

# TRANSMITTAL MEMO

TO: LAMOILLE BASIN WATER QUALITY COUNCIL (BWQC)  
FR: LAMOILLE BASIN CLEAN WATER SERVICE PROVIDER (CWSP) STAFF  
RE: MATERIALS FOR MEETING ON 9/26/24  
DA: 9/19/24

=====

**Greetings, Lamoille BWQC members and others. The next meeting will take place on Thursday, September 26, starting at 9 AM. A few words about each of the agenda topics are offered below.** Please let me know if you have any questions regarding the agenda or the meeting.

## **Introductions/Meeting protocols/Conflict of interest disclosures, if any**

As is customary, time will be set aside for introductions and review of meeting protocols. (There will be at least one new face—that of Nora Brown, who is the newly arrived ECOAmeriCorps service member at NRPC.) And, the Conflict of Interest agenda item will provide BWQC members and others opportunity to note possible conflicts of interest that could arise later in the meeting.

## **Approval of Minutes**

Some pretty important motions were approved at the last meeting. Please do let us know if any part of the minutes for the meeting need to be corrected.

## **Budget Adjustments**

No budget requests have been received since the last meeting.

## **Operation and maintenance topics: Landowner agreements**

Vermont DEC requires Clean Water Service Providers to maintain site control and access to project sites for the duration of a project's design life. This ensures the CWSP can perform any necessary maintenance, verify project function, and receive the phosphorus reduction credits associated with the project. To achieve this, the DEC has developed a new Site Access Agreement specifically for projects funded by CWSPs. This agreement is necessary because CWSPs must be able to access projects on private land to meet their obligations. Sponsors of funded projects should begin discussing the need for a Site Access Agreement with landowners during the project review and eligibility screening phase. This ensures that landowners understand the long-term commitment involved in hosting a clean water project and allows ample time to negotiate the terms of the agreement. Staff will provide a short review of the document at the meeting.

## **BWQC member and subgrantee training: What types of training are needed most?**

At the upcoming meeting, time will be dedicated to discussing training needs related to clean water project implementation. This discussion will help identify areas where additional training and resources could enhance the council's effectiveness in achieving water quality goals. There are many aspects of clean water project implementation that may require training, from project identification and development to financial management, reporting, and compliance. An important question to consider is what training, if any, should be directed at members of the consulting community as opposed to (or in addition to) BWQC representatives and subgrantees. Please come to the meeting prepared to share your insights and suggestions on training needs.

### **Proposed procurement changes**

Vermont DEC has proposed revisions to Chapter 3 of the Clean Water Service Provider Guidance document. These changes would if adopted streamline the procurement process for clean water projects. The proposed changes impact two key areas of procurement. One change would **allow subawardees of CWSP Formula Grant funds to adhere to their own procurement policies instead of the requirement to solicit three bids for services.** The other would allow expanded use of "sole sourcing." Although the changes are likely to be considered favorable ones, BWQC members may wish to familiarize themselves with the proposed revisions to Chapter 3 of the DEC Guidance document.

### **Update on funding for project development**

The expedited project development funding program opened for applications on September 6. Prequalified partners can submit online applications, which will be reviewed continuously. While the initial deadline was December 31, 2024, the program will continue beyond that date. Funding awards require a Watershed Project ID number (WPDID). CWSP is working with the Vermont Department of Environmental Conservation to obtain these numbers and can assist partners in the process. Additionally, CWSP has created an online tool to help partners develop project descriptions.

### **Update on invoicing**

As the first quarter of FY24-25 ends on September 30, Subgrant recipients may be preparing reimbursement requests. CWSP is working on improving the invoicing process and is developing a "pre-invoice review" tool. We will discuss this tool and answer questions at the meeting and in follow-up sessions. Invoicing processing is most time-sensitive at the end of quarter 4, so it's beneficial to start planning ahead.

### **Update on NRPC Public Participation Plan**

NRPC's draft Public Participation Plan (PPP) was available for public comment on August 19. Based on feedback, the plan was revised and presented to the Executive Committee on September 17. Another round of changes will be prepared to reflect the Executive Committee's feedback. The document will be reviewed by the Committee again in October.

### **Future meeting topics and conclusion**

As part of this agenda item, members will have an opportunity to suggest future meeting topics, etc.

Thanks to all who participate.

## AGENDA

### Lamoille Basin Water Quality Council (BWQC)

**Thursday, September 26, 2024**

**9:00 -11:00 AM**

#### **Remote /Zoom meeting**

(Zoom details below)

1. Welcome and introductions
2. Meeting protocols
3. Conflict of interest declarations, if any
4. Review/adjust and approve agenda
5. Approval of minutes
6. Public comment not related to items on agenda
7. Report on budget adjustments, if any
8. Operation and maintenance topics: Landowner agreements
9. BWQC member and subgrantee training: What types are needed most?
10. Proposed procurement changes (per DEC guidance)
11. Updates:
  - a. "Expedited" funding for project development
  - b. Invoicing
  - c. NRPC Public Participation Plan
12. Future meeting topics
13. Updates and conclusion

Please Note: The schedule for the upcoming application round in Lamoille Basin is as follows:

Round #	Open	Deadline
6	October 10, 2024	November 14, 2024
7	February 6, 2024	March 13, 2024

**Join Zoom Meeting**

<https://us02web.zoom.us/j/86562460349?pwd=dCtISjdHSGI1OFZ6Z2ZndTRPQ1pRQT09>

Meeting ID: 865 6246 0349

Passcode: 031502One tap mobile

+16465588656,,82336649019# US (New York)

#### **Dial by your location**

+1 309 205 3325 US

+1 646 558 8656 US (New York)

Staffing provided by Northwest Regional Planning Commission (NRPC), the Basin 6 Clean Water Service Provider. NRPC's physical / mailing address is 75 Fairfield Street, St. Albans, Vermont 05482.

***In accordance with provisions of the Americans with Disabilities Act (ADA) of 1990, and Vermont's Open Meeting Law, the NRPC will ensure public meeting sites are accessible to all people or provide an opportunity to request accommodations. Requests for free interpretive or translation services, assistive devices, designation of a physical meeting location, electronic access to a meeting, or other requested accommodations, should be made to Amy Adams, NRPC Title VI Coordinator, at 802- 524-5958 or aadams@nrpcvt.com, no later than 2 business days prior to the meeting for which services are requested.***

# Welcome and introductions

# Meeting protocols

## Zoom Norms and Inclusive Language

- Introductions of all participants at each meeting
- As possible, BWQC members should have in their Zoom Name/Title the following: Name, Organization, “Voting” or “Alternate”, and pronouns (if desired)
- BWQC members are expected to have cameras turned on during entirety of meeting, as technically possible.
- BWQC members are expected to stay focused / avoid multi-tasking and follow the guidance of: “if you wouldn’t do something in an in-person meeting don’t do it in a virtual meeting”
- BWQC members will use the “raise hand” function on Zoom to indicate a request to speak / come off mute – this is in an effort to make sure all are heard in turn.
- All members will stay muted until called upon; if needed, CWSP staff may mute participants to avoid background noise
- Any comments made in the chat will be read aloud at the appropriate time by the CWSP staff in full for the public record / record.

