



Water Investment Division

"Planning, financing, building, and reporting on water infrastructure to support clean water for all Vermonters."

Questions and Answers on Act 76 and Clean Water Service Providers

Introduction

Act 76 of 2019 establishes a project delivery framework to ensure essential water quality projects achieve Vermont's clean water goals. Three of the most fundamental aspects of this law are:

Non-regulatory project identification and prioritization: Act 76 makes it easier to prioritize and fund non-regulatory projects. Non-regulatory projects include small-scale stormwater management practices and natural resource restoration projects such as floodplain reconnections, wetlands restoration, or vegetated buffer plantings. While not required through existing regulatory programs, these projects are essential to achieve the water quality goals spelled out in the [Lake Champlain and Lake Memphremagog TMDLs](#).

Phosphorus reduction targets: Act 76 places a greater emphasis on establishing non-regulatory phosphorous reduction targets set for each watershed, and on "paying for performance" based on the amount of pollution reduced by water quality projects.

Clean Water Service Providers: Act 76 establishes new regional organizations called clean water service providers (CWSP). CWSPs will be established in each major watershed to identify, implement and maintain local water quality projects.

Over the first three months following signature of Act 76 by Governor Scott, staff of the Agency of Natural Resources (ANR, or Agency) and the Department of Environmental Conservation (DEC, or Department) have been conducting outreach on the new law and collecting questions from stakeholder organizations. Organizations that have participated include:

- Audubon of Vermont (scheduled)
- Connecticut River Conservancy (scheduled)
- Friends of North Lake Champlain (planned)
- Lake Champlain Basin Program
- Natural Resources Conservation Council and the Vermont Association of Conservation Districts
- University of Vermont Cooperative Extension (scheduled)
- University of Vermont Dept of Community Development and Applied Economics
- Vermont Association of Planning and Development Agencies
- Water Caucus of Vermont
- Watersheds United Vermont

The following Q+A document provides answers to the many questions received to date. For organizations that have presented written questions, these are provided verbatim, with answers. Many of the written questions respond to questions posed by organization representatives during one on one meetings. However, questions posed during these meetings that are not captured by the written questions are also provided.

General Questions posed at the August 15, 2019 Initial Public Webinar on Act 76

Q: In advance of establishing an advisory group to assist Clean Water Service Provider rulemaking process, will there be a written FAQ?

A: Yes. This is the written FAQ.

Q: Will the Act 76 effort consider or result in a phosphorus (or “P”) trading program?

A: There is a report requirement in Act 76 to examine P trading. Presently, the Lake Champlain Total Maximum Daily Load Plan (TMDL) does not contemplate trading of pollution reductions between the required P reductions to be achieved by the issuance and adherence to water quality permits, such as stormwater or wastewater, and non-regulatory phosphorus reductions. In the language of a TMDLs, those reductions that are required by Clean Water Act regulations are assigned to the “wasteload allocation” of the TMDL, while non-regulatory project are assigned to the “load allocation” of the TMDL.

Q: Water Quality Restoration Formula Grant, how does the cost/unit relate to funds that are dispersed for education and outreach?

A: The formula for dispersal of funding is intended to include cost of identification, developing, designing constructing, developing a project. There are \$500K annually targeted to basin planning support, to include partners engaged in outreach activities. The agency will continue to evaluate what resources may be necessary to achieve the goals of Act 76 and the VT Clean Water Act.

Q: Are enhancement grants limited to areas where CWSPs are not receiving Formula Grants?

A: Act 76 does not limit enhancement grants by recipient nor geography.

Q: How many service providers will be established?

A: There are six basins for Lake Champlain, one for Lake Memphremagog. There are 15 planning basins in Vermont. At present, based on stakeholder discussions to date, the Department will endeavor to establish a CWSP for each major planning basin. Nothing in Act 76 prevents a CWSP from serving more than one planning basin.

Q: When are Basin Water Quality Councils (BWQCs) required to be established?

A: November 1, 2020 is the deadline for rulemaking to assign CWSPs. Statute does not establish a deadline for the empaneling of Councils, however, statute implies that this needs to be done after CWSP established November 2020 and before beginning WQ Restoration Formula Grant November 2021. See additional information below.

