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Sequence Number: 10-10-11
 Notice ID(s): 1670-1671
 File Date: 10/18/2011

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Water Supply
Contact Person:	Tom Moss
Address:	6 th Floor, L & C Tower 401 Church Street Nashville, Tennessee 37243-1549
Phone:	615-532-0170
Email:	Tom.Moss@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	12 th Floor L&C Tower 401 Church Street Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Ruth Neff Conference Room – Side B 17 th Floor, L & C Tower		
Address 2:	401 Church Street		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	12/13/11		
Hearing Time:	1:00 p.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Address 1:	Knoxville Environmental Field Office Large Conference Room		
Address 2:	3711 Middlebrook Pike		
City:	Knoxville, TN		
Zip:	37921-5602		
Hearing Date :	12/14/11		
Hearing Time:	9:00 a.m.	<input type="checkbox"/> CST/CDT	<input checked="" type="checkbox"/> EST/EDT

Address 1:	Jackson Environmental Field Office		
Address 2:	1625 Hollywood Drive		
City:	Jackson, TN		
Zip:	38305		
Hearing Date :	12/16/11		

Hearing Time: 1:00 p.m. CST/CDT EST/EDT

Additional Hearing Information:

The Department prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550 - State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

The "Draft" rules may also be accessed for review using <http://tn.gov/environment/dws/ppo/>

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation
Division of Water Supply
6th Floor, L&C Tower
401 Church Street
Nashville, Tennessee 37243-1549
(615) 532-0170

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Division of Water Supply; Attention: Tom Moss, 6th Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1549; telephone 615-532-0191 or fax 615-532-0503. However, such written comments must be received by 4:30 PM CST, December 15, 2011, in order to assure consideration. For further information, please contact Tom Moss at the above address or telephone number or by e-mail at Tom.Moss@tn.gov.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0400-45-04	Regulations Governing the Waterworks Construction Loan Act
Rule Number	Rule Title
0400-45-04-.01	Purpose
0400-45-04-.02	Definitions
0400-45-04-.03	General
0400-45-04-.04	Eligible Applicants
0400-45-04-.05	Applications
0400-45-04-.06	Determination of Eligibility
0400-45-04-.07	General Criteria for Evaluation of Eligible Applications

Chapter Number	Chapter Title
1200-05-04	Regulations Governing the Waterworks Construction Loan Act
Rule Number	Rule Title
1200-05-04-.01	Purpose
1200-05-04-.02	Definitions
1200-05-04-.03	General
1200-05-04-.04	Eligible Applicants
1200-05-04-.05	Applications
1200-05-04-.06	Determination of Eligibility
1200-05-04-.07	General Criteria for Evaluation of Eligible Applications

(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://tn.gov/sos/rules/1360/1360.htm>)

Repeal

Chapter 1200-04-04 Regulations Governing the Waterworks Construction Loan Act is repealed.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

New Rules

Chapter 0400-45-04
Regulations Governing the Waterworks Construction Loan Act

Table of Contents

0400-45-04-.01 Purpose
0400-45-04-.02 Definitions
0400-45-04-.03 General
0400-45-04-.04 Eligible Applicants
0400-45-04-.05 Applications
0400-45-04-.06 Determination of Eligibility
0400-45-04-.07 General Criteria for Evaluation of Eligible Applications

0400-45-04-.01 Purpose.

The primary purpose of "The Waterworks Construction Loan Act of 1974" is to provide loans to local units of government to stimulate the construction and improvements of needed water supply systems in order to provide the citizens of Tennessee, as well as visitors to the Senate, an adequate supply of safe water. In making these loans available, the State is in no way attempting to assume responsibilities of local government units to provide adequate water service to the people. As the funds available are sufficient to meet only a part of the total need, in making loans the State must place great emphasis on:

- (1) Providing an adequate and safe supply of water for the area to be served;
- (2) The availability of grants and loans from other sources;

- (3) The creation of efficient systems of regional water supply; and
- (4) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.02 Definitions.

