

Administrative Procedures – Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” ([CVR 04-000-001](#)) adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Clean Water Service Provider Rule

_____/s/ Julia S. Moore_____, on 11/30/2020
(signature) (date)

Printed Name and Title:

Julia S. Moore, Secretary
Vermont Agency of Natural Resources

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Filing Confirmed

1. TITLE OF RULE FILING:

Clean Water Service Provider Rule

2. ADOPTING AGENCY:

Agency of Natural Resources

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Chris Rottler

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 3,
Montpelier, VT 05620

Telephone: 802 461 - 6051 Fax: -

E-Mail: chris.rottler@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

4. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Katelyn Ellermann

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 3,
Montpelier, VT 05620

Telephone: 802 522 - 7125 Fax: -

E-Mail: katelyn.ellermann@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. §§ 924 and 930, established by Act 76 of 2019

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Under 10 V.S.A. § 924, the Agency of Natural Resources (Agency) is required to adopt rules assigning Clean Water Service Providers (CWSP) to impaired basins, and under 10 V.S.A. § 930, the Agency has general authority to adopt rules to implement the requirements of 10 V.S.A., Chapter 37, subchapter 5 (Water Quality Restoration and Improvement).

8. CONCISE SUMMARY (150 WORDS OR LESS):

The Agency proposes this rule to assign a CWSP to each basin described in 10 V.S.A. § 922(a) for the purpose of achieving pollutant reduction values established by the Secretary. This rule also establishes requirements for the implementation of 10 V.S.A., Chapter 37, subchapter 5, related to the operational, financial, managerial, and technical requirements associated with CWSP service, as well as the governance structure for Basin Water Quality Councils (BWQCs). The rule also proposes requirements related to conflicts of interest, oversight and evaluation of CWSP service, and renewal or removal of a CWSP assignment.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

Vermont and Federal statutes mandate that impaired waterbodies be restored in accordance with total maximum daily load (TMDL) requirements for pollution reduction. The Vermont Clean Water Initiative provides funding to implement water quality projects to comply with TMDLs in the State, including phosphorus TMDLs for Lake Champlain and Lake Memphremagog. Act 76 declared that Clean Water Initiative success will depend on sustained and adequate funding for implementation of projects, including non-regulatory projects, and required the Agency to assign Clean Water Service Providers (CWSPs) to oversee the development of non-regulatory projects in impaired watersheds. This rule assigns a CWSP to each basin and establishes foundational requirements for CWSPs and Basin Water Quality Councils, which are councils attached to CWSPs. CWSPs, funded by formula grants from the State, will identify, prioritize, develop, design, construct, verify, operate and maintain clean water projects in their assigned basin.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The Vermont Legislature has concluded that non-regulatory clean water projects are necessary to restore impaired waters and comply with mandated TMDLs. Following an extensive stakeholder process, the proposed rule complies with 10 V.S.A., Chapter 37, subchapter 5, in establishing the Clean Water Service Provider framework to implement these projects.

11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Landowners, including individuals, organizations and state agencies receiving funding for projects.

Regional Planning Commissions, Natural Resources Conservation Districts, Municipalities, Watershed-based Organizations, and land conservation organizations.

Engineers, designers, consultants, and contractors who are hired to design and construct water quality projects.

The public at large, with an interest in water quality, outdoor educational and recreational opportunities.

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The Agency of Natural Resources will annually issue a formula grant to each assigned CWSP, 85% of which shall be dedicated towards projects, and 15% of which is reserved for administrative costs. In aggregate, the value of these formula grants could range from an estimated \$6 million to \$9 million per year, depending on available and budgeted funds, which are subject to annual appropriation by the General Assmebly, based on recommendations of the Vermont Clean Water Board. The issuance of sustained investment at this scale for the implementation of non-regulatory water quality projects will have a positive economic impact on job creation and the Vermont economy as a whole. The improvement and maintenance of Vermont's water quality will also have a positive economic impact associated with recreational use of Vermont's waters (swimming, fishing, boating), tourism, and property values.

