wastewater facilities or treatment works as outlined in the application requirements of the ~~Departmental Rule 1200-22-06-.06 0400-46-06-.06~~. Design consists of creating those necessary bid/contract documents, plans, and specifications for the construction of wastewater facilities or treatment works consistent with the approved facilities plan and necessary to construct the proposed wastewater facilities.
- (m) Pump Station/Force Main. A pump station is a mechanical device that raises and transfers wastewater. A force main is a pipe conveyance system for wastewater that is under hydraulic pressure due to energy imparted by a pump.
- (n) Refinancing. A project previously constructed for which State Revolving Fund Loan Program funds may buy or refinance local debt obligations where the initial debt was incurred after March 7, 1985. Projects that have incurred debt using their own means of financing must have met the requirements of Chapter ~~1200-22-06 0400-46-06~~ in order to be eligible for refinancing.
- (o) Stormwater Projects. Projects that will convey, store, and/or treat accumulated surface flow water from precipitation.
- (p) Wastewater Treatment Plant (WWTP). Any facility whose purpose is to store, treat, neutralize, stabilize, recycle, reclaim, or dispose of municipal sewage or wastewater.
- (q) Water-Quality Impaired Stream Segment. Any stream segment that has been determined by the Division of Water ~~Pollution Control Resources~~ not to meet its classified uses.

All other terms used in this ~~C~~chapter are as defined in Chapter ~~1200-46-06 0400-46-06~~ unless the context requires otherwise.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~1200-22-01-.02 0400-46-01-.02~~ Priority Ranking, Project Criteria Points, and Priority Point Value (PPV) Formula.

- (1) General Provisions for Priority Ranking, Project Criteria Points, and Priority Point Value (PPV) Formula.
 - (a) Purpose. The Priority Ranking System ~~defined in Rule 1200-22-01-.03(2) detailed in these rules~~ has been developed to achieve optimum water quality management consistent with the goals and requirements of the Clean Water Act and the Tennessee Water Quality Control Act. Municipal wastewater treatment projects and terms, as defined in Section 212 of the Clean Water Act, such as WWTP upgrades, collection system rehabilitation, infiltration and inflow correction projects, new collector sewers, and combined sewer overflow elimination projects and nonpoint source projects, as defined in Section 319 of the Clean Water Act, may be eligible for funding in accordance with these rules.
 - (b) Priority Ranking. All proposed projects for which the potential loan recipient has requested financial assistance will be assigned Project Criteria Points based on the project criteria defined in ~~Rule 1200-22-01-.02(2) paragraph (2) of this rule~~. WWTP projects may be assigned additional points based on the Priority Point Value (PPV) formula delineated in ~~Rule 1200-22-01-.02(3) paragraph (3) of this rule~~.

- (c) Combined Project Priority Ranking.
 - 1. When a potential loan recipient operates or proposes to operate more than one WWTP, the PPV will be independently calculated for each WWTP discharge point on the basis of data specific to each WWTP's discharge point.
 - 2. When more than one project appears on the Priority List and those projects are an integral part of the cost-effective solution for one ~~facilities~~ facility's planning area, each of the projects may be assigned the same Priority Point Value as the WWTP that will receive and treat the combined wastewater flow.

- (2) Project Criteria Points. Project Criteria Points will be assigned to individual wastewater facilities projects based on the following:
 - (a) WWTP discharges to a water-quality impaired stream segment will receive 100 Project Criteria Points in addition to any other applicable Project Criteria Points. WWTP projects with a compliance schedule in the NPDES permit requiring construction will receive 50 Project Criteria Points in addition to any other applicable Project Criteria Points.
 - (b) Wastewater collection system projects with a compliance schedule in the NPDES permit requiring construction will receive 50 Project Criteria Points in addition to any other applicable Project Criteria Points.
 - (c) Nonpoint Source (NPS) pollution projects affecting a water-quality impaired stream segment will receive 100 Project Criteria Points. Other NPS pollution projects will receive 25 Project Criteria Points. NPS pollution projects may be directed toward protection or improvement of the quality of ground water, surface water, or wetlands. NPS pollution projects must be consistent with Tennessee's approved Nonpoint Source Management Program requirements and be included in the State's current EPA-approved Nonpoint Source Management Plan.
 - (d) Effluent-trading projects will receive 50 Project Criteria Points in addition to any other applicable Project Criteria Points.
 - (e) Combined Sewer Overflow (CSO) projects will receive 25 Project Criteria Points.
 - (f) Infiltration/Inflow (I/I) correction projects and major sewer rehabilitation projects will receive 25 Project Criteria Points. Construction of projects that will transport and treat I/I at the WWTP will receive 10 Project Criteria Points.
 - (g) Storm water management projects affecting a water-quality impaired stream segment will receive 100 Project Criteria Points. Storm water management projects with a compliance schedule in the NPDES permit requiring construction will receive 50 Project Criteria Points. All other storm water management projects will receive 25 Project Criteria Points.
 - (h) Collection lines to be constructed to address an existing public health problem caused by failed septic systems will receive a minimum of 40 Project Criteria Points up to a maximum of 100 Project Criteria Points. If a Department-certified septic system failure survey utilizing either color infrared aerial photography or ground inspections has been conducted in the project area, Project Criteria Points may be obtained by multiplying the percentage of failing systems by the 100-point maximum Project Criteria Points as follows:
 - 1. $\text{Project Criteria Points} = 100 \times \text{Department-certified percent of septic systems failing}$
 - 2. Proposed projects will receive a minimum of 40 Project Criteria Points if they are in an area where a Department-certified septic system failure survey was not conducted or where the percentage of failing septic systems was less than 40 percent.
 - (i) Any wastewater project proposed for development and/or growth potential, i.e., projects that were not planned to address a water quality problem or a public health problem, will receive 5 Project

Criteria Points. WWTPs that are required to serve new collectors as part of the approved facilities plan will receive the same Project Criteria Points as the collectors.

- (j) Interceptors and pump stations will receive varying Project Criteria Points. Interceptors and/or pump stations that eliminate a WWTP discharge point that was included in an approved facilities plan will receive the same Project Criteria Points as the WWTP. Interceptors and/or pump stations proposed as part of an I/I elimination project will receive the same Project Criteria Points as the I/I elimination project. Interceptors and/or pump stations proposed as part of a collection system project will receive the same Project Criteria Points as the collection system project.
 - (k) Planning/Design projects will receive Project Criteria Points based upon the proposed project type.
 - (l) Section 212 projects that are also associated with the construction of nonpoint source projects shall have an additional 20 Project Criteria Points.
 - (m) Section 212 projects with zoning that demonstrates preservation of greenspace shall have an additional 15 Project Criteria Points.
 - (n) Section 212 projects with zoning that demonstrates riparian buffer zones of at least 150 feet shall have an additional 10 Project Criteria Points.
 - (o) Section 212 projects demonstrating an enforced buffer zone ordinance shall have an additional 5 Project Criteria Points.
 - (p) Refinancing projects will receive 1 Project Criteria Point.
 - (q) In accordance with T.C.A. § 6-58-109(b), all State Revolving Fund projects within Counties that have an approved growth plan will receive 5 Project Criteria Points in addition to any other applicable Project Criteria Points.
- (3) Priority Point Value (PPV) Formula.

The PPV formula assigns numerical points to a specific WWTP project based on the product of the Receiving Stream Hydraulic Factor (RSHF), Severity of Pollution Factor (SPF), and Water Quality Improvement Factor (WQIF), as follows:

$$PPV = (RSHF) \times (SPF) \times (WQIF)$$

- (a) The RSHF will be determined based on the ratio of plant discharge to stream flow using the following equation:

$$RSHF = 1.0 + \frac{\text{Plant Flow}}{\text{Stream Flow} + \text{Plant Flow}}, \text{ where}$$

- 1. Stream flow is the lowest stream flow measured upstream of the WWTP discharge for any 7 consecutive days in a 10-year period. The Department may allow the use of the dilution flow for impoundments.
 - 2. Plant flow is the average daily flow reported on Monthly Operating Reports or Discharge Monitoring Reports submitted to and certified by the Department.
- (b) The SPF will be determined based upon whether violations of the WWTP's permit limits have occurred. The SPF will be determined using the following equation:

SPF = 1.0 + the sum of point values from the following effluent parameters:

- 1. Biochemical Oxygen Demand, 5-Day (BOD₅) and/or Carbonaceous Biochemical Oxygen Demand (CBOD₅) Violation

If the actual BOD₅ and/or CBOD₅ concentration in the WWTP effluent has exceeded the permit limit for BOD₅ and/or CBOD₅ for two consecutive months or three or more times during the last year, the project receives..... 1 point

2. Total Nitrogen (N-Total) and/or Ammonia Nitrogen (NH₃-N) Violation

If the actual N-Total and/or NH₃-N concentration in the WWTP effluent has exceeded the permit limit for N-Total and/or NH₃-N for two consecutive months or three or more times during the last year, the project receives..... 1 point

3. Phosphorous (P) Violation

If the actual P concentration in the WWTP effluent has exceeded the permit limit for P for two consecutive months or three or more times during the last year, the project receives..... 1 point

4. Dissolved Oxygen (DO) Violation

If the actual DO concentration in the WWTP effluent has been less than the minimum permit limit for DO for two consecutive months or three or more times during the last year, the project receives..... 0.5 points

5. Fecal Coliform and/or E. coli Violation

If the actual fecal coliform and/or E. coli concentration has exceeded the permit limit for fecal coliform and/or E. coli for two consecutive months or three or more times during the last year, the project receives..... 1 point

(c) The WQIF applies only to a receiving stream that is a water-quality impaired stream segment. The WQIF will be determined based on the receiving stream's designated stream-use classification(s) for recreation, fish and aquatic life, and/or domestic water supply.

The WQIF is the number obtained from the equation:

$$WQIF = 1.0 + F + G + H, \text{ where}$$

1. Recreation, denoted as F, is assigned a numerical value based upon the following:

(i) If the existing effluent violates recreational bacterial standards (Chapter ~~1200-04-03~~ 0400-40-03) and causes a significant adverse impact on the receiving waters beyond the mixing zone or precludes the actual use of the receiving waters for body contact recreation beyond the mixing zone, the recreation factor F will be assigned2 points

(ii) If there is no significant impact on recreation, F will be assigned..... 0 points

2. Fish and Aquatic Life, denoted as G, is assigned a numerical value based upon the following:

(i) If the existing effluent contains one or more conventional pollutants in excess of the permit limits established by the Department or contained in the WWTP's NPDES Permit or results in violations of the dissolved oxygen standard for fish and aquatic life (Chapter ~~1200-04-03~~ 0400-40-03) in the receiving waters beyond the mixing zone, G will be assigned..... 3 points

(ii) If there is no significant impact on fish and aquatic life, G will be assigned.....0 points

3. Domestic Water Supply, denoted as H, is assigned a numerical value based upon the following:

- (i) If the existing effluent contains one or more conventional pollutants in concentrations exceeding the domestic water supply standard (Chapter ~~1200-04-03~~ 0400-40-03) in waters affecting an existing community water treatment plant, H will be assigned..... 4 points
 - (ii) If there is no significant adverse impact on domestic water supply, H will be assigned..... 0 points
4. No WQIF points will be awarded for F, G, and H if the existing treatment facility is not operated and maintained properly, as determined by the Department's evaluation of the facility's operation and maintenance.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~1200-22-01-03~~ 0400-46-01-03 Program Management.