Pursuant to § 68-221-502 of "The Waterworks Construction Loan Act of 1974" and within the scope of this Act, the following definitions will be used unless the context requires otherwise:

- (1) "Waterworks" shall be constructed to include all or any part of the following: source of supply, pumping facilities, purification works, collection and storage facilities and distribution system for water, together with all necessary parts and appurtenances for proper operation.
- (2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of waterworks, preliminary planning to determine the economic and engineering feasibility of waterworks, 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 waterworks, and the inspection and supervision of the construction of waterworks.
- (3) "Department" means the Tennessee Department of Environment and Conservation.
- (4) "Eligible Project" means a project for the construction of waterworks for which approval is required under T.C.A §§ 68-221-501 et seq., which conforms with the applicable rules and regulations of the department, and which in the judgment of the department is economically feasible.
- (5) "Municipality" means any county, metropolitan government, incorporated town or city, or special district of this state empowered to provide water services, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.
- (6) "Law" includes any act or statute, general, special, or local, and the charter of any incorporated town or city or metropolitan government of this state.
- (7) "Act" shall mean "The Waterworks Construction Loan Act of 1974", same being T.C.A §§ 68-221-501 et seq.
- (8) "Regional Water Supply System" shall mean a municipality that has the capability to provide water service to an area, either by extension of water service into an area outside its own boundaries or the boundaries of another municipality, or by the acquisition of an existing system, and is permitted, by law, to serve the area; and will make a commitment satisfactory to the Department to extend such services; will minimize the cost of integration with other system(s) where proximity of such system(s) indicate the integration is or may become economically feasible; and the system is administered by a common management.
- (9) "Construction Cost" shall mean the actual cost of construction of the eligible portions of any project for which a loan is made under the Act, including engineering, legal, fiscal, contingency costs, cost of real property, service connections, meters and meter installations, for water supply systems, or alterations to existing systems. No cost shall be eligible for recurring annual expenditures for administration, repairs, operation and maintenance of any water supply system.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.03 General.

Subject to the provisions governing the allocations of funds set forth in the Act, the department will enter into contract with municipalities to make loans for the construction of new or improvement of existing water systems. Applications for the funds will be filed in accordance with Rule 0400-45-01-.05. Pursuant to T.C.A § 68-221-502, the plans and specifications for the work proposed to be constructed shall be approved in writing by the department prior to the initiation of any construction. The facilities shall be operated in accordance with rules and

regulations. The staff of the Division of Water Supply will do a detailed review of the economic analysis submitted with the application in order to ascertain the economic feasibility of the proposed project.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.04 Eligible Applicants

- (1) Only municipalities as defined in these rules and regulations and the Act shall be eligible to apply for loans to assist in the financing of the cost of construction of new of the improvement or expansion of existing water supply system projects.
- (2) No applicant shall be eligible for the award of a loan unless the applicant demonstrates to the satisfaction of the Division of Water Supply that:
 - (a) The applicant is a municipality as defined in these rules and regulations and the Act.
 - (b) The applicant has the financial capacity to provide its share of the project costs. To the extent that the 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.
 - (c) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances of the State.
 - (d) The estimated revenues to be derived from the project under the applicant's proposed schedule of fees and charges will be adequate to provide for proper operation, maintenance, and administration, reasonable expansion of the system and repayment of present and proposed indebtedness, as determined from the detailed engineering report and other available information, and will comply with T.C.A. §§ 68-221-512 and 68-221-513. 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.
 - (e) The applicant has attempted, without success to obtain the necessary financial assistance from other State, Federal, or private sources at a lesser cost.
 - (f) The proposed project will be placed under construction within the fiscal year in which the loan is received. The repayment period may be determined by the applicant, but in no case shall the period exceed thirty (30) years. Also, repayment shall begin no later than one month after completion of the project. Each municipality after entering into a loan agreement shall remit to the Tennessee Local Development Authority such amounts and at such times as shown in the amortization schedule established by the Tennessee Local Development Authority and the Department.
- (3) Eligible Project Costs – Eligible project costs shall include the actual cost of construction of facilities, and the cost of equipment and appurtenances, for any project for which a loan is made under the Act, and the actual cost of necessary engineering, legal, and fiscal services related to the project for which a loan is made. Eligible costs also include the cost of purchase of acquisition of real property or interest therein. Costs incurred prior to approval of the application will be eligible with the exception of those costs involved in completing the documents for the application.
- (4) Limitations on Eligible Costs – 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 Legislation.
- (5) Exclusion from Eligible Costs – Eligible costs do not include recurring annual expenditures for administration, repairs, operation and maintenance of any water supply systems project, and these costs must be excluded from the applicant's share of the total construction costs.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.05 Applications

