NORTHERN LAKE CHAMPLAIN
Clean Water Service Provider

c/o Chittenden County RPC
110 West Canal Street, Suite 202
Winooski, VT 05404
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802-861-0133

Date: July 16, 2024
To: Basin 5 Water Quality Council
From: Dan Albrecht, CWSP Manager
Re: Proposed slate of Members & Alternates for FY25 & FY26

Pursuant to the attached, here are the proposed members and alternates for FY25-FY26.

	BASIN 5 WATER QUALITY COUNCIL, February 2024	Nominated for FY25-FY26
	Watershed Organizations	**Two (2) seats**
MEMBER	**Kent Henderson**	Friends of Northern Lake Champlain
MEMBER	**Andrea Morgante**	Lewis Creek Association
Alternate	*Don McFeeters (for Henderson)*	*Friends of Northern Lake Champlain*
Alternate	*T.B.D. (for Morgante)*	*t.b.d*
	Municipalities	**Two (2) seats**
MEMBER	**Shayne Geiger**	Shelburne
MEMBER	**Thomas Briselden**	North Hero
Alternate	*Lisa Schaeffler*	*Milton*
Alternate	*Ken Mirvis*	*Grand Isle*
	NRCDs	**Two (2) seats**
MEMBER	**Molly Varner**	Grand Isle County NRCD
MEMBER	**Daniel Koenemann**	Winooski NRCD
Alternate	*Mel Auffredou (for Varner)*	*Franklin County NRCD*
Alternate	*Macie Broussard (for Koenemann)*	*Winooski NRCD*
	RPCs	**Two (2) seats**
MEMBER	**Dean Pierce**	Northwest RPC
MEMBER	**Karen Adams**	Chittenden County RPC
Alternate	*Catherine Dimitruk*	*Northwest RPC*
Alternate	*Miles Waite*	*Chittenden County RPC*
	Land Conservation Organizations	**One (1) seat**
MEMBER	**Emily Alger**	*South Hero Land Trust*
Alternate	*Rebecca Roman*	*Vermont Land Trust*

ENVIRONMENTAL PROTECTION RULE
CHAPTER 39

CLEAN WATER SERVICE PROVIDER RULE

State of Vermont
Agency of Natural Resources
Department of Environmental Conservation
Effective Date: August 12, 2021

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Subchapter 1. General Provisions

§ 39-101. Purpose.

The purpose of this Rule is to assign a clean water service provider (CWSP) to each basin 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) for the purpose of achieving pollutant reduction values established by the Secretary. In collaboration with the Basin Water Quality Council (BWQC), consistent with the BWQC's policies and clean water project prioritization, and with technical and financial support from the Agency, the CWSP bears responsibility for overseeing clean water project identification, prioritization, development, design, construction, verification, inspection, and operation and maintenance to be administered in accordance with this Rule. This Rule establishes requirements for the implementation of 10 V.S.A., Chapter 37, Subchapter 5, related to the operational, financial, managerial, and technical aspects of CWSP services, as well as the governance structure for BWQCs. The Rule also establishes requirements related to conflicts of interest, oversight and evaluation of CWSP service, and renewal or removal of a CWSP assignment.

§ 39-102. Authority.

This Rule is adopted by the Secretary of the Agency of Natural Resources pursuant to the authority granted by 10 V.S.A. §§ 924 and 930.

§ 39-103. Severability.

The provisions of this Rule shall be severable. If any provision of this Rule or any application of this Rule to any person or circumstance is deemed to be invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Subchapter 2. Definitions

§ 39-201. Definitions.

As used in this Rule, the following terms shall have the specified meaning. If a term is not defined, it shall have its common meaning.

(1) "Agency" means the Vermont Agency of Natural Resources.

(2) "Administrative cost" means program delivery costs incurred by a clean water service provider in the administration of the Water Quality Restoration Formula Grant, including costs to conduct procurement, sub-agreement preparation and monitoring, reporting, and invoicing. CWSPs may elect to subgrant or subcontract aspects of Formula Grant administration. Costs to manage and complete individual clean water projects are not administrative costs.

(3) "Basin" means a watershed basin designated by the Secretary for use as a planning unit under 10 V.S.A. § 1253(d).

(4) "Basin Plan" means a plan developed and approved in accordance with 10 V.S.A. § 1253(d).

(5) "Basin Water Quality Council" or "BWQC" means a council established by a Clean Water Service Provider pursuant to 10 V.S.A. § 924(g) in accordance with Subchapter 5 of this Rule, to establish policy and make decisions for the CWSP regarding the most significant water quality impairments that exist in the basin and prioritizing the clean water projects that will address those impairments based on the basin plan.

