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**Date: December 31, 2020**  
**To: Clean Water Advisory Committee**  
**From: Dan Albrecht, Senior Planner and Charlie Baker, Executive Director**

The attached matrix below presents the concerns raised on October 30<sup>th</sup> by the CCRPC and other proposed Clean Water Service Providers (CWSP) vis-à-vis the formal draft CWSP Rule published on December 30<sup>th</sup> for public comment until mid-February. By and large, [the draft Rule](#) addresses our concerns. However, we have identified some remaining issues which the CWAC and then the full CCRPC Board may wish to provide formal comment on. The anticipated schedules for both the development and submission of CCRPC comments and the DEC public comment process on the draft CWSP Rule are as follows:

January 5, 2021 CCRPC	11 a.m. CCRPC Clean Water Advisory Committee <a href="https://www.ccrpcvt.org/about-us/committees/clean-water-advisory-committee/">https://www.ccrpcvt.org/about-us/committees/clean-water-advisory-committee/</a>	Crosswalk: Fall 2020 RPC comments vs. draft CWSP Rule Identification of additional concerns
January 7, 2021 DEC	Public Notice of draft CWSP Rule	Published in newspapers by Secretary of State
February 1, 2021 DEC	10 a.m. Online Public Hearing on draft CWSP Rule	See Teams link at: <a href="https://dec.vermont.gov/water-investment/statues-rules-policies/act-76">https://dec.vermont.gov/water-investment/statues-rules-policies/act-76</a>
February 2, 2021 CCRPC	11 a.m. CCRPC Clean Water Advisory Committee <a href="https://www.ccrpcvt.org/about-us/committees/clean-water-advisory-committee/">https://www.ccrpcvt.org/about-us/committees/clean-water-advisory-committee/</a>	Finalize draft CCRPC comments on draft CWSP Rule
February 3, 2021 DEC	5:00 p.m. Public Hearing on draft CWSP Rule	See Teams link at: <a href="https://dec.vermont.gov/water-investment/statues-rules-policies/act-76">https://dec.vermont.gov/water-investment/statues-rules-policies/act-76</a>
February 17, 2021 CCRPC	6:00 p.m. CCRPC Board meeting <a href="https://www.ccrpcvt.org/about-us/commission/agendas-minutes/">https://www.ccrpcvt.org/about-us/commission/agendas-minutes/</a>	Adopt and transmit comments to DEC
February 19, 2021 DEC	Deadline for Public Comment	

<p>October 30<sup>th</sup> concern by CCRPC &amp; other CWSPs  Text in yellow was suggested change/addition</p>	<p>Text in formal Draft CWSP Rule</p>
<p>§ 39-304. Secretary's Guidance.</p> <p>(a) How projects will be entered into the watershed project database;</p> <p>(b) How DEC will provide technical project scoring or scoring methodology to be used by the BWQC and CWSP in prioritizing and selecting projects</p> <p>(c) BWQC role in annual reporting and renewal process</p> <p>(d) BWQC membership and rules of conduct</p>	<p><b>STATUS: ACCEPTABLE, CONCERN/COMMENT ADDRESSED</b></p> <p>(a) how the CWSP shall determine project eligibility, including the Secretary's role;</p> <p>(b) how, for projects in the agriculture sector, the CWSP shall consult the Agency of Agriculture, Food and Markets (AAFM) to determine project eligibility;</p> <p>(c) how the CWSP and BWQC utilize the Watershed Projects Database to integrate, prioritize, score, and select projects consistent with the applicable basin plan, including how to account for the co-benefits provided by a project, as provided in § 39-403 of this Rule;</p> <p>(d) how standard project costs will be developed for different clean water project types by contributing sector;</p> <p>(e) minimum requirements with respect to selection of and agreements with subgrantees;</p> <p>(f) requirements associated with the distribution of administrative costs to the CWSP and subgrantees;</p> <p>(g) the Secretary's assistance to CWSPs with respect to their maintenance obligations pursuant to 10 V.S.A. § 924(c);</p> <p>(h) The role of the BWQC in annual reporting, annual progress, and CWSP re- assignment; and</p> <p>(i) Governance and operations of the BWQC.</p>
<p>§ 39-306. Fiscal Management.</p> <p>(g) Procurement, Prequalification. The CWSP shall have a procurement policy for procuring goods and services consistent with State and Federal requirements. The policy shall outline the procedures that the CWSP shall follow when subgranting or subcontracting, and when the CWSP implements a project directly. Sole source agreements are prohibited, except for pre-</p>	<p><b>STATUS: ACCEPTABLE, CONCERN/COMMENT ADDRESSED. Proposed language workable and not overly constraining</b></p> <p>(g) Procurement. The CWSP shall have a procurement policy for procuring goods and services. The policy shall outline the procedures that the CWSP shall follow when subgranting or subcontracting, and when the CWSP implements a clean water project directly.</p> <p>(h) Pre-qualification. Sole source agreements are prohibited,</p>

