

Attendees:

Neil Kamman, Ethan Swift, Chris Rottler - VTDEC
Gianna Petito, Holden Sparacino, Jill Arace, NRCC/VARD.
Jared Carpenter, Zach Porter – Water Caucus/LCC
Peter Gregory, Dan Albrecht, Charlie Baker - VAPDA
Lyn Munno, Mary Russ - WUV

Agenda:

Act 76 Stakeholder Advisory Group, 11/4/2019
Calvin Coolidge Room, 6th Floor, National Life

Introductions

Discussion on roles and responsibilities of the Stakeholder Advisory Group (Neil)

- CWSP Rulemaking
- Guidance Development
- Targeting and Accounting

Discussion of the Q+A Document (Neil, Ethan, Chris)

- Identify areas of disagreement with ANR's interpretation
- Identify areas that are particularly challenging

Initial thoughts on areas of focused work for the CWSP Rule (Chris/Neil)

- Governance
- Capabilities
- Financial Controls
- Other

Update on RFPs for Accounting (Ethan)

- FFI
- O+M
- Forest Lands Allocation

Scheduling forthcoming meetings and next steps.

Notes from the meeting:

Introductions:

Neil welcomed group, set stage by thanking participation, and indicating that this advisory group is not established to make specific decisions, but to provide DEC guidance in development of Act 76 activities, and to identify areas of shared or disparate understanding. No governance/voting structure.

Discussion on roles and responsibilities of the Stakeholder Advisory Group (Neil)

- CWSP Rulemaking
- Guidance Development
- Targeting and Accounting
- New Grant Program development

Three areas we need help with: Rulemaking, Guidance Development, Targeting and Accounting, and could add design of the new grant programs. First up will be CWSP rule and guidance. It is envisioned that once the RFP is out, work will continue on guidance, and as targeting and accounting info is developed, the group can be a sounding board. Ultimately, DEC may use the group as a sounding board for design of new grant programs.

Group discussed the need to identify which components of CWSP activities would be in rule, vs. which would be in guidance. Reviewing the schedule, the highest need is to identify qualifications and criteria by which prospective CWSP can be evaluated for an RFP. DEC staff will be developing proposals for content or rule vs. content of guidance.

Group reviewed the proposed timeline presented by the Act 76 report to the CW Board, and discussed where periods of concentrated work were needed.

Tentative Timeline for CWSP Establishment

Task	Due Date
Stakeholder Outreach Meeting - Level Setting on S96	9/1/2019
Individual Stakeholder Group Meetings	10/15/2019
Issue Q+A and Convene Stakeholder Group	11/1/2019
Develop criteria and desired qualifications for WSP	12/1/2019
Develop proposed Governance	12/1/2019
Issue RFQ providing criteria for evaluation.	1/1/2020
Outline and initiate drafting of rule language	4/1/2020
Pre-rulemaking outreach meetings (N LC Basin, S. LC Basin, Memph Basin)	5/1/2020
Final draft and propose to SOS for ICAR	6/1/2020
Public Comment Period	7/1/2020
Responsiveness Summary	9/10/2020
LCAR	9/25/2020
Final Adoption	11/1/2020

Group indicated the desirability of a GoogleDoc or some other resource that provides transparency around the interim steps. DEC team will consider this as part of Act 76 website.

Group requested clarification Pre rulemaking outreach – specifically what State is planning?
 Neil: a number of groups have requested conversations – these have occurred. Some organizations stated that they would like to put the RFP out to their constituents for them to comment on. It was

noted that some basins are not represented on the Advisory Committee. DEC plans to notice the RFP for CWSP and invite comments on it, prior to posting it officially as an RFP for people to respond to. We propose that watershed-level meetings can occur among stakeholders during the RFP period, and that post-selection, and once the rule is ready for outreach **prior to posting** with the Sec. State, that we would do roadshow in the watersheds regarding content of the draft rule.

Question was raised if other parts of Act 76 could be discussed during outreach sessions to provide context? For example, discuss how allocations among watersheds will be made/target setting. Neil: sure. Starting with first principles, targets will be a subset of a basin's load allocation (- largely non-regulatory activities) within the TMDL. For example, in the forest sector, management of current log jobs will adhere to AMP practices, and those are regulatory. However, opportunities exist to address old hydrologic modifications that result in geomorphic instability and erosion. These would be non-regulatory.

Jill asked about modelling, specifically, if we will be using the same model? Ethan noted that we are working with NRCS and AAFM to try to develop a common understanding about reconciliation, so that BMP data aligns. There are different tools available to us that we are looking at. For Agriculture, FarmPrep/Apex are example farm-scale tools.

Question on timing – will the guidance and rulemaking also be completed by the end of 2020?
Neil – yes – that is the expectation of Act 76 and DEC's goal.

Question on the implications of the guidance document versus the rule? Answer: where we have 100% buy in and/or do not expect to revise a given provision, that item will go in the rule. The guidance however will contain those items that may need some experience and learning before being codified into rule. Moreover, the guidance was discussed as taking the form of a Procedure of the Commissioner. In the past, rules could reference signed procedures, but this has been looked upon unfavorably by recent LCAR members. This dynamic will also affect what will be in the rule versus the guidance document. The most obvious example is that the rule will formally assign a CWSP to each basin, but how the BWQC and CWSP interact should be in guidance. One approach may be to develop the rule as two separate chapters of the Environmental Protection Rules. One rule would designate the CWSP, and the other would provide the rule content that we decide should be published in rule right away. This would allow for easier re-assignment of a CWSP should that need to change down the road.