Q: From a governance point of view, how will the CWSPs, their specific Advisory Councils, the Clean Water Board, and the new Division interact with each other?

A: Please see detailed questions from the State Natural Resources Conservation Council on matters of Governance.

Q: O&M is not going to be neglected in these projects and tasks that are funded and that is good. Going one step further as you plan budgets is to get some sense of performance indicators or outcome evaluations that get you past the modeling and instead into actual monitoring. With enormous investments in practices and the increase in granularity, can you comment on monitoring?

A: The Department runs a robust monitoring program, overseen by the Watershed Management Division (WSMD). WSMD's professional and citizen-based monitoring programs can target monitoring to where we know practices have been implemented. The resulting data creates a statement of success (or not), and it is critical to understand that monitoring results will always vary to a degree from standard practice efficiencies.

It is important to note that accounting methods are based on pre and post BMP implementation modeling and monitoring, and capture the range of variability in pollutant reductions. For this reason, the accounting of P reduction at the practice scale must rely on standard practice efficiencies, while monitoring conducted by the LCBP/DEC long-term monitoring program will track loading changes over time. Additional monitoring at smaller watershed scales and/or targeted to specific installations is warranted and will happen, although it is impractical to monitor every site at which a practice is installed.

Q: What is the penalty for not achieving targets for the contract or agreement?

A: See §10 VSA 924(f). There are a series of steps the Secretary may take. They include insertion of specific remedial provisions or penalties in grants, remediation planning, or designation of alternate CWSPs.

Q: Will your data management efforts include all projects in terms of tracking and results?

A: The Clean Water Reporting Framework incorporates the Agency's Clean Water Projects Dashboard, Watershed Projects Database, and Basin Accounting and Tracking Tool. The Framework will take in project attributes from partners and calculate pollutant reductions. Right now, we are not able to calculate pollutant reductions for every project type, but this is an area of active work as required by Act 76,

Q: It may be difficult to have a strict standard O&M around natural resource projects. Are there going to be performance measures?

A: Duly noted. The O+M guidance will necessarily be reflective of the different natural resources project types. The Agency is particularly interested in the outcomes of the Functioning Floodplain Initiative to learn of the pollutant reduction factors, co-benefits, and operation and maintenance standards that may apply specifically to river corridor easements and floodplain restorations.

Q: Why does the Memphremagog watershed as mapped show the Tomofobia River, which discharges north into Quebec.

A: The Basin 17 tactical plan covers the Memphremagog, Tomofobia, and Coaticook watersheds. Only the Memphremagog basin is subject to the Lake Memphremagog phosphorus TMDL.

Q: As the Agency sets forth into rulemaking for CWSPs, prospective CWSPs have no idea what the pollution reduction targets and gaps are in the basins. It may be challenging for a prospective CWSP to step up to serve absent the CWSP guidance, O+M guidance, and non-regulatory pollutant targets.

A: The Agency does see the challenge around the timelines. Act 76 requires public notice and comment on all of the aforementioned items, though some will not be in place as the CWSP rule is established. However, the CW Board is required by Act 76 to adequately fund reasonable O+M costs for projects installed by CWSPs, and costs for new project implementation equal to the annually-expressed targets. Thus, the rule will stipulate that if there are insufficient funds to support the O+M requirements or target reductions, the CWSP will not held accountable for those reductions.

Q: How will service providers ramp up for this work? It seems like a chicken and egg problem. Does the money help for staffing at necessary levels, or just for projects?

A: The DEC is considering funding mechanisms for the startup of CWSPs. Act 76 requires assignment of CWSPs by rule by Nov. 1, 2020, and there is a full year between establishment and the formula grant. DEC is looking at options for use of Clean Water Fund dollars to provide startup funding that will support CWSP operation and basin planning support.

Q: Will the Agency plan on adding basin planners as their scope of work increases? One basin plan per basin?

A: That is not being contemplated at this time. However, with the creation of the Water Investment Division, DEC has identified and implemented some opportunities that expand the capacity of the basin planning team.

Written Questions from the Natural Resources Conservation Council and Vermont Association of Conservation Districts

Questions about assigning a CWSP

Q: The NRCC has received feedback from partners about the timeline and the general concern that ANR is asking people to submit qualifications to be a CWSP before seeing guidance or knowing the total budget being allocated to their respective assigned basins/precise measures for determining success or CWSP vulnerability to penalties. How will ANR address these concerns?