### **Inclusive Language**

<https://pronouns.org/what-and-why>

Conflict of interest declarations, if any

Review/adjust and approve agenda



## AGENDA

### Lamoille Basin Water Quality Council (BWQC)

**Thursday, September 26, 2024**

**9:00 -11:00 AM**

#### **Remote /Zoom meeting**

(Zoom details below)

1. Welcome and introductions
2. Meeting protocols
3. Conflict of interest declarations, if any
4. Review/adjust and approve agenda
5. Approval of minutes
6. Public comment not related to items on agenda
7. Report on budget adjustments, if any
8. Operation and maintenance topics: Landowner agreements
9. BWQC member and subgrantee training: What types are needed most?
10. Proposed procurement changes (per DEC guidance)
11. Updates:
  - a. "Expedited" funding for project development
  - b. Invoicing
  - c. NRPC Public Participation Plan
12. Future meeting topics
13. Updates and conclusion

Please Note: The schedule for the upcoming application round in Lamoille Basin is as follows:

Round #	Open	Deadline
6	October 10, 2024	November 14, 2024
7	February 6, 2024	March 13, 2024

**Join Zoom Meeting**

<https://us02web.zoom.us/j/86562460349?pwd=dCtISjdHSGI1OFZ6Z2ZndTRPQ1pRQT09>

Meeting ID: 865 6246 0349

Passcode: 031502One tap mobile

+16465588656,,82336649019# US (New York)

#### **Dial by your location**

+1 309 205 3325 US

+1 646 558 8656 US (New York)

Staffing provided by Northwest Regional Planning Commission (NRPC), the Basin 6 Clean Water Service Provider. NRPC's physical / mailing address is 75 Fairfield Street, St. Albans, Vermont 05482.

***In accordance with provisions of the Americans with Disabilities Act (ADA) of 1990, and Vermont's Open Meeting Law, the NRPC will ensure public meeting sites are accessible to all people or provide an opportunity to request accommodations. Requests for free interpretive or translation services, assistive devices, designation of a physical meeting location, electronic access to a meeting, or other requested accommodations, should be made to Amy Adams, NRPC Title VI Coordinator, at 802- 524-5958 or aadams@nrpcvt.com, no later than 2 business days prior to the meeting for which services are requested.***

## Approval of minutes

**Lamoille Basin Water Quality Council (BWQC)**

**Thursday, July 25, 2024, 9:00 -11:00 AM**

**Hybrid /Zoom meeting with physical location at:**

***Jenna's House Community Center***

**117 St Johns Rd, Johnson, VT 05656**

Meeting video posted at <https://youtu.be/ed7w4IU-HeU>

**A VIDEO RECORDING OF THE MEETING IS AVAILABLE THROUGH THE  
NRPC YOUTUBE CHANNEL (Link above).**

**THE WRITTEN MINUTES ARE A SYNOPSIS OF THE DISCUSSION AT THE MEETING.  
MOTIONS ARE AS STATED. MINUTES WILL BE SUBJECT TO CORRECTION BY THE  
COUNCIL. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT  
MEETING OF THE COUNCIL**

Council Members: Peter Danforth (Q), Clarice Cutler, Daniel Koenemann (Q after Lauren Weston was disconnected from meeting), Christine Armstrong (Q), Meghan Rodier (Q), Brad Holden (Q), Erin De Vries (Q), Lauren Weston (Q), Richard Goff, Brent Sheets (Q), Ken Mink (Q)

Q= towards quorum

Staff: Dean Pierce, Sara Gratz

Others present: Peter's AI Notetaker, Karen Bates, Tom Joslin, Erik Bailey

**1. Welcome and introductions**

Peter Danforth opened the meeting at 9:11 am as Chair. A round of introductions was made.

**2. Meeting protocols**

Peter Danforth reviewed the meeting protocols.

**3. Conflict of interest declarations, if any**

No conflicts of interest were made.

**4. Review/adjust and approve agenda**

No adjustments to the agenda were made. Lauren Weston motioned to approve the agenda and Erin De Vries seconded. Motion carried.

**5. Approval of minutes**

Erin De Vries motioned to approve the minutes and Meghan Rodier seconded. Motion carried. Lauren Weston abstained.

**6. Public comment not related to items on agenda**

No public comments were made.

**7. Report on budget adjustments, if any**

Dean Pierce shared that CWSP staff recently approved a budget adjustment for the Lamoille County Conservation District, which was less than \$2,000. Peter Danforth clarified that the budget adjustment was requested for a project in Hyde Park.

**8. Biannual Organizational Tasks**

Dean Pierce shared information regarding the appointment of Council Members and the specific sectors that they should represent. He shared the current slate of Council Members and discussed efforts to recruit at least one more member, plus several more alternates.

**9. Annual Meeting Tasks:**

Nominations for Chair and Vice Chair commenced.

Brad Holden motioned to nominate Peter Danforth as Chair and Erin De Vries seconded. Motion carried. Peter Danforth was named Chair.

Erin De Vries motioned to nominate Brent Sheets as Vice Chair and Meghan Rodier seconded. Motion carried. Brent Sheets was named Vice Chair.

**10. Expedited Project Development funding proposal**

Dean Pierce proposed adopting a program to expedite project development funds. He shared that the program would set aside \$50,000 for project development funding, which prequalified partners could access by requesting an annual grant of \$5,000 to use for project development purposes.

Brad Holden motioned to authorize the creation of the program and establish basic parameters, and to approve individual projects and create an inventory of funding from which entities may draw. Meghan Rodier seconded. Motion carried.

**11. NRPC Public Participation Plan update**

Dean Pierce shared that the progress of NRPC's Public Participation Plan has slowed recently, but that once it is ready, the Council will be able to use it as a guideline for defining and finalizing their Public Participation Plan.

**12. Future meeting topics**

The next meeting will be held on September 26<sup>th</sup>. Peter Danforth requested that the schedule for grant proposals in the agenda include due dates.

**13. Updates and conclusion**

Brad Holden motioned to adjourn the meeting and Brent Sheets seconded. Motion carried. Meeting ended at 10:59 am.

Public comment not related to items on agenda

Report on budget adjustments, if any

Operation and maintenance topics:

Landowner agreements



# MEMORANDUM

TO: LAMOILLE BASIN WATER QUALITY COUNCIL (BWQC)  
FR: LAMOILLE BASIN CLEAN WATER SERVICE PROVIDER (CWSP) STAFF  
RE: MATERIALS FOR O&M SITE ACCESS AGENDA ITEM  
DA: 9/19/24

=====

This memo provides background for the agenda item relating to **Operations and Maintenance**.

## Context

Vermont DEC requires Clean Water Service Providers to maintain site control and access to project sites for the duration of a project's design life. This ensures the CWSP can perform necessary maintenance, verify project function, and receive the phosphorus reduction credits associated with the project. To achieve this, the DEC has developed a new Site Access Agreement specifically for projects funded by CWSPs. This agreement is necessary because CWSPs must be able to access projects on private land to meet their obligations.

## Potential for Confusion

The DEC has also developed a separate Site Access Agreement for projects funded through the Water Quality Restoration Formula Grant Program. This presents the potential for confusion about which agreement is appropriate for a given project. It is important to emphasize that projects funded directly by CWSPs should use the new Site Access Agreement, while projects funded through the Water Quality Restoration Formula Grant Program should use the existing agreement.

## Contents of the New Model Site Access Agreement

The new Site Access Agreement includes the following components:

- Contact information for the landowner(s) and the CWSP
- A description of the project, including its location, design life, and necessary maintenance activities
- A grant of site access, outlining the CWSP's right to enter the property for project-related activities
- The term of the agreement, which is initially set to the project's design life and automatically renews unless terminated by either party
- A requirement for the landowner to notify the CWSP of any property conveyance
- A release of liability for the CWSP, except in cases of negligence

## Timing of Agreement Discussions

Sponsors of funded projects should begin discussing the need for a Site Access Agreement with landowners during the project review and eligibility screening phase. This ensures that landowners understand the long-term commitment involved in hosting a clean water project and allows ample time to negotiate the terms of the agreement. A signed Site Access Agreement, including an Operation and Maintenance Plan, must be in place before the project's implementation phase begins.

## Resources

The form for CWSP funded projects (attached) can also be downloaded from <https://dec.vermont.gov/water-investment/cwi/clean-water-grants/applicant-recipient-resources>.

Form Updated: Tuesday, May 7, 2024

## Installing and Maintaining your Clean Water Project

Dear \_\_\_\_\_ [*landowner's name*],

Thank you for partnering with us to host a voluntary clean water project on your property. This project is intended to protect the quality of Vermont's rivers, lakes, streams, and wetlands. Your participation is a valuable contribution to Vermont's water quality goals. This cover letter provides an overview of the attached Site Access [License/Easement Agreement](#) and Operation and Maintenance Plan and highlights some key aspects of how we will work together to help the project succeed.