Question on non-formula grant money? Neil: new grant programs are to be online starting July 1, 2021 (FYI 2022). Question on how this will work with the CWB? Will the CWB have enough information? Neil: Ethan is working on this and will have a general sense, with input on BMP load reduction values from RFPs that the Department has issued. CWB will receive guidance from DEC. August of 2020, we will start having conversations with CWB on this. So, it is coming up fast. We have built in a year of flex for CWSP to get into operation and engage into the process.

Discussion of the Q+A Document

- Identify areas of disagreement with ANR's interpretation
- Identify areas that are particularly challenging

Mary believes that DEC's interpretation of the provision on the top of page 7 of Act 76 is what the legislature intended.

Q+A document might have a typo, on Accountability – 10 VSA 923(a) might be section 924. (that’s correct and has been fixed).

How will the RFP process work? Will the advisory group have input on selection?

Answer: Once RFP is issued, the process gets walled off from the public, which is standard for all RFPs. We will build the rule based on the outcomes of the RFP. During the period that the RFP is open, there can continue to be discussions over rule outline/content, but not assignments. NRCC requested whether we can provide transparency on who submitted? A: typically, this is “foia-able” information only. However, this is a little different than a standard RFP, so DEC will consider options.

It was suggested that partners, and not DEC, host and put on a roadshow on Act 76.

It was noted that some watersheds are complex from a governance point of view. For example, the Lamoille crosses the jurisdiction of three RPCs, two or three conservation districts, and several towns, and many of these entities are not used to working together. It is observed that there will be capacity variations from watershed to watershed.

Chris Koliba stated that in his reading of Act 76, it is not clear if the BWQC is subservient to the CWSP, and that this should be addressed in guidance. Chris also asked if a BWQC could be formed first. Ethan read from Act 76, which says that a CWSP “shall establish” their BWQC.

Someone asked what qualifies as a watershed organization? DEC suggests that WUV and others can help with that definition/analysis.

Concerns were noted about funding for Council participation; specifically that council members should be compensated for their time. Not compensating people could result in smaller groups with smaller budgets being unable to participate in the councils. Neil noted that BWQC set up is in the Act, and that some of the \$500,000 referenced in the Act for tactical basin planning support will help support the council.

Chris Koliba raised a question about the relationship between the BWQC and CWSP, namely: Does the BWQC have fiduciary responsibility over the CWSP (like a board of directors?). This relationship also may raise conflict of interest issues. With this in mind, shouldn’t DEC have a role in deciding who sits on the BWQC, to avoid conflict of interest?

Neil stated that the Act states that BWQCs have primacy on decision making on projects, while a CWSP will sign an agreement with the State to move the money, so this does not look like the BWQC has a fiduciary responsibility. Rather, this looks more like the district commission model. Revising this dynamic to a fiduciary relationship would be a big pivot.

Charlie Baker stated that listed entities in Act 76 shall appoint their own staff person to sit on a BWQC. So, to say a CWSPs appoints these representatives is not completely correct. Question was raised as to how a CWSP will pick between multiple entities (such as municipalities) to sit on the BWQC? Chris Rottler suggested that maybe there could be a rotation of entities.

Neil referred to Act 76 and said that the intention of the law is to have people on the council who know what projects exist on the ground. This should be a guiding concern for making decisions.

A question was raised about conflicts of interest that arise after a CWSP/BWQC are established. Dan Albrecht suggested that a BWQC could be supported by a Technical Advisory Council, which is not prohibited by the Act. This would be analogous to how clean water block grants work. Chris Rottler noted that DEC will be developing a conflict of interest policy to deal with these questions.

It was noted that many of these questions are governance questions, and that DEC will provide some sideboards in the guidance document and rule, some of these decisions will be decentralized (delegated to the CWSP) in practice. One area that guidance will probably address is how to add people to a BWQC above and beyond the minimum.

Someone mentioned that the guidance document should not just set sideboard but should also provide direction to entities that need more hand holding.

Areas of Focused Work

Chris and Neil offered initial thoughts on areas of focused work for the CWSP rule, which are proposed to include Financial, Technical, and Managerial capabilities. This approach mirrors the approach to capacity development espoused for water and wastewater infrastructure.

RFP Update

Ethan provided an update on RFPs for accounting, including:

- Functioning Floodplains Initiative
- Operation and Maintenance
- Forest Lands Allocation

Question regarding the Clean Water Roadmap tool, if project selection will prioritize easier projects (i.e. low hanging fruit), while ignoring upstream projects that may have other co-benefits. Ethan noted that accounting for co-benefits is a goal for the program and is specifically mentioned in Act 76.

Scheduling forthcoming meetings and next steps.

The next group meeting will be Thursday 19th, 9-1130.

Subsequent meetings have been scheduled bi-weekly as placeholders, and will be modified or cancelled as needed. This keeps the meetings on the books and efforts moving forward.

Beginning Tuesday, Dec 3, and occurring bi-weekly, 2-430.