A: ANR recognizes that there are multiple parallel work tasks that must be implemented for Act 76. The Agency intends to make as much information available as possible via cleanwater.vermont.gov. Further, the Agency envisions that the Rule will spell out provisions for the relief of responsibilities of CWSPs in the event that sufficient funding is not available to support the formula grants spelled out by Act 76.

Q: What is the plan if ANR finds no willing entity to serve as a CWSP for a given basin or only under-qualified entities indicating interest?

A: Great question, and one that is unforeseen by Act 76. There are a range of approaches that the Agency will consider, in consultation with stakeholders.

Q: Who is to be on the RFQ/RFP advisory council and will ANR host a formal in person meeting?

A: The Agency does not contemplate an advisory council for the RFQ/RFP **process** itself. Rather, the Agency envisions a stakeholder advisory group for the development of the CWSP Rule, including those issues that should be examined in the RFQ/RFP. By its nature, an RFQ/RFP would be executed, and responses evaluated, by Agency staff so that there is no conflict of interest imparted in the selection process. The Agency will host meetings with the Advisory group. Members of key stakeholder

organizations have been identified to serve on the group, including statutory partners identified in §10 VSA 1253(d), academia, and advocacy.

Q: If not, how will ANR solicit feedback from the council on the draft RFP or RFQ? Will that feedback be made public?

A: As noted above, ANR will seek feedback. ANR will maintain information about the rulemaking process, its progress, and key decisions, via Cleanwater.vermont.gov.

Q: ANR's draft timeline proposed completing this by the end of September, has this started yet?

A: The timeline established by DEC and shared during the August webinar has been updated and included in materials provided to the Clean Water Board for their October meeting. ANR has been meeting with individuals and groups interested in this process since late August of 2019. The process is underway, and it is anticipated that individual organizational meetings will be completed by the end of October. The first stakeholder advisory group meeting is scheduled for November 4th.

Q: What role will the public or the RFP/RFQ advisory council have in reviewing the qualifications and candidate CWSPs once they have been submitted to ANR?

A: See above.

Q: Can the RFP advisory committee or public provide comment on the submitted applications prior to rule-making, or are steps between the RFP/RFQ and rulemaking closed to public input?

A: Once a CWSP has been proposed for assignment in the CWSP Rule, the Agency will make the draft rule available to stakeholders prior to filing the rule with the Secretary of State.

Q: What other steps are involved in the rulemaking, and how will the public be involved and/or know what applications were received?

A: This rulemaking will follow all steps outlined by the Secretary of State at

<https://www.sec.state.vt.us/administrative-rules.aspx>.

NRCC Questions about CWSP Governance, Project Prioritization and Selection

In Act 76, both the CWSPs and BWQCs are given the responsibility of prioritizing/selecting projects, see:

924(a)(3)(A) At a minimum, the guidance shall address the following...how the clean water service provider integrates prioritizes and selects projects consistent with the applicable basin plan, including how to account for the co-benefits provided by a project;

924 (a)(2)An entity designated as a clean water service provider shall be required to identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects in accordance with the requirements of this Subchapter.

924(a)(5) When selecting clean water projects for implementation or funding, a clean water service provider shall prioritize projects identified in the basin plan for the area where the project is located and shall consider the pollutant targets provided by the Secretary and the recommendations of the basin water quality council

924(g)(1)The purpose of a basin water quality council is to establish policy and make decisions for the clean water service provider regarding the most significant water quality impairments

that exist in the basin and prioritizing the projects that will address those impairments based on the basin plan.

Q: How are projects prioritized?

A: Generally speaking, projects will be prioritized by CWSPs locally based on local knowledge and their BWQCs, reflecting phosphorus reduction, relevant co-benefits, and when appropriate, input solicited from basin planners or the availability of co-funding. Specifically:

According to 924(a)(5), “When selecting clean water projects for implementation or funding, a clean water service provider shall prioritize projects identified in the basin plan for the area where the project is located and shall consider the pollutant targets provided by the Secretary and the recommendations of the basin water quality council;” and,

According to 924(b), “When identifying, prioritizing, and selecting a clean water project to meet a pollutant reduction value, the clean water service provider shall consider the pollution reduction value associated with the clean water project, the co-benefits provided by the project, operation, and maintenance of the project, conformance with the tactical basin plan, and other water quality benefits beyond pollution reduction associated with that clean water project. All selected projects shall be entered into the watershed projects database.”