**Please read the attached Agreement carefully for the complete agreement terms.**

### What is this agreement saying?

#### Introduction

Page One describes the parties to the Agreement, the property, the general clean water project context (with reference to the state statute and rule that supports this project), and the parties' intent for access to the property and installation, maintenance, and inspection of the project.

#### Project Description

Pages Two and Three provide contact information as well as project details including location, expected "design life" (the number of years we expect that the project will protect water quality), maintenance activities needed to keep the project in good condition, and the frequency of those maintenance activities.

#### Terms of Agreement

After the project description topics, the document lists the terms of the Agreement—what the parties agree to, how long you're agreeing to it, and other expectations for both parties.

The Agreement allows \_\_\_\_\_ [*list the relevant organizations*] and staff from the Vermont Department of Environmental Conservation to access the project on your property for planned visits with necessary equipment for the following purposes: 1) to install the project, 2) to regularly inspect the project to ensure proper function, and 3) to conduct routine maintenance activities that include \_\_\_\_\_ [*short description of common maintenance activities*] to keep the project working properly. We may also request to visit your property if damage is suspected (such as after a large storm) to inspect and possibly perform repairs. If you have concerns about damage to a project or if there is something you feel is not working properly, please contact us to request a site visit. All visits will be scheduled by \_\_\_\_\_ [*landowner liaison organization*] via phone or email [*indicate landowner's preferred contact method*] with at least 48 hours' notice. Refer to the Operation and Maintenance Plan in the Agreement for more details.

Note that the Agreement prevents you from making a trespass or similar claim against the parties that are being authorized to enter your property for the reasons listed, but you retain the right to make a claim for negligent acts or omissions by those parties.

#### Agreement Duration

*For license include this paragraph:* The Site Access **License** Agreement will initially last for \_\_\_\_ years [*fill in design life term*]. This is the "design life" of the project, or the number of years we expect that the project will protect water quality, if properly maintained. At the end of the initial term, the license will automatically renew for consecutive \_\_\_\_-year terms [*fill in the mutually agreed upon renewal*]

Form Updated: Tuesday, May 7, 2024

term]. You or the Clean Water Service Provider (CWSP) can choose to cancel this agreement at any time following certain notice requirements. If you have concerns, the agreement requires you to inform the CWSP of these concerns at least 60 days before sending a termination notice. You can send the notice of concerns through your landowner liaison if preferred. The CWSP will work to address concerns where feasible. If you still wish to cancel, you can do so by sending written notice by Certified or Registered US Mail. This Site Access License Agreement will end 180 days after the termination notice is sent.

*For easement include this paragraph:* The Site Access **Easement** Agreement will initially last for \_\_\_\_ years [fill in design life term]. This is the “design life” of the project, or the number of years we expect that the project will protect water quality, if properly maintained. At the end of the initial term, the easement will automatically renew for consecutive \_\_\_\_-year terms [fill in the mutually agreed upon renewal term]. You or the CWSP can choose not to renew the easement, by sending written notice by Certified or Registered US Mail at least 180 days before the scheduled renewal date. The easement is intended to remain on the property even if it is transferred to a new landowner. To ensure that future landowners know about the easement in advance, the CWSP will record it in your municipality’s land records.

If you decide to transfer the property, please communicate this landowner change to \_\_\_\_\_ [CWSP] at least 30 days before the transfer and inform the new landowner about the clean water project and the terms of this site access agreement. In the event that the Department of Environmental Conservation re-assigns the CWSP role to a different entity, you will be notified.

A note about maintenance activities

We share a common goal of taking care of the land to ensure the project’s success. As part of this agreement, please do/do not \_\_\_\_\_ [upon communication with landowner, and at the liaison or CWSP’s discretion, list instructions or maintenance tasks that the landowner can do themselves and any activities they should refrain from doing to not cause harm to the project]. We will implement the maintenance activities outlined in the Operation and Maintenance Plan and will minimize or restore (as reasonably practicable) any impacts that accessing the project site has on the rest of your property.

If you have any questions or concerns about site visits, maintenance activities, or the project itself, please contact \_\_\_\_\_ [landowner liaison organization] and we will work with you. We appreciate your willingness to be a good steward of your property and working with us to carry out this project. This voluntary project on your land will help us all work towards clean water and healthy watersheds in Vermont. Thank you!

*Please indicate a single entity who will serve as the landowner liaison. This organization will communicate with the landowner to schedule verification and maintenance site visits, and address landowner’s concerns and questions.*

Landowner Liaison Organization: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Clean Water Project Location: \_\_\_\_\_  
Landowner Name: \_\_\_\_\_  
Indicate preferred contact method: Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Form Updated: Tuesday, May 7, 2024

Clean Water Service Provider: \_\_\_\_\_

Contact Person for Clean Water Service Provider: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_

**SITE ACCESS EASEMENT AGREEMENT**  
**FOR A CLEAN WATER PROJECT**

THIS SITE ACCESS EASEMENT AGREEMENT FOR A CLEAN WATER PROJECT (Agreement) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between: \_\_\_\_\_ of \_\_\_\_\_, Vermont, [add additional landowner lines if needed] and their heirs, administrators, successors, and assigns (collectively, “Landowner”); and \_\_\_\_\_ (“Clean Water Service Provider” or “CWSP” and with Landowner, the “Parties”).

**WHEREAS**, the Landowner owns certain land and premises located at \_\_\_\_\_ in \_\_\_\_\_, Vermont (“Property”), as set forth in Exhibit A, within the \_\_\_\_\_ watershed basin (“Basin”); and

**WHEREAS**, the CWSP has been assigned by the Secretary of the Vermont Agency of Natural Resources for the purpose of achieving pollutant reduction values, in accordance with the Clean Water Service Delivery Act (Act 76 of 2019) at 10 V.S.A. §§ 921-930 and the Clean Water Service Provider Rule, Environmental Protection Rule Chapter 39 (“Rule”); and

**WHEREAS**, the CWSP is responsible for implementation and operation and maintenance of clean water projects designed to improve water quality to achieve certain pollutant reduction targets (10 V.S.A. § 924 and the Rule §§ 39-101 and 39-403); and

**WHEREAS**, maintenance means ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life and design life means the period of time that a clean water project is designed to operate according to its intended purpose; and

**WHEREAS**, Landowner wishes to voluntarily provide the CWSP with Property access for the clean water project, and the project is anticipated to result in a clean water improvement and possibly related environmental improvement outcomes; and

**WHEREAS**, the Parties desire that a clean water project be implemented and operated and maintained on the Property, as more particularly described in Sections 2 and 3 below (the Project); and

**WHEREAS**, the Project may require the CWSP, with its own forces or those of contractors, to enter upon the Property; and

**WHEREAS**, the Project may require a duly authorized representative of the Vermont Department of Environmental Conservation to enter upon the Property for Project inspection; and

**WHEREAS**, the Project’s design life is \_\_\_\_\_ years (Design Life);

**NOW, THEREFORE**, the Parties, intending to be legally bound, hereby agree as follows:

**1. Parties and Contact Information.** The Landowner and CWSP and their respective contact information are:

Landowner:

Landowner Name	
Landowner Phone:	( ) -
Landowner Email:	
Landowner Mailing Address	

[use below if applicable]

Landowner Name	
Landowner Phone:	( ) -
Landowner Email:	
Landowner Mailing Address	

Landowner Name	
Landowner Phone:	( ) -
Landowner Email:	
Landowner Mailing Address	

[Add Additional Landowner tables if needed]

Clean Water Service Provider:

CWSP	
CWSP Phone:	( ) -
CWSP Email:	
CWSP Mailing Address	

Any party may designate in writing, communicated to all other parties, any updated contact information for purposes of communication regarding this Agreement.

**2. Location of Project.** The Project is located at: \_\_\_\_\_.  
Refer to Exhibit B: As-built plan or final site plan with details of what was installed/constructed.

