

Guidance Document Chapter 2 – CWSP Governance

1. General – Assignment and Service

In accordance with Act 76 of 2019 (10 VSA 922(a)), the Secretary of the Agency of Natural Resources shall assign clean water service providers (CWSPs) for each basin in Vermont. CWSPs are being assigned in two phases. In the first phase, CWSPs will be assigned for the Missisquoi, Memphremagog, Lamoille, Winooski, North Lake, Otter Creek, and South Lake basins, for operations to begin July 1, 2022. In the second phase, the State will evaluate whether to procure a CWSP/CWSPs for the remaining 8 basins in the eastern and southern parts of the State on a schedule to be published no later than November 1, 2023.

The State will award each CWSP a formula grant, which will contain an assigned phosphorus reduction target. Through the grant, the CWSP will have a direct reporting relationship with the State – where the CWSP is responsible for following applicable law, rule, guidance, and terms of their formula grant. A CWSP will administer their formula grant with the primary goal of making adequate progress on their assigned phosphorus reduction targets (and if applicable, other pollutant reduction targets) through administration and implementation of non-regulatory projects in their basin. CWSP efforts to reduce phosphorus pollution from non-regulatory sources is connected to the State's plan for meeting the Lake Champlain and Lake Memphremagog phosphorus TMDLs and water quality standards throughout Vermont. CWSPs will work collaboratively with their basin water quality councils (BWQCs) when implementing their formula grant awards.

The BWQC is a decision-making body attached to a CWSP, that is charged with selecting the highest priority areas in a watershed and the non-regulatory projects that a CWSP may administer for addressing and remediating impairments. BWQCs are made up of partner organizations from the community, with knowledge of water quality policy and practices, who shall provide guidance and leadership to support the CWSP in achieving their pollutant reduction goals. The BWQC shall be guided in their work by the CWSP's goal of achieving the assigned phosphorus reduction target in a cost-effective manner, together with consideration of a project's co-benefits and costs. Projects will come to the CWSP through a call for projects issued by the CWSP. Project proposals will be processed and given to the BWQC for their review and consideration. BWQC members that have a conflict of interest on any given project shall not vote on that project. A BWQC's selection of projects is not the same as procurement, which is a responsibility that a CWSP has as administrator of their formula grant.

The relationship between a CWSP and its BWQC is a foundational dynamic of this new model for achieving voluntarily implemented, TMDL-required water quality improvements in a watershed. An effective CWSP/BWQC relationship will be built on teamwork and collaboration, with both parties working together to achieve the water pollution goals assigned to the basin, in an efficient and effective manner. More information on the BWQC can be found in Chapter 4 of this Guidance. Moreover, while doing so is not a statutory goal, it is worth noting the impact that Act 76 may have on economic development, workforce development, and environmental justice in Vermont. More on BWQCs can be found in chapter 4, conflicts of interest in chapter 5, and project advancement in Chapter 6.

A regular full term for a CWSP is set at five years. In order to achieve staggered terms across basins, though, almost every CWSPs' first term will be longer or shorter than 5 years. This staggering of the initial terms is meant to create a schedule so that every year, three CWSPs will be evaluated for re-assignment (when all Vermont basins have an assigned CWSP). CWSP terms are also being staggered in alignment with the development and adoption of tactical basin plans and targets.

CWSPs cannot unilaterally transfer assignment to another third party, as selection of the entity serving as a CWSP was conducted through an open and competitive process run by the State Agency of Natural Resources, Department of Environmental Conservation. However, ANR understands that entities sometimes are acquired by, or acquire other entities which will affect their corporate structure. Should there be a change in organizational structure, the Secretary will agree to allow the new entity to serve as the CWSP, pending a review of the nature of the change. ANR will review the managerial, staffing, technical and financial capacity of the new entity as it relates to the ability to continue to serve as the CWSP. Employment of sufficient capacity (e.g. staff working on CWSP tasks) will be key to this analysis.

CWSPs can be re-assigned to additional five-year terms of service. Re-assignment will be considered pursuant to the Rule, with additional future guidance provided in Chapter xyz. The programmatic review for re-assignment will be conducted cooperatively between ANR and the CWSP, after the CWSP applies for reappointment. Application for reappointment should occur no later than eight months prior to the end of their current CWSP term. The application process, forms, and submission shall be established by the Secretary. CWSPs that do not intend to apply for re-appointment should notify the Secretary as early as possible, but no later than 8 months prior to the end of their term.