Q: If considerations beyond cost effectiveness and pollutant reductions are considered, what is or is not included (permitting requirements, landowner agreement, strong working relationships with the implementers)?

A: Beyond the obvious criteria of pollutant reduction, CWSP/BWQCs should also consider co-benefits of relevance. This will be further articulated in the guidance referenced in 924(A)(3)(a). See also above at 924(b).

Q: Who is the final decision-making body if there is a “hung jury” or disagreement between the BWQC and CWSP?

A: That is a matter of governance and the function of the CWSP relative to the Council, guided by Act 76. Ultimately, Act 76 simultaneously indicates that:

“ An entity designated as a clean water service provider shall be required to identify, prioritize, develop, construct, verify, inspect, operate, and maintain clean water projects in accordance with the requirements of this subchapter. (§10 VSA 924(a)(2)); ” and,

“(…) a clean water service provider shall prioritize projects identified in the basin plan for the area where the project is located and shall consider the pollutant targets provided by the Secretary and the recommendations of the basin water quality council. (§10 VSA 924(a)(5)); and,

“(…) The purpose of a basin water quality council is to establish policy and make decisions for the clean water service provider regarding the most significant water quality impairments that exist in the basin and prioritizing the projects that will address those impairments based on the basin plan. (§10 VSA 924(g)(1)).

Taken together, this language indicates that the Basin Council has greater weight in decision-making. This is because the CWSP “shall” consider Council recommendations, and that the purpose of the Basin Council is explicitly to make decisions on policy, impairment priority, and prioritizing projects (sic).

Thus, while ultimate accountability for funding directed to establishment of projects to achieve targets rests with the CWSP, the accountability for project selection rests with the BWQC.

Q: What if the process of finding a resolution impacts project funding and pollution reduction efforts? Will this determination be written out in ANR guidance?

A: This question is unclear.

Q: If the CWSP is the ultimate decision-maker and also the direct recipient of clean water project funding, what protections exist to protect against an incentive to select/fund projects they implement rather than working with partners to implement the most cost-effective projects?

A: 10 V.S.A. §923(a)(3-4) spell out the requirements for guidance of the Agency, *and* the CWSP on this matter.

Q: If the BWQC is the ultimate decision-maker, what guidance will exist on how a consensus is determined or a similarly “hung jury” situation is resolved?

A: That is a matter of governance and the function of the Council relative to the CWSP. However, to the extent that the CWSP believes the direction provided by the BWQS will affect the ability of the CWSP to achieve the targets established by DEC, then the Commissioner DEC will provide adjudication.

Q: What if the CWSP is unable to implement projects in a timely matter due to disagreements?

A: See 10 V.S.A. § 924(f).

Q: Will ANR guidance include dealing with conflict management and grievance procedures?

A: 10 V.S.A. §§924(a)(3)(E) and 924(f) speaks to the Secretary’s Strategy with respect to performance. This again is a matter of governance between the CWSP and BWQC. The Department is interested in approaches to this from stakeholders and will take comment as part of the development of the guidance. The Department is researching governance models to address this. Further, the CWSP Rulemaking Advisory Committee membership has specific expertise on governance.

Q: If a CWSP is operating in multiple basins, do they have multiple BWQCs or a single council across multiple basins?

A: “A clean water service provider designated under this section shall establish a basin water quality council for each assigned basin.” 10V.S.A. § 924(g)(1). There is to be a Council for each planning basin.

Q: 922.(a)(1): “the Secretary may express the pollutant reduction in a numeric reduction or through defining a clean water project that must be implemented to achieve water quality standards”

How will this process tie into the “final say” question of CWSP vs. BWQCs? At what point would the Agency step in and define projects that “must be implemented”?

A: Regulatory tools exist to compel implementation of a specific project of such significance that Water Quality Standards cannot be met without it. In this instance, such a project would move from the non-

regulatory to regulatory status, and thus may not be eligible for implementation by the CWSP via the formula grant.