Project Latitude Longitude (center point in Decimal Degrees):	Latitude °N , Longitude °W
---	----------------------------

3. **Description of Project.** The Project and operation and maintenance will consist of the following:

Project Type:	Choose a Project Type
Practice Type:	Choose a Practice Type
Watershed Projects Database ID:	
Project Title:	
Project Implementation Completion Date:	
Project Design Life*:	
Special Equipment Required, if any*: (e.g., Vactor truck, anything other than hand tools)	
Frequency of Regular Inspections*:	

[Add additional project description tables if multiple practices]

<b>Operation and Maintenance Plan</b>	
Operation and maintenance will include the following activities* (such as weeding, mowing, sediment and debris removal, inlet and/or outlet cleaning, and equipment maintenance) and project repairs on an as-needed basis within the reasonable discretion of the CWSP**.	Frequency (e.g., quarterly, annually, or as needed)

\*If O&M plans are updated to reflect new knowledge and best practices, they may be mutually signed and placed in the CWSP’s files without the need to update the easement itself.

\*\*The DEC O&M manual contains guidance on equipment required, frequency of inspections, and O&M activities.

4. **Grant of Site Access Easement.** Landowner, for themselves and their heirs, administrators, successors, and assigns, hereby gives, grants, sells, conveys and confirms to the CWSP and its agents, employees, contractors, successors, subgrantees, and assigns, an easement and right to enter upon the Property, with workers and equipment, for the purpose of undertaking the Project and all activities reasonably related thereto, including operation, maintenance, repair, and replacement. This grant includes a right of reasonable access to the Property proximate to the Project site for the foregoing activities, as well as the ability of a duly authorized representative of the Vermont Department of Environmental Conservation (DEC) to enter the Property for purposes of conducting a Project inspection following 48 hours’ notice to the Landowner at the last phone number and email provided to the CWSP.

5. **Limited Release.** Landowner hereby waives, releases and discharges any claims, whether styled as trespass or otherwise, that may arise from the entry described in Section 4.
6. **Retention of Certain Other Rights.** Notwithstanding Section 4 of this Agreement, the Landowner retains the right to assert against the CWSP, its contractors, or other parties any claims that may arise from negligent acts or omissions during the Project.
7. **Term of Site Access Easement.** The Grant of Site Access Easement shall run with the land and be effective for a term of \_\_\_\_\_ years, or until \_\_\_\_\_ [must be at least as long as the Design Life] (Easement Term). After the Easement Term, the Site Access Easement shall automatically renew for consecutive \_\_\_\_-year terms subject to the right of either party to decline renewal of the Site Access Easement by providing the other party 180 days' written notice by Certified or Registered US Mail with or without cause. Renewal declinations must be sent by either party at least 180 days before the scheduled renewal date.
8. **Notice of Conveyance of Property or CWSP Role.** Landowner hereby agrees to make its best efforts to inform the CWSP by email 30 days prior to conveying the Property to a subsequent owner. Landowner will be notified if a different entity is assigned to the Basin CWSP role.
9. **Landowner Use Limitation in Project Area.** The Landowner and its heirs, successors, and assigns shall have the right to make use of the Property subject to the access rights granted herein, provided that the use does not conflict with the CWSP's access rights. Landowner will not undertake any activity or make any modifications that materially change the final project design or intended usefulness as implemented without obtaining prior written CWSP approval.
10. **CWSP Restoration of Property Disturbance Outside Project Area; Project Area Release.** The CWSP or its agents, employees, contractors, successors, or assigns, shall restore any portion of the Property outside the Project Area disturbed or affected by the exercise of their access rights as near as reasonably practicable to the condition prior to such exercise at the sole cost of the CWSP or its agents, employees, contractors, successors, or assigns and within a reasonable time. Landowner releases CWSP from any obligation to restore the Project Area or reclaim any changes to the Property contemplated within the Project Description.

TO HAVE AND TO HOLD, all right and title in and to the herein conveyed rights and this Site Access Easement with all the privileges and appurtenances thereof, unto the CWSP, its authorized representatives, successors and assigns to their own use and behoof forever; and the Landowner, \_\_\_\_\_, for itself and its heirs, successors and assigns, does covenant with CWSP, its authorized representatives, successors and assigns, that from and after the ensealing of these presents, it is the sole owner of the Property, and has good right and title to convey the same in the manner aforesaid, and they are FREE FROM EVERY ENCUMBRANCE and it hereby engages to WARRANT and DEFEND the same against all lawful claims whatever.



The Parties have caused this Agreement to be executed as of the date of final signature below.

\_\_\_\_\_  
Party Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Party Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Party Name:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Party Name:

\_\_\_\_\_  
Date

[Easement requires notary]

[Exhibit A – Access description; for Easement include Property Deed description]

[Exhibit B – Site plan with details of Project Area]

BWQC member and subgrantee training:

What types of training are needed most?

# MEMORANDUM

TO: LAMOILLE BASIN WATER QUALITY COUNCIL (BWQC)  
FR: LAMOILLE BASIN CLEAN WATER SERVICE PROVIDER (CWSP) STAFF  
RE: MATERIALS FOR TRAINING AGENDA ITEM  
DA: 9/19/24

=====

**At the upcoming meeting, time will be dedicated to discussing training needs related to clean water project implementation.** This discussion will help identify areas where additional training and resources could enhance the council's effectiveness in achieving water quality goals.

**The state of Vermont offers various resources and training opportunities relevant to clean water project work.** The Department of Environmental Conservation (DEC) provides numerous resources for applicants and recipients of clean water project funding, including:

- **Clean Water Project Eligibility Review Training**
- **Interim Phosphorus Reduction Calculator Tool Training video**
- **Training Video: New Project Form**
- **Recorded training on Site Access Agreements** (available on the Clean Water Project Verification webpage)

According to their website <https://dec.vermont.gov/water-investment/cwi/clean-water-grants/applicant-recipient-resources>, DEC is also developing training related to project development.

**There are many aspects of clean water project implementation that may require training, from project identification and development to financial management, reporting, and compliance.** For example:

- The **Watershed Projects Database Search, Clean Water Project Explorer, and Proposed Projects by Basin** tools all contain information important to identifying and prioritizing potential projects. Training on these tools could benefit BWQC members as they review and select projects.
- **Guidance documents** outline eligibility criteria, assessment protocols, reporting requirements, and more. Training on relevant guidance documents could ensure that BWQC representatives and subgrantees clearly understand program requirements and expectations.
- **Proper financial management** is critical for both CWSPs and subgrantees. Training on topics like procurement, budgeting, allowable expenses, and financial reporting could help to ensure compliance and prevent issues.

**An important question to consider is what training, if any, should be directed at members of the consulting community as opposed to (or in addition to) BWQC representatives and subgrantees.** Consultants often play a key role in developing and implementing clean water projects. Providing them with the necessary knowledge and tools could improve project quality and efficiency.

**Please come to the meeting prepared to share your insights and suggestions on training needs.**

### Operation and Maintenance

Clean water projects funded through CWIP (other than the Water Quality Restoration Formula Grant Program; see Access License or Easement section below) should complete and execute an Operation & Maintenance (O&M) Plan. Project proponents should use the DEC Operation and Maintenance Manual (coming soon) or an engineering firm for guidance on expected Operation and Maintenance practices to include in the Operation and Maintenance plan.