(6) "Clean water project" means a best management practice or other program designed to improve water quality to achieve a target established under 10 V.S.A. § 922 that:

(A) is not required by a permit under 10 V.S.A., Chapter 47, is not subject to the requirements of 6 V.S.A., Chapter 215, exceeds the requirements of a permit issued under 10 V.S.A., Chapter 47, or exceeds the requirements of 6 V.S.A Chapter 215, where requirements of 6 V.S.A Chapter 215 means and includes all agricultural water quality conservation activities on any farm that meets the Required Agricultural Practices Rule (RAP) eligibility requirements; and

(B) is within the following activities:

(i) developed lands, sub-jurisdictional practices related to developed lands including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges;

(ii) natural resource protection and restoration, including river corridor and floodplain restoration and protection, wetland protection and restoration, riparian and lakeshore corridor protection and restoration, and natural woody buffers associated with riparian, lakeshore, and wetland protection and restoration;

(iii) forestry; or

(iv) agriculture, when:

(a) it is a natural resource project as described in subdivision (B)(ii) of this paragraph that is determined to be eligible in accordance with § 39-403(d)(3) of this Rule; or

(b) it is a project on agricultural land that is not subject to the RAP because the farm does not meet the minimum eligibility criteria for the RAP to apply.

(7) "Clean Water Service Provider" or "CWSP" means an entity assigned to a basin by the Secretary pursuant to Subchapter 3 of this Rule for the purpose of achieving pollutant reduction values established by the Secretary for the basin and bearing responsibility for overseeing identification, prioritization, development, design, construction, verification, inspection, and operation and maintenance of clean water projects within the basin.

(8) "Co-benefit" means the additional benefit to local governments and the public provided by or associated with a clean water project, including flood resilience, hazard mitigation, education, ecosystem improvement, and local pollution prevention.

(9) "Department" means the Vermont Department of Environmental Conservation.

(10) "Fiscal sponsor" means an organization that provides fiduciary oversight, financial management, legal status, and other administrative services to a secondary organization.

(11) "Guidance" means the guidance adopted by the Secretary pursuant to 10 V.S.A. § 924(a)(3) and § 39-304 of this Rule.

(12) "Maintenance" means ensuring that a clean water project continues to achieve its designed pollution reduction value for, at a minimum, its design life.

(13) "Secretary" means the Secretary of the Vermont Agency of Natural Resources or the Secretary's duly authorized representative.

(14) "Services" means the activities a CWSP performs or oversees, for the purposes of achieving pollutant reduction values established by the Secretary for the basin, including identification, prioritization, development, design, construction, verification, inspection, and operation and maintenance of clean water projects within the basin.

(15) "Standard cost" means the projected cost of achieving a pollutant load reduction per unit or per best management practice in a basin, including the costs of project identification, project design, and project construction.

Subchapter 3. Clean Water Service Providers

§ 39-301. Assignment to Basins.

(a) The Secretary shall assign a clean water service provider (CWSP) to each basin described in 10 V.S.A. § 922(a) (listed as impaired pursuant 33 U.S.C. § 1313(d) and not subject to the stated exception) for the purpose of achieving pollutant reduction values established by the Secretary for the basin in accordance with § 39-101 of this Rule.

(b) Request for Proposals. The Secretary shall issue a competitive Request for Proposals (RFP), publicly soliciting proposals from qualified entities interested in serving as a CWSP.

(c) Assignment.

(1) Following the competitive RFP process, the Secretary shall assign one entity for each basin to serve as the CWSP for that basin. The Secretary may also assign a backup CWSP for any basin. The list of assignments shall be set forth in Appendix A.

(2) An entity may be assigned to serve as the CWSP in more than one basin.

(3) An entity assigned as a CWSP in any basin is eligible to serve as a CWSP in any other basin on an interim basis as determined by the Secretary, in the event the assigned backup CWSP is unable to fulfill that role.

(d) Term. The duration of the CWSP assignment term shall be set forth in Appendix A and shall not exceed five (5) years, except that the initial set of assignments pursuant to this Rule may extend beyond five years to allow for staggered terms among the various CWSPs.

(e) Transfer. If an entity assigned as a CWSP intends to merge with, be acquired by, or otherwise restructure as a different entity, the Secretary may transfer the assignment to the new entity for the remainder of the term, provided that the new entity meets all applicable requirements of the original CWSP entity and the entities execute an Assignment Transfer Agreement consistent with the transfer plan contents set forth in § 39-803. A transfer shall be documented in a supplement to Appendix A published on the Agency's website and the CWSP's website.

(f) Renewal and Termination of Assignment. The Secretary may renew or terminate a CWSP assignment in accordance with Subchapter 8 of this Rule.

(g) Prohibition on Provision of Services Outside Assigned Basin(s). A CWSP shall not utilize Formula Grant funds in support of clean water projects outside the CWSP's assigned basin.

§ 39-302. Funding.

The Secretary shall administer a Water Quality Restoration Formula Grant Program to award Formula Grants to CWSPs to meet the pollutant reduction requirements under 10 V.S.A. Chapter 37, Subchapter 5. The grant amount shall be based on the annual pollutant reduction goal established for the CWSP by contributing sector, multiplied by the standard cost for pollutant reduction,

including administration and reporting costs. Administrative costs shall not exceed 15 percent of the total grant amount.

