



AGENDA

Clean Water Advisory Committee

Thursday October 8th 4:00 – 6:00 PM

Central Vermont Regional Planning Commission

29 Main St., Suite 4, Montpelier, VT

REMOTE GoTo MEETING via computer, smartphone, or dial-in:

<https://global.gotomeeting.com/join/397508885>

[+1 \(646\) 749-3122](tel:+16467493122)

Access Code: 397-508-885

Problems with connection please call Pam DeAndrea at (802) 793-6043

- 4:00 PM: Welcome and Introductions
Public Comments
- 4:05 PM: Changes to agenda
- 4:10 PM: Approval 5/14/20 minutes (enclosed)
- 4:15 PM: Approval 6/11/20 minutes (enclosed)
- 4:25 PM: Draft ANR Rule for Clean Water Service Providers – Bonnie Waninger
- 5:50 PM: Other Announcements?
- 5:55 PM: Wrap-up. Next Meeting Date 11/10/20.

Persons with disabilities who require assistance or special arrangements to participate in programs or activities are encouraged to contact Nancy Chartrand at 802-229-0389 or chartrand@cvregion.com at least 3 business days prior to the meeting for which services are requested.

1 **CENTRAL VERMONT REGIONAL PLANNING COMMISSION**
2 **CLEAN WATER ADVISORY COMMITTEE**
3 **May 14, 2020**

4
5 A meeting of the Central Vermont Regional Planning Commission's Clean Water Advisory
6 Committee was held remotely on May 14, 2020 via Zoom Meeting due to the COVID-19 pandemic
7 and adhering to social distancing guidelines by the State of Vermont.
8

9 Committee Members Present:

10 Dona Bate – Montpelier City Council
11 Larry Becker- Middlesex Conservation Commission
12 John Hoogenboom – Moretown Selectboard (on phone)
13 Joyce Manchester – Moretown TAC (on phone)
14 Russ Barrett – Northfield Conservation Commission
15 Ron Krauth – Middlesex/Board of Commissioners
16 Karen Bates – ANR
17 John Brabant – Calais/Board of Commissioners
18

19 Committee Members Absent:

20 Amy Hornblas – CWAC Chair, Cabot/Board of Commissioners
21 Rich Turner – Williamstown Planning Commission/Board of Commissioners
22 Stewart Clark – Worcester Planning Commission
23 Michele Braun – Friends of Winooski River
24 Corrie Miller – Friends of the Mad River
25 Brian Shupe – Friends of the Mad River
26 Gianna Petito - Winooski Natural Resources Conservation District
27

28 Others Present:

29 CVRPC Staff: Pam DeAndrea
30 Vermont Geological Survey: Jon Kim
31

32 **CALL TO ORDER**

33 Pam DeAndrea called the meeting to order at 4:05 PM.
34

35 **PUBLIC COMMENTS**

36 None.
37

38 **CHANGES OR AMENDMENTS TO THE AGENDA**

39 Pam - Move Jon Kim's presentation first and approval of minutes afterwards. There were no
40 objections.

41 **VERMONT GROUNDWATER MONITORING PROGRAM PRESENTATION – Jon**
42 **Kim, Vermont Geological Survey**

43 Jon went over aquifer basics and interactions with stream and drawdown of wells.

1 Bennington PFOA issue: He went over what PFOA is. Nature of the problem is that the PFOA
2 was released into the atmosphere and then fell as rainfall into the surficial aquifer and into the
3 bedrock aquifer.

4 Jon went over sources of nitrates from agricultural use and from industry. Went over nitrogen
5 cycle and phosphorus cycle. Showed the data from Lake Carmi map and surface water data.

6 He went over the aquifer characterization process which includes field studies including soil
7 borings and investigation of well logs. Look at wells outside of the watershed area to determine
8 isopach thickness. Chemical monitoring on wells. Groundwater age dating, chlorofluorocarbons.
9 Surface water sample collection too. Jon shared concentrations over time in surface water and
10 groundwater as well as maps showing well concentrations.

11 In East Montpelier, they were able to determine a nitrate source through this method.

12 Did a study in Sutton with Nitrate monitoring. Something happened in 2010 to increase nitrate
13 concentrations. Then plotted herbicide levels by well and herbicide sites.

14 They did a study in Bristol also where they showed herbicide levels in relation to nitrate level to
15 indicate the travel of the groundwater and agricultural contaminants.

16 Ron asked whether they would be looking at drawdown. Jon said that pump tests would be too
17 expensive.

18 Joyce was curious about natural phosphorus in the soils vs. what's from ag use. Jon said that they
19 just sample total P in groundwater and surface water. Natural levels can vary from 5 – 15 ppb in
20 different rock types, and then compare that to what they are seeing. Lake samples are as high as
21 30 ppb. Studies in Europe have shown that groundwater inputs of P can increase P in surface
22 waters. We should perhaps consider that here in VT.

23 Larry asked about neonics in groundwater and if they can make it to surface water. Jon was not
24 sure about that but he has heard of travel of pharmaceuticals and coffee.

25 **APPROVAL OF APRIL 9 MINUTES**

26 No changes. Dona motioned to approve April 9th minutes as is, Larry seconded. Motioned
27 carried.

28

29 **CWAC LETTER STAFF REVISION –Pam DeAndrea**

30 Pam shared with the CWAC the Executive Committee's comment on the recommendation
31 regarding the Municipal Roads General Permit and asked them how they would like to revise
32 their recommendation to make it clearer for the Executive Committee.

33

34 Joyce – We could take away the second sentence since it is vague. Dona, the second sentence is
35 providing more detail.