- (1) The assigned Project Criteria Points and the calculated Priority Point Value are applicable only to WWTP projects and will be summed to establish a proposed project's Priority Rank. Projects will be placed on the Priority Ranking List in ascending order by Priority Rank, i.e., in descending order by total project priority points.
- (2) When the project is placed on the Priority Ranking List, the potential loan recipient is responsible for providing a written detailed project description, a schedule of events, and an up-to-date project cost estimate to the Department. The Department may request adjustments to the cost estimate at its discretion.
- (3) The Department will use the project cost estimates on the Priority Ranking List to allocate available funds to as many potential loan recipients as possible in order to protect public health and the environment. The Department may limit the award amount per loan in order to provide funds to more potential loan recipients.
- (4) The priority of available funds will be assigned to those projects with the highest Priority Rank on the Priority Ranking List with preference given to those projects that are ready to proceed.
- (5) The Department may bypass projects on the Priority Ranking List that are not ready to proceed. The Department may also bypass projects if a completed loan application has not been received within 90 days after notification from the Department to the potential loan recipient that failure to submit the completed application will result in a bypass.
- (6) Proposed projects with a lower Priority Rank may be fundable by virtue of bypass. Preference will be given to those lower-ranked projects that are ready to proceed and that will make progress towards compliance with the enforceable requirements of the Clean Water Act and the Tennessee Water Quality Control Act.
- (7) Projects may be purged from the Priority Ranking List annually, on April 15. Projects may be reinstated to the Priority Ranking List upon the Department's receipt of a letter requesting the reinstatement. The letter must also include a written, detailed project description and an up-to-date project schedule and cost estimate.
- (8) The Department will remove a project from the Priority Ranking List prior to April 15 annually when financial assistance has been awarded or upon receipt of a written request from the potential loan recipient that they no longer want to include their project on the Priority Ranking List.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-46-02
State Grants

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~~1200-22-02-.01~~ 0400-46-02-.01 Purpose and Policy. The primary purpose of these rules is to provide financial assistance to municipalities to plan, design and construct wastewater treatment works. Such assistance shall be provided in order to meet the requirements of state laws to protect public health and water quality throughout the State of Tennessee. It is further intended that such assistance be coordinated with other state and federal programs of loans or grants for the construction of wastewater treatment works.

Authority: T.C.A. §§68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~1200-22-02-.02~~ 0400-46-02-.02 Definitions. Unless the context requires otherwise as used in this chapter the following words and terms mean:

- (1) ~~Act. The Clean Water Act, 33 U.S.C. 1251 et seq., as amended. The Wastewater Treatment Works Construction Grant Act of 1984, (as amended) T.C.A. §§ 68-221-801 et seq.~~
- (2) Ad valorem tax. A tax based upon the value of real property.
- (3) Ability to Pay Index (ATPI). An economic index developed by the Center for Business and Economic Research, the University of Tennessee, as certified by the Department.
- (4) Allowable costs. Fair and reasonable amount paid for eligible treatment works planning, design and construction.
- (5) Allowance. The portion of a grant for preliminary engineering or construction engineering.
- (6) Alternative technology. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants, or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed lands; containment ponds; sludge composting and drying prior to land application; self sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and onsite systems. Alternative technology also includes a wastewater collection system other than conventional system for a community with population of less than 3,500 persons, according to the 1980 federal census, or any subsequent decennial federal census. This includes, but is not limited to, small diameter pressure, gravity and vacuum sewers carrying partially or fully treated wastewater and which demonstrate a significant savings in the life cycle cost of the project when compared to an appropriate conventional technology.
- (7) Architectural or ~~E~~ngineering (A/E). Consultation, investigations, reports, or services for projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State of Tennessee. This includes, but is not limited to, preliminary engineering and construction engineering.
- (8) Basic State ~~G~~rant. Award of funds under the ~~State~~ Act calculated at 55 percent (plus any additional Innovative and/or Alternative determination), but not to exceed 75 percent of the sum of the total Step 3 allowable costs and the allowance.

- (9) Building. The erection, acquisition, alteration, remodeling, improvement or extension of treatment works.
- (10) Building completion. The date when all but minor components of a project have been built, all equipment is operational and the project is capable of functioning as designed.
- (11) Clean Water Act. The Clean Water Act, 33 U.S.C. 1251 et seq., as amended.
- ~~(11)~~(12) Collector sewer. The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service connections designed for connection with those facilities including:
- (a) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers, and;
 - (b) Except as provided in ~~(11)(c) of this section~~ subparagraph (c) of this paragraph, pumping units and pressurized lines serving individual structures or groups of structures when such units are cost effective and are owned and maintained by the recipient; and
 - (c) This definition excludes other facilities which convey wastewater from individual structures, from private property to the public lateral sewer, or its equivalent and also excludes facilities associated with SAWS.
- ~~(12)~~(13) Combined sewer. A sewer that is designed as a sanitary sewer and a storm sewer.
- ~~(13)~~(14) Commissioner. The Commissioner of the Tennessee Department of ~~Health and~~ Environment and Conservation or his duly authorized representatives.
- ~~(14)~~(15) Construction. The erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater treatment works, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures and other similar action necessary in the building of wastewater treatment works, and the inspection supervision of the construction of wastewater treatment works.
- ~~(15)~~(16) Construction ~~E~~ngineering. The services provided by A/E during the building of a project, and start-up services.
- ~~(16)~~(17) Department. The Tennessee Department of ~~Health and~~ Environment and Conservation.
- ~~(17)~~(18) Design Allowance. The portion of a grant for the design, based on construction costs of a project which are allowable preliminary engineering costs.
- ~~(18)~~(19) Easement. The right which one person has to use the land of another for a specific purpose.
- ~~(19)~~(20) Eligible. Qualified to receive a basic State grant or EPA grant.
- ~~(20)~~(21) E.P.A. The United States Environmental Protection Agency.
- ~~(21)~~(22) E.P.A. Grant. The award of funds under the provisions of Title II of the ~~Act~~ Clean Water Act.
- ~~(22)~~(23) Excessive infiltration/inflow. The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.
- ~~(23)~~(24) Flow. Wastewater, as a volume or a rate, ~~that~~ which is processed by a wastewater treatment works. The following apply:
- (a) 24-hour flow: The total amount of wastewater that is processed by a wastewater treatment works in a 24-hour period.

- (b) Design flow: The wastewater flow that is used in the design of individual components of wastewater treatment works and to which suitable peaking factors have been applied.
- (c) Peak flow: The largest amount of wastewater that is processed by the wastewater treatment works in 24-hour period.
- (d) Domestic flow: The portion of the 24-hour flow that consists primarily of sanitary wastes and that originates from residential-type sources.
- (e) Commercial flow: That part of the 24-hour flow, sanitary as well as process, that originates from commercial sources as restaurants, motels, institutions, offices, airports, laundries, etc.
- (f) Industrial flow: That part of the 24-hour flow, sanitary as well as process, ~~that~~ which originates from an industry.
- (g) Infiltration: Water other than wastewater that enters a sewer system, including sewer service connections and foundations drains, from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
- (h) Inflow: Water other than wastewater that enters a sewer system, including sewer service connections, from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

~~(24)~~(25) Individual systems. Privately owned alternative wastewater treatment works, including but not limited to dual waterless/gray water systems, serving one or more principal residences, or small commercial establishments. Normally, these are onsite systems with localized treatment and disposal of wastewater, but may be systems utilizing small diameter gravity, pressure or vacuum sewers conveying treated or partially treated wastewater. The systems can also include small diameter gravity sewers carrying raw wastewater to cluster systems.

~~(25)~~(26) Industrial user. Any non-governmental, non-residential user of a publicly owned treatment works which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under one of the following divisions:

- Division A. Agriculture, Forestry, and Fishing
- Division B. Mining
- Division D. Manufacturing
- Division E. Transportation, Communications, Electric, Gas and Sanitary Services
- Division I. Services

~~(26)~~(27) Infiltration/Inflow ~~C~~orrrection. Techniques which eliminate excessive infiltration/inflow. This definition refers to excessive infiltration/inflow reduction techniques that do not involve extensive excavation and/or replacement. Techniques considered to be infiltration/inflow correction include but are not limited to the following:

- (a) Pressure testing and sealing procedures;
- (b) Excavation and replacement where documented and severe infiltration/inflow problems can be corrected. Specific examples are replacing or repairing manhole covers, repairing crushed pipe within an area of temporary or permanent ground water and replacement or repair of a sewer segment beneath a waterway.
- (c) Sliplining.

~~(27)~~(28) Innovative technology. Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant

advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.

~~(28)~~(29) Interceptor sewer. A sewer which is designed for one or more of the following purposes:

- (a) to intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
- (b) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
- (c) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
- (d) To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

~~(29)~~(30) Major rehabilitation. Techniques which involve the removal of the existing pipes or manholes from the ground and replacing them with new ones. This definition is considered applicable for this Chapter under one or more of the following conditions:

- (a) In locations where pipes or manholes have lost their structural integrity, such as pipes or manholes which are collapsed, crushed, broken or badly deteriorated and cracked;
- (b) In cases where pipe size enlargement, change in grade and/or line realignment are needed in addition to pipe deficiency corrections; or
- (c) In cases where the causes of damages to the existing pipes or manholes, including but not limited to corrosion, soil movement, and increasing traffic load, have been identified and it is desirable to prevent the recurrence of these damages by replacing the existing structures with new ones having better quality and greater strength.

~~(30)~~(31) Municipality. Any utility district existing on July 1, 1984, county, incorporated town or city, or metropolitan government which has authority to administer a wastewater treatment works, or any combination of two (2) or more of the foregoing, acting jointly to construct a wastewater treatment works.

~~(31)~~(32) Non-excessive infiltration. The quantity of flow which is less than 120 gallons per capita capita per day, domestic base flow plus infiltration, or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effective analysis.

~~(32)~~(33) Non-excessive inflow. The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include but are not limited to surcharging, backups, bypasses, and overflows.

~~(33)~~(34) Operation and Maintenance. Activities required to assure the dependable and economical function of treatment works.