§ 39-303. Subgrants and Subcontracts.

(a) Subgrant Guidance, Requirements. The CWSP shall timely adopt guidance for subgrants, consistent with the Secretary's guidance pursuant to § 39-304(e), that establishes a policy for how the CWSP will issue subgrants to other organizations in the basin, giving due consideration to the expertise of those organizations and other requirements for the administration of the grant program. The subgrant guidance shall include a policy and procedures for subgrantees and subcontractors for certification of debarment status and for Certificate of Good Standing requirements, including how the CWSP will audit these requirements.

(b) The following responsibilities and activities shall not be subgranted, subcontracted, or otherwise delegated by a CWSP:

(1) Establishment and coordination of the BWQC;

(2) Financial management and oversight of CWSP activities, including procurement decisions, grant and contract signing and oversight, invoice approval, and task order approval;

(3) Administrative oversight and approval of technical implementation services regardless of whether those services are provided directly by the CWSP or by a subgrantee or subcontractor;

(4) Certification and submission of reports; and

(5) Responsibility for compliance with all laws, regulations, nutrient reduction assignments, and guidance applicable to CWSPs.

(c) Secretary approval is required for any assignment of CWSP rights or benefits and delegation of any CWSP duties to another entity.

(d) A CWSP may only pay a subcontractor if the CWSP approves and accepts the work performed.

§ 39-304. Secretary's Guidance.

A CWSP shall follow the Secretary's guidance on a CWSP's obligation with respect to implementation of 10 V.S.A., Chapter 37, Subchapter 5. The Secretary shall provide notice to the public of the proposed guidance and a comment period of not less than 30 days. At a minimum, the guidance shall address the following:

(a) how the CWSP shall determine project eligibility, including the Secretary's role;

(b) how, for projects in the agriculture sector proposed on farms subject to the Required Agricultural Practices Rule, the CWSP shall consult the Agency of Agriculture, Food and Markets (AAFM) to determine project eligibility;

(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;

(d) how standard project costs will be developed for different clean water project types by contributing sector;

(e) minimum requirements with respect to selection of and agreements with subgrantees;

(f) requirements associated with the distribution of administrative costs to the CWSP and subgrantees;

(g) the Secretary's assistance to CWSPs with respect to their maintenance obligations pursuant to 10 V.S.A. § 924(c);

(h) the role of the BWQC in annual reporting, annual progress, and CWSP re-assignment;

(i) governance and operations of the BWQC; and

(j) reasonable expectations for CWSPs serving in a backup capacity for another CWSP.

§ 39-305. Operating Procedures.

As part of its operating procedures, an entity assigned as a CWSP shall:

(a) have one principal Director (CWSP Director), who shall be responsible to the Secretary for the entity's compliance with all CWSP obligations set forth in statute, this Rule, and guidance. The CWSP Director shall also be the authorized signatory for all CWSP activities, including execution of agreements with the Agency, invoice payment approval, procurement processes, and subcontracts or subgrants.

(b) be responsible to the Secretary for compliance with all CWSP obligations set forth in statute, this Rule, and guidance.

(c) ensure coordination with their BWQC, stakeholders, related entities, and other CWSPs.

(d) ensure that the entity's policies and services are consistent with the mission, outcomes, and requirements of the Agency.

(e) review and approve the CWSP budget and monitor the CWSP's financial status.

(f) monitor costs, projects, construction, and project condition, in accordance with any specific Agency requirements.

(g) support high quality service provision, with the capacity to monitor the services delivered by contracted entities, in accordance with any specific Agency requirements.

(h) ensure the entity maintains sufficient technological infrastructure to provide all CWSP services.

(i) have a statement of its policies and procedures for disposal of assets and debts and obligations in the event of dissolution, including the return to the Agency of any assets and property directly obtained with Agency funds, as allowed by law.

(j) be subject to public records law.

(k) have written personnel practices, policies, and procedures that promote high quality services, and maintain evidence showing that the CWSP adheres to its stated practices.

(l) implement staff training requirements as established by the Secretary.

(m) have written policies prohibiting discrimination based on all protected classes under federal and Vermont state law.

§ 39-306. Fiscal Management.

(a) Role of CWSP Director. The CWSP Director shall be responsible for reviewing and approving the CWSP budget and expenses and managing CWSP financial operations.

(b) Solvency. The entity serving as the CWSP shall be solvent as a condition of its term of service, as demonstrated by an ability to meet payroll and pay bills in a timely fashion, and by other metrics as the Secretary may establish. An entity serving as a CWSP shall not be overly leveraged. Quarterly, the CWSP shall provide the Agency with a cash flow statement, income statement, and balance sheet showing CWSP activities.

(c) Audit. Annually, the entity serving as a CWSP shall provide the Agency an independent financial and programmatic audit of the entity. The audit shall show all CWSP activities as a separate fund from the entity's other activities. The audit

shall be performed by an independent public accountant in accordance with all applicable laws, regulations, policies, and procedures.

