

Clean Water Service Provider Guidance

Chapter 1 -Introduction

Preface – Act 76

The Clean Water Service Delivery Act of 2019 (Act 76 or the Act) establishes a water quality project delivery framework to support Vermont’s clean water goals. The Act implements four major policy changes that benefit Vermonters.

Firstly, the Act codified a long-term funding source for the Clean Water Fund (CWF, or Fund). Unless modified by future legislative action, these sources are projected to raise approximately \$28 million/year¹; which is expected to increase over time. These sources are:

1. A small percentage of Vermont Rooms and Meals Tax Receipts
2. A modest surcharge on the Property Transfer Tax
3. Forfeit escheats resulting from the failure to redeem deposits on bottles that are subject to Vermont’s Bottle Bill.

Second, the Act created assurances to meet non-regulatory pollution reduction targets, by prioritizing program delivery and funding for non-regulatory projects. Non-regulatory projects include sub-jurisdictional stormwater management practices and natural resource restoration projects such as floodplain reconnections, wetlands restoration, forestland best management practices, and forested riparian buffer restoration. While not required through existing regulatory programs, these projects are essential to achieve the water quality goals spelled out in the Lake Champlain and Lake Memphremagog TMDLs.

Third, the Act established new regional organizations called clean water service providers (CWSPs). These CWSPs are established for each Tactical Basin Planning watershed in the Lake Champlain and Lake Memphremagog basins. CWSPs are responsible for partnering with Basin Water Quality Councils (BWQCs) to identify, implement, operate, and maintain non-regulatory projects to meet non-regulatory interim phosphorus reduction targets.

Fourth, the Act required computation and publication, subject to public comment, of five-year pollution reduction targets for each segment of Lake Champlain or Lake Memphremagog subject to an EPA-approved Total Maximum Daily Load. The Act then requires distribution of Clean Water Fund revenues in the form of formula-grants to support non-regulatory project implementation in these Basins by CWSPs, under the direction of their BWQCs. Formula grants are based on annualized interim pollution reduction goals and a standard cost per unit phosphorus reduced; a “pay for performance” model.

Purpose of this Guidance

The purpose of the [ten chapters of Act 76 Guidance](#), is to serve as comprehensive guidance for CWSPs and other stakeholders to understand and implement many aspects of the Act, and State policies or procedures related to clean water project implementation. As required by the Act, this guidance provides the Secretary, Agency of Natural Resources’ interpretation of Chapter 39 of the Environmental Protection Rules governing the operation of CWSPs. Pursuant to the Act, this guidance also fulfills several requirements of the Act that are required to be noticed and published, including:

1. Calculation of initial five-year pollution reduction targets including regulatory and non-regulatory fractions. The methodology for these calculations will be subject of this guidance, while the actual targets will be published in the specific tactical basin plans.
2. Standard costs for clean water projects, and standard pollution reduction factors, by land use sector.
3. Operation and maintenance requirements for these clean water projects, and their standard costs.
4. Methodology for calculating the design life of clean water projects.

The audience for this guidance is not only the CWSPs, mature organizations that have well developed technical, financial and managerial systems in place, but also all stakeholders associated with CWSPs and the work of standing-up non-regulatory clean water projects. Thus, while the guidance may read prescriptively, this is so that all stakeholders understand the system. This Guidance should not be taken as an implication that any organization is under-equipped to implement Clean Water Projects, but instead articulates a full complement of technical, financial, and managerial best practices that will support efficient clean water project implementation.

For the purpose of this iteration of the guidance, the focus is on Lake Champlain and Lake Memphremagog Total Maximum Daily Loads (or TMDLs), and nonregulatory phosphorus reductions. Guidance will be updated in the future to address other pollutants as noted in the Act.