13. A HEARING IS SCHEDULED .

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

Proposed Rule Coversheet

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Clean Water Service Providers

Basin Water Quality Councils

Water Quality

Regional Planning Commission

Watershed Organization

Natural Resources Conservation District

Vermont Housing and Conservation Board

Proposed Rule Coversheet

Non-regulatory projects

Natural Resources projects

Natural Resource restoration

Rain gardens

Functioning Floodplain Initiative

Forestland

Clean Water Initiative

Clean Water Formula Grants

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Clean Water Service Provider Rule

2. ADOPTING AGENCY:

Agency of Natural Resources

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Engineering firms, construction companies, watershed organizations, Natural Resources Conservation Districts, Regional PLanning Commissions, governmental entities that own land, people that recreate on or near water, landowners with documented impacts to surface waters that are not otherwise subject to pollution control requirements, landowners who live near waterbodies. BENEFITS: This rule will have a positive

Economic Impact Analysis

impact for these parties as funds are disbursed to implement natural resource projects. Contractors will be eligible to work on implementing, designing, constructing, maintaining and operating projects. Landowners will benefit if a project is implemented on their land. Improved water quality will provide a boost to businesses from tourists, and from residents who live in Vermont because of the quality of the environment. COSTS: The costs of the rule relate to providing funding for this work, which funds will be used to create jobs and improve the environment.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The rule will have positive impacts on schools, as funds are disbursed to implement projects. Schools may be eligible to apply for funds, and students will be able to learn about water quality restoration and protection by visiting projects.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

There are no direct costs to school districts from this Rule, and so no alternatives need be considered.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The rule will have a positive impact on small businesses, as funds are disbursed to implement projects. Small businesses may be hired to implement/design/construct/maintain/operate projects, and will benefit if a project is installed on on their property. Improved water quality will also provide a boost to businesses from tourists, and from residents who live in Vermont because of the quality of the environment.

7. **SMALL BUSINESS COMPLIANCE:** *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

There is no burden of compliance placed on small businesses by this Rule, as this Rule is related to the disbursement of funding for the construction, operation, and maintenance of clean water natural resource projects.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Failure to adopt this rule will prohibit implementation of Act 76, which would result in the inability to stand up a decentralized network of partners to distribute clean water funding, resulting in a negative economic impact.

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

Due to the nature of this Rule, which will have a positive economic impact, this analysis is sufficient.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

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3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

Clean water projects will not materially contribute greenhouse gas emissions, and some natural resource projects may have carbon sequestration benefits, as well as climate adaptation benefits.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

The purpose of this rule is to establish a governance structure that allows CWSP and BWQCs to receive and distribute funds, that will result in constructed and maintained natural resources projects that will improve water quality. By design, this Rule will have a positive impact on water quality in the State.

Environmental Impact Analysis

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

This rule will result in constructed natural resources projects on land that will have a positive impact on water quality. These projects will manage lands in a manner that precludes undue adverse impact to surface waters, increases water and habitat quality, and protects natural resources generally.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

Improved water quality in the State will improve the quality of recreation opportunities in the State. This includes fishing, swimming, and recreating on or near waterbodies benefiting from upstream projects financed by grants governed by this Rule.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

CWSPs will implement natural resources projects that are likely to have a positive impact on mitigating climate impacts by increasing climate resilience and adaptation.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

9. **SUFFICIENCY:** *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

Due to the nature of this Rule, which will have a positive environmental impact, this analysis is sufficient.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

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3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Agency of Natural Resources (ANR) has engaged in a robust public engagement process in support of the development of this Rule. The success of this rule depends on the participation of stakeholders. ANR has worked to include stakeholders all along the way, offering individual meetings to everyone who has requested one, as well as establishing a more formal advisory group, made up of representative stakeholders, who in turn, were encouraged and asked to relay information from stakeholder meetings to all of their constituencies and contacts. Information exchange has been a two-way process, with ANR sharing information and receiving information during all of these meetings. As part of the advisory group process, ANR created a page on their website with meeting minutes, draft documents, a FAQ, contact information, and other resources to keep the public informed of work on the development of this rule and associated administrative procedures.

ANR will also hold a public hearing during the rulemaking process.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

In November 2019, ANR convened a stakeholder advisory group, made up of approximately 12 representative stakeholder groups to assist with the development of both the RFP for selecting CWSPs, and with the drafting of this Rule. Over the past 12 months, the stakeholder group has met frequently, typically every two weeks during the RFP development process, as well as every two weeks during the Rule development timeframe, to present draft language and to solicit input and feedback from the stakeholder group. Stakeholders were encouraged to reach out to their colleagues, partners, and constituencies to update them on the activities of the advisory group, as well as to receive feedback and input on the progress and activities of the development of the rule. Once CWSPs were selected under the RFP, the stakeholder group was reconstituted to include representative staff from each selected CWSP to also participate in the Rule development process. Individual meetings were also offered and held with members of the advisory group. Supplemental outreach sessions with other entities were also held with entities on both the RFP, as well as on the Rule, including a session with partner Agencies of the State of Vermont, as well as with other stakeholders, such as the Vermont Water Caucus.

