

**Ch. 39 Clean Water Service Provider Rule**  
**List of Changes in Final Proposed Rule**

Section	Change	Explanation
§ 39-101	for the purposes-	Grammatic improvement
	10 V.S.A., Chapter 37, <del>S</del> subchapter 5	Consistency in reference to this statutory subchapter
§ 39-101	governance structure for <del>Basin Water Quality Councils.</del> <u>BWQCs</u>	Use of acronym previously defined in same paragraph
§ 39-201(2)	“Administrative cost” means program <del>and project</del> <u>delivery</u> costs incurred by a clean water service provider <u>in the administration of the Water Quality Restoration Formula Grant</u> , including costs to conduct procurement, <del>contracts</del> <u>sub-agreement</u> preparation, and monitoring, reporting, and invoicing. <del>Subaward recipients</del> <u>CWSPs</u> may <del>be eligible for these costs depending on the nature of the</del> <u>elect to subgrant or subcontract aspects of Formula Grant administration. Costs to manage and complete individual clean water projects are not administrative costs.</u>	Response to comment; clarification of administrative costs
§ 39-201(5)	“Basin Water Quality Council” <u>or “BWQC”</u>	Addition of acronym to definition
§ 39-201(6)(B)(iv)(a)	Change "Section" to §	Use of § symbol
§ 39-201(7)	“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 <del>bearings</del> responsibility for overseeing identification, prioritization, development, design, construction, verification, inspection, and operation and maintenance of clean water projects within the basin.	Grammatic improvement
§ 39-201(8)	“Co-benefit” means the additional benefit to local governments and the public provided by or associated with a clean water project, including flood resilience, <u>hazard mitigation, education,</u> ecosystem improvement, and local pollution prevention.	Response to comment
§ 39-201(13)	<del>CWSP</del> <u>Clean Water Service Provider</u>	Use of acronym previously defined
§ 39-301(a)	<del>purposes</del>	Grammatic improvement

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§ 39-301(e)	A transfer shall be documented in a supplement to Appendix A published on the Agency's website; and <del>on</del> the CWSP's website.	Simplifying language
§ 39-304(h)	<del>The</del> role of the BWQC in annual reporting, annual progress, and CWSP re-assignment; <del>and</del>	Consistency in capitalization; adjusting list based on addition of another item to list
§ 39-304(i)	<del>Governance</del> <u>governance</u> and operations of the BWQC; <del>and</del>	Consistency in capitalization; adjusting list based on addition of another item to list
§ 39-304(j)	<u>reasonable expectations for CWSPs serving in a backup capacity for another CWSP.</u>	Response to comment; addition to Secretary's guidance list to address backup CWSP service
§ 39-305(m)	have written policies prohibiting discrimination based on all protected classes under <del>f</del> Federal and <del>State of</del> Vermont <u>state</u> law.	Correct capitalization
§ 39-306(c)	Audit. Annually, the entity serving as a CWSP shall provide the Department an independent financial and programmatic audit of the entity. The audit shall show all CWSP activities as a separate fund from the <u>entity's</u> other activities <del>of the entity</del> . The audit shall be performed by an independent public accountant in accordance with all applicable laws, regulations, policies, and procedures.	Simplifying language
§ 39-306(h)	Pre-qualification. <del>Sole source agreements are prohibited, except for pre-qualified subgrantees or subcontractors selected by the BWQC to implement a clean water project.</del> Subgrantees and subcontractors may be pre-qualified through a request for qualifications process implemented by the CWSP. <del>An entity assigned as a CWSP shall be subject to the pre-qualification process when proposing to implement a clean water project outside the entity's assigned basin.</del> The outcome of the request for qualifications shall be valid for up to three years. <u>CWSPs must open the pre-qualification process to new entities at least once per year.</u>	Response to comment; clarifying pre-qualification, including elimination of sole sourcing of entities pre-qualified by BWQC

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§ 39-306(i)	<p>Procurement; <u>Services and</u> Goods <del>and Services</del>. Procurement <u>of services</u> by the CWSP or its subgrantees, <del>for anything except for pre-qualified entities selected by the BWQC to implement a clean water project,</del> shall be by a competitive process <del>for services</del>, with a solicitation of <u>at least three</u> quotations from <u>at least three</u> 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.</p>	Response to comment; revising procurement process to align with BWQC statutory purpose and reduce conflict of interest concerns
§ 39-306(j)	<p>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 <del>shall</del><u>may</u> obtain Errors and Omissions insurance for BWQC members, <u>the cost of which shall be considered an administrative cost.</u></p>	Response to comment; E&O insurance is administrative cost
§ 39-306(m)	<p><u>Use of leftover funds is subject to applicable provisions of Subchapters 3, 4, 5, and 6 of this Rule.</u></p>	Clarifying that use of leftover funds is subject to same CWSP operational and fiscal requirements and project selection process