(d) Monitoring of Billing and Expenditures. The CWSP shall follow generally accepted accounting principles (GAAP) in developing its financial statements and shall only provide financial statements prepared in accordance with GAAP.

(e) Payments to the CWSP. Specific payment provisions shall be governed by the terms of the Formula Grant. The CWSP shall bill the State in accordance with the payment provisions established by the Secretary.

(f) Internal Controls. The CWSP shall have an adequate Internal Controls Policy that includes, at a minimum:

(1) separation of duties for financial activities (paying invoices, approval to pay invoices, check issuance, reconciliation);
(2) an electronic accounting system;
(3) a process to regularly monitor budgeted vs. actual expenditures, to ensure accounts are not overspent or underspent;
(4) a system to track staff time spent on grants and projects;
(5) written procurement procedures that indicate which individuals are authorized to initiate a purchase request, the flow of documents, and the requested levels of approvals for procurement decisions; and
(6) internal control procedures for written accounting, financial reporting, and personnel policies that detail separation of duties, approvals/authorizations, and safeguarding of assets.

The Policy shall be subject to Agency review and subject to a Corrective Action Plan if deemed inadequate. Annually, the Agency will evaluate CWSP compliance with the Internal Controls Policy as part of its annual review. The CWSP shall also be subject to Agency risk assessment every three years.

(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.

(h) Pre-qualification. Subgrantees and subcontractors may be pre-qualified through a request for qualifications process implemented by the CWSP. The outcome of the request for qualifications shall be valid for up to three years. CWSPs must open the pre-qualification process to new entities at least once per year.

(i) Procurement, Services and Goods. Except for entities that have been pre-qualified to provide services pursuant to § 39-306(h) of this Rule and whose clean water project has been selected pursuant to § 39-403(e) of this Rule, procurement of services by the CWSP or its subgrantees shall be by a competitive process,

with a solicitation of quotations from at least three qualified entities. Purchasing of goods shall require the solicitation of at least two different quotations, except when purchasing items valued at $1,000.00 or less. Records related to the procurement of services shall be retained for the term of the contract plus three years. Records related to the procurement of goods shall be retained for one year after the audit covering the period of purchase of those goods. Procurement of a good or category of goods totaling $15,000.00 or greater from one vendor in one year shall be by written contract. Equipment and other durable assets purchased by a CWSP shall be maintained.

(j) Insurance. The entity serving as CWSP shall comply with the insurance requirements of Water Quality Restoration Formula Grants. Professional liability insurance shall be required for any engineers or architects that are subgrantees or subcontractors, with the CWSP listed as additional insured. The CWSP may obtain Errors and Omissions insurance for BWQC members, the cost of which shall be considered an administrative cost.

(k) Investment of CWSP funds. The CWSP shall deposit all funds into an accessible interest-bearing checking or savings account and monitor the interest earned. Funds may not be otherwise invested, such as in bonds, stocks, Certificates of Deposit, or any other non-approved manner, and shall be used only for allowed uses pursuant to the Formula Grant. Failure to comply with this provision is ground for immediate removal of assignment.

(l) Insurance for deposits. Funds deposited at financial institutions for any account shall be insured against failure of the financial institution by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA). Deposits that exceed the insurance limit of the FDIC/NCUA coverage shall be otherwise insured by the CWSP.

(m) Leftover funds. Pursuant to 10 V.S.A. § 924(d), if a CWSP achieves its pollutant reduction goal or five-year target and has excess grant funding available, the CWSP may carry those funds forward into the next program year for the following uses: for other eligible projects; for operation and maintenance responsibilities for existing constructed projects; for projects within the basin that are required by federal or State law; or, 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. Use of leftover funds is subject to applicable provisions of Subchapters 3, 4, 5, and 6 of this Rule.

(n) Risk Reserve. A risk reserve may be held within the Clean Water Fund pursuant to 10 V.S.A. § 1389(d)(1), and subject to annual appropriations. Access to risk reserve funds shall follow the Risk of Loss provisions of § 39-404 of this Rule and the Secretary's guidance.

(o) Secretary Access to Records and Programmatic Site Visits. With advance notice, the Secretary or the Secretary's authorized representative shall have access to the CWSP office during normal business hours for the purpose of ensuring compliance with all CWSP obligations.

(p) CWSPs are not precluded from receiving funds from sources other than the Formula Grant to further improve water quality.

§ 39-307. Public Engagement and Records.

(a) BWQC Open Meetings. The CWSP shall comply with the Vermont Open Meeting Law for all BWQC meetings.

(b) Public Records. The CWSP shall comply with public records law for all CWSP and BWQC activities.

