

**RULES  
OF  
TENNESSEE DEPARTMENT OF TRANSPORTATION  
CONSTRUCTION DIVISION**

**CHAPTER 1680-5-2  
CONTRACTOR QUALIFICATIONS FOR CONSTRUCTION IN  
HIGH QUALITY OR IMPAIRED WATERS**

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**1680-5-2-.01 PURPOSE.**

The purpose of these Rules is to establish staffing, training and certification requirements that the Department of Transportation may require highway construction contractors to meet as a qualification for bidding on contracts for the construction of highway projects involving earthwork within or in close proximity to surface waters of the State of Tennessee that have been identified by the Tennessee Department of Environment and Conservation as either high quality waters or impaired waters.

*Authority:* T.C.A. §4-3-2303 and 54-5-117. *Administrative History:* Original rule filed March 2, 2005; effective May 16, 2005.

**1680-5-2-.02 APPLICATION.**

These rules apply to any proposal contract let by the Department for the construction of a highway project where:

- (1) Such highway construction will require earthwork within or in close proximity to either high quality waters or impaired waters of the State of Tennessee; and
- (2) The Commissioner has determined that it is in the best interest of the Department and the State of Tennessee that the contractor on such project shall be required to meet the staffing, training and certification requirements established in these rules.

*Authority:* T.C.A. §4-3-2303 and 54-5-117. *Administrative History:* Original rule filed March 2, 2005; effective May 16, 2005.

**1680-5-2-.03 DEFINITIONS.**

- (1) “Commissioner” means the Commissioner of the State of Tennessee Department of Transportation.
- (2) “Department” means the State of Tennessee Department of Transportation.
- (3) “Earthwork” means any type of construction work that requires the disturbance or exposure of soil or rock, including without limitation clearing, grubbing, excavation, grading, cutting or filling.
- (4) “Enforcement Order” means a final administrative or judicial order, including any order on appeal, which contains a finding of a violation of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, or any other State’s water quality control act. The term “enforcement order” does not include administrative notices of violation or equivalent actions that are not subject to appeal.

(Rule 1680-5-2-.03, continued)

- (5) “General Permit” means the Tennessee General Permit for Storm Water Discharges from Construction Activities as authorized by TDEC.
- (6) “High quality waters” means surface waters of the State of Tennessee identified as high quality waters (Tier II) by TDEC, in accordance with TDEC Rule 1200-4-3-.06(2), and surface waters of the State of Tennessee designated as Outstanding National Resource Waters (Tier III) by the State of Tennessee Water Quality Control Board, in accordance with TDEC Rule 1220-4-3-.06(4).
- (7) “Impaired waters” means surface waters of the State of Tennessee identified by TDEC on the most recent Tennessee 303(d) list, or otherwise identified by TDEC pursuant to field investigations, as impaired waters not meeting one or more of the use classifications for surface waters as designated in TDEC Chapter 1200-4-4.
- (8) “TDEC” means the State of Tennessee Department of Environment and Conservation.
- (9) “Water Quality Permits” means any and all permits administered by any federal or state government agency that governs construction activities within or affecting waters of the United States and/or waters of the State of Tennessee, including without limitation Aquatic Resource Alteration Permits (ARAPs) and National Pollution Discharge Elimination System (NPDES) permits, including the General Permit, administered by TDEC; Section 404 permits administered by the United States Army Corps of Engineers; and Section 26a permits administered by the Tennessee Valley Authority.

*Authority:* T.C.A. § 4-3-2303 and 54-5-117. *Administrative History:* Original rule filed March 2, 2005; effective May 16, 2005.

#### **1680-5-2-.04 STAFFING, TRAINING AND CERTIFICATION REQUIREMENTS.**

At the discretion of the Commissioner, highway construction contractors may be required to meet the following staffing, training and certification requirements in order to qualify as a responsible bidder on proposal contracts for the construction of highway projects involving earthwork within or in close proximity to high quality waters or impaired waters of the State of Tennessee. Nothing in these rules shall be construed to limit the Commissioner’s discretion to impose other or additional staffing, training or certification requirements, or other or additional contract specifications, in particular construction contracts where the Commissioner determines that it is in the best interest of the State to do so.

- (1) Staffing Requirements.
  - (a) The contractor may be required to employ one or more persons as necessary who shall be specifically assigned to the project to perform the duties of an erosion prevention and sediment control inspector. In the absence of any provision in the construction contract to the contrary, the contractor may elect to meet this requirement either by assigning the duties of the erosion prevention and sediment control inspector to one or more of its own employees or by assigning these duties to a subcontractor or consultant. At a minimum, each erosion prevention and sediment control inspector shall have successfully completed the training identified in paragraph (2) of this rule below.
  - (b) The duties of the erosion prevention and sediment control inspector may include the following:
    1. The inspector shall perform all inspections required under section IV.D.4 of the General Permit and such additional inspections as may be required under the construction contract. At a minimum, such inspections shall be performed before anticipated storm events and within 24 hours after the end of a storm event of 0.5 inches or greater rainfall,

(Rule 1680-5-2-.04, continued)