- [Operations & Maintenance Plan Template](#): This is a required form for implementation projects requiring O&M plans and agreements for grants utilizing Clean Water Initiative Program funds (*updated December 11, 2019*). Note: If the project is funded through the Water Quality Restoration Formula Grant, you should only use the Site Access Agreements (see below), which have an O&M plan incorporated into them.
- [Third Party Operations & Maintenance Plan Template](#): This is an alternative O&M Agreement Template for use with projects where the O&M responsible party (e.g., watershed group) enters into a separate agreement with the project landowner, and the O&M responsible party agrees to act as an intermediary between DEC and the landowner. To use this form the following must be true: *The Responsible Party agrees to enter into a separate O&M agreement with the Landowner and to keep the signed agreement on file for the duration of the O&M agreement (template updated February 28, 2020).*
- [Site Access Agreement Cover Letter](#): This cover letter provides an overview of the below Site Access License/Easement Agreement and Operation and Maintenance Plans. The cover letter must accompany every site access agreement for clean water projects funded through the Water Quality Restoration Formula Grant Program. *Below Site Access Agreement templates now come with the cover letter included.*
- [Site Access License Agreement and Operation and Maintenance Plan Template with Cover Letter](#): This is used to secure access to public or private property to perform the necessary operation and maintenance on clean water projects funded through the Water Quality Restoration Formula Grant Program. Refer to the [Water Quality Restoration Formula Grant Guidance](#) for more information on which (license or easement) is needed based on the project budget. A recorded training on Site Access Agreements is available, visit [Clean Water Project Verification webpage](#) to learn more and access the training materials.
- [Site Access Easement Agreement and Operation and Maintenance Plan Template with Cover Letter](#): This is used to secure access to public or private property to perform the necessary operation and maintenance on clean water projects funded through the Water Quality Restoration Formula Grant Program. Refer to the [Water Quality Restoration Formula Grant Guidance](#) for more information on which (license or easement) is needed based on the project budget. A recorded training on Site Access Agreements is available, visit [Clean Water Project Verification webpage](#) to learn more and access the training materials.
- [Annual Verification and Maintenance Reporting Template](#): This excel form is a required deliverable for Formula Grant funded projects to gather O&M data to meet statutory reporting requirements pursuant to Clean Water Service Provider statute and rule.
  - [Verification and Maintenance Reporting Instructions](#): description of collected data, overview of how to report and submit.

Proposed procurement changes (per DEC guidance)

# MEMORANDUM

TO: LAMOILLE BASIN WATER QUALITY COUNCIL (BWQC)  
FR: LAMOILLE BASIN CLEAN WATER SERVICE PROVIDER (CWSP) STAFF  
RE: MATERIALS FOR PROCUREMENT AGENDA ITEM  
DA: 9/19/24

=====

The Vermont Department of Environmental Conservation (DEC) has proposed revisions to Chapter 3 of the Clean Water Service Provider Guidance document. These changes would if adopted streamline the procurement process for clean water projects.

## Proposed Changes

The proposed changes impact two key areas of procurement as detailed in emails between Chris Rottler, Water Investment Coordinator for the Vermont Agency of Natural Resources, and stakeholders:

- **Subawardee Procurement:** The proposed changes would allow subawardees of CWSP Formula Grant funds to adhere to their own procurement policies instead of the requirement to solicit three bids for services.
- **Sole Sourcing:** Currently, sole sourcing is permissible under specific conditions, such as using prequalified project managers. The proposed changes would enable CWSPs to sole source awards up to \$25,000 to any entity, regardless of prequalification status, as long as the BWQC approves the expenditure.

## Rationale for Changes

According to DEC, these revisions are a response to stakeholder feedback and are intended to introduce more flexibility into the current process. The changes regarding sole sourcing, in particular, have prompted extensive discussion among stakeholders and DEC, mainly pointing to initial lack of understanding of the proposal.

## Call for Comments

Although the changes are likely to be considered favorable ones, BWQC members may wish to familiarize themselves with the proposed revisions to Chapter 3 of the DEC Guidance document. Please come prepared to share your perspectives and insights on the potential benefits and (if any) drawbacks of these proposed procurement changes.

# Clean Water Service Provider Guidance Document

## Chapter 3 – CWSP Financial Management

Act 76 of 2019 directed the Agency of Natural Resources (ANR) to assign by rule a Clean Water Service Provider (CWSP) to each watershed basin for the purposes of achieving pollutant reduction values and overseeing the identification, design, construction, operation, and maintenance of clean water projects within that assigned basin. To accomplish these goals, ANR, through the Department of Environmental Conservation (DEC), will issue Formula Grants to host entities that have been designated to serve as CWSPs. CWSPs will receive funds for identification, development and implementation of projects, operation and maintenance activities, Basin Water Quality Council (BWQC) coordination, and CWSP administration. ANR may also issue other awards to a CWSP, including start-up grants which will help prepare the CWSP to operate under its Formula Grant. CWSPs will be entrusted to manage grant funds, subject to DEC/ANR oversight. This chapter outlines the basic financial management expectations for CWSPs when administering formula, and where relevant, start-up and other ANR issued grants.

### **Chapter outline:**

- A. CWSP Financial Operations
- B. Internal Controls
- C. Procurement and Grant Issuance

### **A. CWSP Financial Operations**

- 1) Role of Management

DEC recognizes that CWSP operational management may pragmatically or formally be the responsibility of a staff member other than the executive director or manager of the entity assigned as a CWSP (i.e. the host entity). A host entity must formally designate to DEC one staff member as the “CWSP Director.” The CWSP Director may or may not be the host entity’s executive director/manager of the host entity.

The CWSP Director is accountable for compliance with all terms of applicable grant documents and implementation of the CWSP, including:

- Review and approval of the CWSP budget;
- Monitoring CWSP billing and expenditures;
- Preparing, verifying the accuracy of, and submitting CWSP financial and programmatic reports;
- Ensuring compliance with DEC oversight and re-appointment review activities;
- Ensuring compliance with internal controls procedures for CWSP activities;
- Ensuring CWSP compliance with applicable policies for staff members who perform work for the CWSP;
- Overseeing projects, whether or not another entity is subcontracted to manage that project;
- Overseeing Operation and Maintenance; and
- Communications with DEC, including early identification of any CWSP financial distress and barriers to implementation/meeting pollution reduction targets.

## 2) Solvency, Liquidity, Leveraging, and Program Effectiveness

The host entity for a CWSP must be solvent. To measure solvency, DEC will look primarily to see that CWSPs are not overly leveraged and that the host entity has sufficient cash flow to meet ongoing obligations, including payroll. DEC will do this by reviewing audited year-end financial statements of the host entity, monitoring other quarterly reporting as required by the formula grant, having conversations with CWSPs, conducting monitoring visits, conducting monitoring associated with the formula grant issuance process, and when reviewing a CWSP for reassignment.

Decreases in income, an increase in expenses, or cash-flow interruptions can all negatively impact solvency. The CWSP should promptly communicate to DEC significant changes that affect CWSP operations, especially changes to financial management-related staffing and program implementation. CWSP provision of effective and efficient services will require adequate staffing, however, CWSPs will not be expected to provide services that are not funded by the Formula Grant (or other grants). DEC considers the loss of staff, such that the separation of financial duties is impracticable or effective program implementation is stalled, as a concern warranting consultation with DEC staff.

## 3) Annual Review

DEC will work with CWSPs to conduct a programmatic and financial review once per year. This review may involve a site visit that includes conversations with the CWSP Director and other staff working on CWSP operations, as well as conversations with the BWQC. DEC will also request documents from the CWSP as a part of this annual review, which will include audited year-end financial statements, when available.

In the last year of CWSP service, a CWSP in good standing may apply for reassignment for a new five-year term. More information on this process can be found in Chapter 10 of this Guidance Document.

## 4) Project vs. Administrative funds

At start up, Formula Grants are envisioned to contain authorization and sufficient liquidity for two main uses of funds: 1) Project completion costs, and (2) administrative costs (also called program delivery costs in the Clean Water Initiative Program (CWIP) Funding Policy). A third use of funds, for operations and maintenance (“O&M”) of implemented projects, will also be available to CWSPs. O&M activities are covered in Chapter 7.