(c) Public Participation. The CWSP shall comply with a public participation policy that, at a minimum: (1) ensures public notice of the CWSP and BWQC meetings, decisions, and actions; (2) promotes public participation in an open, competitive, and transparent process for identifying and selecting clean water projects, with specific consideration given to minority, limited English proficiency, and socioeconomically disadvantaged communities and stakeholders; and (3) complies with the Agency's nondiscrimination policy.

(d) Website. The CWSP shall maintain a website, used at least for noticing meetings, posting minutes, and other relevant documents and information on clean water project implementation as may be required by the Secretary's guidance.

§ 39-308. Reporting to the Secretary.

(a) Quarterly Reporting. The CWSP shall report to the Secretary quarterly, as specified in applicable grant documents.

(b) Annual Reporting. The Secretary shall set a schedule for CWSPs to submit an annual report, which, at a minimum, shall contain:

(1) A summary of all clean water projects completed, and in progress, for the period of performance;

(2) A summary of any inspection, verification, and operation and maintenance activities of previously implemented clean water projects and whether those projects continue to operate in accordance with their design;

(3) All costs incurred by the CWSP, including administrative, project development, design, construction, verification, inspection, operation and maintenance, and other costs incurred under Formula Grant awards;

(4) A list of all subgrants and subcontracts awarded by the CWSP in the basin for the period of performance; and

(5) All data necessary for the Secretary to determine the pollutant reduction achieved by the CWSP during the period of performance.

Subchapter 4. Technical Implementation.

§ 39-401. Secretary's Allocation of Pollutant Reduction Targets to CWSP.

(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:

(1) An evaluation of whether implementation of existing regulatory programs will achieve water quality standards in the impaired water. If the Secretary determines that existing regulatory programs will not achieve water quality standards, the Secretary shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water. When making this determination, 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.

(2) An allocation of the pollutant reduction identified under subdivision (a)(1) of this section to each basin and CWSP assigned to that basin pursuant to Subchapter 3 and Appendix A of this Rule. When making this allocation, the Secretary shall consider the sectors contributing to the water quality impairment in the impaired water's boundaries and the contribution of the pollutant from regulated and nonregulated sources within the basin. Those allocations shall be expressed as annual pollution reduction goals by sector where feasible, and five-year pollution reduction targets as checkpoints to gauge progress and adapt or modify as necessary. The Secretary shall publish these allocations in the applicable basin plans.

(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. When known, costs for project development may be included in the standard cost for pollutant reduction.

(b) When implementing the requirements of subsection (a) of this section, the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714 and applicable provisions of 10 V.S.A. § 923.

§ 39-402. Pollution Reduction and Design Life Methodologies.

(a) Pollution Reduction Methodology. After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for calculating pollution reduction values associated with a clean water project in that water for use by CWSPs. When establishing a pollutant reduction value, the Secretary shall consider pollution reduction values established in the TMDL; pollution reduction values established by other jurisdictions; pollution reduction values recommended by organizations that develop pollutant reduction values for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Pollution reduction values established by the Secretary shall be the exclusive method for determining the pollutant reduction value of a clean water project. When implementing this subsection (a), the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714. The CWSP shall use the Secretary's pollution reduction methodology to assign pollutant reduction values to individual projects.

(b) Design Life Methodology. After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for establishing a design life associated with a clean water project. The design life of a clean water project shall be determined based on a review of values established in other jurisdictions, values recommended by organizations that regularly estimate the design life of clean water projects, actual data documenting the design life of a practice, or a comparison to other similar practices if no other data exists. A design life adopted by the Secretary shall be the exclusive method for determining the design life of a best management practice or other control. When implementing this subsection (b), the Secretary shall follow the type 3 notice process established in 10 V.S.A. § 7714.

(c) Pollution Reduction and Design Life When No Methodology Exists.

(1) Any person, in coordination with the applicable CWSP, may request a pollutant reduction value and design life for an eligible clean water project for which no pollution reduction value or design life methodology exists.

(2) A request for pollutant reduction value or design life shall be made on an application form provided by the Secretary and submitted to the Department's Watershed Planning Program.

(3) A pollution reduction value or design life established under this subsection (c) shall be based on a review of pollution reduction values established in the TMDL; pollution reduction values or design lives established by other jurisdictions; pollution reduction values or design lives recommended by organizations that develop pollutant reduction values or design lives for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; actual data documenting the design life of a clean water project; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists.

(4) The Secretary shall establish the requested pollutant reduction value or design life within 60 days following such a request and post the result on the Agency's website.

(5) When implementing this subsection (c), the Secretary shall follow the type 4 notice process established in 10 V.S.A. § 7715.

(d) The Secretary shall periodically, and no less than every five years, review pollution reduction values and design lives established under this subsection to determine the adequacy or accuracy of a pollution reduction value or design life.

§ 39-403. Clean Water Projects.

(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.

(b) On a schedule determined by the CWSP, and in consultation with the BWQC, the CWSP shall conduct an open process to solicit 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 clean water projects 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 proposed on farms subject to the Required Agricultural Practices Rule only, consult with AAFM quarterly on project eligibility, selection, and progress, as AAFM shall have the authority to determine whether such a proposed project qualifies as a clean water project;

(4) consider empirical project-specific factors including the pollution reduction, cost effectiveness of that reduction, design life, 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.