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§ 39-306(n)	Risk Reserve. A risk reserve may be held within the Clean Water Fund pursuant to <del>recommendations of the Clean Water Board, 10 V.S.A. § 1389(d)(1),</del> and subject to annual appropriations. Access to risk reserve funds shall follow the Risk of Loss provisions of § 39-404 of this Rule and the Secretary’s guidance.	Adding citation to applicable statutory provision
§ 39-307(c)	limited English <del>proficient</del> <u>proficiency</u>	Correction
	A summary of any <del>inspections</del> <u>inspection, verification, and operation and maintenance activities</u> of previously implemented clean water projects and whether those projects continue to operate in accordance with their design;	Response to comment
§ 39-308(b)(3)	Formula <u>Grant</u> awards	Consistent use of term
§ 39-401(a)(2)	An allocation of the pollutant reduction identified under subdivision (a)(1) of this <del>section</del> <u>chapter</u> to each basin and CWSP assigned to that basin pursuant to Subchapter 3 and Appendix A of this Rule.	Consistency of internal references
§ 39-401(a)(2)	<u>The Secretary shall publish these allocations in the applicable basin plans.</u>	Response to comment
§ 39-401(a)(3)	<u>When known, costs for project development may be included in the standard cost for pollutant reduction.</u>	Response to comment
§ 39-401(b)	<del>subdivision-subsection</del> (a) of this <del>sub</del> section	Consistency of internal references
§ 39-402(a)	<del>subdivision-subsection</del> (a)	Consistency of internal references
§ 39-402(b)	<del>subdivision-subsection</del> (b)	Consistency of internal references
§ 39-402(c)(3)	<del>subdivision-subsection</del> (c)	Consistency of internal references
§ 39-402(c)(5)	<del>subdivision-subsection</del> (c)	Consistency of internal references
§ 39-403(d)	When identifying, prioritizing, and selecting <del>a slate of</del> clean water <del>project</del> <u>projects</u> to meet a basin’s pollutant reduction target, the CWSP and BWQC shall:	Removal of slate of projects to improve project selection and reduce conflict of interest concerns
§ 39-403(d)(4)	consider empirical project-specific factors including the pollution reduction, cost effectiveness of that reduction, <u>design life,</u> cost of operation and maintenance of the project, and conformance with the basin plan;	Response to comment

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<p>§ 39-403(e)</p>	<p>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 <u>as</u> 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 <del>on a prioritized slate of</del> <u>to advance</u> clean water projects for both development and construction to fulfill pollution reduction goals. <del>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 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</del><u>Individual clean water projects should not be voted for advancement outside of this selection process unless to address an urgent water quality concern with the concurrence of the Secretary.</u></p>	<p>Improvements to align with BWQC statutory purpose and reduce conflict of interest concerns</p>
<p>§ 39-403(d)</p>	<p>Methodology for Determining Project Eligibility. Upon the request of a CWSP, the Secretary shall evaluate a proposed clean water project <u>type</u> and issue a determination as to whether the proposed clean water project <u>type</u> 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, permit eligibility, 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 and odor.</p>	<p>Response to comment, efficiency benefits</p>

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§ 39-403(h)	Permits. <u>For all clean water projects that are administered under CWSP oversight, the</u> <del>A</del> CWSP shall ensure that all local, state, and federal permits necessary for project completion are secured prior to implementation or construction <del>for all clean water projects that are administered under CWSP oversight.</del>	Readability improvement
§ 39-403(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. <del>Such</del> <u>Any</u> site control in fee simple, easement, or agreement shall be documented on a form provided by the Secretary. <u>Such fee simple interest, easement, or agreement may be secured by or assigned to a third party following Secretary approval.</u>	Response to comment requesting affirmation on the potential role of third parties in quality control and site control
§ 39-404	<del>The risk of</del> <u>In the event of a total, partial, or temporary</u> loss of a clean water project during installation or following completion, <u>the CWSP shall cease counting the project's performance towards pollution reduction goals as of the date the performance issue is identified until the project is rehabilitated.</u> <u>Project losses</u> shall be addressed as follows:	Clarification on the impact of project loss on counting pollution reduction
§ 39-404(a)	When project 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 may use the Water Quality Restoration Formula Grant, <del>but will not receive credit for any pollution reduction until</del> <u>to cover costs already incurred up to the project is complete.</u> <u>date of such circumstances or Acts of God.</u> Leftover funds <del>are</del> <u>may also allowed</u> <del>be used to cover such costs pursuant to § 39-306(n) of this Rule</del> <u>if such funds are available.</u>	Clarification