36 Larry, maybe the easiest is to take it away.

37 Joyce – it seems that the recommendation is not in line with concern.

38 Larry – should we add cost-benefit to the first sentence?

39 Dona – It was about choice on which segments not just sectors.

1 Ron – Towns should be able to spend their money where they need to.

2 Pam – some road foreman may know which road segments are connected to streams, but some
3 may not.

4 Joyce – Rewrite the first sentence to say. *The DEC should allow municipalities more leeway with
5 as well as how funds are allocated among different sectors.*

6 Dona – it seems like we are getting into another issue.

7 Pam – could remove the “compared to other sectors” from the first sentence.

8 John – we have had this conversation at Ridge to River that we may be overdoing it in terms of
9 are spending a lot of money on materials to fixing roads. For instance, we may not need to
10 stone-line ditches in certain places that could be stabilized with vegetation that may not need it.

11 Joyce – let’s go with dropping the “compared to other sectors”.

12 Pam – suggestion - add the word “may” before results in the first sentence and delete the second
13 sentence in the recommendation.

14 Dona- add the word “deciding” after “leeway with”.

15

16 Ron made a motion to accept the letter as amended, John Hooganboom seconded. Motion
17 carried.

18

19 **CWAC RULES OF PROCEDURE REVISION**

20 Pam mentioned that according to the open meeting law that all members contribute to the
21 quorum and that the quorum is not adjusted by having non-voting members.

22 Dona disagreed and mentioned that they have many city committees that have non-voting
23 members that are advisory or something of that nature and that you can have members that are
24 not part of the quorum – she motioned that we place the non-voting members under the heading
25 as advisory members. John Brabant – seconded. Motion carried.

26 Pam said she would bring this to the Executive Committee and asked if Dona could please
27 provide her with documentation within the Open Meeting Law that speaks to the ability to have
28 non-voting or advisory committee members that do not contribute to the quorum.

29

30 **OTHER ANNOUNCEMENTS**

31 Basin 14 Tactical Basin Plan – June 2nd Skype Meeting; will send basin plan to CWAC as soon
32 as we get it and ask that they review to provide comments for the next meeting.

33

34 **SCHEDULE**

35 Next meeting: Devoted to Basin 14 Tactical Basin Plan comments.

36 Pam will check with Amy to see if she got in touch with Stew and then check in with Stew if she
37 hadn’t.

38

39 Meeting adjourned at 5:45 pm.

1 **CENTRAL VERMONT REGIONAL PLANNING COMMISSION**
2 **CLEAN WATER ADVISORY COMMITTEE**
3 **June 11, 2020**

4
5 A meeting of the Central Vermont Regional Planning Commission's Clean Water Advisory
6 Committee was held remotely on June 11, 2020 via Zoom Meeting due to the COVID-19 pandemic
7 and adhering to social distancing guidelines by the State of Vermont.
8

9 Committee Members Present:

10 Amy Hornblas – CWAC Chair, Cabot/Board of Commissioners
11 Dona Bate – Montpelier City Council
12 Larry Becker- Middlesex Conservation Commission
13 John Hoogenboom – Moretown Selectboard
14 Joyce Manchester – Moretown TAC
15 Ron Krauth – Middlesex/Board of Commissioners
16

17 Committee Members Absent:

18 Rich Turner – Williamstown Planning Commission/Board of Commissioners
19 Stewart Clark – Worcester Planning Commission
20 Michele Braun – Friends of Winooski River
21 Corrie Miller – Friends of the Mad River
22 Brian Shupe – Friends of the Mad River
23 Gianna Petito - Winooski Natural Resources Conservation District
24 Karen Bates – ANR
25 Russ Barrett – Northfield Conservation Commission
26 John Brabant – Calais/Board of Commissioners
27

28 Others Present:

29 CVRPC Staff: Pam DeAndrea
30

31 **CALL TO ORDER**

32 Amy Hornblas called the meeting to order at 4:05 PM.
33

34 **PUBLIC COMMENTS**

35 None.
36

37 **CHANGES OR AMENDMENTS TO THE AGENDA**

38 None.
39

40 **APPROVAL OF MAY 14 MINUTES**

41 John was in attendance not on phone. John's comment about roads – he wanted to clarify that
42 money that is spent is overdoing a bit and cost of materials may not be necessary; may not have
43 to be rock lined in all places. Did not have a quorum so minutes were not voted on.
44

1 **CWAC RULES OF PROCEDURE REVISION**

2 The CWAC was fine with the changes but was not able to vote since didn't have a quorum.

3

4 **DRAFT BASIN 14 TACTICAL BASIN PLAN COMMENTS**

5 Joyce: questioned how many plans and how many planners? Seems like this would be
6 exhaustive to do the same plan in all these different basins.

7 Pam – they are using a consistent template across the basins now and adjusting for basin specific
8 strategies and goals

9 Ron – yes, they need to have common goals.

10 Joyce - Would be easier to know what makes this plan different from another.

11 Dona – table 1 talks about focus area and strategies

12 Larry – is there a way to focus on the towns in the basin? He had questions about what main
13 strategies are for the two towns

14 Pam – main strategies are reclassification of headwater streams in Orange and Washington. Lee
15 of Orange has provided comments to me on the River Corridor by-laws and how his town would
16 not have the capacity to administer and enforce such a by-law.

17 Dona – the conformance letter seems like it just points out how the plan conforms with
18 everything and does not point out its weaknesses

19 Amy – seems like it is very boiler plate

20 Joyce – it would be interesting to know how this basin ranks among other basins in the state

21 Joyce – Story map should have an executive summary

22 Dona – first bullet point in conformance letter is a stretch.

23 Joyce – colors on Figure 1 should be more distinct to show differences. Should have different
24 colors for different issues on restoration/protection

25 John – like the last bullet point in the conformance letter referring to forest fragmentation

26

27 **OTHER ANNOUNCEMENTS**

28 CWAC letter will go to Board on July 7.

29

30

31 **SCHEDULE**

32 Next meeting: September 10, 2020.

33

34 Meeting adjourned at 5:30 pm.





MEMO

Date: September 29, 2020

To: Clean Water Advisory Committee

From: Bonnie Waninger, Executive Director

Re: Request for CWAC Input on Rough Draft of ANR Rule for Clean Water Service Providers

☒ **ACTION REQUESTED:** Provide input on the 09/02/20 draft ANR Rule for Clean Water Service Providers.