<p>qualified subgrantees or subcontractors selected by the BWQC to implement a project. Subgrantees and subcontractors <b>may</b> be pre-qualified through a request for qualifications process implemented by the CWSP.</p> <p>(h) <b>Delete unless providing additional flexibility</b></p>	<p>except for pre-qualified subgrantees or subcontractors selected by the BWQC to implement a clean water project. Subgrantees and subcontractors may be pre-qualified through a request for qualifications process implemented by the CWSP. 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. The outcome of the request for qualifications shall be valid for up to three years.</p>
<p><b>§ 39-308. Reporting to the Secretary.</b></p> <p>(b)(3) All costs incurred by the CWSP <b>including administrative, project identification, project implementation, project maintenance, and any other costs;</b></p>	<p><b>STATUS: ACCEPTABLE, CONCERN/COMMENT ADDRESSED</b></p> <p>(3) All costs incurred by the CWSP, including administrative, project development, design, construction, verification, inspection, operation and maintenance, and other costs incurred under Formula awards;</p>
<p><b>§ 39-401. Secretary's Allocation of Pollutant Reduction Targets to CWSP.</b></p> <p>(a) Pollutant Reduction Determination, Allocation, and Standard Cost. For waters described in 10 V.S.A. § 922(a) (water listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception), the Secretary shall include the following in an implementation plan <b>as part of the basin plan:</b></p> <p>(3) A determination of the standard cost per unit of pollutant reduction. The Secretary shall publish a methodology for determining standard cost for pollutant reductions. The standard cost shall include the costs of project identification, project design, project construction, <b>and maintenance.</b></p>	<p><b>STATUS: CONCERN/COMMENT NOT ADDRESSED.</b></p> <p>(a) Pollutant Reduction Determination, Allocation, and Standard Cost. For waters described in 10 V.S.A. § 922(a) (water listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception), the Secretary shall include the following in an implementation plan:</p> <p>(3) A determination of the standard cost per unit of pollutant reduction by sector. The Secretary shall publish a methodology for determining standard cost for pollutant reductions. The standard cost shall include the costs of project identification, project design, and project construction.</p>
<p><b>§ 39-403. Clean Water Projects.</b></p> <p>(a) <b>In partnership with</b> the BWQC, and in consultation with the applicable basin plan <b>and DEC basin planner</b>, the CWSP shall identify and prioritize clean water projects in accordance with the requirements of 10 V.S.A., Chapter 37, Subchapter 5, this Rule, and guidance. The CWSP shall also oversee the <b>development and</b> construction of projects, and verify, inspect, operate, and maintain</p>	<p><b>STATUS: ACCEPTABLE, CONCERN/COMMENT ADDRESSED. Proposed language workable and not overly constraining</b></p> <p>(a) With direction from the BWQC and in consultation with the applicable basin plan, the CWSP shall oversee identification and prioritization of clean water projects in accordance with the requirements of 10 V.S.A., Chapter 37, Subchapter 5, this Rule, and guidance.</p> <p>(b) On a schedule determined by the CWSP, and in consultation with the BWQC, the CWSP shall conduct an open process to solicit</p>

those projects.

