

Clean Water Service Provider Guidance Document

Chapter 4 – Basin Water Quality Councils

Table of Contents

- 1) Membership and Structure
- 2) Roles and Responsibilities of the BWQC
- 3) Meetings and Actions
- 4) Participation in Tactical Basin Planning
- 5) Professional Conduct
- 6) Appendices

Acronyms Used in this Chapter

BWQC	Basin Water Quality Council
CWSP	Clean Water Service Provider
TBP	Tactical Basin Plan
WSMD	Watershed Management Division (Vermont DEC)
WPD	Watershed Projects Database
WUV	Watersheds United Vermont

1. Membership and Structure

Member Appointment, Reappointment/ Replacement, Dismissal, Expansion, and Compensation

Appointment of BWQC Members

Act 76 at 10 VSA §924 establishes that each BWQC shall include, at a minimum, 9 Council members. A CWSP shall establish a Basin Water Council for each basin and should coordinate with the Tactical Basin Planning (TBP) statutory partners (as identified in 10 V.S.A. § 1253), to select eligible members for 6 out of the 9 members for each BWQC in each Basin. For the initial and subsequent selection of BWQC members, CWSPs should defer to the Act 76 statutory partners (see 10 VSA 1253) to identify eligible BWQC candidate members. TBP Statutory partners include Regional Planning Commissions represented by VAPDA or its designee (2 seats), Natural Resource Conservation Districts represented by the NRCC or its designee (2 seats), and Watersheds United Vermont or its designee (2 seats).

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. A CWSP shall post on the CWSP website the terms for all active BWQC members.

The Act establishes that each BWQC shall include, at a minimum, the following nine (9) seats to be selected by and held by representatives of the applicable organizations:

- Natural Resource Conservation Districts (2 seats),
 - Regional Planning Commissions (2 seats),
 - Watershed (protection) Organizations (2 seats),
 - Municipalities (2 seats) to be selected by each CWSP, in consultation with municipalities in each Basin
 - and local or statewide land conservation organizations (1 seat) to be selected by the land conservation organizations in each Basin (in consultation with each CWSP).
- a. Selection and Appointment of Watershed Organizations – In establishing members of their BWQCs, DEC expects CWSPs to proactively work with Watersheds United Vermont to determine membership of watershed organizations.
 - b. For participation as a watershed group on a Basin Water Quality Council under the Watershed Organization category, priority shall be given to watershed groups who meet the full watershed group definition (see Appendix 1 at the end of this chapter) and who work at the appropriate geographic scale for the Basin covered by the BWQC. For basins that lack an active watershed group(s), a group should be selected that best aligns with the criteria as a “watershed group” for service on that area’s Basin Water Quality Council.

Appointment of BWQC Chair and Vice Chair

1. Chair/ Vice Chair - 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

- ii. Terms – BWQC members, including alternates, shall be appointed for two-year terms, with the exception of initial appointments where the beginning of the term shall be considered as the beginning of the next state fiscal year. BWQC duly adopted bylaws may establish term limits for membership.
- iii. Alternates
 - 1. BWQC appointing entities within 10 V.S.A. § 924(g) shall 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.
 - 2. Alternate members may be designated in the same manner as primary BWQC members and appointed at the first BWQC meeting of their term and may be changed with reasonable prior written notice to the BWQC and CWSP.
 - 3. Terms of Alternate members shall match those of the primary members to which they are paired.
 - 4. Alternates do not have to represent the same organization/municipality as the primary BWQC seat for which they are an alternate.

Staff of CWSP organizations not involved in CWSP management may serve as BWQC members or alternates for the basin in which they are the CWSP. However, BWQC members shall not include staff of the CWSP host organization providing staff support to their BWQC.

- c. Reappointment at the end of term/ Replacement - At least 4 months before the end of each BWQC member term, the BWQC member should inform the CWSP (and any relevant statutory partner) of their interest to stay on the BWQC for another term. At least 3 months prior to the start of the state fiscal year, the CWSP shall provide to ANR in writing if the BWQC member will continue as a BWQC member or who the new BWQC member will be. This is necessary to provide the funding to support BWQC participation by statutory partners.