The Agency of Natural Resources (ANR) is working to finalize a proposed Rule for Clean Water Service Providers. The purpose of the Rule is to assign a clean water service provider (CWSP, pronounced “quisp”) to each basin described in 10 V.S.A. § 922(a) (water listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception) for the purposes of achieving pollutant reduction values established by the Secretary. For background, see: <https://dec.vermont.gov/water-investment/statutes-rules-policies/act-76>. CVRPC applied for, and is proposed to be designated as, the CWSP for the Winooski River Basin.

ANR formed an Act 76 Advisory Committee last year to advise it on the Rule’s contents. Entities to be proposed as CWSPs were invited to participate in Committee discussions beginning mid-August 2020. A rough version of the draft proposed Rule was released to the Act 76 Advisory Committee in early September. Comments from the Advisory Committee have not been incorporated into the document.

Staff is seeking CWAC input on the rough draft. **The purpose of CWAC engagement is to educate the CWAC about the direction the Rule is taking and to solicit high level comments.** The Act 76 Advisory Committee meets the day after the CWAC meeting. Final Committee comments are due to ANR at that meeting. When the proposed Rule is released for public comment, staff anticipates the CWAC will review it and develop formal comments.

We will plan to discuss this rough draft in detail at the CWAC’s October 8th meeting. **Please send your questions/comments to me by noon on Tuesday, October 6th** so I can compile them ahead of time. My email address is waninger@cvregion.com. It would be helpful to put “CWSP Comments” in the email subject line.

Outline:

- 1) Purpose and Authority
- 2) Definitions
- 3) Clean Water Service Providers
- 4) Basin Water Quality Councils
- 5) Conflict of Interest
- 6) Adequate Progress and Corrective Action
- 7) Renewal and Removal of Clean Water Service Provider Assignment

Appendix A: List of Assigned CWSPs by Basin

Discussion Draft - Not for Circulation

**ENVIRONMENTAL PROTECTION RULE
CHAPTER 37**

CLEAN WATER SERVICE PROVIDER RULE

**State of Vermont
Agency of Natural Resources
Department of Environmental Conservation**

Effective Date: _____

[TABLE OF CONTENTS – build automatic once re-formatted]

Discussion Draft - Not for Circulation

Subchapter 1. General Provisions

§ 37-101. Purpose.

The purpose of this Rule is to assign a clean water service provider (CWSP) to each basin described in 10 V.S.A. § 922(a) (water listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception) for the purposes of achieving pollutant reduction values established by the Secretary. In collaboration with the Basin Water Quality Council (BWQC), and with technical and financial support from the Agency, the CWSP bears responsibility for overseeing clean water project identification, prioritization, development, construction, verification, inspection, and operation and maintenance to be administered in accordance with this Rule.

§ 37-102. Authority.

This Rule is adopted by the Secretary of the Agency of Natural Resources pursuant to the authority granted by 10 V.S.A. §§ 924 and 930.

§ 37-103. Severability.

The provisions of this Rule shall be severable. If any provision of this Rule or any application of this Rule to any person or circumstance is deemed to be invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Subchapter 2. Definitions

§ 37-201. Definitions

As used in this Rule, the following terms shall have the specified meaning. If a term is not defined, it shall have its common meaning.

- (1) “Agency” means the Vermont Agency of Natural Resources.
- (2) “Administrative cost” means program and project costs incurred by a clean water service provider or a grantee, including costs to conduct procurement, contract preparation, and monitoring, reporting, and invoicing.
- (3) “Basin” means a watershed basin designated by the Secretary for use as a planning unit under 10 V.S.A. § 1253(d).
- (4) “Basin Water Quality Council” means a council established by a clean water service provider pursuant to 10 V.S.A. § 924(g).

- (5) “Clean water project” means a best management practice or other program designed to improve water quality to achieve a target established under 10 V.S.A. § 922 that:
- (A) is not subject to a permit under 10 V.S.A., Chapter 47, is not subject to the requirements of 6 V.S.A., Chapter 215, exceeds the requirements of a permit issued under 10 V.S.A., Chapter 47, or exceeds the requirements of 6 V.S.A. chapter 215; and
 - (B) is within the following activities:
 - (i) developed lands, sub-jurisdictional practices related to developed lands including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges;
 - (ii) natural resource protection and restoration, including river corridor and floodplain restoration and protection, wetland protection and restoration, riparian and lakeshore corridor protection and restoration, and natural woody buffers associated with riparian, lakeshore, and wetland protection and restoration;
 - (iii) forestry; or
 - (iv) agriculture.
- (6) “Clean Water Service Provider” or “CWSP” means an entity assigned to a basin by the Secretary pursuant to Subchapter 3 of this Rule for the purposes of achieving pollutant reduction values established by the Secretary for the basin and for identification, design, construction, operation, and maintenance of clean water projects within the basin.
- (7) “Co-benefit” means the additional benefit to local governments and the public provided by or associated with a clean water project, including flood resilience, ecosystem improvement, and local pollution prevention.
- (8) “Department” means the Vermont Department of Environmental Conservation.
- (9) “Guidance” means the guidance adopted by the Secretary pursuant to 10 V.S.A. § 924(a)(3) and § 37-304 of this Rule.
- (10) “Natural Resources Conservation District” means a district operating under 10 V.S.A. § 702.
- (11) “Maintenance” means ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life.
- (12) “Regional Planning Commission” means a regional planning commission operating under 24 V.S.A. 117, subchapters 3 and 4.

- (13) “Secretary” means the Secretary of the Vermont Agency of Natural Resources or the Secretary’s duly authorized representative.
- (14) “Services” means the activities a Clean Water Service Provider performs for the purposes of achieving pollutant reduction values established by the Secretary for the basin and for identification, design, construction, operation, and maintenance of clean water projects within the basin.
- (15) “Watershed Association” means XXXXXXXXXXXXXXXX.

Subchapter 3. Clean Water Service Providers

§ 37-301. Assignment to Basins.