(b) On a schedule determined by the CWSP in consultation with the BWQC, the CWSP shall solicit projects for development and implementation from the public and all identified potential project partners in the basin.

(c) Watershed Projects Database. All identified projects shall be entered into the Agency's watershed projects database by the project sponsor with notification to the CWSP. The database contains information necessary to the prioritization of clean water projects. The Agency shall provide means for projects to be entered into the database, to include project attributes as required by the Secretary. The Agency's database outputs will provide data reflecting pollution reduction values, tactical basin plan priorities and other water quality and environmental factors. These outputs will be available to the project sponsor and CWSP for use in prioritization.

(d) Project Prioritization and Selection. When prioritizing and selecting clean water projects to meet the basin's pollutant reduction target, the CWSP and BWQC shall:

(1) develop and implement a project ranking schedule and process to ensure that the highest priority projects are developed and constructed, within the available funding provided by the formula grant;

(2) the CWSP will work with DEC staff to determine project eligibility before scoring and ranking;

(3) consider the pollution reduction value and other environmental outputs associated with the clean water project provided by the Agency. This value making up 80% of the total score;

(4) consider the co-benefits provided by the project, operation, and maintenance of the project. This value making up 20% of the total score;

(5) the BWQC shall review the preliminary scoring and ranking of all proposed projects drafted by the CWSP for both project

clean water projects for development and implementation in the basin.

(c) Watershed Projects Database. All clean water projects proposed for Formula Grant funding shall be entered into the Agency's watershed projects database. For these clean water projects, the database shall contain information necessary for the prioritization of those projects, including pollution reduction values and basin plan priorities. The Agency shall provide means for projects to be entered into the database by CWSPs, to include project attributes as required by the Secretary. The Agency's database should provide data reflecting other water quality and environmental factors. This information shall be available to the project sponsor, CWSP, and BWQC for use in prioritization.

(d) Clean Water Project Identification, Prioritization, and Selection.

When identifying, prioritizing, and selecting a slate of clean water project to meet a basin's pollutant reduction target, the CWSP and BWQC shall:

(1) develop and implement a project ranking schedule and scoring process to ensure that the highest priority projects are developed, designed, and implemented within the available funding provided by the Formula Grant;

(2) consult with the Secretary to determine project eligibility before scoring and ranking projects;

(3) for projects in the agriculture sector only, consult with AAFM quarterly on project eligibility, selection, and progress, as AAFM shall have the authority to determine whether a proposed project in the agricultural sector qualifies as a clean water project;

(4) consider empirical project-specific factors including the pollution reduction, cost effectiveness of that reduction, cost of operation and maintenance of the project, and conformance with the basin plan;

(5) consider co-benefits provided by the project; and

(6) prioritize projects in accordance with any additional requirements imposed by the Secretary's guidance.