- (a) Operation is the control of the unit processes and equipment which make up the treatment works. This include financial and personnel management records, laboratory control, process control, safety and emergency operation planning.
- (b) Maintenance is the preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

~~(34)~~(35) Planning/Design. Facilities planning consists of those necessary plans and studies which directly relate to wastewater facilities or treatment works needed to comply with the requirements of the departmental rules, sections ~~1200-22-02-.08 and 1200-22-06-.06~~ Rules 0400-46-02-.08 and 0400-46-06-.06. Design consists of those necessary drawings, plans and specifications which directly relate to wastewater facilities or treatment works needed to comply with the approved facilities plan.

- ~~(35)~~(36) Preliminary engineering. The preparation of ~~F~~facilities ~~P~~plans, preparation of engineering plans, writing specifications, value engineering, and related similar activities.
- ~~(36)~~(37) Principal residence. The habitation of a family or household for at least 51 percent of the year. Second homes, vacation or recreation residences are not included in this definition.
- ~~(37)~~(38) Priority ranking list. A list generated through the State Priority Ranking System rules pursuant to T.C.A. ~~§68-13-803~~ § 68-221-804 by which the Department ranks in descending order of priority all applicants for state and federal ~~monies~~ grants for construction of wastewater treatment works.
- ~~(38)~~(39) Project. The activities or tasks the Commissioner identifies in the contract agreement for which the recipient may expend, obligate or commit funds.
- ~~(39)~~(40) Project schedule. A timetable specifying the dates of key project events including but not limited to, the following: submittal of plans and specifications, advertising for bidding, notice to proceed, and building completion.
- ~~(40)~~(41) Replacement. Obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.
- ~~(41)~~(42) Reserve capacity. Capacity to treat, store, transport or dispose of more wastewater than the demand on the system at the time of construction.
- ~~(42)~~(43) Sanitary sewer. A conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.
- ~~(43)~~(44) Small ~~A~~alternative ~~W~~wastewater ~~S~~system (SAWS). Projects using the following types of alternative technology in small communities: on-site treatment systems, non-conventional collection systems, and any one of the twenty-one systems described in the EPA Publication FRD-10 (1980).
- ~~(44)~~(45) Small community. Any municipality with a population of 3,500 persons or less, in accordance with 1980 federal census or any subsequent federal decennial census.
- ~~(45)~~(46) State. State of Tennessee.
- ~~(46)~~ State Act. ~~The Wastewater Treatment Works Construction Grant Act of 1984, (as amended) T.C.A. §§68-13-801 et seq.~~
- (47) State ~~R~~revolving ~~F~~fund (SRF) ~~A~~assistance ~~G~~grant. A grant made to a municipality in addition to an SRF loan for the financing of the building of wastewater treatment works.
- (48) State ~~R~~revolving ~~F~~fund (SRF) ~~L~~loan. Loan program as established in the Wastewater Facilities Act of 1987.
- (49) Step 1. Planning phase of a treatment works including related services and supplies which result in a 201 Facilities Plan.
- (50) Step 2. Design phase of a treatment works including related services and supplies.
- (51) Step 3. Building phase of a treatment works including related services and supplies.
- (52) Storm sewer. A sewer designed to carry only storm waters, surface runoff, street wash wasters and drainage.
- (53) Supplemental State ~~G~~grant. A grant made to a municipality in addition to the basic State grant under the provisions of this ~~C~~hapter or in addition to an EPA grant both made to municipalities for the financing of the construction of wastewater treatment works.

- (54) Useful ~~l~~ife. The period during which a wastewater treatment works operates. This is not design life which is the period during which a wastewater treatment works is planned and designed to operate.
- (a) For purposes of analyzing cost-effectiveness, the components of a wastewater treatment works shall have a useful life as follows:
1. Land-permanent;
 2. Wastewater conveyance structures including but not limited to collection systems, outfall pipes, interceptors, force mains, and tunnels - 50 years;
 3. Other structures, including but not limited to plant building, concrete process tankage, basins, and lift station structures - 50 years;
 4. Process equipment - 20 years; and
 5. Auxiliary equipment - 15 years.
- (b) Other useful life periods will be acceptable when sufficient justification can be provided to the Commissioner. Where a system or a component is for interim service, the anticipated useful life shall be reduced to the period of interim service.
- (55) User. A single municipal, domestic, commercial or industrial connection to a wastewater treatment works.
- (56) User charge. A charge levied on users of a treatment works, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt retirement, operation and maintenance, and replacement of such works.
- (57) Utility district. A publicly owned utility district existing on July 1, 1984, or if created after that date, comprising at least five hundred (500) customer connections.
- (58) Value engineering. A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high costs in a project in order to arrive at a cost savings without sacrificing the reliability or efficiency of the project.
- (59) Wastewater treatment works. Any facility whose purpose is to store, treat, neutralize, stabilize, recycle, reclaim or dispose of municipal wastewater, including treatment or disposal plant, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof and their appurtenances which are necessary to accomplish the foregoing purposes; also included in this definition are collection systems which are to be built, repaired or extended for the purpose of ameliorating or correcting a pollution problem existing at the time of the application for the grant; providing, that collection systems, or parts thereof, otherwise are excluded from this definition and are not eligible for grants under the ~~State~~ Act and this chapter.

Authority: T.C.A. §§68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~4200-22-02-.03~~ 0400-46-02-.03 Basic State Grants

- (1) General Provisions.
- (a) The basic State grant share for each project shall be based on the sum of the total Step 3 allowable costs and the allowance established in the grant agreement. Except as provided elsewhere in this rule, the basic State grant share shall be 55 percent of allowable costs for grant assistance awarded after July 1, 1984.
- (b) The basic State grant share for eligible treatment or unit processes and techniques that the Commissioner determines meet the definition of innovative or alternative technology shall be 20 percent greater than the basic State grant share under subparagraph (a) of this Rule paragraph, but in no event shall the total basic State grant be greater than 75 percent. This increased basic

State grant share depends on the availability of funds from the reserve except where the municipality is eligible for a supplemental State grant.

- (c) Municipalities receiving an EPA grant shall not be eligible for a basic State grant but may be eligible for a supplemental State grant.
- (d) The municipality is responsible for using competitive bidding for all construction contracts where practicable. This is accomplished by placing an advertisement for bids in a regional newspaper. The advertisement should run at least four (4) weeks prior to the bid date. The advertisement should be placed in the "Legal" classification of the newspaper and run for three (3) consecutive days, excluding holidays and weekends.
- (e) State Basic and Supplemental State grants shall be increased or decreased immediately after the building contract has been executed by the municipality where the initial contract cost is more or less than the amount of the original grant. State grant increases shall depend upon the availability of funds for the purpose and shall not be made prior to the execution of the building contract by the municipality and the contractor.

(2) Preliminary Engineering (PE) Grant.

- (a) Where a municipality builds a wastewater treatment works using its own finances, the Commissioner may award a grant for preliminary engineering. Such grants shall be at the rate of 80% of the calculated design allowance based on construction costs of the project and shall be paid at the time of initiation of building of the project and such time shall be on or after July 1, 1984.
- (b) Any municipality receiving a grant under the provisions of this rule and subsequently receiving funds for preliminary engineering from other state or federal sources shall refund such grant to the State. Municipalities previously receiving such grants shall not be eligible for preliminary engineering grant allowances. If the municipality has received an advance of allowance from the EPA, the PE grant award will be reduced by the amount of that advance.
- (c) Allowances for a PE grant will be calculated as follows:
 1. The design allowance will be determined in accordance with Tables 1 and 2 of this rule;
 2. Table 2 is to be used only in the event that the recipient received a Step 1 grant from the federal government;
 3. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building costs per bid documents;
 4. The amount of the allowance will be computed only once for each project, and will not be adjusted for subsequent construction cost increases or decreases; and
 5. The recipient shall be reimbursed for preliminary engineering upon receipt of signed pay requests.

TABLE I
Allowance for Facilities
Planning and Design

Building Cost	Allowance as a percentage of building cost*
\$100,000 or less	14.4945
120,000	14.1146
150,000	13.6631
175,000	13.3537
200,000	13.1023
250,000	12.6832

300,000.....	12.3507
350,000.....	12.0764
400,000.....	11.8438
500,000.....	11.4649
600,000.....	11.1644
700,000.....	10.9165
800,000.....	10.7062
900,000.....	10.5240
1,000,000.....	10.3637
1,200,000.....	10.0920
1,500,000.....	9.7692
1,750,000.....	9.5523
2,000,000.....	9.3682
2,500,000.....	9.0686
3,000,000.....	8.8309
3,500,000.....	8.6348
4,000,000.....	8.4684
5,000,000.....	8.1975
6,000,000.....	7.9827
7,000,000.....	7.8054
8,000,000.....	7.6550
9,000,000.....	7.5248
10,000,000.....	7.4101
12,000,000.....	7.2159
15,000,000.....	6.9851
17,500,000.....	6.8300
20,000,000.....	6.6984
25,000,000.....	6.4841
30,000,000.....	6.3142
35,000,000.....	6.1739
40,000,000.....	6.0550
50,000,000.....	5.8613

*Use straight line interpolation between values.

TABLE 2
Allowance for Design only

Building cost	Allowance as a percentage of building cost*
\$100,000 or less.....	8.5683
120,000.....	8.3808
150,000.....	8.1570
175,000.....	8.0059
200,000.....	7.8772
250,000.....	7.7668
300,000.....	7.4991
350,000.....	7.3602
400,000.....	7.2419
500,000.....	7.0485
600,000.....	6.8943
700,000.....	6.7666
800,000.....	6.6578
900,000.....	6.5634
1,000,000.....	6.4300
1,200,000.....	6.3383
1,500,000.....	6.1690
1,750,000.....	6.0547
2,000,000.....	5.9574
2,500,000.....	5.7983

3,000,000.....	5.6714
3,500,000.....	5.5664
4,000,000.....	5.4769
5,000,000.....	5.3306
6,000,000.....	5.2140
7,000,000.....	5.1174
8,000,000.....	5.0352
9,000,000.....	4.9637
10,000,000.....	4.9007
12,000,000.....	4.7935
15,000,000.....	4.6655
17,500,000.....	4.5790
20,000,000.....	4.5054
25,000,000.....	4.3851
30,000,000.....	4.2892
35,000,000.....	4.2097
40,000,000.....	4.1421
50,000,000.....	4.0314

*Use Straight line interpolation between values

(3) Allowances.