- (a) The Secretary shall assign a clean water service provider to each basin described in 10 V.S.A. § 922(a) (listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception) for the purposes of achieving pollutant reduction values established by the Secretary for the basin and for identification, design, construction, operation, and maintenance of clean water projects within the basin.
- (b) Request for Proposals. The Secretary shall issue a competitive Request for Proposals (RFP), publicly soliciting proposals from qualified entities interested in serving as a Clean Water Service Provider (“CWSP”).
- (c) Assignment.
- (1) Following the competitive RFP process, the Secretary shall assign one entity for each basin to serve as the CWSP for that basin. The list of assignments shall be set forth in Appendix A.
 - (2) An entity may be assigned to serve as the CWSP in more than one basin.
 - (3) An entity assigned as a backup CWSP in any basin is eligible to serve as a CWSP in any other basin on an interim basis, should a partial or total vacancy exist in that basin for provision of CWSP services in a basin. Should that backup CWSP be unable to fulfill the role of interim CWSP, or if there is no backup CWSP for a basin, then an entity assigned as a CWSP in Appendix A is eligible to serve as a CWSP in any other basin on an interim basis.
- (d) Term. The duration of the CWSP assignment term shall be set forth in Appendix A and shall not exceed five (5) years, except that the initial set of assignments pursuant to this Rule may extend beyond five years to allow for staggered terms among the various CWSPs.

- (e) Transfer. If an entity assigned as a CWSP intends to merge with, be acquired by, or otherwise restructure as a different entity, the Secretary may transfer the assignment to the new entity for the remainder of the term, provided that the new entity meets all applicable requirements of the original CWSP entity and the entities enter an Assignment Transfer Agreement. A transfer shall be documented in a supplement to Appendix A published on the Agency's website, and on the CWSP website.
- (f) Renewal and Termination of Assignment. The Secretary may renew or terminate a CWSP assignment in accordance with Subchapter 7 of this Rule.
- (g) Provision of Services Outside Assigned Basin(s). A CWSP shall obtain Secretary approval prior to providing any services funded either directly by a formula grant or by subcontract outside the CWSP's assigned basin(s), unless the services are targeted to a subwatershed that overlaps with the assigned basin.

§ 37-302. Funding.

The Secretary shall administer a Water Quality Restoration Formula Grant Program to award grants to CWSPs to meet the pollutant reduction requirements under 10 V.S.A. Chapter 37, Subchapter 5. The grant amount shall be based on the annual pollutant reduction goal established for the CWSP multiplied by the standard cost for pollutant reduction, including administration and reporting costs. Administration and reporting costs shall not exceed 15 percent of the total grant amount.

§ 37-303. Subgrants and Subcontracts.

- (a) A CWSP may subgrant or subcontract the following activities in accordance with the procurement provisions of this Rule and applicable Secretary guidance:
 - (1) Accounting and bookkeeping, provided the CWSP retains responsibility for financial management and oversight responsibilities;
 - (2) Technical implementation, including the identification, development, design, construction, operation and maintenance of clean water projects, provided the CWSP retains responsibility for administrative oversight and certification of these activities;
 - (3) Report drafting, provided the CWSP retains responsibility for certification and submission of any reports; and
 - (4) Facilitation and coordination of Basin Water Quality Council meetings and activities.

- (b) The CWSP may only pay a subcontractor if the CWSP approves and accepts the work performed.
- (c) The following responsibilities and activities shall not be subgranted, subcontracted, or otherwise delegated:
 - (1) Financial management and oversight of CWSP activities, including procurement decisions, grant and contract signing and oversight, invoice approval, and task order approval;
 - (2) Administrative oversight and certification of CWSP technical implementation;
 - (3) Certification and submission of reports; and
 - (4) Responsibility for compliance with any all laws, regulations, and guidance applicable to CWSPs.
- (d) Secretary approval is required for any assignment of CWSP rights or benefits and delegation of any CWSP duties to another entity.

§ 37-304. Secretary's Guidance.

A CWSP shall follow the Secretary's guidance on a CWSP's obligation with respect to implementation of 10 V.S.A., Chapter 37. The Secretary shall provide notice to the public of the proposed guidance and a comment period of not less than 30 days. At a minimum, the guidance shall address the following:

- (a) how the clean water service provider and BWQC integrates, prioritizes, and selects projects consistent with the applicable basin plan, including how to account for the co-benefits provided by a project;
- (b) minimum requirements with respect to selection of and agreements with subgrantees;
- (c) requirements associated with the distribution of administrative costs to the clean water service provider and subgrantees;
- (d) the Secretary's assistance to clean water service providers with respect to their maintenance obligations pursuant to 10 V.S.A. § 924(c); and
- (e) the Secretary's strategy with respect to accountability pursuant to 10 V.S.A. § 924(f).

§ 37-305. Secretary's Allocation of Pollutant Reduction Targets to CWSP.

(a) Pollutant Reduction Determination, Allocation, and Standard Cost.

For waters described in 10 V.S.A. § 922(a) (water listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception), the Secretary shall include the following in an implementation plan:

- (1) An evaluation of whether implementation of existing regulatory programs will achieve water quality standards in the impaired water. If the Secretary determines that existing regulatory programs will not achieve water quality standards, the Secretary shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water. When making this determination, the Secretary may express the pollutant reduction in a numeric reduction or through defining a clean water project that must be implemented to achieve water quality standards.
- (2) An allocation of the pollutant reduction identified under subdivision (a)(1) of this subchapter to each basin and CWSP assigned to that basin pursuant to Subchapter 3 and Appendix A of this Rule. When making this allocation, the Secretary shall consider the sectors contributing to the water quality impairment in the impaired water's boundaries and the contribution of the pollutant from regulated and nonregulated sources within the basin. Those allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets as checkpoints to gauge progress and adapt or modify as necessary.
- (3) A determination of the standard cost per unit of pollutant reduction. The Secretary shall publish a methodology for determining standard cost for pollutant reductions. The standard cost shall include the costs of project identification, project design, and project construction.

- (b) When implementing the requirements of subdivision (a) of this subsection, the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714.