General Outline of this Guidance

This Guidance is divided into [10 Chapters](#). Where feasible, existing documents developed by DEC's Water Investment and Watershed Management Divisions are referenced from the relevant chapters. Taken in aggregate, this Guidance and its related standalone documents comprise the roadmap for how CWSPs oversee, in coordination with their BWQCs, the development design, construction, and operation and maintenance of clean water projects. This Guidance also documents how DEC will interact with and assist CWSPs and BWQCs. The chapters include:

Chapter 2 - [CWSP Governance](#)

This chapter addresses generally the operations and oversight of the CWSP. Chapter 39 of the Environmental Protection Rule (or CWSP Rule) assigns organizations to serve as CWSPs. However, the Department considers that the activity and operation of a CWSP by an organization is an activity distinct from the organization itself, whether or not the organization elects to create a legally recognized standalone entity. In other words, if a Regional Planning Commission is serving as CWSP for a basin, the operation of the CWSP is distinct and separate from the standard activities of that RPC. As such, this chapter of the Guidance addresses expectations for operations of the CWSP within the framework of an existing organization.

Chapter 3 - [CWSP Financial Operations](#)

This chapter addresses specifically the expectations for financial administration of Formula Grants awarded by the Department. The Chapter expands upon requirements in the CWSP Rule addressing financial operations for the CWSP, expectations for internal controls, recommendations for procurement, and programmatic audit requirements.

Chapter 4 – [BWQC Operations](#)

This chapter provides specificity in the standardized expectations of BWQCs. The Department recognizes that BWQCs will necessarily vary in their capacity and interests by basin. This chapter details expectations for meetings and comportsment of the BWQC. Particular emphasis in this chapter is placed on the manner in which BWQCs engage with the CWPS to fulfill the statutory role to “establish policy and make decisions for the clean water service provider regarding the most significant water quality impairments that exist in the basin and prioritizing the projects that will address those impairments based on the basin plan.” Additional emphasis is placed on the manner in which BWQCs fulfill the statutory requirement to participate in the basin planning process.

Chapter 5 - [Conflict of Interest](#)

Some of the statutory BWQC members will represent entities that are capable of effectively proposing, constructing, and operating clean water projects. Because the BWQC makes decisions regarding the most important impairments, and prioritizing projects to address them, there is heightened concern about the potential appearance of, and actual, conflicts of interest. CWSP staff and the host entity operating a CWSP may also encounter conflicts while administering the CWSP program. This chapter expands on best practices to avoid conflicts of interest while ensuring that the CWSP receives robust BWQC input as intended by Act 76.

Chapter 6 - [Clean Water Project](#)

This Chapter provides access to tools, calculators, and other information relating to the development and advancement of clean water projects. This chapter addresses: project scoring, selection, and staging; project eligibility and permitting; and project advancement considerations. Also included are descriptions of project tracking tools within the Watershed Projects Database that DEC continues to develop for use by CWSPs and BWQCs.

Chapter 7 – [Operation and Maintenance](#), and Adoption of Prior-constructed Projects.

This chapter describes “O&M” including verification of project functionality, and the opportunity for CWSPs to adopt prior constructed projects. The chapter discusses roles of CWSPs and other parties, site access, “O&M” and verification steps, decommissioning, and adoption of projects.

Chapter 8 – [Data Management](#)

This chapter provides or references the tools and data systems available to support CWSPs to generate, store, or report data associated with Clean Water projects.

Chapter 9 – [Determination of Adequate Progress](#)

This chapter articulates the Department’s process for evaluating annual progress against five-year pollution reduction targets, as required by Act 76. The Department understands that in initial operational years, CWSPs will likely invest in project development activities to continue to build their project queues. This chapter elaborates on expectations for investment in project development, design, construction, and operation and maintenance.

Chapter 10 – CWSP Assignment, Re-Assignment, Replacement

Act 76 envisions the creation and long-term operation of CWSPs in each basin. The Act also provides for corrective action if adequate annual progress is not made. In the event of perpetuating failure to achieve pollution reduction targets, Act 76 envisions initiation of rulemaking to designate an alternate CWSP as accountable for the basin. The CWSP Rule contains provisions for re-assignment, after review of performance and public comment. This chapter expands on the Department's envisioned process for continuing a CWSPs service or re-assigning a new CWSP.

It is anticipated that from time to time, and resulting from learned experience or stakeholder input, DEC will revisit individual chapters or sections of chapters of this guidance. Such updates will be undertaken with stakeholder input, and resulting chapter modifications noticed accordingly.

ⁱ Per the forecasted SFY 2026 Clean Water Fund revenue