(a) Allowances for Planning and Design will be provided under the following conditions:

1. Step 3 grant agreements will include an allowance for facilities planning and design of the project;
2. The estimated and final design allowance will be determined in accordance with Tables 1 and 2 of this rule;
3. Table 2 is to be used only in the event that the recipient received a Step 1 grant from the federal government;
4. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building cost multiplied by the appropriate eligible grant percentage. Specifically, the initial allowable building cost is the allowable cost of the following:
 - (i) The initial award amount of all prime subagreements for building the project;
 - (ii) The initial amounts approved for force account work performed in lieu of awarding a subagreement for building the project; and
 - (iii) The purchase price of eligible real property; and
 - (iv) The purchase price of eligible equipment.
5. The estimated allowance is to be based on the estimate of the initial allowable building cost;
6. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases;
7. For any Step 3 project, the recipient may request payment of 50 percent of the State grant share of the estimated allowance immediately after notification of grant award. Final payment of the state grant share of the allowance may be requested in the first payment after the recipient has awarded all prime subagreements for building the project, received the Commissioner's approval for force account work, and completed the acquisition of all eligible real property;

8. The allowance does not include architect or engineering services provided during the building of the project, e.g., reviewing bids, checking shop drawings, reviewing change orders, making periodic visits to job sites, etc. Architect or engineering services during the building of the project are allowable costs provided in subparagraph (3)(b) of this Rule paragraph; and
 9. If the municipality has received an advance of allowance from EPA, the design allowance will be reduced by the amount of that advance.
- (b) The allowance for Step 3 A/E services shall be calculated under the following conditions:
1. The estimated and final allowance for construction engineering will be determined in accordance with Table 3 of this rule.
 2. The amount of the allowance is computed by applying the resultant allowance percentage to the initial allowable building costs multiplied by the appropriate eligible grant percentage. The allowable building costs are defined in part (3)(a)4 of this paragraph.
 3. The estimated allowance is to be based on the estimate of the initial allowable building cost.
 4. The final allowance will be determined one time only for each project, based on the initial allowable building cost, and will not be adjusted for subsequent cost increases or decreases.
 5. The recipient shall be reimbursed for A/E Services by monthly invoice.

TABLE 3
Allowance for Construction Engineering

Building Cost	Allowance as a percentage of building cost*
\$100,000 <u>or less</u>	8.0500%
.....	\$8,050.00
200,000	7.5929%
.....	\$15,186.00
300,000	7.3488%
.....	\$22,046.00
400,000	7.1849%
.....	\$28,729.00
500,000	7.0627%
.....	\$35,313.00
1,000,000	6.7083%
.....	\$67,083.00
2,000,000	6.3878%
.....	\$127,757.00
2,500,000	6.2911%
.....	\$157,277.00
3,000,000	6.2142%
.....	\$186,425.00
3,500,000	6.1506%
.....	\$215,271.00
4,000,000	6.0966%
.....	\$243,863.00
4,500,000	6.0497%
.....	\$272,237.00
5,000,000	6.0084%

.....	\$300,419.00
10,000,000.....	5.7500%
.....	\$575,000.00
15,000,000.....	5.6089%
.....	\$841,335.00

*Use straight line interpolation between values.

(4) Innovative and Alternative (I/A) Technologies.

- (a) Projects or portions of projects using unit processes or techniques which the Commissioner determines to be innovative or alternative technology in accordance with this rule may receive an additional 20% grant on the eligible I/A portions as determined by the Commissioner.
- (b) A project will be determined to have an alternative technology if it is listed under the definition of alternative technology in Rule ~~1200-22-02-.02~~ 0400-46-02-.02.
- (c) A project will be determined to have an innovative technology if present worth cost of the eligible portions of the treatment works excluding conventional sewer lines is at least 15% less than that for the most cost effective alternative which does not incorporate innovative wastewater treatment processes and techniques; i.e., is no more than 85% of the present worth of the most cost-effective non-innovative alternative.
- (d) In the present worth cost comparisons in subparagraph ~~(4)(c)~~ above of this paragraph, the following apply:
 - 1. The non-innovative alternative must be clearly identified. Where an upgrading or expansion of an existing treatment works is encountered, only the portions associated with the increased capacity or level of treatment shall be considered in the cost analysis;
 - 2. The cost-effectiveness of the non-innovative alternative will be judged against the best available state-of-the-art cost information;
 - 3. The basis of the comparison is the present worth cost of the proposed innovative technology versus the lowest present worth cost of the non-innovative systems considered;
 - 4. The cost comparison between the proposed innovative and non-innovative alternatives must be made on a completed treatment works basis, grant eligible portions excluding conventional sewer lines, even though the proposed potentially innovative portion is a sub-system or component;
 - 5. In the comparative analysis, both systems must provide equivalent levels of pollutant control. Equivalency of the following factors shall be considered:
 - (i) Design minimum effluent quality standards;
 - (ii) System reliability with respect to effluent quality and residual disposal;
 - (iii) Residual treatment and disposal;
 - (iv) Level of toxic material control; and
 - (v) Environmental benefit
 - 6. For cases where innovative sub-system components are analyzed or aggregated in the total plant cost comparison, only the cost of the innovative components and the appurtenant non-innovative equipment uniquely necessary for the proper functioning of the candidate innovative technology shall be included as a part of the component cost; and

7. A component is uniquely necessary if it would have to be modified or replaced to correct a failure of the innovative system.
- (e) In the total system cost comparison, the present worth cost of the proposed design with innovative components must be a minimum of 15% less than that of the most cost effective non-innovative alternatives to qualify as innovative technology.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~4200-22-02-.04~~ 0400-46-02-.04 Supplemental State Grants.

(1) General Provisions.

- (a) Municipalities receiving basic State grants on or after July 1, 1984, may be eligible for supplemental State grants. Municipalities receiving EPA grants for projects on or after April 18, 1985, may be eligible for supplemental State grants.
- (b) The amount of the supplemental State grant shall be based on the same allowable costs as the basic State grant or EPA grant. In no case shall the basic State grant plus the supplemental State grant or the EPA grant plus the supplemental State grant exceed 90% of the allowable costs of the project. All supplemental state grant awards shall not exceed \$500,000.
- (c) Supplemental State grants shall be increased or decreased immediately after the building contract has been executed by the municipality where the initial contract cost is more or less than the amount of the original grant. Supplemental State grant increases shall depend upon the availability of funds for the purpose and shall not be made prior to the execution of the building contract by the municipality and the contractor.

(2) Supplemental State Grant Amount Determination.

The Ability to Pay Indices (ATPI) is to be used in determining the amount of the supplemental State grants along with the corresponding percentage as stated below. The ATPI, as certified by the Department, is listed both by counties and towns. To be eligible for a supplemental State grant a municipality must have an ATPI of 97.63 or less.

The ranges of ATPI's and their corresponding percentage are shown below:

ATPI Range	Supplemental Grant Percentage
97.63 to 95.00	5
94.99 to 93.00	10
92.99 to 90.00	15
89.99 to 85.00	20
84.99 to 82.00	25
81.99 to 77.00	30
Below 77.00	35

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~4200-22-02-.05~~ 0400-46-02-.05 State Revolving Fund (SRF) Assistance Grant.

(1) General Provisions.

- (a) Municipalities (except utility districts created after ~~7-1-84~~ July 1, 1984) receiving State Revolving Fund construction loans pursuant to ~~T.C.A. §68-43-1001~~ T.C.A. § 68-221-1001 et seq., on or after January 1, 1989, may be eligible for an SRF Assistance grant provided the municipality has not received any other form of state assistance pursuant to ~~T.C.A. §68-43-801~~ T.C.A. § 68-221-801 et seq.
- (b) The SRF Assistance grant may be awarded to those small communities which have a population of 3500 or less ~~than~~ and an ATPI of 110 or less.

- (c) Grants made under this ~~section rule~~ may only be awarded after a community has received an SRF construction loan. The grant recipient must adhere to all grant conditions and terms of the loan agreement. Additionally, failure to obtain Department approval for plans and specifications within six months or to initiate construction of the project within twelve months of grant award shall constitute ground for termination of the grant.
 - (d) The priority for obligating funds pursuant to this ~~part chapter~~ shall be based upon the date of loan approval for the project, provided the recipient has applied for such assistance.
 - (e) Grants to be awarded under this ~~section rule~~ are contingent upon the availability of funds for that purpose.
- (2) Grant Amount.
- (a) The amount of the SRF Assistance grant may be based on reasonable estimated building costs. The final amount of the grant will be determined once based on actual building costs and will not be adjusted for subsequent cost increases or decreases.
 - (b) The amount of an SRF Assistance grant shall be 20% of the eligible building cost funded by the SRF loan which is the sum of the initial award amounts for all building contracts less the Reserve Capacity Cost Ratio (RCCR) except as provided in ~~subparagraph (2)(c) of this paragraph.~~
 - (c) In no case shall the amount of the SRF Assistance grant exceed 20% of the eligible SRF loan building cost of \$500,000, whichever is less. Any municipality receiving a grant under the provisions of this rule and subsequently receiving other forms of federal assistance may have the grant reduced to an amount based on 20% of the eligible building cost funded by the SRF loan.
 - (d) The SRF Assistance ~~Grant~~ shall be based on building cost alone and will include provisions for reimbursement of other project uses.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~1200-22-02-.06~~ 0400-46-02-.06 Priority for the Obligation of Available Funds.

(1) General.

The ~~s~~State will award financial assistance to municipalities for the construction of wastewater treatment works under the provisions of T.C.A. §§ ~~68-13-804~~ 68-221-801 et seq., only for projects on the ~~State~~ ~~p~~Priority ~~r~~Ranking ~~l~~ist.

(2) Delayed Supplemental State Grants.

When State funds are insufficient to make supplemental State grants in any year, such supplemental State grants may be made from appropriations in later years with the oldest funded projects having first priority.

(3) Partial Grants Prohibited.

When there are insufficient funds to make a grant for a project on the priority list, a partial grant shall not be made and a project shall not be bypassed because of insufficient funds for the purpose of funding a project for which available funds would be adequate. The partial funding of a grant amendment is also prohibited.

(4) Priorities for the Obligation of State Funds.

The priority for the obligation of State funds appropriated for the purpose of implementing the provisions of T.C.A. § ~~68-13-804~~ 68-221-801, et seq. and T.C.A. § ~~68-13-1001~~ 68-221-1001, et seq., shall be in accordance with the following:

- (a) The first priority shall be to provide the required 20% match for the State Revolving Fund's capitalization grant received annually from the ~~Environmental Protection Agency (EPA)~~.
- (b) On any given date after obligations under the first priority have been met, the balance of available funds may be obligated under a second priority, which is to provide small low income communities with SRF Assistance grants.
- (c) When the second priority for funds ~~have~~ has been met, the balance of available funds may be obligated under a third priority which is to provide increases as necessary for existing state grants.
- (d) When the third priority for funds has been met, any balance of available funds will be provided to subsidize the low interest rates of approved SRF loan projects.
- (e) When the fourth priority for funds has been met, the balance of available funds may be obligated under a fifth priority which is for the purpose of making supplemental State grants to EPA grants as provided in Rule ~~4200-22-02-.04~~ 0400-46-02-.04. Obligations under the fourth priority shall have been met when supplemental State grants have been made for all EPA projects which will be funded in a given Federal fiscal year or the amount required for supplemental State grant has been determined by the preparation of EPA grant offers, but such grants have not been accepted by municipalities. Within this priority the funding shall be based on the priority ranking of the EPA grant projects which is determined by the priority ranking list.
- (f) When the ~~fifty~~ fifth priority for funds has been met, any balance of available funds may be used for basic State grants under the provisions of this ~~C~~hapter or basic State grants plus supplemental State grants may be used.