§ 37-306. Pollution Reduction and Design Life Methodologies.

- (a) Pollution Reduction Methodology. After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for calculating pollution reduction values associated with a clean water project in that water for use by clean water service providers. When establishing a pollutant reduction value, the Secretary shall consider pollution reduction values established in the TMDL; pollution reduction values established by other jurisdictions; pollution reduction values recommended by organizations that develop pollutant reduction values for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Pollution reduction values

established by the Secretary shall be the exclusive method for determining the pollutant reduction value of a clean water project. When implementing this subdivision (a), the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714. A CWSP shall assign individual project pollutant reduction values in accordance with the pollution reduction methodology provided by the Secretary.

- (b) **Design Life Methodology.** After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for establishing a design life associated with a clean water project. The design life of a clean water project shall be determined based on a review of values established in other jurisdictions, values recommended by organizations that regularly estimate the design life of clean water projects, actual data documenting the design life of a practice, or a comparison to other similar practices if no other data exists. A design life adopted by the Secretary shall be the exclusive method for determining the design life of a best management practice or other control. When implementing this subdivision (b), the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714.
- (c) **Pollution Reduction and Design Life When No Methodology Exists.**
 - (1) A person, in coordination with the applicable CWSP, may request a pollutant reduction value and design life for an eligible clean water project for which no pollution reduction value or design life methodology exists.
 - (2) A request for pollutant reduction value or design life shall be made on an application form provided by the Secretary and submitted to the Department's Watershed Planning Program.
 - (3) A pollution reduction value or design life established under this subsection shall be based on a review of pollution reduction values established in the TMDL; pollution reduction values or design lives established by other jurisdictions; pollution reduction values or design lives recommended by organizations that develop pollutant reduction values or design lives for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; actual data documenting the design life of a clean water project; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists.
 - (4) The Secretary shall establish the requested pollutant reduction value or design life within 60 days following such a request post the estimate on the Agency's website.
 - (5) When implementing this subdivision (c), the Secretary shall follow the type 4 notice process established in 10 V.S.A. § 7715.

- (d) The Secretary shall periodically review pollution reduction values and design lives established under this subsection at least every five years to determine the adequacy or accuracy of a pollution reduction value or design life.

§ 37-307. Clean Water Projects.

With direction from the BWQC, the CWSP shall identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects in accordance with the requirements of 10 V.S.A., Chapter 37, Subchapter 5, this Rule, and guidance.

- (a) Project Identification and Prioritization.

When identifying, prioritizing, and selecting a clean water project to meet a pollutant reduction value, the CWSP and BWQC shall:

- (1) consider the pollution reduction value associated with the clean water project, the co-benefits provided by the project, operation, and maintenance of the project, conformance with the tactical basin plan, and other water quality benefits beyond pollution reduction associated with that clean water project;
- (2) prioritize projects identified in the basin plan for the area where the project is located and shall consider the pollutant targets provided by the Secretary and the recommendations of the BWQC; and
- (3) prioritize projects in coordination with their BWQC and the Secretary, in accordance with any additional requirements imposed by the Secretary's guidance.
- (4) The CWSP and BWQC shall jointly implement a process for project ranking to ensure that the highest priority projects are constructed, within the available funding provided by the formula grant.

- (b) Project Selection. Based upon project priorities identified and prioritized in section 307(a)(1) of this subchapter, the BWQC shall select a set of projects to fulfill pollution reduction goals.

- (c) Watershed Projects Database. All selected projects shall be entered into the State's watershed projects database. The database contains information necessary to the prioritization of clean water projects. The State shall provide means for projects to be entered into the database, to include project attributes identified as necessary by the Secretary.

- (d) Limitation on Project Procurement. The CWSP shall not be required to develop or construct projects for which the formula grant is insufficient, based on standard costs.
- (e) Methodology for Determining Project Eligibility. Upon the request of a clean water service provider, the Secretary shall evaluate a proposed clean water project and issue a determination as to whether the proposed clean water project is eligible to receive funding as a part of a Water Quality Restoration Formula Grant. When making a determination, the Secretary shall consider the impact of the project on natural resources, and the feasibility, legality, and consistency of the project with goals of the applicable TMDL. The Secretary may also consider the impact of the project on the neighboring community including noise or odor, or other impacts to natural resources.
- (f) Operation and Maintenance. The clean water service provider shall operate and maintain projects in accordance with best practices established by the Secretary, and shall verify on-going functioning of projects by submitting information as determined by the Secretary.
- (g) Quality Control and Site Control. Clean water service providers shall have site control to access property where projects are installed, which may include acquisition of a fee simple interest, a maintenance and access easement, or a maintenance and access agreement. The existence of ownership in fee simple, easements, or agreements shall be documented on a form provided by the Secretary.
- (h) Basin Water Quality Council. A CWSP shall establish and support a basin water quality council (BWQC) for each assigned basin in accordance with Subchapter 4 of this Rule. Within 60 days of assignment pursuant to this rule, each CWSP shall convene an initial meeting of the BWQC as described in Subchapter 4 of this Rule.

§ 37-308. Operating Procedures.

As part of its operating procedures, an entity assigned as a CWSP shall:

- (a) have one principal Director, who shall be responsible to the Secretary for the entity's compliance with all CWSP obligations set forth in statute, this Rule, and guidance. The Director shall also be the authorized signatory for all CWSP activities, including execution of agreements with the Agency, invoice payment approval, procurement processes, and subcontracts or subgrants.
- (b) be responsible to the Secretary for compliance with all CWSP obligations set forth in statute, this Rule, and guidance.