ANR will also hold a public hearing during the rulemaking process.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Chris Koliba, UVM Professor of Community and Applied Economic Development

Lyn Munno, for Watersheds United Vermont

Mike Kline, for Watersheds United Vermont

Holden Sparacino, for the Vermont Natural Resources Conservation Council

Jill Arace, for the Vermont Association of Conservation Districts

Public Input

Gianna Petito for Winooski Natural Resources
Conservation District

Jared Carpenter, for Trout Unlimited of VT, the Lake
Champlain Committee, and the Vermont Water Caucus

Amy Macrellis, for Green Mountain Water Environment
Association

Dan Albrecht, for Chittenden County Regional Planning
Commission and the Vermont Association of Planning and
Development Associations

Charles Baker, for Chittenden County Regional Planning
Commission and the Vermont Association of Planning and
Development Associations

Peter Gregory, for Two Rivers-Ottawaquechee Regional
Commission and the Vermont Association of Planning and
Development Associations

Zack Porter, for the Conservation Law Foundation

Jim Giffin, for the Vermont Clean Water Board

Karina Dailey, for Vermont Natural Resources Council

Karen Freeman, for Vermont Housing and Conservation
Board

Jon Groveman, for Vermont Natural Resources Council

Adam Lougee, for Addison County Regional Planning
Commission

Amanda Holland, for Northwest Regional Planning
Commission

Ed Bove, for Rutland Regional Planning Commission

Hillary Solomon, for Poultney-Mettowee Natural
Resources Conservation District

Bonnie Waninger, for Central Vermont Regional Planning
Commission

Echo Leahy Center of Vermont

Lake Champlain Sea Grant

Lake Champlain Basin Program

The Nature Conservancy

Northwoods Stewardship Center

Public Input

University of Vermont Cooperative Extension

Vermont Agency of Transportation

Vermont Agency of Agriculture

Vermont Agency of Commerce and Community Development

Vermont Agency of Natural Resources, Department of Fish
and Wildlife

Vermont Agency of Natural Resources, Department of
Forests, Parks and Recreation

Administrative Procedures – Scientific Information

THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:

Instructions:

In completing the Scientific Information Statement, an agency shall provide a brief summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

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3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

The Clean Water Service Provider Rule contains references to surface water restoration plans (e.g., TMDLs), ANR policy statements, and references the Vermont Water Quality Standards.

Entities serving as CWSPs will be required to undertake clean water project development and implementation concurrent with technical guidelines noted in Subchapter 4 of the Rule which are under development based on several scientific studies. Of these, several of the guidance methodologies are based upon scientific studies and principles, references for which may be found in Item 4, below. These include studies associated with natural resource protection and restoration, including river corridor and floodplain restoration and protection, wetland protection and restoration, riparian and lakeshore corridor protection and restoration, natural woody buffers associated with riparian, lakeshore, and wetland protection and

Scientific Information

restoration; forestland restoration, agricultural land restoration, and studies related to an analysis of co-benefits associated with those projects.

4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

Vermont's Functioning Floodplains Initiative -
<https://dec.vermont.gov/rivers/ffi>

Dynamic Stream Equilibrium. Please see the Vermont Surface Water Management Strategy, Chapters One (Introduction) and Two (Channel Erosion; Encroachment; Flow Alteration), at:

<http://dec.vermont.gov/watershed/map/strategy>

http://dec.vermont.gov/sites/dec/files/documents/WSMD_swms_Chapter_1_Introduction_VS.pdf

[http://dec.vermont.gov/sites/dec/files/documents/WSMD_swms StressorPlan Channel%20Erosion_Web_V3.pdf](http://dec.vermont.gov/sites/dec/files/documents/WSMD_swms_StressorPlan_Channel%20Erosion_Web_V3.pdf)

http://dec.vermont.gov/sites/dec/files/documents/WSMD_swms_StressorPlan_FlowAlt_V4.pdf

[http://dec.vermont.gov/sites/dec/files/documents/WSMD_swms StressorPlan_Encroachment_V4.pdf](http://dec.vermont.gov/sites/dec/files/documents/WSMD_swms_StressorPlan_Encroachment_V4.pdf).

Vermont Wetland Restoration Initiative

<https://dec.vermont.gov/watershed/wetlands/protect/restore>

Vermont Agricultural Lands Restoration

<https://agriculture.vermont.gov/water-quality/water-quality-initiatives>

5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:

The Agency of Natural Resources has posted links to scientific documentation on various pages of the Watershed Management Division website as noted above. The documents are also available to the public for review at the Agency's Watershed Management Division offices in Montpelier, VT, or upon request.