NRCC Questions about the BWQCs

924 (g) Basin water quality council.(1) A clean water service provider designated under this section shall establish a basin water quality council for each assigned basin

924(g)(1)...A basin water quality council shall also participate in the basin planning process.

Q: By what deadline will BWQCs be established? Will this deadline be included in rule-making and/or guidance?

A: Statute is silent on this. However, at present, the Department would intend, in its RFP, to solicit information from prospective CWSP on the proposed makeup of its BWQC. ANR is open to input on this matter. While not stated in statute, partners indicate a desire to establish BWQC to support tactical basin planning.

Q: Is the CWSP and/or their representatives a voting member of council?

A: This is a matter of governance. A starting point is that voting members of the BWQC would be those entities/individuals named in 10 V.S.A. §§924(g)(2) (A)-(E), or nine individuals. To the extent that the role of CWSP is fulfilled by any of the specific organizations listed subdivisions 924(g)(2)(A) - (E), then these organizations necessarily have voting status. The Agency may include options to adjust voting representation in Guidance or in the CWSP Rule itself and welcomes input.

Q: Does their attendance count as representing one of the mandated groups?

A: To allow an additional vote to a CWSP, by virtue that they are one of the specific organizations designated to the BWQC, would confer unfair status. The Department may include options to adjust voting representation in Guidance or in the CWSP Rule itself and welcomes input.

Q: What is the fate of project development and education/outreach funding? How will this funding and TBP funding transition before/after CWSP establishment?

A: ANR recognizes that the transition period will be challenging, given the partnership agreements existing at present that are supported by the Clean Water Fund. ANR's intent is to maintain the status-quo to the extent practical during the transition.

Q: "At a minimum" most groups can have two persons on a council, will a limit on the number of members will exist?

A: ANR's guidance in this matter will begin with 924(g)(2). ANR's CWSP guidance will need to contemplate criteria for the assignment of the watershed protection organizations, to establish sideboards on the minimum capabilities of organizations to be considered "local watershed protection organizations" pursuant to 924(g). The Department may include options to adjust voting representation in Guidance or in the CWSP Rule itself and welcomes input.

NRCC Technical Questions about Computations and Modeling

922. (a)(2): ANR shall allocate to each clean water service provider for that water an amount of pollution reduction the provider shall be responsible for achieving. The allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets.

How will reductions be measured:

- In what units?
 - A: $\text{kg} \cdot \text{t}^{-1}$.
- How is success determined? Through modeling/estimation or direct sampling?
 - A: modeling and accounting of implementation efforts. See answer to general questions on the bottom of page two.
- Is there an appeals process if there is disagreement in the amounts reduced?
 - A: When implementing the requirements of subsections (a) and (b) of this section [pollutant reduction estimates and design life], the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714 of this title. 923 (f)(1). Decisions made from type 3 notices are appealable actions of the Secretary.

924 (e)(5): annual report must include... all data necessary for the Secretary to determine the pollutant reduction achieved by the clean water service provider during the prior year

Q: What will these data be?

A: These are the data of the type noted in Attachment F of current CWF/ERP grants. They are the data necessary to calculate pollution reduction using the Basin Accounting and Tracking Tool developed by CWIP. Also, we anticipate applying the analytics/ informatics that will be developed through phase 2 of the Functioning Floodplains Initiative.

Q: For instance, will CWSPs need to invest in field technology for monitoring?

A: No, not for the purpose of accounting for pollution reductions. CWSPs will be expected to track implementation efforts that will achieve (annual) pollution reduction targets and report on those efforts concurrent with the development of DEC (and inter-Agency) annual performance report.

Q: ANR is going to set up a methodology for standard cost per unit of P-reduction specific to each basin. Is this going to be based on the estimated costs of existing/pending projects in those basins? Percent of land-use cover for that basin? Will CWSPs fund projects before the standard costs are determined, and if so, how will those projects be funded to completion if the standard costs varies from budgeted costs?