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§ 39-404(b)	When a completed project was appropriately designed, installed, operated, and maintained, but inspection reveals lack of performance due to <u>damage or</u> unforeseen factors, <u>not from negligence or intentional acts of others</u> : The CWSP may use the Water Quality Restoration Formula Grant to rehabilitate the project, but will not receive continuing payment for operation and maintenance of the project for ongoing pollution reduction, unless that project is rehabilitated. <u>Risk reserve and leftover funds are also allowed for rehabilitation if such funds are available.</u>	Clarification
§ 39-404(c)	When the project is <del>damaged or</del> removed due to the negligence or intentional acts of others and not the CWSP, <del>the CWSP may lose future pollution reduction credit, but risk:</del> <u>Risk</u> reserve and leftover funds are allowed for rehabilitation if such funds are available: <del>Access to Risk Reserve funds shall be subject to recommendation by the Secretary pursuant to 10 V.S.A. 1389(d)(1) and limited to funds appropriated for the purpose by the General Assembly.</del>	Clarification
§ 39-404(e)	When the project is installed but <del>fails</del> <u>damaged or lost</u> due to a negligent or intentional act or omission: the Secretary may exercise authority pursuant to 10 V.S.A. § 924(f) and Subchapter 7 of this Rule.	Language consistency
§ 39-404(f)	<del>Rehabilitated projects will not be considered failed.</del>	Eliminating redundancy and inconsisent phrase, "failed"; the same concept was incorporated into the beginning of § 39-404, in that project performance can be counted following rehabilitation.
§ 39-501(a)	Should additional BWQC membership be authorized, the proportionality of representation established by 10 V.S.A. § 924(g)(2) shall be maintained: <u>either by membership or weighting of votes.</u>	Clarification on how BWQC member prooportinality can be maintained

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§ 39-501(b)(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 <a href="#">citizenspeople</a> with Vermont’s waters. Watershed protection organizations <del>work with</del> <a href="#">are open to</a> all watershed constituents and <del>do</del> <a href="#">shall</a> not represent a specific constituency or interest group.	Response to comment
§ 39-501(c)	<a href="#">Organizations with a fiscal sponsor may serve on a BWQC. A fiscal sponsor organization and the sponsored organization shall not concurrently serve on the same BWQC.</a>	Response to comment
§§ 39-501(d)-(f)	Relettering	Relettered following addition (c) to list
§ 39-503(b)(2)	Decisions shall be binding by a vote of the majority of the BWQC members, regardless of the number of members present for the vote, <a href="#">except that the BWQC may adopt and implement a decision making model requiring a greater proportion of votes.</a>	Response to comment related to interest in having consensus model decisions
§ 39-503(c)	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 <a href="#">without good cause</a> shall constitute grounds for replacement of the member.	Response to comment
§ 39-503(d)	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.	Unnecessary comma
§ 39-503(g)	BWQC members from among the appointing entities in 10 V.S.A. § 924(g) shall be entitled to reasonable compensation for participation in <a href="#">the BWQC-meetings</a> in accordance with the Secretary’s guidance and applicable grant agreements.	Response to comment
Subchapter 6	Each CWSP shall adopt a <del>conflicts</del> <a href="#">conflict</a> of interest policy that includes, in part, the following:	Consistency of terms



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Subchapter 6 (a)	Conflict of interest means an interest, direct or indirect, financial or otherwise, of a person <u>or entity</u> with a CWSP or BWQC decision making role, or such an interest, known to <del>that</del> <u>such</u> 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.	Given the nature of BWQC members being representative of entities, this addition makes clear that the entity's conflict must also be addressed
Subchapter 6 (c)	<u>A person engaged in CWSP decision making must disclose any potential conflict of interest and shall recuse itself from any CWSP decision making subject to that conflict.</u>	Addition to make clear that CWSP conflicts of interest must also be addressed.
Subchapter 6 (d)	Relettering	Relettered for addition of (c) to list
§ 39-801(d)	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, including consideration of any comments <u>from</u> <del>er</del> the public and BWQC.	Correction