Project completion costs support costs associated with individual projects funded under the Formula Grant regardless of whether this work is sub-contracted or completed by the CWSP. Allowable costs include expenses incurred that directly relate to project identification, development, implementation and reporting of the individual project, including materials, travel, contracts, and personnel expenses for direct project implementation and management. Direct project management tasks may include stakeholder coordination, communications, procurement, development and monitoring of subcontracts, processing invoices for payment, overseeing and verifying project results, and preparing and compiling grant deliverables. Per current the CWIP Funding policy, project completion costs may include subcontractor/CWSP indirect costs (when billing for time spent on projects.) Project completion expenses are deducted from the project completion budget and not the program delivery (i.e. administration) budget. CWSPs should also consider including in their subgrant/procurement policies a section on allocation of administrative funds to subgrantees.



Administrative costs, described in the CWIP Funding Policy as “Program Delivery costs,” supports costs associated with administering the operation of the CWSP and Formula Grant requirements. A CWSP’s administrative costs are limited to 15% of the value of their overall Basin-specific allocation for Formula Grants. The 15 percent cap includes all tasks associated with program delivery, appropriately billed indirect costs, and elements of subgranted program delivery work (if applicable). Example program delivery tasks include:

- Implementing a procurement policy (but not procurement activity related to a specific project);
- Staffing the BWQC, including meeting preparation and attendance;
- BWQC member expenses (for municipal and land conservation organizations);
- Managing the Formula Grant award;
- Maintaining the CWSP webpage/website
- Developing and monitoring subgrants and subcontracts;
- Processing subgrantee and subcontractor invoices for payment;
- Verifying project results (but not O&M which is in a separate category); and
- Preparing and compiling required grant deliverables (e.g., interim and final reports and project deliverables).

Administrative costs may include indirect expenses for the time spent on administrative tasks consistent with an entity’s Negotiated Indirect Cost Rate Agreement (NICRA). CWSPs without a NICRA may be reimbursed for indirect expenses capped at a 10% de minimis rate. See the CWIP Funding Policy for additional information.

#### 5) Insurance

CWSPs shall comply with the insurance requirements (general liability, workers compensation, and automobile) contained in their Formula Grant awards, which are contained in the State’s Attachment C - Standard State Provisions for Contracts and Grants (“Attachment C”). Separate insurance for the CWSP is not required, assuming the host entity has insurance coverage that complies with Attachment C. CWSPs must provide proof of insurance coverage to DEC as part of executing a Formula Grant. In addition to the standard State insurance requirements, CWSPs will also be required to maintain/ensure the following insurance coverage for themselves and for their subcontractors or subgrantees as appropriate:

##### a) Professional liability insurance.

Per the Clean Water Service Provider Rule (Vermont Environmental Protection Rules, Chapter 39), professional liability insurance is required for any professional services performed by/procured/paid for by a CWSP. Professional services include work performed by engineers, architects, lawyers, or accountants. The amount of professional liability coverage depends on the nature of the work performed, but typically should be procured minimally at \$1,000,000.00 per occurrence, and \$1,000,000.00 aggregate, although higher coverage is appropriate for larger projects.

##### b) Errors and Omissions.

The State recommends that CWSPs maintain standard Errors and Omissions insurance for the CWSP Director and BWQC members. This insurance may be paid for from 'Administrative Funds'. Coverage should be minimally in the amount of \$1,000,000.00 per occurrence, and \$1,000,000.00 aggregate. The State will not be responsible for any losses associated with the failure to procure this coverage.

c) Performance bonds for projects

Performance and payment bonds shall be required for projects over \$500,000.00 in value, while performance bonds are recommended as best practice for projects in excess of \$250,000.00 in value. Contractors may add the cost of the bond to their overall fee, which in turn may be paid for by the CWSP using "project completion" funds.

It is recommended that CWSPs require subcontractors and subgrantees to obtain insurance at the level required by Attachment C. However, when a CWSP hires a project developer as a subcontractor to oversee design or construction of a clean water project, including any operation and maintenance work, that subcontractor shall be required to obtain the standard insurance coverage expected of grantees and contractors who sign agreements with the State.

6) Investment of CWSP funds; Insurance on CWSP funds.

CWSPs shall deposit all CWSP related funds, including both program, administrative and operations and maintenance funds, into Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA) insured savings or checking accounts at an accredited financial institution or with the State Treasurer, if applicable. All funds deposited with a bank or credit union must be insured; should balances exceed the insured maximums, the CWSP shall make sure to provide sufficient additional insurance, such as through creation of a second account, purchasing additional coverage, or use of another mechanism to ensure the funds are always insured.

Funds shall not be deposited into any other accounts, including money markets, CDs, or any other investment without prior written approval from DEC.

7) Leftover Funds

Act 76 states that once a CWSP is deemed to have met their pollution reduction goal, or five-year target, and has excess formula grant funds available ("Leftover Funds"), a CWSP may:

- a) Carry those funds forward to the following year;
- b) Use those funds for other eligible projects;
- c) Use those funds for operation and maintenance responsibilities for existing constructed projects;
- d) Use those funds for projects within the basin that are required by federal or state law; or,
- e) Use those funds for other work that improved water quality within their assigned basin, including river corridor protection, aquatic species passage, or other similar projects.

Per statute, the CWSP decides how to spend Leftover Funds. However, should the CWSP decide to spend Leftover Funds on other eligible projects, that decision must be advanced to the BWQC, for approval before any funds are expended on said project. Should a CWSP decide to spend Leftover Funds on O&M, or to carry those funds forward to the next year, instead of advancing a project, the CWSP may seek input and counsel from the BWQC, although, the CWSP has the final say on this matter.

Also, because spending formula grant funding on anything besides non-regulatory projects may impact a CWSP's (and relatedly the State's) ability to meet future non-regulatory pollution reduction targets should that CWSP be re-assigned to serve in their basin, a CWSP can only use Leftover Funds for other uses besides non-regulatory project development if the Clean Water Fund has fully funded formula grants sufficient to meet the entirety of the non-regulatory load allocation requirements of a TMDL in a given basin. In other words, if funding was not sufficient, a CWSP would be able to either carry forward Leftover Funds into the future, spend them on other eligible non-regulatory projects, or spend the funding on Operations and Maintenance of constructed non-regulatory projects to retain or extend their phosphorus reduction capabilities.

More on projects can be found in Ch. 6.

#### 8) Risk Reserve

The idea of a risk reserve was first discussed with the Act 76 advisory group, as a way to manage situations where a CWSP has incurred costs, but due to acts outside the control of the CWSP (such as weather, or acts of a third party), a project is damaged or destroyed.

The recommendation to appropriate a risk reserve from within the Clean Water Fund is subject to a decision by the Clean Water Board. The Board, in recommending its annual budget, already maintains a contingency reserve unrelated to CWSP project risk of loss. Should the Board decide to fund a risk reserve, it would be subject to the following considerations:

- a. Access. The Secretary shall make the final decision on whether a CWSP qualifies for funding from the risk reserve, subject to the eligibility provisions of Act 76.
- b. Amount. Any funds will be limited to actual damage to the project, so that the project can be rehabilitated.
- c. Process. The Department shall provide a form for CWSPs to use to apply for Risk Reserve funding.

If appropriated, DEC will hold and administer the risk reserve. Authorization to access risk reserve funds will be contained in a CWSPs' formula grant, subject to approval by the State. A separate risk reserve policy may be developed, providing guidance for when and how the risk reserve may be accessed.

#### 9) Reporting

CWSPs are responsible for reporting on programmatic, organizational, financial, and grant-related information. Specific reporting requirements are contained throughout this Guidance and will be referenced in a CWSP's start-up and Formula Grant awards. DEC will provide CWSPs a form to aid the management of reporting requirements.

#### 10) Other revenue sources

Formula Grants cannot be used as match for any other grant beyond the "match limits" indicated in Attachment B – Payment Provisions of the Formula Grant agreements, without prior written approval from DEC. CWSPs may access other funds and use them to improve water quality. The availability of

additional funding shall not change or impact any requirements for how a CWSP uses its Formula Grant. The effect of co-funding on pollution accounting for a CWSP is covered in Chapter 6.

## **B. Internal Controls**

Internal controls are the policies, processes, and procedures used to ensure accountability in the management of financial information and transactions. CWSPs are expected to follow internal controls, which must be documented in an internal controls Policy.