- i. For reappointment of Council members:
 - 1. The reappointment of a BWQC member shall be selected in a manner consistent with initial appointments.
 - 2. A CWSP shall post any BWQC vacancies on the CWSP website in a timely manner (i.e., within 4 months from which a vacancy is determined, or at the end of a member term who no longer wishes to serve on that CWSP) and shall conduct outreach and an open process following the processes described in the initial membership section above to make potential representatives aware of the opportunity to serve on the BWQC.
- ii. For replacement of a Council member prior to term expiration:
 - 1. The replacement member shall be selected in a manner consistent with initial appointments, except that a BWQC's duly adopted rules of procedure may express a preference for

- replacement members to be drawn from previously designated Alternates.
2. Replacement Members shall be selected based on their knowledge of clean water topics for the basin(s) served and interest and availability to attend BWQC meetings as required.
 3. The initial term of a Replacement member shall be the unexpired portion of the term of the Member being replacement.
- d. Dismissal – following a majority vote (e.g., quorum of the BWQC, a Council member can be dismissed following sufficient documentation that the BWQC member is failing to uphold their duty. An example would be the failure of a member to attend one-half or more of the scheduled meetings per year without good cause, which shall constitute grounds for replacement of the member.
- e. Expansion of the BWQC (additional members – see Rule 10 V.S.A. § 39-501a.) – 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 the 9 ‘statutory seats’ established by 10 V.S.A. § 924(g)(2) shall be maintained either by membership or weighting of votes, such that if additional BWQC seats are established within any of the ‘statutory’ categories, voting or membership shall be adjusted so that the original proportionality/weighting of votes between and among the statutory seats is maintained. CWSPs and BWQCs are encouraged to consider the addition of two seats representing BIPOC/traditionally disadvantaged communities. The addition of two BIPOC/disadvantaged community seats on the BWQC would not alter the original proportionality of the ‘statutory seats’, and thus each seat would cast a full vote on the BWQC.
- i. Following a unanimous vote of the Council, the BWQC shall submit a request for additional membership which must be provided to the Secretary in writing and address:
 - a. Any unique information or representation that additional BWQC membership would provide that justifies additional BWQC costs and complexity of proportional voting.
 - b. How this information could not be provided through alternative methods such as participation in BWQC meetings (i.e., a public participation option).
 - c. An explanation as to how the proportionality of representation established by 10 V.S.A. § 924(g)(2) shall be maintained either by membership or weighting of votes.
 - d. A CWSP evaluation of the annual costs of adding to the BWQC membership.
 - ii. The Secretary shall respond in writing (45 days) as a determination of whether the information submitted is sufficient to evaluate the request for additional membership and if sufficient will respond in writing as to approval or disapproval of the request.

- iii. the BWQC may appoint Ex Officio members to the Council. Ex Officio members will be non-voting and be appointed for a two-year term. The BWQC may adopt policies for appointing Ex Officio members.
 - iv. Additional BWQC meeting participants may participate in the open meeting process, and for which participation may be described in each BWQC's stakeholder and/or public participation policy.
- f. Compensation - 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 (included in the Rule - § 39-503(g) Meetings and Actions).

2. Roles and Responsibilities of the BWQC

- a. Establish Policy - 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 (per the Rule). Upon the establishment and/or adoption of each BWQC's governance policies and operational procedures, BWQCs may consider additional procedures that may further define the following required roles and responsibilities. Such additional policies could include, but not limited to - BWQC meeting rules, policies, and operating procedures, including conflict resolution, voting procedures, meeting frequency, establishment of subcommittees, etc.
 - 5. On a timeline which shall be updated biennially, the BWQC shall review the Vermont DEC Surface water assessment results that are produced in conformance with Sections 303(d) and 305(b) of the federal Water Pollution Control Act, also known as the Clean Water Act, in order to review the updated surface water assessment lists, which will also be published as basin assessment reports within each Tactical Basin Plan.
 - 6. BWQC's shall coordinate with each DEC Watershed Planner on the review and interpretation and surface water assessment lists and attendant data on an as-needed basis, as published in the applicable Tactical Basin Plans that are revised on a 5-year rotational cycle
 - 7. BWQC's shall review Tactical Basin Plan "Implementation Tables" which will provide a cross reference to surface water conditions and related implementation plan strategies and priorities.
 - 8. BWQCs shall coordinate with DEC Watershed Planners assigned to each of the 15 major river basins (as opposed to just Champlain and Memphremagog basins) as the primary DEC staff to serve as the liaison between BWQCs and DEC technical

programs (such as for the WSMD River Management, Wetlands, and Lakes and Ponds Programs).

- i. Project Selection (see also Chapter 6 for project identification, eligibility determination, project development phases, project implementation, project verification, and project operation and maintenance).
 1. Clean Water Projects. (Rule 10 V.S.A. § 39-403).
 - 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, of the Rule, and Guidance.
 - b. 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 identification, development, design, and/ or implementation categories and make any adjustments to the co-benefits scoring as needed.
 - c. 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 identification, development, design, and implementation in the basin.
 - d. Watershed Projects Database. All clean water projects proposed for Formula Grant funding shall be entered into the Agency's Watershed Projects Database (WPD). For these clean water projects, the database shall contain information necessary for the prioritization of those projects by the BWQC, 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.
 - e. 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:
 - i. develop and implement a project ranking schedule and scoring process to ensure that the highest priority projects are identified, developed, designed, and implemented within the available funding provided by the Formula Grant.
 - ii. consult with the Secretary to determine project eligibility before scoring and ranking projects.