(e) Clean Water Project Selection. Based upon project priorities identified under § 39-403(d), the BWQC shall consider the preliminary scoring and ranking of all proposed clean water projects as drafted by the CWSP for both project development or implementation categories and make any adjustments to the co-benefits scoring as needed. The BWQC shall vote to advance clean water projects for both development and construction to fulfill pollution reduction goals. Individual clean water projects should not be voted for advancement outside of this selection process unless to address an urgent water quality concern with the concurrence of the Secretary.

(f) Limitation on Project Procurement. The CWSP shall not be required to develop or construct clean water projects for which the Formula Grant is insufficient, based on standard costs.

(g) Methodology for Determining Project Eligibility. Upon the request of a CWSP, the Secretary shall evaluate a proposed clean water project type and issue a determination as to whether the proposed clean water project type is eligible to receive funding as a part of a Water Quality Restoration Formula Grant. When

making a determination, the Secretary shall consider the impact of the project on natural resources, and the feasibility, permit eligibility, and consistency of the project with goals of the applicable TMDL. The Secretary may also consider the impact of the project on the neighboring community, including noise and odor.

(h) Permits. For all clean water projects that are administered under CWSP oversight, the CWSP shall ensure that all local, state, and federal permits necessary for project completion are secured prior to implementation or construction.

(i) Operation and Maintenance. The CWSP shall oversee operation and maintenance of clean water projects in accordance with best practices and permit requirements established by the Secretary and shall verify on-going functioning of projects by submitting information as determined by the Secretary.

(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. Any site control in fee simple, easement, or agreement shall be documented on a form provided by the Secretary. Such fee simple interest, easement, or agreement may be secured by or assigned to a third party following Secretary approval.

§ 39-404. Risk of Clean Water Project Loss.

In the event of a total, partial, or temporary loss of a clean water project during installation or following completion, the CWSP shall cease counting the project's performance towards pollution reduction goals as of the date the performance issue is identified until the project is rehabilitated. Project losses shall be addressed as follows:

(a) When project costs have been incurred, but the project is not completed due to unforeseen circumstances or Acts of God and not due to an act or omission of the CWSP, and there is no functional pollution reduction value: The CWSP may use the Water Quality Restoration Formula Grant to cover costs already incurred up to the date of such circumstances or Acts of God. Leftover funds are also allowed to cover such costs if such funds are available.

(b) When a completed project was appropriately designed, installed, operated, and maintained, but inspection reveals lack of performance due to damage or unforeseen factors, not from negligence or intentional acts of others: The CWSP may use the Water Quality Restoration Formula Grant to rehabilitate the project, but will not receive continuing payment for operation and maintenance of the project for ongoing pollution reduction, unless that project is rehabilitated. Risk reserve and leftover funds are also allowed for rehabilitation if such funds are available.

(c) When the project is removed due to the negligence or intentional acts of others and not the CWSP: Risk reserve and leftover funds are allowed for rehabilitation if such funds are available.

(d) When the completed project is damaged or lost due to Acts of God: Risk reserve and leftover funds are allowed for rehabilitation if such funds are available.

(e) When the project is installed but is damaged or lost due to a negligent or intentional act or omission: the Secretary may exercise authority pursuant to 10 V.S.A. § 924(f) and Subchapter 7 of this Rule.

Subchapter 5. Basin Water Quality Councils

§ 39-501. Membership and Structure.

(a) Each CWSP shall establish a basin water quality council (BWQC) for each assigned basin. BWQC membership shall comprise the minimum statutory members identified in 10 V.S.A. § 924(g)(2). Additional BWQC membership is only allowed if unanimously approved by the BWQC and approved by the Secretary. When considering the addition of BWQC members, the CWSP shall evaluate the costs of adding to the BWQC membership. Should additional BWQC membership be authorized, the proportionality of representation established by 10 V.S.A. § 924(g)(2) shall be maintained either by membership or weighting of votes. The CWSP will coordinate assignment or replacement of BWQC members for those entities named in 10 V.S.A. §§ 924(g)(2)(D-E).

(b) For the purposes of selecting members pursuant to 10 V.S.A. § 924(g)(2), the following definitions apply:

(1) "Natural Resources Conservation District" shall have the meaning set forth in 10 V.S.A. § 702(2).

(2) "Regional Planning Commission" shall have the meaning set forth in 24 V.S.A. § 4303(23).

(3) "Local watershed protection organization" means a community-based, nonprofit organization working with individuals and communities in their local watersheds to protect and improve water quality, habitat, and flood resilience and to connect people with Vermont's waters. Watershed protection organizations are open to all watershed constituents and shall not represent a specific constituency or interest group.

