

**Vermont Department of Environmental Conservation  
Agency of Natural Resources  
Responsiveness Summary to Public Comments Regarding:**

**Clean Water Service Delivery Act Guidance Chapter 5 – Conflict of Interest**

On August 9, 2023, the Vermont Department of Environmental Conservation (DEC) of the Agency of Natural Resources (ANR) released for public comment a final draft of Chapter 5 of Guidance for the Clean Water Service Delivery Act on Conflict of Interest. The public comment period ended on September 8, 2023. The chapter was posted on DEC's website and notice of this posting was sent to stakeholders via email.

The DEC prepared this responsiveness summary to address specific comments and questions and to indicate how the Guidance has been modified. Comments may have been paraphrased or quoted in part.

Public comments:

Comment #1:

“The distribution of funding by CWSPs and BWQCs must be conducted in a fair and transparent manner, without the presence of an actual conflict due to private, personal, or organizational gain. This chapter provides guidance on CWSP and BWQC conflicts of interest.

Per the Clean Water Service Provider Rule Subchapter 6(b), a conflict of interest occurs when a person or entity within a CWSP or BWQC has a decision-making role in which a direct or indirect, financial or otherwise, benefit, or possible perceived benefit, could occur. This Guidance applies to the individual as well as the organization with which that individual is affiliated. If there is the possibility of a direct or indirect benefit, or a perceived benefit, that individual must recuse him or herself from the decision-making process.”

Response #1:

This comment proposes the addition of the underlined language as part of the introduction to Guidance Chapter 5. The proposed language uses similar, yet modified language as to what appears in the definition of a “Conflict of interest” in the Clean Water Service Provider Rule, Environmental Protection Rule, Chapter 39 (Rule) (see § 39-601(b)). The Rule establishes the “minimum” components for a Conflict of Interest Policy. For consistency purposes and based on the diligence that went into the State Code of Ethics, the “Conflict of interest” definition in Rule was purposefully aligned with the definition incorporated into the Code of Ethics (see 3 V.S.A. § 1203(a)(3)).

During rulemaking, DEC received comment on whether or how to address “appearances” of a “conflict of interest.” The final, adopted Rule does not expressly address the specific topic. This was discussed at length with the Act 76 Advisory Group at the time of Rule development, and the Advisory Group recommended against addressing “appearances” of conflict largely due to

the difficulties this could present for operating the BWQC as intended by Act 76. Accordingly, DEC declines to add such a reference here.

Comment #2:

“When a CWSP proposes a project to the BWQC that will be managed by the CWSP, a conflict of interest occurs and the project proposal including the budget shall be independently reviewed and scored.”

Response #2:

This comment proposes to revise Guidance Chapter 5 as noted. DEC declines this addition. CWSPs, in scoring a project for consideration by the BWQC, are not ‘making a decision’ but are providing their analysis of a project’s merits. Per statute and rule, the BWQC is the decision-making body, that can accept or reject the CWSP’s analysis or conclusions. The language that the commenter proposes to replace specifically empowers the BWQC to investigate any concerns with a CWSP’s scoring. This language should remain as it empowers the BWQC to address on the merits any real or perceived irregularities that may exist with a CWSP’s scoring analysis, thus allowing the BWQC to effectively perform their decision-making role over project prioritization and selection.

Comment #3:

“No BWQC members shall have access to or share RFPs project solicitations / calls for projects prior to release by the CWSP to the public at large. BWQC members shall receive applications and supporting materials only as part of distributions issued by the CWSP. Any application materials received from other sources shall be considered ex parte\* communications and must be avoided and if occurring must be disclosed.

Response #3:

This comment proposes to revise Guidance Chapter 5 as noted. DEC declines the revision. In the final version of Guidance released to the public, DEC revised the first sentence to remove the reference to RFPs and replaced it with language on grant applications or proposals. This approach provides stronger protections against sharing information than the comment’s proposed language, because applications contain more specific information whereas Requests for Proposals are fairly standard or “boilerplate.”

Comment #4:

A CWSP putting forward projects to the BWQC that the CWSP plans to manage does not by itself raise a conflict of interest. When a CWSP proposes a project to the BWQC that will be managed by the CWSP, the CWSP may request that the BWQC consider the potential for bias. If a disproportionate bias exists, the BWQC may be consulted to determine how to handle scoring of the CWSP-sponsored project. One option in such a situation would be for staff preparing the application to have no role in reviewing/scoring the application.

Response #4:

This comment proposes to revise Guidance Chapter 5 as noted. DEC declines. In the final version of Guidance released to the public, DEC had already revised this language to state that the CWSP

shall request the BWQC to consider the potential for bias, which empowers the BWQC as the decision-maker for project prioritization to review the CWSP's scoring analysis. This authority is needed so that a BWQC can credibly perform their statutory role. Requiring that 'a disproportionate bias' be present before the BWQC is consulted is too high of a bar, and not consistent with the role of the BWQC to score and make decisions over projects.