A:

Standard cost per unit:

ANR will establish standard cost per unit of phosphorus reduced by project type. This may be expressed at the land use sector, project, or practice-level. To clarify, different cost rates will not be specific to each basin. ANR is seeking contractor support to establish standard cost per project output unit by project and/or practice type (e.g., acres of existing impervious surface treated by stormwater treatment practice). Project output metrics will be used as a surrogate to phosphorus reduced for the contractor's analysis. ANR will later translate estimated cost per project output to estimated cost per unit of phosphorus reduced based on ANR's phosphorus accounting methods. The estimated costs per unit will

likely be based on a combination of existing models, DEC's dataset of state-funded clean water projects funded and/or completed since SFY 2016 (July 1, 2015), and literature search. Costs should be adjusted for Vermont and account for inflation. Total project costs will be broken down by project step, including identification, design, implementation, and operation and maintenance.

Interim targets: Interim targets will be established per basin by sector, corresponding with TMDL load allocation categories (e.g., streams, forests). Targets will be represented as a total phosphorus load reduction over a five-year period and based on a combination of potential for project implementation (considering basin land use cover and baseline level of project implementation) within a sector per basin, pacing TMDL reductions to meet targets within the 20-year implementation timeframe, and per reasonable expectation for the pace of project installation.

Formula dispersal of funds: ANR will disperse funds to CWSPs based on interim targets by sector and standard cost per unit phosphorus reduced by sector. If insufficient funds are available to fully fund targets, CWSP targets will be adjusted based on available funds. ANR intends to establish standard costs and formula for dispersal of funds before CWSPs begin operating under Water Quality Restoration Formula Grants in November 1, 2021. If projects are more expensive than the formula dispersal allows, other funding sources will need to be leveraged to complete the project.

924(c) Maintenance responsibility. A clean water service provider shall be responsible for maintaining a clean water project or ensuring the maintenance for at least the design life of that clean water project. The Secretary shall provide funding for maintenance

Q: The standard cost does not include cost for re-build/maintenance, this is listed separate. How frequently will those expenses be tabulated and refunded to CWSPs?

A: See Act 76 Section 4, specifically the Board's responsibility to propose funding sufficient to support O+M and annualized target pollutant reductions as a top tier priority.

Q: Where will ANR codify these plans?

A: Act 76 at Sec 4. - 1389(e)(1)(A) establishes as a top-most priority, and co-equal to the formula and enhancement grants, "grants to clean water service providers to fund the reasonable costs associated with the inspection, verification, operation, and maintenance of clean water projects in a basin."

923 (a) ANR also shall publish methodologies for calculating pollution reduction values for a clean water project in that water.

Q: Is this one component or the main component for determining "success" for the CWSP?

A: For purposes of determining accountability under the formula grant, a CWSP will be evaluated on whether they have achieved pollution reduction goals.

Q: Will the methodology developed ensure that, for a given basin, if every clean water project is implemented the P reduction target would be attained?

A: Yes, and the Lake Champlain TMDL provides for adaptive management over time. DEC will develop targets that reflect realistic and achievable, reflective of available modeling tools. Through the tactical

planning process, incremental plan issuances, and adaptive management, DEC will track progress towards achievement of overall regulatory and non-regulatory goals.

Q: How should a CWSP weigh a project across other benefits/pollutants?

A: See answer on Page 5.

Q: For example, if a rain garden will reduce a lot of P but very little N is that of lower priority in the CT River Basin?

A: If a CWSP is in operation in the CT River Basin, and has been assigned target nitrogen reductions, then the formula grant will be indexed to the cost factors for N. Thus, the project noted above would be of lesser priority.

Q: Both standard cost and reduction value should account for topographical differences (aspect and slope), BMP sizing, soil types, surrounding land-uses and contributing stormwaters.

A: The Agency agrees, with the understanding that “contributing stormwaters” means the contributing storm-shed, for projects designed to treat sub-jurisdictional stormwater runoff. This will need to be balanced against the practical reality of developing site and project-specific P reduction coefficients.

Written Questions from Mr. Tom DiPietro.

The questions posed below by Mr. DiPietro were asked as an interested citizen. They were not posed on behalf of his employer, nor the Green Mtn Water Environment Association.

Q. How will the funding and payment to CWSPs work in practice? My current understanding is that funding will be divided up between the 14 basins and each basin will have a CWSP. CWSPs will identify and implement projects. CWSPs can retain up to 15% of the funding for administration. I’m assuming that payment to CWSPs will be made on a project by project basis. I’m also assuming that this payment will be based on the amount of P removed by the project using a formula that DEC is developing. Is this accurate? Can you provide an example project and payment? Can you provide example formulas?