CWSP service will stop at the end of the CWSP's term, if the CWSP is not selected for re-assignment. Additionally, subject to the provisions of Act 76 and the CWSP Rule, CWSP service may be terminated during a term, though this is viewed by the Department as unlikely. More on termination and corrective action can be found in Chapters xyz.

Should a CWSP come to the end of its term and be unwilling or unable to continue that service, it will be necessary to assign an interim or back-up CWSP in whole or in part for the given basin. Any entity assigned as a CWSP is eligible to serve as a CWSP in any other basin on an interim basis, as determined by the Secretary. Should it be necessary to assign a CWSP as a back-up in another basin, the Secretary will consult first with the CWSP who has been formally designated as the back-up for that basin. If the designated backup CWSP is unable or unwilling to provide services in their back-up basin, or if there is no back-up CWSP assigned to the basin with a vacancy, then DEC will look to see if another CWSP will be able to serve in an interim capacity. Terms of interim service of a CWSP will be documented in writing, and formula grant funding will be made available for the term of interim service. More information on interim or back-up CWSPs can be found in Chapter xyz.

CWSP service is defined by the [boundaries of their basin](#). CWSPs may stand up projects that are 100% within those project boundaries. Projects that cross boundaries should be discussed with the neighboring CWSP and ANR, prior to selection and implementation, regarding funding and pollution reduction credit allocation. CWSPs are encouraged to communicate and collaborate with each other when prospective projects cross basin boundaries.

2. Funding – Start up and Formula Grants

Generally, in the year before a newly designated CWSP's service officially starts, and for organizations who have not previously served as a CWSP, that entity will be awarded a start-up grant to fund activities to get a CWSP ready for service. These tasks include empanelment of the BWQC, establishing policies and project tracking systems, training, website development, invoice processing, and preparing for procurement. The scope of work for the start-up period will be contained within the start-up grant document.

Regular service of a CWSP will be funded by the formula grant established at 10 V.S.A. §925 by Act 76. The scope of work and terms for the formula grant will be contained within the formula grant document. Formula grants will contain the requirement that CWSPs comply with all applicable laws, rules, and guidance documents as a term of service and as a condition of receipt of the formula grant.

Formula grants will be structured such that CWSP's maintain sufficient liquidity to operate CWSP activities. More information on financial management of CWSP operations can be found in Chapter 3 of this Guidance Document.

3. Operations

a. CWSP Director

Every CWSP shall appoint one person on their staff as the "CWSP Director". This person shall be a paid member of the CWSP host organization but need not be the Executive Director of the host. The CWSP Director will be the primary responsible person for implementing the terms of assignment for a CWSP.

b. Capacity

CWSPs should develop sufficient technical, managerial, and financial capacity to comply with and implement the requirements of the formula grant. Maintaining adequate capacity does not mean that a CWSP shall employ staff for every aspect of CWSP service. ANR understands that some work may be contracted with other entities. As noted in the CWSP Rule, even if some services are procured from outside the CWSP, the CWSP itself remains accountable for overseeing all work, and for achieving adequate annual progress.

c. Consistency – Policies/Procedures of Organization

ANR understands that entities currently selected to serve as a CWSP are mature organizations that have fully developed policies, procedures, obligations, and operations that exist independent of, and may predate, CWSP service. Generally, ANR will ensure that any entity proposing to serve as a new CWSP will act in a manner consistent with the expectations of CWSP service. CWSPs shall be able to demonstrate compliance with the State of Vermont's requirement that all grantees submit a certificate of good standing confirming compliance with the State's environmental laws, rules, and requirements.

d. CWSP Fiscal Operations

The guidelines related to CWSP financial management is located in Chapter 3, which addresses items including the review and approval of the CWSP budget, monitoring of costs/expenses, dissolution, and disposition of CWSP assets/debts. Chapter 3 also contains a section on procurement and pre-qualification.

e. BWQC Coordination

Each CWSP will work collaboratively with the Basin Water Quality Council (BWQC) for their basin. CWSPs shall coordinate BWQC meetings in collaboration with the BWQC chair. CWSPs and BWQCs together shall implement a procedure to inform the public, consistent with the requirements of Vermont's Open Meeting Law, which governs BWQC meetings pursuant to the Clean Water Service Provide Rule. A CWSP shall also comply with the Vermont Public Accommodations Law (9 V.S.A. §§4500-4507). More information on the role and responsibilities of the BWQC, as well as on BWQC meetings, can be found in Guidance Document Chapter 4.