- and in any event at least once per week, or at such more frequent intervals as may be required under the General Permit or the construction contract.
2. Based on the results of the inspections, and subject to the overall supervision of the contractor's environmental supervisor, the inspector shall identify any erosion prevention and sediment control measures that are in disrepair or otherwise functioning inadequately. The inspector shall also report to the environmental supervisor any modifications that may need to be made in the project's storm water pollution prevention plan, as provided in section IV.D.4, subsections f and g, of the General Permit and as may be further required in the construction contract.
  3. The inspector shall document the inspections by preparing Construction Storm Water Inspection Reports, as provided in section IV.D.4, subsection h, of the General Permit, and as may be further required in the construction contract. These Inspection Reports shall be documented on forms approved by the Department.
- (c) In addition, the contractor may be required to employ one or more persons as necessary who shall be specifically assigned to the project to perform the duties of environmental supervisor for the contractor. In the absence of any provision in the construction contract to the contrary, the contractor may elect to meet this requirement either by assigning the duties of the environmental supervisor to one or more of its own employees or by assigning these duties to a subcontractor or consultant. At a minimum, the contractor's environmental supervisor(s) shall have successfully completed the training identified in paragraph (2) of this rule below.
- (d) The duties of the contractor's environmental supervisor may include the following:
1. The environmental supervisor shall have responsibility for the overall operation of the project's construction activities that are regulated under the General Permit or any other Water Quality Permit.
  2. The environmental supervisor shall be responsible for implementing the project's storm water pollution prevention plan and otherwise ensuring compliance with the General Permit and any other Water Quality Permits.
  3. The environmental supervisor shall be authorized to sign and shall be responsible for signing the certifications on all Construction Storm Water Inspection Reports, as provided in section III.F.3 of the General Permit and as may be further provided in any Water Quality Permit or the construction contract. These Inspection Reports shall be submitted to the Department's project supervisor and/or to such other persons as the Department may determine.
  4. The environmental supervisor shall supervise the erosion prevention and sediment control inspector(s) and ensure that the inspector's duties are fully and timely performed.
  5. Based on the results of the inspections performed by the erosion prevention and sediment control inspector(s), the environmental supervisor shall recommend to the Department any modifications that may need to be made in the project's storm water pollution prevention plan.
  6. The environmental supervisor shall be responsible for ensuring that the erosion prevention and sediment control measures on the project are properly maintained, repaired or replaced as required under any Water Quality Permit, including the General Permit, and as may be further required in the construction contract.

(Rule 1680-5-2-.04, continued)

7. The environmental supervisor shall have the authority and responsibility to stop earthwork at any disturbed site on the project where the erosion prevention and sediment control measures are proving ineffective in eliminating or significantly minimizing the runoff of soil or other pollutants in storm water discharges or are otherwise not achieving the general objectives of controlling pollutants in storm water discharges associated with construction activities until such time as the erosion prevention and sediment control measures can be repaired or modified to achieve these objectives.

(2) Training Requirements.

- (a) As a minimum, the contractor's erosion prevention and sediment control inspector(s) shall have successfully completed the following training within the past five years:
  1. TDEC's "Fundamentals of Erosion Prevention and Sediment Control," or its successor; or
  2. A beginner level class in storm water management and construction site inspection offered by the International Erosion Control Association; or
  3. A comparable course from another source, subject to Department approval.
- (b) As a minimum, the contractor's environmental supervisor(s) shall have successfully completed the same basic training required for the contractor's erosion prevention and sediment control inspector as provided in subparagraph (a) above, and within the past five years the contractor's representative shall have successfully completed the following additional training:
  1. TDEC's "Design Principles for Erosion Prevention and Sediment Control," or its successor; or
  2. An intermediate or advanced level course in storm water management and construction site inspection offered by the International Erosion Control Association; or
  3. A comparable intermediate or advanced level course from another source, subject to Department approval.

(3) Certification Requirements.

- (a) The contractor's bid shall include a certification stating that the contractor is able to provide and will provide personnel to perform the duties of the erosion prevention and sediment control inspector and the environmental supervisor, as set forth in paragraph (1) above or as otherwise set forth in the Department's proposal contract, and who have fulfilled the training requirements set forth in paragraph (2) above. After a contractor has been awarded a contract, the contractor shall certify to the Department the identity of the persons who will perform the duties of the erosion prevention and sediment control inspector and environmental supervisor, and the contractor's certification shall include documentation to verify the content and date of the training. This certification shall be made in writing at or before the preconstruction meeting and thereafter as necessary whenever the contractor makes a change in the persons fulfilling these duties.
- (b) The contractor's bid shall also include a certification identifying all enforcement orders issued against the contractor within the past twenty-four (24) months for violations of the Federal Water Pollution Control Act, the Tennessee Water Quality Control Act, or any other State's

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water quality control act. At the discretion of the Commissioner, and as set forth in the specifications of the proposal contract, serious violations of any such act may be deemed a sufficient ground for finding that a contractor is not a responsive bidder on that project.

- (c) If the Commissioner makes an initial determination that a contractor – who is otherwise responsive and the apparent low bidder – should not be considered a responsive bidder based on the certification concerning enforcement orders, the Commissioner shall provide written notice of this initial determination and give the contractor an opportunity for an informal meeting to show why the contractor should nevertheless not be considered non-responsive. This informal meeting shall be held within twenty (20) calendar days after the date of the contract bid opening and may be conducted by the Commissioner or the Commissioner’s designee(s). After considering the information presented by the contractor in the informal meeting, the Commissioner shall make a final determination as to whether the contractor shall be considered a responsive bidder on the project. Written notice of the final determination shall be given to the contractor. The Commissioner’s decision shall be final and not subject to appeal.
- (d) A final determination by the Commissioner that a contractor is not a responsive bidder on a particular project as provided in this rule shall not, by itself, be considered a disqualification from bidding on any other proposal contract with the Department.
- (e) Falsification of any certification required under these rules may be deemed a sufficient ground for finding that a contractor is not a responsive bidder, and if a falsified certification is submitted after a contract has been awarded it shall be deemed a breach of contract to be dealt with as provided in the contract.

**Authority:** T.C.A. § 4-3-2303 and 54-5-117. **Administrative History:** Original rule filed March 2, 2005; effective May 16, 2005.