



AGENDA

Clean Water Advisory Committee

Thursday March 11th 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/904349861>

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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 1/14/21 minutes (enclosed)
- 4:20 PM: CVRPC CWSP Rule Comment Letter (enclosed)
- 4:45 PM: Lamoille Tactical Basin Plan – Danielle Owczarski, VT DEC Basin Planner
- 5:50 PM: Other Announcements?
- 5:55 PM: Wrap-up. Next Meeting Date 5/13/21.

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CENTRAL VERMONT REGIONAL PLANNING COMMISSION
CLEAN WATER ADVISORY COMMITTEE
January 14, 2021

A meeting of the Central Vermont Regional Planning Commission's Clean Water Advisory Committee was held remotely on January 14, 2021 via GoToMeeting due to the COVID-19 pandemic and adhering to social distancing guidelines by the State of Vermont.

Committee Members Present:

Dona Bate – Montpelier City Council
Larry Becker, CWAC Vice Chair - Middlesex Conservation Commission
Joyce Manchester – Moretown TAC
Ron Krauth – Middlesex/Board of Commissioners
Rich Turner – Williamstown Planning Commission/Board of Commissioners
John Hoogenboom – Moretown Selectboard
Russ Barrett – Northfield Conservation Commission

Committee Members Absent:

Karen Bates – ANR
John Brabant – Calais/Board of Commissioners
Amy Hornblas – CWAC Chair, Cabot/Board of Commissioners

Others Present:

CVRPC Staff: Pam DeAndrea, Bonnie Waninger, Grace Vinson

CALL TO ORDER

Larry Becker called the meeting to order at 4:04 PM.

PUBLIC COMMENTS

None.

CHANGES OR AMENDMENTS TO THE AGENDA

None.

APPROVAL OF OCTOBER 8 MINUTES

Dona motioned to accept October minutes as written. Ron seconded. Motion carried.

APPROVAL OF NOVEMBER 12 MINUTES

Rich made a motion to approve the November minutes as written. Russ seconded. Motion carried.

UPDATED CLEAN WATER SERVICE PROVIDER RULE

Grace went over the rule summary by chapter via a summary table. She explained each chapter and what is included in each chapter in general. Purpose, Definitions, CWSPs, Technical

1 Implementation, BWQC, Conflicts of Interest, Review of Adequate Progress & Maintenance,
2 CAPs, Renewal of CWSP Term.

3
4 Joyce question: Has very much changed since October?

5 Grace – more detailed and more information on what the guidance would include. Pam –
6 CCRPC crosswalk can show some of the differences.

7 Larry – how formal will the guidance be? Will be there a lot of technical information in there?

8 Grace – we don't have a lot of detail on that, but there is some info on the ANR website.

9
10 Grace shared the CWAC's comments from October.

11 Subchapter 3 of the rule – design life and maintenance addresses that.

12 Funding will be addressed in the guidance

13 Pollution reduction cost will be addressed in the guidance.

14 Leftover funds – in the updated rule that yes leftover funds can be used.

15 BWQC comment – in the rule section 39-501 – BWQC rule states that members shall be
16 knowledgeable – how knowledgeable is not spelled out

17 Larry – How is the provider being seen in terms of expertise?

18 Bonnie – laid out in our proposal that we would solicit an RFP/RFQ for technical expertise when
19 needed.

20
21 Grace went over the crosswalk from the CCRPC on changes in the rule addressed/not addressed.

22 Conflict of interest. RPC request was that the membership of the BWQC, it is likely that a
23 member of the BWQC may have a conflict of interest at some point. The way the conflict of
24 interest language is written, a member has to recuse themselves if one of their projects is in the
25 slate of project. If there was a slate of projects and members could not vote on the package, it
26 would be very difficult to have quorum to vote on a packet.

27 Bonnie - ANR may not be able to remedy this and it may have to be resolved legislatively.

28
29 Pam went through process in terms of compiling comments from the CWAC on the updated rule.
30 Public comment is open until Feb. 19th and we won't be meeting again.

31
32 Grace went over the previous comments from October again in terms of shall we keep them to
33 submit to the ANR or shall we remove them.