(c) Organizations with a fiscal sponsor may serve on a BWQC. A fiscal sponsor organization and the sponsored organization shall not concurrently serve on the same BWQC.

(d) Each BWQC member shall be knowledgeable on clean water topics for the basin(s) served and shall at all times act in good faith in the discharge of BWQC member duties.

(e) If there is a disagreement among the appointing entities in 10 V.S.A. § 924(g)(2) as to who shall be the BWQC member, the CWSP shall select the BWQC member, but only from among eligible persons.

(f) 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.

§ 39-502. Responsibilities.

(a) The purpose of a BWQC is to establish policy and make decisions for the CWSP regarding the most significant water quality impairments that exist in the basin and prioritizing the clean water projects that will address those impairments based on the basin plan.

(b) When prioritizing clean water projects and prioritizing the most significant water quality impairments in the basin, the BWQC shall consult with the basin plan and CWSP and utilize the Agency's project selection protocols.

(c) The BWQC shall participate in the basin planning process established in 10 V.S.A. § 1253(d).

§ 39-503. Meetings and Actions.

(a) A BWQC shall convene at least four meetings per year, with a best practice of having one meeting per quarter.

(b) Voting.

(1) A quorum shall be required in order to take a vote. A quorum shall be attained by the presence of a majority of the BWQC membership.

(2) Decisions shall be binding by a vote of the majority of the BWQC members, regardless of the number of members present for the vote, except that the BWQC may adopt and implement a decision making model requiring a greater proportion of votes.

(3) Each BWQC member shall have one vote.

(4) Proxy voting shall not be permitted.

(c) BWQC members shall attend all BWQC meetings, unless good cause prevents attendance. Failure to attend one-half or more of the scheduled meetings per year without good cause shall constitute grounds for replacement of the member.

(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.

(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 meeting.

(f) The BWQC and BWQC subcommittee(s) shall comply with public records law. The CWSP assigned to the basin for which the BWQC serves shall assume the records retention responsibilities for the BWQC.

(g) BWQC members from among the appointing entities in 10 V.S.A. § 924(g) shall be entitled to reasonable compensation for participation in the BWQC in accordance with the Secretary's guidance and applicable grant agreements.

Subchapter 6. Conflicts of Interest.

Each CWSP shall adopt a conflict of interest policy that includes, in part, the following:

(a) All persons engaged in the decision making of the respective CWSP or BWQC, or both, shall conduct themselves according to high ethical standards.

(b) "Conflict of interest" means an interest, direct or indirect, financial or otherwise, of a person or entity with a CWSP or BWQC decision making role, or such an interest, known to such 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.

(c) Persons engaged in CWSP decision making must disclose any potential conflict of interest and shall recuse themselves from any CWSP decision making subject to that conflict.

(d) BWQC members that propose to implement a clean water project must disclose any potential conflict of interest and shall recuse themselves from any BWQC decision making subject to that conflict. Notwithstanding these limitations, a conflicted BWQC member may answer questions on the subject project in an open meeting of the BWQC.

Subchapter 7. Review of Adequate Progress and Maintenance; Corrective Action Plans.

§ 39-701. Review.

(a) The CWSP shall be subject to the Secretary's review of adequate progress toward the CWSP's allocated pollution reductions and five-year target and adequate maintenance of clean water projects, pursuant to 10 V.S.A. § 924(f).

(b) The CWSP shall allow the Secretary to conduct regular, scheduled oversight and compliance checks of the CWSP as set out in guidance and in grant agreements.

(c) With advance notice, the Secretary or the Secretary's duly authorized representative shall have the right, during regular business hours, to enter the CWSP office location and to inspect CWSP documents to confirm compliance with 10 V.S.A. Chapter 37, Subchapter 5, and this Rule.

(d) The CWSP shall ensure that the Secretary has the right to reasonably access and, if necessary, to inspect and verify maintenance of all projects established under Formula Grants and to take emergency measures if necessary to secure ongoing functioning of clean water projects. The Secretary's emergency measures shall not affect any CWSP obligation or liability.

(e) Any person may, on a form provided by the Secretary, present information relevant to a CWSP review pursuant to § 39-701.

(f) Adequate annual progress on pollutant reduction shall be achieved to retain assignment as a CWSP.

§ 39-702. Corrective Action Plans.

At any time, the Secretary may prepare a Corrective Action Plan for any CWSP, 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. Issuance of a Corrective Action Plan is not a prerequisite of assignment removal. For any entity to which a Corrective Action Plan is issued, the Secretary may also limit all or part of the entity's Formula Grant funding, shift all or part of the implementation of that CWSP's pollution reduction target to a backup CWSP, require more frequent reports or oversight, modify the terms of the entity's terms of service, and take any other appropriate action.

Subchapter 8. Renewal of CWSP Term and Removal of CWSP Assignment

§ 39-801. Evaluation and Process for Renewal of Term.

(a) Any entity assigned as a CWSP that seeks to renew its assignment shall undergo an evaluation and renewal process prior to the assignment expiration.