### 1) Requirements, Submission and Approval, Updates

Per Environmental Protection Rule § 39-306(f), CWSPs shall maintain an adequate Internal Controls policy, that at least addresses separation of duties for financial activities, use of an electronic accounting system, budget reconciliation, tracking of staff time, procurement procedures, authorizations for purchasing and procurement, written accounting procedures, financial reporting, personnel policies, and safeguarding of assets.

Internal control policies should be kept up to date and adhered to. Once every five years, CWSPs should review their Internal Controls policies and processes to ensure they meet sufficient, evolving best practices.

### 2) Internal Controls Policy and Procedure Components

#### a) Separation of duties (paying invoices, approvals, check issuance, reconciliation)

The segregation/separation of duties is a well-established principle of any internal controls policy. The policy achieves two major goals: It provides for review and oversight to catch errors, and it helps deter and prevent fraud/theft.

Three key duties should be separated between three separate employees: custody of assets (including financial accounts) and accounting/recordkeeping, authorization of use of the assets (i.e. signing checks, approving procurement), and reconciliation.

#### b) Electronic Accounting System

Some firms still keep track of their financial transactions in whole or in part in a manual, paper-based ledgers. This is not allowed for CWSPs, who must keep track of their financial transactions using a computer-based accounting program.

#### c) Reconciliation

Reconciliation of CWSP formula funds should be performed frequently, but by a separate staff member from the person who is the custodian of assets, such as the financial staff member recording transactions, or the CWSP Director.

#### d) Staff time tracking

Each CWSP will have systems and processes in place to accurately track staff time worked by formula award, fund type (administrative vs. project funds) and project (if and when staff charge time to project

funds). Tracking shall be accurate, and timesheets/records shall be kept and retained, and be available for review upon request by DEC.

- e) Authorizations – purchases/procurement (goods and services); task order approvals

CWSPs should identify staff members who are authorized to approve purchasing and/or expenditures of CWSP funds in a policy.

Authorization to expend funding must be consistent with the other provisions of Act 76, including BWQC approval, and contracting/documentation requirements with contractors/grantees. Authorizations, including any delegations of authority should be made in writing.

- f) Accounting

CWSP funds shall be accounted for as a separate fund on all CWSP host entity financial reports.

- g) Financial Reporting

Quarterly draw requests under formula awards will be accompanied by a Quarterly Report Template, a quarterly Balance Sheet, and a Profit/Loss or equivalent statement (i.e. cash flow statement) showing expenditures of CWSP formula funds.

Yearly, CWSPs shall submit year end, audited financial statements for the host entity serving as the CWSP to the Department. Financial statements shall show activity by fund, including activity of the CWSP. All year-end reports should be submitted to the Department within 180 days of the end of their fiscal year.

### **C. Procurement, Subgrant Issuance, and Contracting**

In collaboration with the BWQC as noted herein, CWSPs shall have discretion to issue and distribute subgrants and subcontracts for clean water projects pursuant to this Guidance document and the Clean Water Service Provider Rule, Chapter 39. Potential subgrantees and subcontractors will apply directly to the CWSP for grant and contract RFPs authorized by the BWQC.

Act 76 at 10 V.S.A.924(a)(4) establishes the requirement that CWPSs establish guidance, consistent with that of this Guidance, on their *“policy for how the clean water service provider 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.”* This language envisions that CWSPs issue funding in the form of subgrants to recipients (in this context called sub-awardees) to design, build, and operate and maintain clean water projects. DEC recognizes the stated preference among partners involved with the development of this Guidance that CWSPs predominantly conduct subgranting as the mechanism to fund clean water projects. That statutory language does not, however, preclude the CWPS from contracting services when needed to support implementation clean water projects. Simple examples of where contracting may be beneficial include the development of master contracts for engineering services to be used by any implementer in the CWSP’s watershed, or the procurement of construction services to build a specific clean water practice as part of a project.

The term “procurement” as used herein means to the process of committing a specified amount of Formula grant funds in support of a specific project or defined set of activities, whether by means of subgranting, or contracting. The provisions below pertain to issuance of subgrants or contracts. Subgrants, generally speaking, are awarded to entities who are actively implementing or developing projects, and offer substantial deference to the subawardee in the manner of execution. Contracts, generally speaking, are awarded to a provider of a service or suite of services, and are an extension of the CWSPs required activities. Subgrants and contracts are described by the Vermont Agency of Administration’s Bulletin 3.5 (Contracts) and Bulletin 5.0 (Grants). CWSPs may use these Bulletins (<https://aoa.vermont.gov/bulletins>) to determine if a subgrant or contract is more appropriate to procure given the circumstances, and for additional guidance.

- Bulletin 3.5: <https://aoa.vermont.gov/bulletins/3point5>
- Bulletin 5.0: [https://aoa.vermont.gov/sites/aoa/files/Bulletins/Bulletin\\_5\\_eff12-26-14.pdf](https://aoa.vermont.gov/sites/aoa/files/Bulletins/Bulletin_5_eff12-26-14.pdf)

When implementing a subgranting process, CWSPs may choose to provide varied subgrant offerings, and are encouraged to adopt an approach that most efficiently and effectively supports attainment of nutrient reduction targets. DEC has in the past implemented a variety of granting approaches: individual grants for a specific class of project types; individual grants across a spectrum of eligible project types; block grants to one or more subawardees for a class of project types, and even direct awards to subawardees based on existing Memorandums of Understanding. When implemented by DEC, notices of availability of funding, or “Requests for Proposals,” provide the parameters associated with the grant opportunity with sufficient specificity to allow subaward applicants an understanding of how to be successful in their application. In conforming to the CWSP Rule at §39-403(b), CWSPs are free to choose the manner of subgranting, and DEC recommends the procurement of subgrants or contracts follow the guidance below.

1. Procurement Considerations for CWSPs
  - a. Requests for Proposals

Competition in the procurement process and grant issuance process serves both the State, CWSPs, and potential bidders by ensuring the process produces an optimal solution at a reasonable price and allowing qualified vendors and grantees an opportunity to obtain CWSP business and awards. CWSP procurements for both subcontracts for services and subgrants may follow the guidance of the respective Bulletins above.

Note, however, that DEC will not expect subawardees to follow the requirements that they always solicit at least 3 bids for any procurement for services. Rather, subawardees should follow the provisions of their own procurement policy.

- b. Pre-Qualification of Entities and Sole Sourcing

Use of “Sole Source” or “no-bid” Contracts or Grants is contrary to the competitive process supported by the State. The Act 76 Rule prohibits sole sourcing in most circumstances. In light of the Sole Source subawards are allowed when an entity has been prequalified to provide services pursuant to § 39-306(h) and whose clean water project has been selected pursuant to § 39-403(e). The only entities who meet these criteria will be providing project management services, except municipalities that perform construction and maintenance work on projects located on

their own property. Engineers, construction firms (except for municipalities, as noted previously), and providers of operations and maintenance services are not considered entities that ‘have a clean water project.’

Pre-qualification is a process, however, that is open to other types of services beyond ‘project managers.’ More specifically, pre-qualification is a tool that a CWSP might employ to simplify procurement by retaining a pool of qualified providers that can be solicited as the need arises. Typical categories of services that a CWSP might seek pre-qualified entities for include engineering, project management, and construction, among other examples. CWSPs may run a competitive procurement that only solicits entities from their list of pre-qualified entities, provided there are more than two pre-qualified entities in a given category of service provider (e.g. 3 engineering firms, 3 green infrastructure construction firms, etc.). Pre-qualification alone does not remove the requirement for CWSPs to issue a competitive RFP and follow a competitive procurement process.

A CWSP should document their pre-qualification requirements in their subgrant/ procurement policy, that includes the process, standards and criteria that must be met, in order for an entity to be considered ‘pre-qualified’ in a given category. This policy should also document what an entity must do to stay ‘pre-qualified.’ At a minimum, a CWSP shall open up the pre-qualification process to new entities at least once per year. CWSPs may consider the cost of work when procuring services, even from a pre-qualified entity. The decision to issue a sole source agreement should be documented in a memo that is signed by the CWSP Director and kept in the grant/contract file.

