

CWSP Guidance Chapter 10: Assignment, Reassignment, and Replacement

1) Assignment and Reassignment

Whenever a new CWSP is assigned for a term of service, it shall be through an open Request for Proposal (RFP) process, except when a backup CWSP is needed or asked to serve on an interim basis as determined by DEC. An interim or backup CWSP may serve for up to one year, after which time DEC shall initiate an open RFP process to find and appoint a CWSP to a term of service.¹ When a CWSP's assignment ends in the middle of their term, DEC will appoint the new CWSP to the remaining term of the previous CWSP, in order to maintain the alignment of CWSP terms with the watershed planning calendar.

CWSPs that have not been de-assigned and that desire to apply for reassignment for another term shall submit written notice to DEC of said intent by July 31 of the last year of their term. Upon receipt of that notice, DEC will promptly publish to its website notice of that entity's intent to be reassigned. DEC will also provide notice of a process for the BWQC, project implementers, and the public to provide comments on said application to DEC.

The criteria for reviewing a CWSP's request for renewed assignment are located in Guidance Chapter 9. DEC will evaluate the application, including public comments that are received, together with all other relevant information from the CWSP's current and previous service. If the CWSP does not meet the criteria for renewed assignment, DEC may either: 1) de-assign the CWSP and go out to RFP to find a new CWSP, or 2) DEC may reassign the entity subject to a Corrective Action Plan for a period of less than 5 years. DEC shall have the discretion to make this determination, based on the totality of circumstances.

Any CWSP that is de-assigned will work with DEC to wind down operations and transfer all on-going work to a back-up CWSP, or to a newly assigned CWSP, as appropriate.

2) De-assignment

De-assignment refers to the process of removing a CWSP in the middle of their term of service (vs. the decision to not reappoint a CWSP to another term of service, which is the distinct process of reviewing Adequate Annual Progress in Chapter 9.) DEC may de-assign a CWSP under the following circumstances:

- a. The entity fails to make adequate annual progress towards achieving water pollution reduction goals.
- b. The entity has shown an inability or unwillingness to improve performance according to the terms of an applicable corrective action plan.
- c. The entity has failed to comply with/adhere to 10 VSA Chapter 39, Subchapter 5; the Chapter 39 Environmental Protection Rule; or the terms of any State of Vermont grant agreement.

¹ Other reasons a backup might not serve as the CWSP include: the backup no longer exists, they are no longer willing to serve this role, the backup also has documented performance concerns, and/or the existing CWSP is on track for de-assignment with a new, permanent CWSP selected per an RFP process.

- d. The collective weight of evidence from the BWQC and publicly submitted comments received under section 39-801 regarding the performance of the CWSP supports removal of assignment.
- e. The entity has violated any federal, state, or local law or regulation.

DEC will have the discretion to de-assign a CWSP, subject to these criteria. Should DEC determine that a CWSP will be de-assigned, DEC shall document the decision in a letter, and identify the process that the CWSP shall take to wind down their service, including putting holds on CWSP invoices, transferring files and subawards, identifying projects that require ongoing operations and maintenance assistance, reclaiming assets, and other required steps, as appropriate.

Prior to any final de-assignment action by DEC, the CWSP shall be entitled to review and respond to ANR's decision on de-assignment, as well as all comments received that were cited as justification for de-assignment, and the CWSP's response will become part of the public record.

3) Modification of CWSP Formula Grant Terms and Corrective Action Plans

DEC's first preference is to work with a CWSP to correct any deficiency of service, whenever possible. DEC will offer informal recommendations and support to help CWSPs with their responsibilities throughout a CWSP's term. In addition to informal support and guidance, DEC may also need to issue formal letters to the file and/or Corrective Action Plans, as may be appropriate to address problems affecting the effective provision of service.

a) Corrective Action Plans

A Corrective Action Plan (CAP) is a document that, per §39-702, the State may issue to a CWSP at any time to address any deficiencies of service, including failure to achieve adequate progress, or failure to adequately implement or comply with applicable statute, rule, guidance or grant terms. CAPs will be issued in the State's discretion and must be followed as a condition of service of the CWSP. In overseeing this program, DEC will consider the circumstances of each situation and will strive to protect clean water investments and state resources, so that Formula Grants are effectively and efficiently managed.

In issuing a CAP, the State may:

- a. Reduce funding to the CWSP
- b. Shift some or all of the CWSP's target and funding to another entity (i.e. backup CWSP)
- c. Require more frequent reporting
- d. Reopen contract with CWSP, modify any other term of service, or take any other action, as appropriate

An unwillingness or inability to follow a Corrective Action Plan is grounds for de-assignment.