- (1) Applications for project grants for the construction of new or the expansion or improvement of existing water supply systems shall be submitted on the appropriate form, and shall be accompanied by all documentation, assurances, and other information called for in the instructions for completing and filing of applications.
- (2) All applications shall be complete and received in the Central Office of the Division of Water Supply no later than May 1 of the year preceding the fiscal year in which the funds are available.
- (3) All applications for project loans of water supply shall be so identified and be forwarded directly to the Director. Division of Water Supply. Applications and all supporting documents shall be submitted in such form and in such number as specified in the instructions for completing applications.
- (4) Any application which does not contain information sufficient to permit the Division of Water Supply to determine either the eligibility of the application or the assignment of a priority, shall not be deemed as received until such information is furnished by the applicant to the Division of Water Supply.
- (5) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the Division of Water Supply.
- (6) An applicant may amend a pending application to include additional data or information in support of its original application at any time prior to the date on which the final priority to be assigned to application is determined.
- (7) An application may be withdrawn from consideration upon request of the applicant, but if resubmitted shall be considered as a new application.
- (8) The amount of the loan request in the application can be adjusted provided the funds are available and the change is not caused by the change in the project scope.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.06 Determination of Eligibility

- (1) Each application and supporting documents shall be reviewed by the Division of Water Supply to determine if it contains all required information and meets the eligibility requirements of the Act and these rules and regulations.
- (2) Each applicant will be notified by the Division of Water Supply within sixty (60) days of the actual date of receipt of the application as to eligibility for consideration for a project loan award.
- (3) Applications from ineligible applicants will be returned to the applicant.
- (4) Eligible applications will be processed for priority determination and qualifications for a project loan award in accordance with the procedures set forth in these rules and regulations.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

0400-45-04-.07 General Criteria for Evaluation of Eligible Applications.

During the review periods set forth in these rules and regulations, all eligible applicants shall be assigned a priority for loan funds. Priorities shall be assigned by the Division of Water Supply for applications for project loans for water systems based upon the following criteria:

CRITERIA CATEGORIES	POINTS
(1) Public Health Needs	

	If the water being conveyed to the consumer by municipal systems has been declared by the Division of Water Supply to be an actual and/or potential health hazard because of the chemical or bacteriological quality	25
	or	
	If water presently being conveyed to the consumers is from individual systems and is declared by the Division of Water Supply to be an actual and/or a potential health hazard because of the chemical or bacteriological quality	20
(2)	Financial Needs	
	One point will be given for each \$100 of total (present plus proposed) indebtedness per connection up to a maximum of	20
(3)	Treatment Facility Needs (quantity)	
	Applications for systems not capable of meeting the needs (quantity) of present consumers will receive	20
	or	
	Those systems not capable of meeting the needs (quantity) of new consumers will receive	20
(4)	Regional War System	
	If the proposed project is part of a regional system, the application will receive	20
	or	
	If the proposed project will become a part of a regional system, within two years, the application will receive	15
(5)	Distribution System	
	Applications for systems that must improve in order to meet the maximum demand of the present consumer will receive	15
	or	
	Application for systems that must be expanded to serve additional consumers will receive	10

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: October 18, 2011

Signature: _____

Name of Officer: Alan Schwendimann

Title of Officer: Director

Subscribed and sworn to before me on: 18th October, 2011

Notary Public Signature: Glenda Sue Stiles

My commission expires on: 12-22-2013

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10/18/11

Tre Hargett

Tre Hargett
Secretary of State

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