34 Joyce had a question about the standard cost.

35 Bonnie – the standard cost is based on the type of project. For example, stream buffer
36 restoration.

37 Joyce – Does it not matter whether the project is near the road or not? Will costs be updated over
38 time?

39 Bonnie – the cost would be the same no matter where. There is no plan to update at this point.

40 Joyce - We should comment on the guidance that the standard costs should be reviewed
41 periodically.

42 Bonnie – we could put it in a letter to the ANR that this should be considered in the guidance.

43 Ron – we should have some reference of where the standard costs and benefits come from and
44 what they are basing it on

45 Pam – The ANR is working on this but the details are unknown.

46

1 Grace – summary – to summarize we should put in guidance comments both Joyce and Ron’s
2 comments but we will not include them in the Rule comments. I
3 Joyce- if there is a review of the standard costs every 5 years or so, make sure that expected costs
4 of future projects are incorporated and not just the cost of past projects?
5 Projects for future years comment? – don’t need to include it.
6 Bid comment, can remove
7 Comment on 39-404.
8 Joyce – how is CWSP evaluated?
9 Grace – guidance will have more detailed on the CWSP evaluation. We can include this
10 comment in the guidance comments.
11 Larry – what if a project is not working and you have to put more money into it? When do you
12 stop?
13 Joyce – that addresses marginal costs.
14 Grace – there is going to be a lot of trust in CWSPs to manage this program. DEC would also
15 say that the CWSP has been selected and that they can manage these projects. Do we need to
16 keep this comment in there?
17 Joyce – no, seems like it is addressed, though not perfectly
18 Grace – BWQC technical expertise comment?
19 Larry – technical expertise existing in appointed members is good. Would be good to members
20 on the BWQC that could address specific types of projects. Guidance show say that BWQC
21 members have expertise on the types of projects. Make comment that guidance should lay out
22 what “knowledgeable” in the rule refers to.
23 Ron – BWQC members should understand whether projects are feasible and reasonable from a
24 cost-benefit perspective.
25
26 Grace – are there any additional comments for the actual Rule?
27
28 Larry – question on conflict of interest? What would a reasonable lumping of projects? Would
29 the y be lumped on type?
30 Bonnie – It would be a slate of projects. They would be ranked and the BWQC would move
31 them forward based on how much funding for a quarter.
32 Pam – had questions about design life. Does O&M commitment need to align with design life? It
33 would be nice for this to be spelled out in the guidance.
34

35 **LAMOILLE TACTICAL BASIN PLAN**

36 Pam went over the Lamoille Tactical Basin Plan story map briefly with the CWAC and mostly
37 focused on the timeline as well as letting the CWAC know what they should focus on when it
38 comes time to review.
39

40 **OTHER ANNOUNCEMENTS**

41 Pam mentioned how she met with DEC Stormwater, LCBP, Andres from WCA to address the
42 Vermont Shopping Center (a 3-acre parcel) stormwater design not funded and how in our grant
43 applications, we that the feedback was that we need to be more specific on how we will address
44 natural resource conflicts such as floodplains.
45

1 Pam mentioned that she will be putting in another grant application for a 3-acre parcel in
2 Waterbury to the DIBG program this week.

3
4 Pam also mentioned that an RFP will be released soon on the Green Schools program to fund
5 schools for design and implementation for stormwater projects for schools that will be required
6 to meet the 3-acre permit.

7
8 **SCHEDULE**

9 Next meeting: March 11, 2021.

10 Larry motioned that we adjourn. Joyce seconded.

11 Meeting adjourned at 5:45 pm.



February 19, 2021

Mr. Chris Rottler, Environmental Analyst VI
 Vermont Dept. of Environmental Conservation
 Water Investment Division
 1 National Life, Davis 3
 Montpelier, VT 05620-3510
 Via email to: chris.rottler@vermont.gov

Dear Chris,

Thank you for the opportunity to provide comments on the draft Clean Water Service Provider Rule. The Central Vermont Regional Planning Commission appreciates the extensive consultation and outreach DEC staff conducted during the proposed Rule's development.

The CVRPC Board of Commissioners is providing the following comments. CVRPC's Clean Water Advisory Committee was consulted during development of the comments. We suggest the following clarifying edits with additions noted in ***italics, bold and underlined*** and deletions in ~~strikethrough~~:

Comment 1: The Rule should align the Basin planning process and the CWSP project identification process. Basin Plans should mention the pollution reduction targets allocated to each Basin. This establishes a connection between the Basin Plan and its implementation.

§ 39-401. 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 ***as part of the basin plans***:

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Comment 2: The standard cost per unit of pollutant reduction should include the cost of *project development and maintenance*. Project development is when landowners and stakeholders begin buying into an identified project and the needs of all parties begin to be defined. Project development helps insure project design funds are used wisely.,

§ 39-401. Secretary's Allocation of Pollutant Reduction Targets to CWSP.