f. Public Records

CWSP records are public records. To comply with 1 V.S.A. §§315-320, ANR publishes records schedules documenting policies for records retention. ANR recommends that CWSPs develop their own records schedules documenting their policies for records retention. ANR has developed a draft records schedule for CWSPs to consider for this purpose.

g. Access to records/sites; Inspections/programmatic reviews

The State of Vermont, through the Department of Environmental Conservation, is responsible for ensuring that CWSPs and BWQCs administer their formula grants effectively and efficiently. Accordingly, DEC shall conduct oversight of CWSP activities, which may require from time to time, the inspection of files or documents. CWSPs shall provide DEC access to all CWSP records when requested. DEC shall give notice of no less than 48 hours/2 days before conducting a routine inspection or review of CWSP activities. In practice, notice of at least a week or more will be provided.

4. Open Meeting Law/Communications/Public Engagement

As noted in the Clean Water Service Provider Rule and elsewhere in this Guidance, a CWSP shall comply with the State's open meeting law. Additionally, the CWSP shall draft a public participation policy. The policy should at a minimum: (1) ensure public notice of the CWSP and BWQC meetings, decisions, and actions; (2) promote public participation in an open, competitive, and transparent process for identifying and selecting clean water projects, with specific consideration given to minority, limited English proficiency, and socioeconomically disadvantaged communities and stakeholders; and (3) comply with the Department's [nondiscrimination policy](#).

A CWSP's public participation policy shall be developed as part of the CWSP start-up phase and amended as appropriate with input from BWQC partners following public notice guidelines described below. Public participation policies are encouraged to consider current and emerging best practices for Justice, Equity, Diversity, and Inclusion. These may include:

- identification, use and compensation of appropriate community connectors;
- use of alternative broadcast channels (for example WhatsApp) or other BIPOC-focused venues for public notice;
- integration of [plain language](#) practices for all public facing materials;
- meetings that are timed and located with due consideration given to accessibility for disadvantaged communities; CWSPs may consider childcare services to increase accessibility at these meetings;
- materials translation into the relevant basin's top 5 languages spoken, and
- early engagement and programmatic support targeted towards historically disadvantaged communities including consideration of the Agency of Natural Resource's [Limited English Proficiency Accessibility Plan](#), and those federal funding requirements that consider Title VI and other accessibility issues.

In their proceedings, BWQCs and the respective CWSP should at all times implement the formula grants in a manner that promotes the mission of securing clean water advancement while considering equity and inclusivity, and may consider the following principles:

- All parties shall have respect for another's point of view
- All parties shall be committed to resolving disputes in a respectful and professional manner
- All parties shall be willing to compromise
- Any disputes shall be resolved in a fair and timely manner.

5. Technology

CWSPs shall maintain and use technology that is sufficient to meet CWSP obligations. More specifically, CWSPs shall maintain a website/webpage for informing the public of meetings and

for posting relevant information and documents. CWSPs should have sufficient electronic storage for records retention, they must maintain financial records using an electronic management system (e.g. Quickbooks, etc.), they shall have capacity for holding virtual meetings (e.g. via Zoom, Teams, etc.), and should be able to interface with DEC databases/applications, when necessary.

As the State will develop a centralized project tracking system for use by all CWSPs, development of any public-facing basin-specific tracking and reporting systems should be performed in coordination with the State to minimize duplication of effort.

Recommended website content includes the following:

- Links to BWQC membership names and points of contact, agendas, meeting minutes, and bylaws,
- CWSP staff contacts, policies and procedures,
- Information on CWSP pre-qualifications, procurement and funding opportunities,
- Information on CWSP projects and financial and pollutant reduction tracking and progress,
- CWSP renewal intent, annual reports, corrective action plans, and entity transfers
- Links to relevant Act 76/ DEC websites (e.g., Act 76, Tactical Basin Plans and Story Maps, Watershed Projects Database, Clean Water Portal, etc).

6. Reporting requirements

CWSPs are responsible for meeting the ongoing reporting requirements contained in their formula grants. Required reports will include quarterly reports, annual reports, and any additional requests for information from the State.