- (c) assure coordination with other CWSPs, stakeholders, and related entities.
- (d) assure that the entity's policies and services are consistent with the mission, outcomes, and requirements of the Agency.
- (e) review and approve the CWSP budget and monitor the CWSP's financial status.
- (f) monitor costs, projects, construction, and project condition, in accordance with any specific Agency requirements.
- (g) support high quality service provision, with the capacity to monitor the services delivered by contracted entities, in accordance with any specific Agency requirements.
- (h) assure the entity maintains sufficient technological infrastructure to provide all CWSP services.
- (i) have a statement of its policies and procedures for disposal of assets and debts and obligations in the event of dissolution, including the return to the Department of any assets and property directly obtained with Department funds, as allowed by law.
- (j) be subject to public records law.
- (k) follow state law on accessibility.
- (l) have written personnel practices, policies, and procedures that promote high quality services, and maintain evidence showing that they adhere to their stated practice.
- (m) implement staff training requirements as established by the Secretary.
- (n) have written policies prohibiting discrimination based on all protected classes under Federal and State law.

§ 37-309. Fiscal Management.

- (a) **Role of Director.** The Director shall be responsible for reviewing and approving the CWSP budget and expenses and managing CWSP financial operations.
- (b) **Solvency.** The CWSP shall be solvent as a condition of its term of service, as demonstrated by an ability to meet payroll and pay bills in a timely fashion, and by other metrics as the Secretary may establish. The CWSP shall not be overly leveraged. Quarterly, the CWSP shall provide the Department with a cash flow statement, income statement, and balance sheet showing CWSP activities.

- (c) Audit. Annually, the CWSP shall provide an independent financial and programmatic audit of the entity. The audit shall show all CWSP activities as a separate fund from the other entity activities. The audit shall be performed by an independent public accountant in accordance with all applicable laws, regulations, policies and procedures.
- (d) Monitoring of Billing and Expenditures. The CWSP shall follow generally accepted accounting principles (GAAP) rules in developing its financial statements and shall only provide financial statements prepared in accordance with GAAP.
- (e) Payments to the CWSP. Specific payment provisions shall be governed by the terms of the Formula Grant. The CWSP shall bill the State in accordance with the payment provisions established by the Secretary.
- (f) Internal Controls. The CWSP shall have an adequate Internal Controls Policy that includes separation of duties for financial activities (i.e. paying invoices, reconciliation, check issuance, etc.). The Policy shall be subject to Department review and subject to Corrective Action Plan if deemed inadequate. Annually, DEC will evaluate CWSP compliance with the Internal Controls Policy as part of annual review. The CWSP shall be subject to Department risk assessment every three years. At a minimum, the Policy must include:
 - (1) separation of duties for financial activities (paying invoices, approval to pay invoices, check issuance, reconciliation)
 - (2) an electronic accounting system
 - (3) a process to regularly monitor budgeted vs. actual expenditures, to ensure accounts are not over or under spent
 - (4) a system to track staff time spent on grants/projects.
 - (5) written procurement procedures that indicate which individuals are authorized to initiate a purchase request, the flow of documents, and the requested levels of approvals for procurement decisions.
 - (6) internal control procedures to include written accounting, financial reporting and personnel policies, that detailed separation of duties, approvals/authorizations, and safeguarding of assets.
- (g) Procurement, Prequalification. The CWSP shall have a procurement policy for procuring goods and services. The policy shall outline the procedures that the CWSP shall follow when subgranting or subcontracting, and when the CWSP implements a project directly. Sole source agreements are prohibited, except for pre-qualified subgrantees or subcontractors selected by the BWQC to implement a project. Subgrantees and subcontractors must be pre-qualified through a request for qualifications process implemented by the CWSP. The outcome of the request for qualifications shall be valid for up to three years.

- (h) Procurement, Goods and Services. Procurement by the CWSP or their subgrantees, for anything except for pre-qualified entities selected by the BWQC to implement a project, shall be by a competitive process for services, with a solicitation of at least three quotations from qualified entities. Purchasing of goods shall require the solicitation of at least two different quotations, except when purchasing items valued at \$1,000.00 or less, which may be procured with a verbal quote. Records related to the procurement of services shall be retained for the term of the contract plus three years. Records related to the procurement of goods shall be retained for one year after the audit covering the period of purchase of those goods. Procurement of a good or category of goods totaling \$15,000.00 or greater from one vendor in one year shall be by written contract. Equipment and other durable assets purchased by a CWSP shall be maintained.
- (i) Subgrant Guidance. The CWSP shall adopt guidance for subgrants consistent with the Secretary's guidance pursuant to § 37-304 that establishes a policy for how the clean water service provider will issue subgrants to other organizations in the basin, giving due consideration to the expertise of those organizations and other requirements for the administration of the grant program. The subgrant guidance shall include a policy and procedures for subgrantees and subcontractors for self-certification of debarment status and for Certificate of Good Standing requirements pursuant to 10 V.S.A. XXXX, including how the CWSP will audit these requirements.
- (j) Insurance. The CWSP shall comply with the insurance requirements of Water Quality Restoration Formula Grants. Professional liability insurance shall be required for any engineers or architects that are subgrantees or subcontractors. Errors and Omissions insurance shall be required for Directors and Officers and BWQCs.
- (k) Investment of CWSP funds. The CWSP shall deposit all funds into an interest-bearing checking or savings account. Funds may not be otherwise invested, such as in bonds, stocks, money market accounts or any other non-approved manner, and shall be used only for allowed uses pursuant to the Formula grant. Failure to comply with this provision is ground for immediate decertification of the CWSP. CWSPs shall monitor the interest earned on proceeds they received .
- (l) Insurance for deposits. Funds deposited at financial institutions shall be insured against failure of the financial institution, such as by the Federal Depositor insurance Corporation (FDIC) or National Credit Union Administration (NCUA). Deposits that exceed the insurance limit of the FDIC/NCUA coverage shall be otherwise insured by the CWSP.
- (m) Leftover funds. Pursuant to 10 V.S.A. § 924(d), if a clean water service provider achieves its pollutant reduction goal or five-year target and has excess grant funding available, a clean water service provider may carry those funds forward into the next program year for the following uses: for other eligible projects; for

operation and maintenance responsibilities for existing constructed projects; for projects within the basin that are required by federal or State law; or, for other work that improves water quality within the geographic area of the basin, including protecting river corridors, aquatic species passage, and other similar projects.