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

- (3) A determination of the standard cost per unit of pollutant reduction by sector. The Secretary shall publish a methodology for determining standard cost for pollutant reductions. The standard cost shall include the costs of project identification, project development, project design, ~~and~~ project construction and maintenance.

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Comment 3 REVISED: Potential and actual conflicts of interest inherent to the Legislature's designation of Basin Water Quality Council (BWQC) membership should be recognized in the Rule and not paralyze the decision making process. Some of the BWQC members will represent entities that are capable of effectively proposing, construction and operating clean water projects. The proposed Rule may negate the BWQC's designated role and participation in project prioritization. If BWQC members must recuse themselves from voting on projects they sponsor, the BWQC regularly may not have sufficient voting members to make decisions about project priorities.

The Legislature codified membership requirements for BWQCs to foster Councils knowledgeable about water quality. The majority of BWQC members are project implementers who will be proposing projects. Recognizing inherent and actual conflicts of interest and minimizing them to the extent possible can be reconciled by permitting BWAC members to vote on a slate of projects, only recusing themselves from voting if projects they sponsor are presented individually for a vote.

Subchapter 6: Conflicts of Interest

Each CWSP shall adopt a conflicts of interest policy that includes, in part, the following:

- (a) All persons engaged in the decision making of the respective CWSP or BWQC or both, shall conduct themselves according to high ethical standards.
- (b) Conflict of interest means an financial 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.
- (c) A BWQC member that proposes to implement a clean water project must disclose any potential conflict of interest and shall recuse itself from any BWQC decision making subject to that conflict if any of the following conditions are present:
 - 1. If a project is being considered by itself per §39-403(e)(5), or the project's score or ranking is being considered by itself, the project sponsor shall recuse itself from the BWQC decision making related to that individual project.
 - 2. If a BWQC-member's project is being considered as part of a list or package of projects being voted on and the funding passed through to its subcontractors (engineers, construction firms, etc.) and/or for materials and supplies constitutes in total less than 50% of the overall cost of the project.

3. *The project involves payments for fee simple for land or for purchase of an easement to the member, the member's immediate family or household, or to a business associate.*

(d) In the case where recusal results in inability of the BWQC to take action due to loss of quorum, the rule of necessity shall apply.

Notwithstanding these limitations, the conflicted BWQC member may answer questions on the subject project in an open meeting of the BWQC.

Note that our preferred language for #2 above is as follows: *If the project is one of many on a list or package considered by the BWQC as they determine the ranking and priorities for funding, the sponsorship of the project is the only potential conflict of interest, and recusal by conflicted BWQC members would result in loss of quorum to make decisions; all members of the BWQC may vote on the list or package. If there are other potential conflicts of interest, each member shall disclose the potential conflict and the BWQC shall determine if the member may vote upon the list or package.* However, the proposed 50% threshold language is offered as a potential compromise.

The rule of necessity has been incorporated into Conflict of Interest policies by many Vermont legislative and quasi-judicial public bodies after legal consultation. It is also included in the Vermont Code of Judicial Conduct Rule 2.11- Disqualification, Comment [3].¹

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Comment 4: The Rule should permit Basin Water Quality Councils and CWSPs to define which co-benefits are most beneficial in a basin. Co-benefits can vary among projects and basins and reflect the value of the project to other goals in a basin.

§ 39-201. Definitions.

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- (8) "Co-benefit" means the additional benefit to local governments and the public provided by or associated with a clean water project, including *but not limited to* flood resilience, *hazard mitigation, educational,* ecosystem improvement, and local pollution prevention.

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Comment 5: Clarity is needed regarding use of funds provided to CWSPs. Before implementation can occur, clean water projects must be developed and designed. As these activities are eligible costs, the Rule would benefit from incorporating these activities by name. Additionally modifying the procurement language clarifies that a CWSP must solicit three quotes, not obtain three quotes. Regarding insurance, because coverage is specific to CWSP activities, it is helpful to clarify that any additional cost can be paid from CWSP funds.

¹ Rule 2.11, Vt. Admin. Ord. of Sup. Ct. 2.11, Amended August 6, 2019, eff. October 7, 2019, <https://casetext.com/rule/vermont-court-rules.vermont-administrative-orders-of-the-supreme-court.vermont-code-of-judicial-conduct.canon-2-a-judge-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently.rule-211-disqualification>.

§ 39-306. Fiscal Management.