A: These are not details the Department has yet worked out. We envision that each completed project will have an associated pollution reduction value. DEC will issue payment based on this value, but also provide payment for the reasonable cost of O+M for the non-regulatory projects implemented by the CWSP’s formula grant (see 10 V.S.A. § 1389(e)(1)) under a separate payment, as envisioned by 1389(e)(1). DEC will develop a formula that supports recommendations to the Clean Water Board for the “Tier 1” O+M and Water Quality Formula Restoration Grants to CWSP. DEC is not yet able to provide example formulas. DEC is also considering approaches to fund the startup of CWSPs and BWQC’s in advance of the availability of these funds.

Q: What happens if a basin doesn’t have a CWSP? Will DEC fill that role?

A: See response to NRCC, Page 4, above.

Q: Does DEC have an example of the agreement that it will require the CWSPs to sign? If not, when will that become available?

A: No. The roles and responsibilities will be articulated through the rulemaking and related guidance documentation. DEC will contemplate what type of instrument may be suitable to constitute an agreement between DEC and the CWSP, absent an actual formula grant award.

Q: What procurement process will a CWSP be required to follow when soliciting and selecting projects? What procurement process must the CWSP require of those project (sic) to which it awards funding?

A: DEC will establish standard requirements for CWSP whom are recipients of grants. Further, 10 V.S.A. §§ 923(a)(3) and(4) spell out the requirements for guidance of the Agency, and the CWSP on this matter. The Department is exploring aspects of the guidance that will address the issue of procurement.

Q: Are there any limitations on who can be a CWSP? Could a privately-owned engineering firm do it? A non-government agency? A municipality? A non-profit? An individual?

A: Statute is silent on this. The RFP OR RFQ and subsequent Rule will outline the basic functions and requirements of a CWSP.

Q: Will DEC provide guidelines for qualifying projects, or will DEC be reviewing projects selected by the CWSPs on a case by case basis?

A: DEC will provide basic guidelines for qualifying projects but will not review each project prior to awarding funding or approving design and construction. DEC's Basin Planners will provide technical assistance for BWQCs and CWSPs, which will ensure that the Agency maintains awareness of newly discovered project opportunities by relying on the Watersheds Project Database for project tracking across all basins. While not required prior to construction, Act 76 requires that projects which have been implemented be entered into this database.

Q: I recall reading that funding for on-going maintenance will be provided. How will that amount be determined and paid to the CWSP? Would the amount of annual maintenance funding and the number of years for which it is needed be determined and agreed upon during the project application period? Would it be something that the CWSPs estimates and invoices for annually? Would these costs count towards the 15% administration that is available or would they be viewed separately?

A: See response above regarding the priorities for funding to be recommended by the Clean Water Board. The Agency has recently issued an RFP for the development of cost effectiveness and O+M specifications. The outcome of these analyses will provide information to calculate, using a formula, reasonable O+M costs. Annual agreements between DEC and the CWSP will stipulate payment schedules. DEC views these as direct costs; they and will not be considered as part of the maximum 15% administrative costs allowed to CWSPs.

Q: What tools (e.g. software, draft legal agreements, etc.), if any, does DEC envision providing to CWSPs?

A: DEC is presently working on the following that will be available to CWSPs: Information Technology portal for project tracking and pollution reduction calculation, and O+M tracking; guidance on governance and operations of CWSPs; prospective organizational models that CWSP may elect to develop, in the event that the CWSP is not already a formed organizational entity.

Q: What legal support, if any, does DEC envision providing to CWSPs?

A: DEC would expect that CWSPs established by the CWSP Rule will have adequate legal representation to support their work implementing agreements funded by the State.

Q: Who will be reviewing the RFP OR RFQ's received by DEC? Will these be made publicly available while DEC is reviewing them?

A: See response to NRCC, Page 4, above.

Additional Questions of Note from Stakeholder Meetings

The following describe questions or topics of discussion not otherwise captured by the written submissions responded to above.

Q: In order to address the "chicken and egg" question of assigning a CWSP prior to having guidance and targets developed, can the CWSP Rule be written in such a manner as to define the process by which a CWSP is assigned, while stopping short of actually assigning the CWSP? (note many organizations have posed this question in some manner or another).