Certain relevant master contracts entered into by the State Department of Environmental Conservation with a contractor may de facto pre-qualify that vendor for procurement with by CWSP under this Guidance Document. Contracts for work on river corridor easements are the main example for this type of arrangement. More on what constitutes a ‘relevant’ master contract for these purposes can be found in Chapter 6.

Finally, DEC acknowledges that sole sourcing is appropriate in certain circumstances, and will only apply the prohibition against sole sourcing to CWSP subawards valued at more than \$25,000.00.

#### c. Pre-qualified Project Managers

The State recognizes that many projects will be brought to the attention of a CWSP as a result of the preparation and groundwork of external partners, including watershed and conservation groups. When CWSPs release subgrant or contract opportunities, entities that have developed a project will be in a competitive position to be awarded funds for the project that they bring forward for consideration, if they are cost competitive, due to the relationship that they have with the landowner and/or unique knowledge that is key to implementing a project without which, the project might not proceed. CWSPs that do not make awards to the entity that developed a project as the project manager may be burdened with additional costs, both real and intangible, which may challenge the viability of a project, up to and including sunk investment. For these reasons, when a project is selected by a BWQC, the CWSP may use its authority to sole source and

subaward that project when the originating organization of that project is a prequalified project manager. A CWSP might not issue a grant or contract to the prequalified entity, however, if the entity is debarred, if there is a conflict of interest, if the costs are unreasonable, or if there are other reasonable concerns related to performance.

Should the CWSP not award a selected project to the pre-qualified project proponent, it should consult with the BWQC to consider whether or not this action has a material change to the project viability that would cause a change in the project priority. Likewise, in the event the originating entity is unable to fulfill the role of project manager, the CWSP should procure or direct additional project development to confirm the ongoing viability and feasibility of the project. Chapter 6 of Guidance contains guidance regarding the evaluation of project feasibility (“viability”).

#### d. Procurement and Conflicts of Interest

Employees with a conflict of interest should not participate in, control or influence the bidding process, the awarding of contracts, or the approval of payments against said contracts. Further, it is recommended that CWSPs should require every subcontractor/subgrantee to disclose in writing any actual or potential conflict of interest. Anyone with a conflict of interest should disclose that conflict in a timely manner.

Basin Water Quality Members that vote to approve (or deny) to advance a project are generally considered conflicted for the purposes of participating in the administration of that project, and, depending on the situation, may not be eligible to bid on any procurement or receive funds as a subcontractor or subgrantee on that project. Should a BWQC member so-conflicted wish to respond to bid on a procurement offering by the CWSP for that project, the conflict created by the prior vote shall be disclosed and a determination of eligibility made by the CWSP.

## 2. Role of the BWQC in Procurement

The State does not view Act 76 as providing the BWQC with the authority to make decisions on the procurement of goods and services necessary to accomplish clean water projects. Therefore, the BWQC should not participate in the review of procurements by the CWSP. BWQC decision-making in procurement, particularly in the awarding of grants to subawardees exacerbates potential and real conflict of interest issues and should be avoided. The CWSP may request input from a BWQC member who is not conflicted (e.g. for a reference, or on a procurement review team) as appropriate.

## 3. Procurement of Goods and Asset Management

When procuring goods, where an item is valued at \$1,000.00 or above, two bids must be solicited and documented. The only exception is when it is impossible to get two bids because the good in question is proprietary and is only available from one vendor. When this occurs, this should be documented to the file. 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.



CWSPs may choose to spend money on equipment and other tangible assets in the course of their service, to facilitate implementation of pollution reduction projects. All equipment and tangible assets shall be maintained, as appropriate. CWSPs shall follow the terms of their Formula Grant when disposing of assets purchased with grant funds.

4. Monitoring of subcontracts and subawards by the CWSP and Procurement/subgrant guidance

CWSPs should consider the best practice of monitoring their subgrants for compliance with the terms of their award.

# Updates (Project Development Funding, Invoicing, Participation Plan)

# MEMORANDUM

TO: LAMOILLE BASIN WATER QUALITY COUNCIL (BWQC)  
FR: LAMOILLE BASIN CLEAN WATER SERVICE PROVIDER (CWSP) STAFF  
RE: MATERIALS FOR UPDATES AGENDA ITEM  
DA: 9/19/24

=====

This memo provides brief updates on the following initiatives: (1) the expedited project development funding program; (2) invoice processing; and (3) the public participation plan.

## **Update on funding for project development**

The call for applications for the expedited project development funding program opened on September 6<sup>th</sup>. To respond to the call, prequalified partners should complete a simple online application form<sup>1</sup>. Applications will be processed on an ongoing basis. Note that while the announcement indicated a deadline of December 31, 2024, the program will continue beyond that date. Funding awards will require a Watershed Project ID number (WPDID). CWSP staff have been working with the Vermont Department of Environmental Conservation (DEC) to obtain WPDID numbers in advance; however, no ID numbers have been obtained yet, but discussions are continuing. CWSP staff can assist partner organizations that would like help obtaining WPDIDs. CWSP staff have also created an online tool that could help some partners create project descriptions for their projects.

## **Update on invoicing**

Another financial quarter will be coming to an end on September 30 (which is Quarter 1 in FY24-25), which means some Subgrant recipients may be preparing to submit reimbursement requests for their projects. CWSP staff appreciate that processes are not as smooth as we would like them to be. In trying to be flexible we might have made things worse, and certainly made more work for NRPC and some partners new to formal invoice submittals. We are developing some new approaches, including a “pre-invoice review” tool. We will provide a brief overview at the meeting and will answer any questions you have about the tool or invoicing in follow-up sessions. The biggest time crunch for invoice processing is the end of quarter 4 (which is mainly for accounting purposes), but it doesn't hurt to start thinking about these things in advance.

## **Update on NRPC Public Participation Plan**

As noted in an email to members of the BWQC, a draft of NRPC’s Public Participation Plan (PPP) was made available for public comment on August 19. Edits to the document since then have been made in response to comments received , and a revised version of the document was presented to members of NRPC’s Executive Committee on September 17. According to the staff who prepared the edits, another round of changes will be prepared to reflect the Executive Committee’s feedback. The document will be reviewed by the Committee again in October.

# BASIN 7

## APPLICATION FOR EXPEDITED PROJECT DEVELOPMENT FUNDING

This form is to be used by Prequalified Partner organizations with substantial area within the Lamoille basin, as listed in the call for applications.

If your organization is not a Prequalified Partner, please contact [dpierce@nrpcvt.com](mailto:dpierce@nrpcvt.com).

If you are looking for the application for organizations in the Missisquoi basin, do not use the form below; instead use this [alternative link](#).

### Your Name \*

Please provide your full name.

### Applicant Organization \*

Please provide the name of your application

### Applicant Email \*

What is your email address?

### Project ID from WPD

A project ID number from the Watershed Projects Database will be required before an award can be issued.

If you have an appropriate ID number (for a Project Development activity), please enter it here.

If you wish to seek an ID number and feel comfortable using the DEC "NFORM" tool to request one, you can find that tool [here](#). A guide for using the NFORM tool can be found [here](#).

If you wish to seek an ID number and would like help creating a project description, contact [CWSP staff](#) or use NRPC's project definition tool [here](#).

### Title of Project \*

Provide a concise title for the project development project you wish to complete.

### Amount of Funding Requested (Proposed Phase) \*

The maximum award for the Basin 7 Expedited Project Development Funding program is \$5,000. What amount of funding are you requesting here?

### Cultural Resource Review \*

Have you anticipated your project's need for cultural resource review or specialized resource review (such as a delineation)?

### File Upload

Drag and drop files here or [browse files](#)

Send me a copy of my responses

Submit

Future meeting topics / conclusion