- (n) Risk Reserve. A risk reserve shall be funded by the Clean Water Board, and held by DEC. Rules for using Risk Reserve funds shall follow the Risk of Loss provisions above, and per Guidance.
- (o) Monitoring/Oversight. Adequate Annual Progress shall be achieved to retain assignment as a CWSP.
- (p) State Access to Records and Programmatic Site Visits. With advance notice, the State shall be entitled to visit the office of any CWSP during normal business hours for the purpose of ensuring compliance with CWSP obligations under applicable laws and this Rule.
- (q) CWSPs are not precluded from receiving funds from sources other than the formula grant to further improve water quality.

§ 37-310. Public Engagement and Records.

- (a) BWQC Open Meetings. The CWSP shall comply with the Vermont Open Meeting Law for all BWQC meetings.
- (b) Records Retention. The CWSP shall comply with records retention law for all CWSP and BWQC activities.
- (c) Public Engagement Policy. The CWSP shall consider Environmental Justice and shall adopt meaningful public engagement policies as part of its operating procedures.
- (d) Website. The CWSP shall maintain a website, used at least for noticing meetings, posting minutes, and other relevant documents and information on project implementation as may be required by the Secretary's guidance.

§ 37-311. Reporting to the Secretary.

- (a) Quarterly Reporting. The CWSP shall report to the Secretary quarterly, as specified in applicable grant documents.
- (b) Annual Reporting. The Secretary shall set a schedule for CWSPs to submit an annual report, which shall contain at a minimum, the following:

- (1) A summary of all clean water projects completed, and in progress, for the period of performance;
- (2) A summary of any inspections of previously implemented clean water projects and whether those projects continue to operate in accordance with their design;
- (3) All administrative costs incurred by the CWSP;
- (4) A list of all subgrants/subcontracts awarded by the CWSP in the basin for the period of performance; and
- (5) All data necessary for the Secretary to determine the pollutant reduction achieved by the CWSP during the period of performance.

§ 37-312. Risk of Project Loss.

The risk of loss of a project that is either in process or completed shall be addressed as follows:

- (a) When costs have been incurred, but the project is not completed due to unforeseen circumstances or Acts of God and not due to an act or omission of the CWSP, and there is no functional pollution reduction value. The CWSP can use the Water Quality Restoration Formula Grant, but will not receive credit for any pollution reduction unless and until the project is complete. Leftover funds may be used pursuant to § 37-309(1) of this Rule.
- (b) When the project is installed, but despite appropriate installation, operation, and maintenance, fails to secure on-going pollution reduction (i.e., a lemon). The project costs will be eligible for the Water Quality Restoration Formula Grant, but the CWSP will not receive continuing payment for ongoing pollution reduction. Projects that are sufficiently rehabilitated will not be considered failed.
- (c) When the project is damaged or removed due to the negligence or intentional acts of others. The CWSP loses future pollution credit, but the project can be rehabilitated if possible, relying on a contingency risk reserve if available within the Clean Water Fund, or leftover funds, provided the damage is not the result of CWSP negligence.
- (d) When the completed project is damaged or lost due to Acts of God. Risk reserve and leftover funds are allowed if available.
- (e) When the project is installed, but fails because due to a negligent or intentional act or omission, the Secretary may exercise authority pursuant to 10 V.S.A. § 924(f) and subchapter 6 of this Rule.

Subchapter 4. Basin Water Quality Councils

§ 37-401. Membership and Structure.

- (a) Each CWSP shall establish a basin water quality council (BWQC) for each basin to which it is assigned. Membership shall be comprised of the minimum statutory members identified in 10 V.S.A. § 924(g)(2). Additional membership on the BWQC is only permitted if allowed by the Secretary.
- (b) BWQC members shall be knowledgeable on clean water topics and shall at all times act in good faith in the discharge of their duties as a member of the BWQC.
- (c) If there is a disagreement as to who shall sit on the BWQC among the appointing entities in 10 V.S.A. §924(g)(2), the CWSP shall decide who the BWQC member shall be.
- (d) The term of membership for a BWQC member shall generally be two years, except that terms shall be staggered, so that initially, at least five members shall serve two-year terms, and at least four members shall serve three-year terms. Thereafter, all member terms shall be two years.
- (e) The CWSP shall oversee replacement of a BWQC member in accordance with Section 37-401(a).
- (f) By majority vote, the BWQC shall appoint a Chairperson for a one-year term, renewable by majority vote. The Chairperson shall guide the planning and facilitation of BWQC meetings.
- (g) By majority vote, the BWQC may establish appropriate subcommittees and subcommittee membership, which may include Non-BWQC members from the public. At least one BWQC member shall be on the subcommittee, and the subcommittee chairperson shall be a BWQC member. Any subcommittee shall have a specific, defined charge.

§ 37-402. Responsibilities.

- (a) Consulting with the basin plan and CWSP, and utilizing the Agency's project selection protocols, the BWQC shall prioritize clean water projects to address the most significant water quality impairments in the basin.

§ 37-403. Meetings and Actions.

- (a) A BWQC shall minimally convene four meetings per year, with a best practice of having one meeting per quarter. Meetings should not occur more frequently than once per month.

- (b) Decisions shall be binding by a vote of the majority of the BWQC members regardless of the number of members present for a vote. Each BWQC member shall have one vote.
- (c) The BWQC and any BWQC subcommittee are subject to the Vermont Open Meeting Law. Minutes of each meeting shall be retained by the CWSP and approved by a vote at a subsequent BWQC meeting.
- (d) A quorum shall be required in order to take a vote. A quorum shall be attained by the presence of a plurality of the voting-eligible membership of the BWQC.
- (e) BWQC members shall attend all BWQC meetings, unless good cause prevents attendance. Failure to attend one-half or more of the scheduled meetings per year shall constitute grounds for replacement of the member.
- (f) Proxy voting shall not be permitted.
- (g) The BWQC statutory members may designate one or more alternate members, who may replace any absent or disqualified member at any meeting. Alternate members shall be established at the first meeting of a BWQC, and may be changed with reasonable prior written notice to the BWQC and CWSP.
- (h) BWQCs shall be subject to the same records retention requirements as are imposed on the CWSP. The CWSP assigned to the basin for which the BWQC serves shall assume the records retention responsibilities for the BWQC.