A: The Department has explored this issue and takes the position that assigning the CWSPs by the statutory deadline of Nov 1, 2020 will be beneficial to all parties. This is because it provides for a year to get these new organizational entities up and running, prior to receiving formula grants, and getting started. There simply is not enough time undertake the two-step process of guidance and target setting, preceding CWSP assignment, before pivoting to formula grants. Further, once established, CWSPs can engage specifically in providing advice to the Agency as guidance and targets are established.

Q: Will the guidelines for sub-granting ensure that the 15% administrative costs awarded to CWSP are sub-awarded to recipient implementation organizations when projects are funded?

A: 10 V.S.A. § 924(a)(4) provides that "(...) a clean water service provider shall adopt guidance for subgrants consistent with the guidance from the Secretary (...). The subgrant guidance shall include how the clean water service provider will allocate administrative costs to subgrantees for project implementation and for the administrative costs of the basin water quality council." The guidance may specify the need for auditable indirect rates from implementor organizations that the CWSP can rely upon for allocation of administrative costs.

Q: Will DEC guidance for CWSP operations set sideboards for issue areas that fall outside of the purview of the CWSP and BWQC?

A: The Department is interested in ensuring that CWSPs and BWQCs maintain focus on the water quality goals and non-regulatory improvements that will be achieved by the pollution reduction targets.

Q: What happens if more than one organization applies to serve as a CWSP, and articulates different visions of their functions and basin council makeup?

A: This is the purpose of the RFP OR RFQ process. Working with the CWSP rulemaking advisory committee, DEC will establish criteria by which to evaluate responses.

Q: Do there exist conflicts in the instance that a CWSP parent organization is beholden to a Board of Directors (e.g., a Regional Commission, or Conservation District Board of Supervisors), while the CWSP itself is beholden to a BWQC.

A: In practice, this happens regularly. For example, Regional Planning Commissions are beholden to Transportation Advisory Committees to prioritize VTrans investments through the Transportation Planning Initiative. While the Regional Commission may disagree with these prioritizations, the “TAC” has primacy.

Q: Given all the money necessary to support non-regulatory projects, is it fair to say that there will not be money left over for the municipal stormwater or private lands stormwater grants programs?

A: This is not accurate. Act 76 specifies the role of CWSPs in funding these other projects, in the event that targets are attained, and residual funding is available (§ 10VSA 924(d)). These options are:

- (1) carry those funds forward into the next program year;
- (2) use those funds for other eligible projects;
- (3) use those funds for operation and maintenance responsibilities for existing constructed projects;
- (4) use those funds for projects within the basin that are required by federal or State law; or
- (5) use those funds for other work that improves water quality within the geographic area of the basin, including protecting river corridors, aquatic species passage, and other similar projects.

Act 76 also lists the roles of the Clean Water Board in recommending redress in the event that “(...)there are insufficient funds in the Clean Water Fund to issue all grants or financing required by sections 925–928 of this title (... , §10VSA1389(d)(3)(C)).” In the event of insufficient funds, this section indicates that the Board:

- (i) Direct the Secretary of Natural Resources to prioritize the work needed in every basin, adjust pollution allocations assigned to clean water service providers, and issue grants based on available funding.
- (ii) Make recommendations to the Governor and General Assembly on additional revenue to address unmet needs.
- (iii) Notify the Secretary of Natural Resources that there are insufficient funds in the Fund. The Secretary of Natural Resources shall consider additional regulatory controls to address water quality improvements that could not be funded.

Q: Where in all of this is the funding to support infrastructure such as stormwater or wastewater?

A: The State Revolving Fund (SRF) and associated Municipal Pollution Control Grants are unaffected by Act 76. The SRF remains available to municipalities and private borrowers, while the grants are limited to public entities. Act 76 establishes the role of CWSPs and their BWQCs as implementors of non-regulatory projects. This does not preclude the parent organization of a CWSP (if one exists), or member organization of the BWQC, from accessing loans from the SRF, subject to the requirements for eligibility of those funds.

Q: Is there a plan to require that CWSP's convene on an annual basis to share best practices?

A: That is a good idea.

DRAFT