Authority: T.C.A. §§68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~4200-22-02-.07~~ 0400-46-02-.07 Eligibility

- (1) Municipalities may receive assistance under the ~~State~~ Act for the construction of wastewater treatment works.
- (2) Grants shall be made only for those wastewater treatment works projects that qualify for funding based on the Department's priority ranking list.
- (3) Basic ~~s~~State grants cannot be used to fund any project for which a federal EPA grant was awarded.
- (4) No portion of a grant may be used to acquire land or pay any costs associated with the acquisition of land; provided, however, that expenditures for land that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment may be eligible for grant participation.
- (5) No grant under the ~~State~~ Act shall be made to provide reserve capacity except in eligible interceptors and collection systems for communities with population less than 3,500 according to the 1980 Federal Census or any subsequent federal decennial census.
- (6) Treatment units and appurtenances that are necessary to meet the requirements of the Commissioner shall be eligible for grant participation.
- (7) Any work done prior to the date of basic State grant award shall be ineligible unless approved in writing by the Commissioner prior to initiation of such work.
- (8) Replacement costs requiring additional grant funds will not be made available for failed, inoperative or otherwise inadequate wastewater treatment works which were considered and funded as Innovative or Alternative technology.
- (9) Any contractor or A/E debarred by either the State or the Federal government cannot participate in a project which involves state funds governed by this rule.

- (10) Participation in the purchase of land shall be limited to the cost determined by a Certified Appraiser. Where the cost exceeds \$100,000 a second appraisal is required and final eligibility shall be determined by the Commissioner.
- (11) A municipality may use its own manpower and/or equipment to build all or part of the project. The method by which this is to be accomplished must be approved by the Commissioner. When the project costs exceed \$25,000, prior approval by the Commissioner shall be obtained.
- (12) Upon award of the building contract under a basic State grant and at the time of increasing or decreasing the grant amount as the result of such award, a contingency item may be included in the grant amount not to exceed 5% of the building cost.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~4200-22-02-.08~~ 0400-46-02-.08 Grant Applications

- (1) Applicants for all grant assistance must submit applications on forms provided by the Commissioner.
- (2) The Commissioner shall review grant applications to ensure that they are completed and shall inform the application in writing of the determination.
- (3) A complete ~~B~~basic State ~~G~~grant application for the building of the treatment works will consist of at least the following:
 - (a) An approved facilities plan;
 - (b) Certification of adequate public participation;
 - (c) Final construction drawings and specifications;
 - (d) Project schedule; and
 - (e) If Step 3 assistance includes acquisition of eligible real property, a plat which shows the legal description of the property to be acquired, a preliminary layout of the distribution and drainage system, and an explanation of the intended method of acquiring the real property.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~4200-22-02-.09~~ 0400-46-02-.09 Related Grant Application Requirements.

These requirements exclude SRF Assistance grants. The SRF Assistance grant application requirements shall be in accordance with the loan application procedures under Rule ~~4200-22-06-.06~~ 0400-46-06-.06.

- (1) Facilities Planning.
 - (a) General. Facilities planning consists of those necessary plans and studies which directly relate to treatment works needed to protect water quality and public health. Facilities planning will investigate the need for proposed facilities. Through a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic and institutional characteristics of the area, it will demonstrate that, except for innovative and alternative technology, the selected alternative is cost effective i.e., is the most economical means of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. For sewerred communities with a population of 10,000 or less, consideration must be given to appropriate low cost technologies such as facultative ponds, trickling filters, oxidation ditches, land disposal or overland-flow land treatment; and for the unsewerred portions of communities of 10,000 or less, consideration must be given to onsite systems. The facilities plan will also demonstrate that the selected alternative is implementable from legal, institutional, financial and management standpoints.

(b) Facilities Plan contents. A completed Facilities Plan must include:

1. A description of both the proposed treatment works, and the completed waste treatment system of which it is a part;
2. A cost-effective analysis of the feasible conventional, innovative and alternative wastewater treatment works, processes and techniques capable of meeting the applicable effluent, water quality and public health requirements over the design life of the facility while recognizing environmental and other non-monetary considerations. The planning period for the cost-effective analysis shall be 20 years. The monetary costs to be considered must include the present worth or equivalent annual value of all capital costs and operation and maintenance costs. The discount rate established by EPA for the construction grants program shall be used in the cost-effective analysis. A cost effective analysis must include:
 - (i) The description of the relationship between the capacity of alternatives and the needs to be served, including capacity for future growth expected after the treatment works become operational. This includes letters of intent from significant users and industries intending to increase their flows or relocated in the area, documenting capacity needs and characteristics for existing or projected flows;
 - (ii) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;
 - (iii) An evaluation of the alternative methods for the reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;
 - (iv) A consideration of systems with revenue generating applications;
 - (v) An evaluation of opportunity to reduce the use of energy or to recover energy; and
 - (iv) Cost information on total capital costs, and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential and industrial users.
3. Demonstration of the non-existence or possible existence of excessive infiltration/inflow in the sewer system;
4. An analysis of the potential open space and recreation opportunities associated with the project;
5. An evaluation of the environmental impacts of alternatives;
6. An evaluation of the water supply implications of the project;
7. A concise description of the selected alternative with an appropriate level of detail, and at least the following;
 - (i) Relevant design parameters;
 - (ii) Estimated capital building and operation and maintenance costs, and a description of the manner in which local costs will be financed;
 - (iii) Estimated cost of future expansion and long-term needs for reconstruction of facilities following their design life;

- (iv) Cost impacts on wastewater system users; and
- (v) Institutional and management arrangements necessary for successful implementation.

8. The facilities plan shall be submitted to the Commissioner for review. Potential grant applicants must confer with Department reviewers in the initial stages of the facilities planning process.

(2) Sewer Use Ordinance

- (a) The applicant's sewer use ordinance shall prohibit any new connections from inflow sources into the treatment works and shall require that new sewers and connections to the treatment works are properly designed and constructed. The ordinance shall also require that all wastewater introduced into the treatment works not contain ~~toxics~~ toxins or other pollutants in amounts of concentrations that endanger public safety and physical integrity of the treatment works or preclude the selection of the most cost-effective alternative for wastewater treatment sludge disposal.
- (b) After July 1, 1984, no Step 3 grant pursuant to the State Act shall be made unless the following pretreatment requirements have been satisfied:
 - 1. A sewer use ordinance in accordance with the format prescribed 40 CFR Part 403 must have been submitted and approved by the Commissioner and adopted by the recipient; and
 - 2. The applicant must document to the satisfaction of the Commissioner that pretreatment facilities have been constructed or that legally binding commitments exist between the applicant and any discharger(s) to the recipient's proposed wastewater treatment facilities which ~~insure~~ ensure that pretreatment will be provided on or before the date of completion of the proposed wastewater treatment facilities. For the purpose of this ~~section~~ paragraph pretreatment shall be defined as that level of treatment required by each discharger to the recipient's sewerage system which is necessary to meet the Publicly Owned Treatment Work (POTW) protection criteria for POTW unit operations including the collection system.

(3) User Charge System

- (a) General. Unless a grant is solely for the acquisition of eligible land, the applicant for a basic State grant or a supplemental State grant must obtain the Commissioner's approval for its user charge system. If the applicant has a user charge system in effect at the time of the application, the applicant shall demonstrate that it meets the provisions of this ~~section~~ paragraph or amend it as required by these provisions.
- (b) Scope of the user charge. The user charge system shall provide that each user which discharges pollutants that cause an increase in the cost of managing the effluent or sludge from the facility shall pay for such increased cost. The user charge system must be designed to produce adequate revenues to provide for the following expenditures:
 - 1. Operation and maintenance expenses;
 - 2. Debt retirement; and
 - 3. Depreciation of the wastewater treatment works over its useful life, unless the generally accepted accounting principles do not require such.
- (c) Actual use. A recipient's user charge system shall be based on actual use, or estimated use, of wastewater treatment services. Each user or user class must pay its proportionate share of the costs described in the ~~rule 1200-22-02-09(3)~~ subparagraph (b) of this paragraph incurred in the

recipient's service area, based on the user's proportionate contribution to the total wastewater loading from all users or user classes.

- (d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Commissioner, of the rate and that portion of the user charge that is attributable to wastewater treatment services.
- (e) Financial Management System. Each user charge system must include a financial management system that will accurately account for revenues generated by the system and expenditures for the items in ~~part subparagraph (b) above of this paragraph~~. This financial management system shall be based on an adequate budget identifying the basis for determining the annual operation and maintenance expenses, debt retirement, depreciation of the wastewater treatment works, and reserve account contributions.
- (f) Charges for operation and maintenance for infiltration/inflow. The user charge system shall provide that the costs of operation and maintenance for all flow not directly attributable to users, be distributed among all users based upon either of the following:
 - 1. In the same manner that it distributes the costs for their actual use; or
 - 2. Under a system which uses one of any combination of the following factors on a reasonable basis:
 - (i) Flow volume of users;
 - (ii) Land area of the user, and ad valorem; or
 - (iii) Number of hookups or discharges of the users.
- (g) Use of revenue. After completion of a project, revenue from the project including but not limited to, sale of a treatment-related-by-products; lease of the land; or sale of crops grown on the land purchased under the grant agreement, shall proportionately reduce all user charges.
- (h) Adoption of system. The user charge system must be legislatively enacted by the recipient. If the project will serve two or more municipalities, the recipient shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works. At a minimum they must include the basis upon which cost are allocated, the formula by which costs are allocated and the manner in which the cost allocation system will be administered. The Department may waive this requirement provided the applicant can demonstrate:
 - 1. That such an agreement is already in place; or
 - 2. Evidence of historic service relationships for water supply, wastewater or the other services among the affected communities regardless of the existence of formal agreements; and
 - 3. That the financial strength of the supplier agency is adequate to continue the project even if one or more of the proposed customer agencies fail to participate.
- (i) Inconsistent agreements. The user charge system shall take precedence over any terms or conditions of agreements or contracts which are inconsistent with the requirements of these provisions.
- (j) Previous debt. The reserve account required under this rule shall be not be used toward offsetting debts incurred prior to the funding of the project.
- (k) Approval of user charge system. Plans and specifications for the project will not be approved until the recipient has developed an approvable user charge system. If the project is for Step 3 grant assistance, unless it is solely for acquisition of eligible land, the recipient must obtain the

Commissioner's approval of its user charge system. If the recipient has a user charge system in effect, the recipient shall demonstrate to the Commissioner's satisfaction that it meets the requirements of this provision.