Subchapter 5. Conflicts of Interest.

Conflict of interest means an interest, direct or indirect, financial or otherwise, of a person with a CWSP or BWQC decision making role, or such an interest, known to that person, of a member of that person's immediate family or household, or of a business associate, in the outcome of a particular matter pending before the CWSP or BWQC or which is in conflict with the proper discharge of the person's duties under this Rule.

All persons engaged in the decision making of a CWSP or a BWQC, or both, shall conduct themselves according to high ethical standards, including the identification and recusal from decision making on any matter that gives the appearance of or constitutes a conflict of interest.

A CWSP or other BWQC member that proposes to implement a project must disclose any conflict of interest and recuse itself from any BWQC decision making subject to that conflict. Notwithstanding this limitation, the conflicted CWSP or other BWQC member may answer questions on the subject project in an open meeting of the BWQC.

Each CWSP and BWQC shall adopt a conflict of interest policy that, at a minimum, implements this subchapter.

Subchapter 6. Adequate Progress and Corrective Action.

§ 37-601. Review of Progress.

- (a) The CWSP shall be subject to determinations of adequate progress, pursuant to 10 V.S.A. § 924(f). In reviewing adequate progress, the Secretary shall consider the provisions of 10 V.S.A. § 922(a)(2).
- (b) The CWSP shall allow the Secretary to conduct regular, scheduled oversight and compliance checks of the CWSP as set out in Guidance and in Grant Agreements.
- (c) The Secretary or their duly authorized representative shall have the right, during regular business hours, to enter the CWSP office location and to inspect CWSP documents to confirm compliance with 10 V.S.A. Chapter 37, Subchapter 5, and this Rule.
- (d) The CWSP shall ensure that the Secretary has the right to reasonably access and if necessary, maintain all projects.

§ 37-302. Corrective Action Plans.

At any time, the Secretary may prepare a Corrective Action Plan for any CWSP, to address any deficiencies of service, including failure to achieve adequate progress, or failure to adequately implement or comply with applicable statute, rule, guidance, or grant terms. Issuance of a Corrective Action Plan is not a prerequisite of assignment removal. For any entity to which a Corrective Action Plan is issued, the Secretary may also limit all or part of the entity's formula grant funding, shift all or part of the pollution reduction target to another CWSP, require more frequent reports or oversight, modify the terms of the entity's terms of service, and/or any other appropriate action.

Subchapter 7. Review and Renewal of Clean Water Service Provider Assignment

§ 37-701. CWSP Evaluation and Renewal Process. Any entity assigned as a CWSP that seeks to renew its assignment shall undergo an evaluation and renewal process prior to the assignment expiration.

- (e) In a reasonable timeframe prior to the expiration of its assignment term, the entity shall submit to the Secretary an assignment renewal application on the form prescribed by the Secretary, or shall otherwise notify the Secretary of the CSWP intent to terminate its service.
- (f) Upon receipt of a completed assignment renewal application, the Secretary shall publish on the Agency's website the notice of intent of the entity to renew its

assignment. The Secretary shall receive and respond to public comment on the application.

- (g) Agency staff shall review the assignment renewal application using the criteria set forth in the Secretary's guidance and make a written recommendation to the Secretary for or against renewal.
- (h) If the Secretary determines that an entity has not fully met the requirements for assignment renewal, the Secretary may re-assign an entity to serve as a CWSP, subject to completion of a corrective action plan, for a period less than five years.

§ 37-702. Removal of Assignment

- (a) The Secretary may remove an entity's CWSP assignment for the following reasons:
 - (1) The entity fails to make adequate annual progress towards achieving water pollution reduction goals.
 - (2) The entity has shown an inability or unwillingness to improve performance according to the terms of an applicable corrective action plan.
 - (3) The entity has failed to comply with 10 V.S.A., Chapter 37, Subchapter 5, this Rule, or the terms of any State of Vermont grant agreement.
 - (4) The entity has violated any federal, state, or local law or regulation.
- (b) Removal process.
 - (1) Notice to entity shall be provided.
 - (2) The Secretary shall determine in writing the date for assignment removal or contract/grant cancellation. An entity subject to removal shall inform its stakeholders in its basin, including its BWQC, subcontractors, and subgrantees, of the change in the entity's status, as agreed upon by the Agency.
 - (3) Transferring records/final accounting, returning left-over grant funds/projects in-process/transferring subcontracts to ANR

§ 37-703. Additional Secretary Actions to Address CWSP Deficiencies and Risks

During the assignment removal process or as a part of the issuance of a Corrective Action Plan, the Secretary may:

- (a) Suspend or amend terms of other grants or contracts between the entity and the Agency;
- (b) Initiate the process to identify a new CWSP for the basin;
- (c) Assign another entity as the CWSP on an interim basis to ensure uninterrupted service provision and quality;
- (d) Take additional actions, as determined by the Secretary, to protect the investments, projects, agreements, and grant funds within the basin.

Appendix A. Clean Water Service Provider Assignments by Basin

Basin (ID)	CWSP	Back-up CWSP	Term
Memphremagog (Basin 17)	Vermont Housing Conservation Board	Chittenden County Regional Planning Commission	
Missisquoi (06) and Lamoille (07)	Northwest Regional Planning Commission	Chittenden County Regional Planning Commission	
North Lake (05)	Chittenden County Regional Planning Commission	None	
Winooski (08)	Central Vermont Regional Planning Commission	Chittenden County Regional Planning Commission	
Otter Creek (03)	Addison County Regional Planning Commission	Chittenden County Regional Planning Commission	
South Lake (02 and 04)	Rutland Regional Planning Commission, in collaboration with the Poultney-Mettowee Natural Resources Conservation District	Chittenden County Regional Planning Commission	