(b) Within a reasonable timeframe prior to the expiration of its assignment term, the entity shall submit to the Secretary an assignment renewal application on the form prescribed by the Secretary or shall notify the Secretary of the entity's intent to terminate its service and provide a CWSP service transfer plan pursuant to § 39-803.

(c) Upon receipt of a completed assignment renewal application, the Secretary shall publish on the Agency's website the entity's notice of intent to renew its assignment. The Secretary shall receive and respond to public comment on the application. The Secretary shall specifically solicit BWQC comments.

(d) Agency staff shall review the assignment renewal application using the criteria set forth in the Secretary's guidance and make a written recommendation to the Secretary for or against renewal, including consideration of any comments from the public and BWQC.

(e) If the Secretary determines that the CWSP meets the criteria for renewal of assignment, the CWSP's term of assignment will be renewed.

(f) If the Secretary determines that an entity has not fully met the requirements for assignment renewal, the Secretary may:

(1) reassign the entity to serve as a CWSP, subject to completion of a corrective action plan, for a period less than five years; or

(2) initiate the assignment process in § 39-301 to assign a new entity to the subject basin.

§ 39-802. Removal of Assignment.

(a) At any time, the Secretary may remove an entity's CWSP assignment for the following reasons:

(1) The entity fails to make adequate annual progress towards achieving water pollution reduction goals.

(2) The entity has shown an inability or unwillingness to improve performance according to the terms of an applicable corrective action plan.

(3) The entity has failed to comply with 10 V.S.A., Chapter 39, Subchapter 5, this Rule, or the terms of any State of Vermont grant agreement.

(4) The collective weight of evidence from the BWQC and publicly submitted comments received under § 39-801 regarding the performance of the CWSP supports removal of assignment.

(5) The entity has violated any federal, state, or local law or regulation.

(b) Removal process.

(1) The Secretary shall provide written notice of assignment removal to the subject entity, which shall include a process and timeline for implementing a CWSP service transfer plan pursuant to § 39-803.

(2) An entity subject to assignment removal shall inform its stakeholders in its basin, including its BWQC, subcontractors, and subgrantees, of the change in the entity's status.

§ 39-803. CWSP Service Transfer Plan.

In the event an assigned entity's CWSP service will be terminated, either on the entity's or the Secretary's initiative, the terminated entity shall be responsible for preparing and implementing a CWSP service transfer plan that is approved by the Secretary and includes:

(a) Notification to the BWQC, stakeholders, and contracted parties;

(b) Accounting and transfer of clean water projects;

(c) CWSP fund accounting and transfer of balance;

(d) Accounting and transfer of assets purchased with CWSP funds to its designated successor in interest;

(e) Identification and transfer of CWSP contracts to its designated successor in interest;

(f) Identification and transfer of CWSP access agreements and property interests to its designated successor in interest;

(g) Identification and production of all CWSP practices, policies, and procedures to its designated successor in interest; and

(h) Identification and production of all CWSP documents and records to its designated successor in interest.

§ 39-804. Additional Secretary Actions to Address CWSP Deficiencies and Risks.

During the assignment removal process or as a part of the issuance of a Corrective Action Plan, the Secretary may:

(a) Suspend or amend terms of other grants or contracts between the entity and the Agency;

(b) Initiate the process to identify a new CWSP for the basin;

(c) Assign another entity as the CWSP on an interim basis to ensure uninterrupted service provision and quality by administering the ongoing activities of the CWSP being replaced;

(d) Take additional actions, as determined by the Secretary, to protect the investments, clean water projects, agreements, and grant funds within the basin.

(e) In the event that a backup CWSP is established pursuant to subsection (c) of this section, and it is determined that the original CWSP that was relieved of service is unable to resume that service, the Secretary shall initiate the process for assigning a new CWSP within one year of establishment of the backup CWSP.

Appendix A. Clean Water Service Provider Assignments by Basin

Basin (ID)	CWSP	Backup CWSP	Initial Term
Memphremagog (Basin 17)	Vermont Housing & Conservation Board	Chittenden County Regional Planning Commission	July 1, 2022 through June 30, 2028
Missisquoi (06) and Lamoille (07)	Northwest Regional Planning Commission	Chittenden County Regional Planning Commission	July 1, 2022 through June 30, 2027
North Lake (05)	Chittenden County Regional Planning Commission	Northwest Regional Planning Commission	July 1, 2022 through June 30, 2026
Winooski (08)	Central Vermont Regional Planning Commission	Chittenden County Regional Planning Commission	July 1, 2022 through June 30, 2029
Otter Creek (03)	Addison County Regional Planning Commission	Chittenden County Regional Planning Commission	July 1, 2022 through June 30, 2025
South Lake (02 and 04)	Rutland Regional Planning Commission, in collaboration with the Poultney-Mettowee Natural Resources Conservation District	Chittenden County Regional Planning Commission	July 1, 2022 through June 30, 2028