- (4) Easements. The recipient must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications will be approved by the Commissioner.
- (5) Plans and Specifications. All plans and specifications must be in accordance with the Facilities Plan/Engineering Report as approved by the Department, and should be consistent with the State Design Criteria for Sewage Works.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~1200-22-02-.10~~ 0400-46-02-.10 Grant Agreement

- (1) The grant agreement will be a legally binding contract between the State and the recipient. The agreement will contain general conditions and may, if necessary, contain special conditions.
- (2) The general conditions will be requirements of law, regulations and policies of the State of Tennessee relative to the State Act as defined under this Chapter.
- (3) The special conditions of the grant agreement will relate to specific provisions unique for an individual project to include, but not limited to, time schedules, and performance requirements.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

~~1200-22-02-.11~~ 0400-46-02-.11 Grants Administration and Grant Conditions

- (1) Project By-Pass. The Commissioner may by-pass the funding of projects on the fundable portion of the priority list as follows:
 - (a) The potential recipient submits to the Commissioner a written statement endorsing the by-pass; or
 - (b) The potential recipient fails to submit information within the time frame required by certified, written notice from the Commissioner.
- (2) Grant Amendments. Grant amendments may be made in circumstances that include, but are not limited to the following:
 - (a) Grant amendments may be made to basic State grants to cover the difference between the original construction cost estimate and the contract price.
 - (b) Grant amendments may be made to cover the provisions of Rule ~~1200-22-02-.11~~ paragraph (6) of this rule.
 - (c) Grant amendments may be made to basic State grants to cover increased eligible cost for Step 3 engineering services or engineering services during initiation of operation.
 - (d) Grant amendments may be made to supplemental grants to reflect changes in eligible cost.
- (3) Inspections.
 - (a) The recipient shall provide continuous inspections during building by qualified inspectors in sufficient numbers to insure the project complies with approved plans and specifications.
 - (b) The Commissioner will conduct interim building inspections to determine compliance with approved plans and specifications and grant agreement, as appropriate.

- (c) The interim inspection reports may be used for determining the amount of the Step 3 grant payment.
 - (d) The recipient shall notify the Commissioner in writing when the building of the project is complete so that operation and maintenance and final inspections can be made by the Commissioner.
- (4) Operation and Maintenance.
- (a) The recipient must assure economical and effective operation and maintenance, including replacement, of the treatment works.
 - (b) The Commissioner shall not pay more than 90 percent of the Basic State grant share of any project unless the recipient has furnished and the Commissioner has approved an operation and maintenance manual.
- (5) Grant Payments.
- (a) Documentation. The Commissioner shall pay the State grant share of the appropriate allowance, preliminary and/or construction engineering and/or the allowable project costs incurred and as certified and documented in accordance with Tennessee Outlay Report and Request for Reimbursement for Construction Programs Form as provided by the Commissioner.
 - (b) Failure to comply with Plans and Specifications. Payments shall be limited to eligible work that complies with plans and specifications approved by the Commissioner.
 - (c) Adjustment. The Commissioner may at any time review and audit requests for payment and make adjustments for, but not limited to, mathematical errors, items not built or purchased, unacceptable construction, and construction not in accordance with plans and specifications.
 - (d) Refunds, Rebates and Credits. The State grant share of any refunds, rebates, credits, or other amounts, including any interest, that ~~accure~~ accrue to, or are received by the recipient of the project, and that are properly allocable to costs for which the recipient has been paid under a grant, must be credited to the State. Examples include rebates for prompt payment and sales tax refunds. Reasonable expenses incurred by the recipient securing such refunds, rebates, credits, or other amounts shall be allowable under the grant when approved by the Commissioner.
 - (e) Release. By its acceptance of final payment, the recipient releases and discharges the State, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to exceptions previously specified in writing between the Commissioner and the recipient.
 - (f) Closure. The grant shall be closed at the end of the performance evaluation period per ~~rule 1200-22-02-14~~ paragraph (7) of this rule as determined by the Commissioner and final audit by the Comptroller of the Treasury. No additional grant payments shall be made after the grant is closed. The findings of the audit shall be used in determining the final grant amount by the Commissioner.
 - (g) Files and Records. All files and records pertaining to the project shall be maintained by the recipient throughout the project and made accessible to the Commissioner and the Comptroller. These files and records must be retained by the recipient for at least three (3) years after project closure.
- (6) Change Orders.
- (a) Change in the Step 3 project work, except as provided in subparagraph (b) of this ~~rule~~ paragraph that are consistent with objectives of the project and that are within the scope of the grant agreement, do not require the execution of a formal grant amendment before the recipient's implementation of the change. However, the Commissioner will determine the eligibility and reasonableness of cost for all change orders funded with a basic grant, or a grant increase.

- (b) The recipient must receive from the Commissioner a grant amendment before implementing changes which:
 1. Alter the type of wastewater treatment provided by the project; or
 2. Significantly delay or accelerate the project schedule.
- (7) Project Performance.
 - (a) The recipient shall notify the Commissioner in writing of the actual date and initiation of operation.
 - (b) The recipient shall hire an individual or firm with proven expertise in wastewater treatment plant operation and maintenance to provide the following services during the start-up period following the initiation of operation:
 1. Direct the operation of the project and revise the operation and maintenance manual as necessary to accommodate actual operating experience;
 2. Train or provide for training of operating personnel and prepare curricula and training material for operating personnel; and
 3. Advise the recipient whether the project is meeting the project performance standard.
 - (c) Immediately after the start-up period, the recipient shall certify to the Commissioner whether the project meets the project performance standards. If the Commissioner or the recipient concludes that the project performance standards are not met, the recipient shall submit the following:
 1. A corrective action report which includes an analysis of the cause of the project's failure to meet the performance standards and an estimate of the nature, scope and cost of the corrective action necessary to bring the project into compliance;
 2. The schedule for undertaking in a timely manner the corrective action necessary to bring the project into compliance; and
 3. The schedule date for certifying to the Commissioner that the project is meeting the project performance standards.
 - (d) The recipient shall take corrective action necessary to bring a project into compliance with the project performance standards at its own expense.
 - (e) Reservation of Rights.
 1. Nothing in this rule prohibits the recipient from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; ~~or~~ and
 2. Nothing in this rule affects the Department's right to take remedial action, including but not limited to administrative enforcement action and actions for breach of contract against a recipient that fails to carry out its obligations under this chapter.
- (8) Effect of Approval or Certification of Documents. Review or approval of facilities plans, design drawings and specifications or other documents by or for the Commissioner does not relieve the recipient of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits, and good management practices.
- (9) Value Engineering. During the design of the project, the Commissioner will determine when and to what degree value engineering will be conducted. Those value engineering determinations recommended by the Commissioner shall be implemented and eligibility shall be limited to a project scope that includes those value engineering determinations.

If any provision of this regulation or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect ~~her~~ the provisions or applications of the regulation which can be given effect without the invalid provision, and to that end the provisions of this regulation declared to be severable.

Authority: T.C.A. §§ 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-46-04 State Loans

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~~1200-22-04-.01~~ 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 Federal Clean Water Pollution Control Act, 33 USC § 1251 et seq., as amended. Emphasis is placed on the following:

- (1) ~~(a)~~ The provision of loans for municipalities without sewage treatment works;
- ~~(b)~~ (2) The availability of grants and loans from other sources;
- ~~(c)~~ (3) The creation of efficient wastewater treatment systems; and
- ~~(d)~~ (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.

~~1200-22-04-.02~~ 0400-46-04-.02 Definitions.

As used in this ~~part~~ chapter:

- (1) Commissioner. The Commissioner of the Tennessee Department of ~~Health and~~ 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 ~~Health and~~ Environment and Conservation.
- (4) Eligible Project. A project for construction of sewage treatment works which:
 - (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 ~~Water Quality Control 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.

~~1200-22-04-.03~~ 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 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 Basic 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.
 - (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.

~~1200-22-04-.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.

New Rules

Chapter 0400-46-06 State Revolving Fund

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~~4200-22-06-.01~~ 0400-46-06-.01 Introduction

The purpose of the "Wastewater Facilities Act of 1987" enacted by the General Assembly of the State of Tennessee, (amended *Tennessee Code Annotated*, Title 4, Chapter 31, Title 7, Chapter 82 and T.C.A. Title 68, Chapter 221, Part 10) is to facilitate statewide compliance with State and Federal water quality standards; to provide local governments in Tennessee with low-cost financial assistance relative to necessary wastewater facilities construction through the creation of a self-sustaining revolving loan program so as to improve and protect water quality and public health; and to establish fiscal self-sufficiency of wastewater facilities. It is intended that the revolving loan program be used in coordination with State and Federal assistance programs.

Authority: T.C.A. §§ 68-221-1001 et seq., 68-221-1005, and 4-5-201 et seq.

~~4200-22-06-.02~~ 0400-46-06-.02 Definitions. As used in these regulations rules:

- (1) Act. The Wastewater Facilities Act of 1987, T.C.A. §§ 68-221-1001 et seq.
- (2) Alternative technology. Proven wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or otherwise eliminate the discharge of pollutants or recover energy. Specifically, alternative technology includes land application of effluent sludge; aquifer recharge; aquaculture; direct reuse (non-potable); horticulture; revegetation of disturbed lands; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; co-disposal of sludge and solid waste and individual and onsite systems. Alternative technology also includes a wastewater collection system other than conventional system. This includes, but is not limited to, small diameter pressure, gravity and vacuum sewers carrying partially or fully treated wastewater and which demonstrate a significant savings in the life cycle cost of the project when compared to an appropriate conventional technology.
- (3) Authority. The Tennessee ~~L~~ocal Development Authority as created by T.C.A. Title 4, Chapter 31.
- (4) Best Management Practices. A practice or combination of practices which has been determined to be the most effective and practicable means of preventing or reducing water pollution to a level compatible with water quality goals.
- (5) Borrower. Local government which has entered into a loan agreement with the Authority and the Department to fund a wastewater treatment facility.
- (6) Clean Water Act. The Water Pollution Control Act of 1972, PL 92-500, as amended 33 U.S.C. §§ 1251 et seq., and rules and regulations promulgated thereunder.
- (7) Collector Sewer. Lateral sewers within a publicly owned treatment system, which are primarily installed to receive and convey wastewater for treatment. Service connections designed for connection with those facilities including:

- (a) Crossover sewers connecting more than one property on one side of a major street, road, or highway to a lateral sewer on the other side; and,
- (b) Pumping units and pressurized lines serving individual structures or groups of structures when such units are owned and maintained by the borrower.