- (i) Procurement, Goods and Services. Procurement by the CWSP or its subgrantees, for anything except for pre-qualified entities selected by the BWQC to develop, design, or implement a clean water project, shall be by a competitive process for services, with a solicitation for quotes sent to ~~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. 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.
- (j) Insurance. The entity serving as 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, with the CWSP listed as additional insured. The CWSP shall obtain Errors and Omissions insurance for BWQC members. Funds provided by the Agency of Natural Resources to a CWSP may be used to pay the premiums for this insurance.

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Comment 6: The DEC Basin Planner should be consulted as part of the project selection process in the event that the BWQC does not achieve quorum and the CWSP must make a decision. This provides a conflict of interest solution should a CWSP have a project in the slate.

§ 39-403. Clean Water Projects.

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- (e) Clean Water Project Selection. Based upon project priorities identified under § 39-403(d), the BWQC shall consider the preliminary scoring and ranking of all proposed clean water projects drafted by the CWSP for both project development or implementation categories and make any adjustments to the co-benefits scoring as needed. The BWQC shall vote on a prioritized slate of clean water projects for both development and construction to fulfill pollution reduction goals. In the event the BWQC is unable to obtain a quorum to vote on a slate of clean water projects as a result of conflicts of interest among its members pursuant to Subchapter 6 of this Rule, the CWSP, in consultation with the applicable DEC Basin Planner, shall be empowered to make a final decision on projects selected for funding. In the event an individual clean water project is brought up for consideration outside of the normal cycle of consideration, the BWQC will consider and decide upon the selection of the individual project consistent with the ranking process and priorities.

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Comment 7: The CWSP should be permitted to assign site control to a third party. The entity that develops and implements a project will have the strongest relationship with the property owner. Also, a CWSP may

contract with a third party for maintenance activities, and that party may be best positioned to hold site control.

§ 39-403. Clean Water Projects.

- (j) Quality Control and Site Control. The CWSP shall ensure site control to access property where clean water projects are installed, which may include acquisition of a fee simple interest, a maintenance and access easement, or a maintenance and access agreement. Such site control in fee simple, easement, or agreement shall be documented on a form provided by the Secretary. **Such fee simple interest, maintenance and access easement, or maintenance and access agreement may be assigned to a third party such as a municipality, non-profit watershed association, conservation district or non-profit conservation organization subject to the approval of the Secretary.**

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Comment 8: The proposed language regarding proportionality should be struck. Proportionality means if one additional member is authorized eight additional members would have to be added to maintain proportionality. The requirement of BWQCC unanimity and Secretary approval provide sufficient safeguards.

§ 39-501. Membership and Structure.

- (a) Each CWSP shall establish a basin water quality council (BWQC) for each assigned basin. BWQC membership shall comprise the minimum statutory members identified in 10 V.S.A. § 924(g)(2). Additional BWQC membership is only allowed if unanimously approved by the BWQC and approved by the Secretary. When considering the addition of BWQC members, the CWSP shall evaluate the costs of adding to the BWQC membership. ~~Should additional BWQC membership be authorized, the proportionality of representation established by 10 V.S.A. § 924(g)(2) shall be maintained.~~ The CWSP will coordinate assignment or replacement of BWQC members for those entities named in 10 V.S.A. §§ 924(g)(2)(D-E).

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Comment 9: Organized watershed groups that are not nonprofit organizations may be present in a basin and should have a right to participate in the BWQC. These groups may meet the legislative intent of being knowledgeable about water quality. Affiliation with a 501(c)3 organization via fiscal sponsorship provides a legitimacy litmus test.

- (b) For the purposes of selecting members pursuant to 10 V.S.A. § 924(g)(2), the following definitions apply:

-
- (3) “Local watershed protection organization” means a community-based, nonprofit organization working with individuals and communities in their local watersheds to protect and improve water quality, habitat, and flood resilience and to connect citizens with Vermont’s waters. Watershed protection organizations work with all watershed constituents and do not represent a specific constituency or interest group. **Organizations that are not a 501(c)3 may serve on a BWQC provided they have a fiscal sponsor that is a 501(c)3.**

If you have any questions or would like to discuss these comments, I hope you will contact me at (802) 229-0389 or waninger@cvregion.com. Thank you for consideration of our comments, and for the inclusiveness DEC demonstrated during development of the proposed Rule.

| Sincerely,


Bonnie Waninger
Executive Director

cc: Adam Lougee, ACRPC
Charlie Baker, CCPRC
Catherine Dimitruk, NRPC
Ed Bove, RRPC
Peter Gregory, TRORC
Karen Freeman, VHCB