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<p>development or implementation categories and make any adjustments to the scoring as needed;</p> <p>(6) the BWQC shall vote on prioritized sets of projects for both development and construction to fulfill pollution reduction goals.</p> <p>(7) in the event of that an individual 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.</p> <p style="text-align: center;">XXXXXXXXXXXXXXXXXXXXXXXXXXXX</p> <p>(J) The CWSP shall ensure site control to access property where projects are installed, which may include acquisition of a fee simple interest, a maintenance and access easement, or a maintenance and access agreement. Such ownership in fee simple, easement, or agreement shall be documented on a form provided by the Secretary.</p>	<p>(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. Such site control in fee simple, easement, or agreement shall be documented on a form provided by the Secretary.</p>
<p><b>§ 39-501. Membership and Structure.</b></p> <p>(a) BWQC member terms should be determined by the BWQC.</p> <p>(b) By majority vote, the BWQC shall appoint a Chair for a one-year term, renewable by majority vote. The Chair shall guide the planning and facilitation of BWQC meetings in coordination with the CWSP. The BWQC shall also appoint a Vice-Chair to act as Chair in the Chair's absence.</p>	<p><b>STATUS: ACCEPTABLE, CONCERN/COMMENT ADDRESSED. Proposed language workable and not overly constraining</b></p> <p>Yes, Governance and Operations of BWQC t.b.d. in guidance.</p> <p>(e) By majority vote, the BWQC shall appoint a Chair and Vice-Chair for one-year terms, renewable by majority vote. The Chair shall guide the planning and facilitation of BWQC meetings in coordination with the CWSP. The Vice-Chair shall act as Chair in the absence of the Chair.</p>
<p><b>§ 39-503. Meetings and Actions.</b></p> <p>(d) The BWQC statutory members may designate one or more alternate member(s), who may replace any absent or disqualified member at any meeting and act in their stead.</p> <p>(e) The BWQC and BWQC subcommittee(s) are subject to the Vermont Open Meeting Law. Minutes of each meeting shall be retained by the CWSP and approved by a vote at a subsequent BWQC or BWQC subcommittee meeting.</p>	<p><b>STATUS: ACCEPTABLE, CONCERN/COMMENT ADDRESSED</b></p> <p>(d) The BWQC appointing entities within 10 V.S.A. § 924(g) may designate one or more alternate statutory member(s) who may act in place of or replace their appointed member in the event of absence or disqualification of that appointed member. 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.</p> <p>(e) The BWQC and BWQC subcommittee(s) are subject to the Vermont Open Meeting Law. Minutes of each meeting shall be retained by the CWSP and approved by a vote at a subsequent</p>

<p><b>§ 39-601. Conflicts of Interest</b></p> <p>Some of the statutory BWQC members will represent entities that are capable of effectively proposing, constructing, and operating clean water projects. Because the BWQC makes decisions regarding the most important impairments, and prioritizing projects to address them, there may be concern about the potential appearance of, and actual, conflicts of interest.</p> <p>Each CWSP and BWQC shall adopt a conflict of interest policy that includes, in part, the following disclosure and recusal requirements:</p> <p>(a) All persons engaged in the decision making of a CWSP or a BWQC, or both, shall conduct themselves according to high ethical standards, including the identification and potential recusal from decision making on any matter that gives the appearance of, or constitutes, a conflict of interest subject to the provisions below.</p> <p>(b) Conflict of interest means an interest, direct or indirect, financial or otherwise, of a person with a CWSP or BWQC decision making role, or such an interest, known to that 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.</p> <p>(c) A CWSP or other BWQC member that proposes to implement a project must disclose any potential conflict of interest to the BWQC when the project will be considered by the BWQC. If the project is one of many on a list or package considered by the BWQC as they determine the ranking and priorities for funding and the sponsorship of the project is the only potential conflict of interest; all members of the BWQC may vote on the list or package. If there are other potential conflicts of interest, each member shall disclose the potential conflict and the BWQC shall determine if the member may vote upon the list or package. If a project is being considered by</p>	<p>meeting.</p> <p><b>STATUS: CONCERN/COMMENT NOT ADDRESSED.</b></p> <p>Each CWSP shall adopt a conflicts of interest policy that includes, in part, the following:</p> <p>(a) All persons engaged in the decision making of the respective CWSP or BWQC, or both, shall conduct themselves according to high ethical standards.</p> <p>(b) Conflict of interest means an interest, direct or indirect, financial or otherwise, of a person with a CWSP or BWQC decision making role, or such an interest, known to that 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.</p> <p>(c) A BWQC member that proposes to implement a clean water project must disclose any potential conflict of interest and shall recuse itself from any BWQC decision making subject to that conflict. Notwithstanding these limitations, the conflicted BWQC member may answer questions on the subject project in an open meeting of the BWQC.</p>
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itself per §39-403(e)(5), or the project's score or ranking is being considered by itself, the project sponsor shall recuse itself from the BWQC decision making related to that individual project. Notwithstanding this limitation, the conflicted CWSP or other BWQC member may answer questions on the subject project in an open meeting of the BWQC.