This definition excludes facilities which convey wastewater on private property to the public lateral sewer.

- (8) Combined sewer. A sewer that is designed as a sanitary sewer and a stormwater sewer.
- (9) Construction. The erection, acquisition, alteration, reconstruction, improvement, or extension of wastewater facilities, including preliminary planning to determine the economic feasibility of wastewater treatment works, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, procedures, and other similar action necessary in the building of wastewater facilities, and the inspection supervision of the construction of wastewater treatment works.
- (10) Department. The Tennessee Department of Environment and Conservation.
- (11) Depreciation. An element of expense resulting from the use of long-lived assets. It is conventionally measured by allocating the expected net cost of using the asset (original cost less estimated salvage value) over its estimated useful life in a systematic and rational manner.
- (12) Director. The ~~d~~Director of the Division of ~~Construction Grants and Loans~~ Water Resources within the Department.
- (13) Enforceable requirements of the Clean Water Act. Those conditions or limitations of permits issued under Sections 402 or 404 of the Clean Water Act or T.C.A. § 69-3-108 which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action under Section 309 of the Clean Water Act or the Water Quality Control Act. If a permit has not been issued, or where no permit applies, the term shall include the requirements necessary to meet the provisions of the T.C.A. § 69-3-101 et seq.
- (14) EPA. The United States Environmental Protection Agency.
- (15) Excessive infiltration/inflow. The quantities of infiltration/inflow which can be economically eliminated from a sewer system as determined in a cost-effective analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.
- (16) Infiltration/Inflow Correction. Techniques which eliminate excessive infiltration/inflow. This definition refers to excessive infiltration/inflow reduction techniques that do not involve extensive excavation and/or replacement. Techniques considered to be infiltration/inflow correction include but are not limited to the following:
 - (a) Pressure testing and sealing procedures;
 - (b) Excavation and replacement where documented and severe infiltration/inflow problems can be corrected. Specific examples are replacing or repairing manhole covers, repairing crushed pipe within an area of temporary or permanent groundwater and replacement or repair of a sewer segment beneath a waterway; ~~and~~ and,
 - (c) Trenchless technologies such as sliplining.
- (17) Initiation of operation. The date when all but minor components of a project have been built, all treatment equipment is operational and the project is capable of functioning as designed and constructed.
- (18) Innovative technology. Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost of the project when compared to an appropriate conventional technology.
- (19) Interceptor sewer. A sewer which is designed for one or more of the following purposes:

- (a) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - (b) To replace an existing wastewater facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - (c) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment; or
 - (d) To intercept an existing major discharge of a raw or inadequately treated wastewater for transport directly to another interceptor or to a wastewater plant.
- (20) Local Government. A county, incorporated town or city, metropolitan government, or state agency which has authority to administer a wastewater facility, or any combination of two or more of the foregoing acting jointly to construct a wastewater facility. "Local government" shall also mean any publicly owned utility district existing ~~only 1, 1914~~ July 1, 1984, or if created after that date, any publicly owned utility district operating a wastewater facility and comprising at least 500 customer connections.
- (21) Major rehabilitation. Techniques which involve the removal of the existing pipes, pumps, or manholes from the ground and replacing them with new ones under one or more of the following conditions:
- (a) In locations where pipes or manholes have lost their structural integrity, such as pipes or manholes which are collapsed, crushed, broken, or badly deteriorated and cracked;
 - (b) In cases where pipe size enlargement, change in grade and/or line realignment are needed in addition to pipe deficiency corrections; or
 - (c) In cases where the causes of damages to the existing pipes or manholes, including but not limited to corrosion, soil movement, and increasing traffic load, have been identified and it is desirable to prevent the recurrence of these damages by replacing the existing structures with new ones having better quality and greater strength.
- (22) Nonexcessive infiltration. The quantity of flow which is less than 120 gallons per capita per day, domestic base flow plus infiltration, or the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effective analysis.
- (23) Nonexcessive inflow. The rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include but are not limited to surcharging, backups, bypasses, and overflows.
- (24) Nonpoint Source (NPS) Pollution. Pollution emitting from sources other than point source.
- (25) Operation and Maintenance. Activities required to assure the dependable and economical function of treatment works.
- (a) Operation is the control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management records laboratory control, process control, safety and emergency operation planning.
 - (b) Maintenance is the preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.
- (26) Planning/Design Facilities planning consists of those necessary plans and studies which directly relate to wastewater facilities or treatment works needed to comply with the requirements of ~~Rule Chapters 122-22-6-06 and 122-22-6-08~~ Rules 0400-46-06-06 and 0400-46-06-08. Design consists of those necessary drawings, plans and specifications which directly relate ~~to~~ to wastewater facilities needed to comply with the approved facilities plan.

- (27) Priority Ranking List. A numerical listing of wastewater facility projects by priority points generated through the State Priority Ranking System, Rule ~~Chapter 1200-22-01~~ 0400-46-01, for which the State is authorized to provide financial assistance pursuant to T.C.A. Title 68, Chapter 221, Parts 8 and 10.
- (28) Project. The activities or tasks the Department identifies in the loan agreement for which the borrower may expend, obligate or commit funds.
- (29) Project Performance Standards. Performance and operational requirements applicable to the project, including the enforceable requirements of the Clean Water Act, and the design criteria upon which the plans and specifications are based.
- (30) Project schedule. A timetable specifying the dates of key project events including but not limited to, the following: submittal of facility plan, submittal of plans and specifications, advertising for bidding, notice to proceed, and project completion.
- (31) Security. That which is determined by the Authority to be acceptable to secure a loan to a local government under this Act and includes but is not limited to revenues of the facility, ad valorem taxes, state-shared taxes, letters of credit or bond insurance.
- (32) State Revolving Fund (SRF) Loan. Loan program as established in the Wastewater Facilities Act of 1987.
- (33) Useful life. The period during which a wastewater facility operates; this is not design life which is the period during which a wastewater facility is planned and designed to operate.
- (a) For purposes of a cost-effective analysis the components of a wastewater facility shall have a useful life as follows:
1. Land - permanent;
 2. Wastewater conveyance structures, including, but not limited to, collection system, outfall pipes, interceptors, force mains, and tunnels - 50 years;
 3. Other structures, including, but not limited to, plant building, concrete process tankage, basins, and lift station structures - 50 years;
 4. Process equipment - 20 years; and,
 5. Auxiliary equipment - 15 years.
- (b) Other useful life periods will be acceptable when sufficient justification can be provided to the Department. Where a system or a component is for interim service, the anticipated useful life shall be reduced to the period of interim service.
- (34) User. A single municipal, domestic, commercial or industrial connection to a wastewater facility.
- (35) User charge. A charge levied on users of a wastewater facility, or that portion of the ad valorem taxes paid by a user, for the user's proportionate share of the cost of debt retirement, operation and maintenance, and depreciation of such works.
- (36) Value Engineering. A specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.
- (37) Wastewater facility. Any facility, including the reserve capacity thereof, whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of wastewater, including treatment or disposal plants, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof and their appurtenances which are necessary to accomplish the foregoing purposes. "Wastewater facility" shall also include best management practice projects for controlling nonpoint sources of water pollution and the planning or replanning requirements of designated management authorities.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

~~4200-22-06-.03~~ 0400-46-06-.03 Priority.

- (1) General. The Authority will award loans to local governments for planning, design and construction of wastewater facilities under the provisions of T.C.A. Title 4, Chapter 31; Title 7, Chapter 82; and Title 68, Chapter 221, only for projects on the Priority Ranking List.
- (2) Obligation of SRF Loans. Funds will be allocated to projects based on the list established by the Priority Ranking Rules, Chapter ~~4200-22-04~~ 0400-46-01.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

~~4200-22-06-.04~~ 0400-46-06-.04 Eligibility.

- (1) Loans shall be made only to local governments that:
 - (a) Have the authority to operate a wastewater facility that is on the Priority Ranking List.
 - (b) In the opinion of the Authority, demonstrate tangible financial capability to assure sufficient revenues to operate and maintain the wastewater facility for its useful life and to repay the loan;
 - (c) Pledge security as required by the Authority for repayment of the loan;
 - (d) Agree to adjust periodically fees and charges for services of the wastewater facility in order that loan payments and costs of the wastewater facility are timely paid;
 - (e) Certify to comply with a plan of operation approved by the Department regarding the quality, compensation, and number of facility personnel for the life of the loan;
 - (f) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the facility's financial records; and
 - (g) Provide such assurances as are reasonably requested by the Authority and the Department.
- (2) Projects funded in whole or part from the SRF must be consistent with plans developed under Section 205, 208, 303(e) or 319 of the Clean Water Act.
- (3) Loans may be made to provide local governments with funds to conduct facilities planning and design.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

~~4200-22-06-.05~~ 0400-46-06-.05 Uses of the Fund.

The SRF shall only be used:

- (1) To make loans; and,
- (2) To pay program administration costs (not to exceed 4% of the annual federal capitalization grant).

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

~~4200-22-06-.06~~ 0400-46-06-.06 Application Procedure.

- (1) Applicants for SRF loans must submit an application on forms furnished by the Department.
- (2) The Department shall review the loan application to ensure that it is complete and shall inform the applicant in writing of the determination and/or other information required.
- (3) The Department shall submit recommendations for loans to the Authority.

- (4) A facilities plan must be submitted and approved by the Department before approval of any loans which do not include planning. Potential loan applicants should confer with Departmental reviewers in the initial stages of the facilities planning process. A facilities plan shall contain the following information:
- (a) identification of the planning area boundaries and characteristics, the existing problems and needs and problems for the next 20 or more years;
 - (b) demonstration that each sewer system is not or will not be subject to excessive infiltration/inflow;
 - (c) systematic identification, screening, study, evaluation, and cost-effective analysis of conventional technologies, as well as innovative, and alternative technologies;
 - (d) adequate evaluation of the environmental impacts of alternatives to support the cost-effective analysis;
 - (e) if collection lines are included, establishment of whether they are for replacement or major rehabilitation necessary to the total integrity and performance of the wastewater treatment works servicing the community, or they are for a new collection system in an existing or planned wastewater treatment capacity;
 - (f) documentation on the project's consistency with the approved elements of any applicable water quality management plan approved under Section 208 or 303(e) of the Clean Water Act; and,
 - (g) a concise description of the selected alternative with an appropriate level of detail.

(5) User charge system.

- (a) General. The borrower of an SRF loan must obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect at the time of the application, the borrower shall demonstrate that it meets the provisions of this ~~section~~ paragraph or amend it as required.
- (b) Rates. The user charge rate must produce adequate revenues to provide for the following expenditures:
 - 1. Operation and maintenance expenses;
 - 2. Interest; and
 - 3. Depreciation or principal payment, whichever is greater.

These costs shall be reviewed by the borrower on an annual basis as a part of the budget process and the rates adjusted accordingly for the life of the loan.

- (c) Operating deficits. The user charge system will require maintenance of user rate structures necessary to fund the current expenditures in ~~(5)(b) above~~ subparagraph (b) of this paragraph, and to liquidate any retained earnings deficit over a period of time to be determined by the Department.
- (d) Rate resolution.
 - 1. Prior to loan approval, the applicant shall provide the Department with an adopted resolution which proposes a user rate that meets the requirements of the user charge system described in ~~5b of this Section~~ subparagraph (b) of this paragraph.
 - 2. Prior to ninety percent payment of loan proceeds, the local government shall submit for ~~Departmental~~ Departmental approval the enacted user rate which meets the requirements described in ~~5b of this Section~~ subparagraph (b) of this paragraph.

- (6) Intermunicipal agreements. If the project will serve two or more local governments, the borrower shall obtain Department approval of executed intermunicipal agreements prior to loan approval. These agreements may be in the form of contracts or other legally binding instruments necessary for the financing, construction, operation and maintenance of the proposed treatment works. At a minimum, it must include the basis upon which costs are allocated.
- (7) Plans and Specifications.
- (a) Plans and Specifications. All plans and specifications must be in accordance with the Facilities Plan/Engineering Report as approved by the Department, and should be consistent with the State Design Criteria for Sewage Works. The borrower must own easements and/or land, or have taken condemnation proceedings needed to construct the project before plans and specifications for a construction loan will be approved by the Department.
- (b) Sewer Use Ordinance. All borrowers who do not have a Sewer Use Ordinance (SUO) in effect at the time of application are required to obtain the Department's approval of an enacted SUO prior to the approval of plans and specifications for the project. The SUO must protect the technical and financial integrity of the collection and treatment system including provisions for the control of inflow/infiltration, toxicity, and maximum system use by all eligible customers.
- (c) Pretreatment Program. If the borrower does not have a pretreatment program approved by the Department and the proposed project will result in the discharge of industrial wastes into the collection system, then an industrial survey in accordance with 40 CFR 403.8(f)(2)(i) (~~dated July 1, 1986~~ as amended) must be conducted. Results of the survey are to be submitted to the Division of Water ~~Pollution Control~~ Resources to determine if a pretreatment program must be developed.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

~~1200-22-06-07~~ 0400-46-06-07 Conditions.

- (1) Federal Requirements. During the period the SRF is capitalized by EPA grant money, any project funded must meet the following requirements:
- (a) Title II Requirements. Projects must comply with the applicable requirements of Title II of the Clean Water Act cited in 40 CFR 35.3135 (f)(1) (~~dated March 19, 1990~~ as amended).
- (b) Environmental Review. An environmental review of the proposed project meeting the requirements of 40 CFR 35.3140 (~~dated March 19, 1990~~ as amended) must be conducted.
- (c) Other Federal Authorities. Projects must comply with other applicable federal authorities cited in 40 ~~CER~~ CFR 35.3145 (~~dated March 19, 1990~~ as amended).
- (2) Loan Agreement.
- (a) The loan agreement will be a legally binding contract between the State and the borrower. The agreement will contain general conditions and may, if necessary, contain special conditions.
- (b) The general conditions will be requirements of law, regulations and policies of the State.
- (c) The special conditions of the loan agreement will relate to specific provisions unique for an individual project including, but not limited to, time schedules and performance requirements.
- (3) Loan Amendments. A loan amendment must be approved by the Department and the Authority and shall be required when the final cost of the project is determined to be greater than the total amount approved in the loan agreement.

Loan amendments may be made to the original contract to include but not be limited to differences between the original construction cost estimate and the contract price.

(4) Procurement. Procurement transactions for equipment and construction must be conducted in a manner providing full and open competition consistent with the standards of 40 CFR 31.36 (~~dated March II, 1988 as amended~~). The Department will review proposed procurement transactions for equipment and construction which exceed \$25,000 prior to contract award. SRF loan participation for any project costs may be limited to amounts determined reasonable by the Department.

(5) Inspections. During project construction the borrower shall provide continuous inspection by qualified inspectors in sufficient numbers to ensure the project complies with approved plans and specifications.

The Department will conduct interim inspections to determine compliance with approved plans and specifications and loan agreement, as appropriate.

The borrower shall notify the Department in writing within 30 days of Initiation of Operation so that an operation and maintenance inspection and final inspection can be made by the Department.

(6) Loan Payments.

(a) Documentation. The Department shall review and certify the loan share of the appropriate project costs incurred and as certified and documented in the borrower's most recent payment request which includes proper invoices to support costs. The payment will be in accordance with Request For Disbursement of Funds form as provided by the Department. The Authority shall pay the loan share of the project costs as certified by the Department.

(b) Non-Compliance. Payments shall be limited to work that complies with approved plans, specifications, and project schedules as determined by the Department.

(c) Adjustments. The Department may at any time review and audit requests for payment and make adjustments for, but not limited to, math errors, items not built or bought, and unacceptable construction.

(d) Release. By its acceptance of final payment, the borrower releases and discharges the Department, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the borrower.

(7) Files and Records. All files and records pertaining to the project shall be maintained by the borrower throughout the project and made accessible to the Department and the Comptroller. These files and records must be retained by the borrower for at least three years after construction completion.

(8) Change Orders. Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan agreement do ~~not~~ not require the execution of a formal loan amendment, however, where the change order will result in the expenditure of more funds than the loan amount, a loan amendment must be executed prior to the implementation of the changes. The Department will determine the reasonableness of cost for all change orders.

(9) Project Performance.

(a) The borrower shall notify the Department in writing within 30 days of the actual date of Initiation of Operation.

(b) Following written notification to the recipient, the Department may unilaterally designate an Initiation of Operation date if the recipient fails to submit a reasonable date.

(c) One year after the date of Initiation of Operation, the borrower shall certify to the Department in writing whether or not the wastewater facility meets its project performance standards.

(d) The borrower shall take corrective action necessary to bring a project into compliance with the project performance standards.

(10) Reservation of Rights. Nothing in this rule:

- (a) Prohibits a borrower from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party performing project work; or,
 - (b) Affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under this Chapter.
- (11) Effect of Approval or Certification of Documents. Review or approval of facilities plans, design drawings and specifications or other documents by or for the Department does not relieve the borrower of its responsibility to properly plan, design, build and effectively operate and maintain the wastewater facilities as required by law, regulations, permits and good management practices. The Department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or other subagreement documents.
 - (12) Value Engineering. During the design of the project the Director will determine when and to what degree value engineering will be conducted. Those value engineering determinations recommended by the Director shall be implemented by the local government and loan eligibility will be limited accordingly.
 - (13) Operation and Maintenance Manual. Prior to ninety percent payment of loan proceeds, all construction loan borrowers shall submit to the Department a draft Operation and Maintenance Manual for ~~its~~ its approval as to adequacy and completeness. This shall apply only to loans for wastewater treatment plants. A final, plant-specific Operation and Maintenance Manual shall be submitted to the Department for its approval one year after Initiation of Operations.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

~~1200-22-06-.08~~ 0400-46-06-.08 Financing Method.

- (1) A construction loan, including loans made solely for equipment, shall be made for a period of time not to exceed 20 years or the useful life, whichever is shorter.
- (2) A Planning and Design loan shall not exceed five years.
- (3) Repayment of the interest of the loan will begin upon reimbursement to borrower of costs incurred.
- (4) Repayment of the principal amount of the construction loan shall begin within 90 days after Initiation of Operation, or within 120 days after the borrower has borrowed 90 percent of the approved loan amount, whichever event occurs earlier.
- (5) Repayment of the principal amount of loans other than construction loans must begin within two years of loan approval or within 120 days after the borrower has borrowed 90 percent of the approved loan amount, whichever event occurs earlier.
- (6) The interest rates for SRF loans shall be fixed for the duration of the loan.
- (7) The Department shall utilize the most current Ability to Pay Index (ATPI) developed by the University of Tennessee Center for Business and Economic Research to determine interest rates for SRF borrowers. Interest rates shall not exceed market values according to appropriate Bond Buyers Index. Local governments which fall within the lower scale of the ATPI will be offered the lower interest rate.
- (8) The Department will recommend interest rates to the Authority.

Authority: T.C.A. §§ 68-221-1001 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Environment and Conservation on 05/29/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/13/13

Rulemaking Hearing(s) Conducted on: (add more dates). 04/09/13

Date: May 29, 2013

Signature: _____

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rulemaking is intended to move the rules from Chapters 1200-22-01, 1200-22-02, 1200-22-04 and 1200-22-06 to Chapters 0400-46-01, 0400-46-02, 0400-46-04 and 0400-46-06 respectively, repeal Chapter 1200-22-03, which is currently reserved, and to edit the rules to correct typos and incorrect references.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The State Revolving Fund (SRF) Loan Program provides low-interest loans that help communities, utility districts, and water and wastewater authorities finance projects that protect Tennessee's ground and surface waters and public health. There is no cost to these entities as a result of this rulemaking.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are no additional costs associated with this rulemaking.

- (3) A statement of the probable effect on impacted small businesses and consumers.

There is no impact to small businesses and consumers resulting from this rulemaking.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

There is no impact to small businesses resulting from this rulemaking.

- (5) A comparison of the proposed rule with any federal or state counterparts.

There is no meaningful comparison with any federal or state counterparts for this rulemaking.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

To accomplish the goal of this rulemaking an exemption of small businesses is not possible.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department does not anticipate that this rulemaking will have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking is intended to move the rules from Chapters 1200-22-01, 1200-22-02, 1200-22-04 and 1200-22-06 to Chapters 0400-46-01, 0400-46-02, 0400-46-04 and 0400-46-06 respectively, repeal Chapter 1200-22-03, which is currently reserved, and to edit the rules to correct typos and incorrect references.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rulemaking is being promulgated under the authority of T.C.A. §§ 68-221-201 et seq., 68-221-801 et seq., 68-221-1001 et seq., and 4-5-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The State Revolving Fund (SRF) Loan Program provides low-interest loans that help communities, utility districts, and water and wastewater authorities finance projects that protect Tennessee's ground and surface waters and public health. None of these entities urged adoption or rejection of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rulemaking will have no fiscal impact on state and local governments.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Robert O'Dette
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
(615) 253-5319

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard
Deputy General Counsel
Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
SS-7039 (October 2011)

William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-0131
Jenny.Howard@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.