- iii. 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.
 - iv. 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.
 - v. consider co-benefits provided by the project.
 - i. In coordination with DEC, BWQCs may establish policy around how co-benefits are considered in the project identification and prioritization process.
 - vi. prioritize projects in accordance with any additional requirements imposed by the Secretary's guidance
- b. Role in reviewing CWSP policies
 - 1. Approve CWSP Guidance for Subgrants (per § 924(a)(4)) – Per the Act, BWQCs shall review and approve subgrant guidance that shall include how the Clean Water Service Provider will allocate Formula Grant funds to subgrantees for project advancement (development), design, implementation, and for the administrative costs of the Basin Water Quality Council
 - 2. Participate in annual progress reporting
 - 3. Governance and operations of the BWQC
 - 4. BWQC may review and comment on the CWSP's procurement policy, but not the actual procurement process, which will remain at the discretion of the CWSP
 - 5. CWSPs are encouraged, to consult with BWQCs on the administration of project selection, implementation, and Formula Grant distribution by the CWSP. However, it is at the discretion of the CWSP whether or not to alter CWSP policies based on BWQC feedback.
 - 6. The BWQC does not have the authority to direct operational or internal policies of the CWSP host organization, nor does it have authority to direct actions of the CWSP beyond what is stated in Rule or this Guidance.
- c. Provide recommendations on CWSP reassignment (see forthcoming Chapter).
- d. Public Engagement and Records (Rule – 39-307(c))
 - i. The BWQC shall assist the CWSP in order to “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."

3. Meetings and Actions

- a. Open Meeting Law – BWQC members shall comply with the Vermont Open Meeting Law for all BWQC meetings.
- b. The BWQC shall adopt a clear, written meeting and decision-making procedure, such as Roberts Rules of Order for Small Boards
- c. Voting
 - i. Quorum requirements – A quorum shall be required in order to take a vote. A quorum shall be
 - a. attained by the presence of a majority of the BWQC membership (e.g., for a 9 member BWQC, the majority is 5).
 - b. For the purposes of calculating a quorum for a BWQC which has proportional representation, each member would be counted toward meeting a quorum based on their proportionality of representing a voting member.
 - c. All actions taken by the Council must be made by a quorum of the voting members
 - d. Alternates may only cast a vote in the absence of the voting member for which they serve as the alternate
 - ii. The BWQC shall vote to advance each clean water project for development, design, and construction to fulfill pollution reduction goals.
 - iii. Individual clean water projects should not be voted for advancement outside of BWQC's established selection timeline/ process unless to address an urgent water quality concern with the concurrence of the Secretary.
 - iv. Decisions shall be binding by a majority vote of the of the BWQC (i.e., a quorum), except that the BWQC may adopt and implement a decision-making model requiring a greater proportion of votes.
 - v. Each BWQC member shall have one vote, except when additional members require proportional representation.
 - vi. Proxy voting shall not be permitted
- d. Meeting Frequency
 - i. Minimum meetings per year (§ 39-503) - A BWQC shall convene at least four meetings per year, with a best practice of having one meeting per quarter
- e. Additional Meetings – In order to comply with the Open Meeting Law, all meetings of the BWQC need to be properly warned and follow appropriate rules of procedure, including subcommittee meetings (§ 39-307(c), and § 39-503(f))
- f. Other Actions

4. Participation in Tactical Basin Planning

- a. (Rule: 10 V.S.A. § 924(g)(1)) – the Basin Water Quality Council shall participate in the basin planning process established in 10 V.S.A. § 1253(d).
- b. BWQC participation in the TBP process will ensure that subsequent (?)TBP strategies and geographic priorities reflect the knowledge and expertise of representatives on the BWQC. It will also ensure that each BWQC member understands TBP strategies and geographic priorities which will inform effective non regulatory project implementation for each 5-year target cycle.
- c. BWQC members may also inform TBP strategies related to regulatory requirements (i.e., in order to inform priority subbasins per the Developed Lands Implementation Grant Program per 10 V.S.A. § 927 and Municipal Stormwater Implementation Grant Program per 10 V.S.A. § 928) where such assistance will provide additional geographic specificity to the resultant TBP.
- d. Watershed Projects Database – BWQCs shall utilize the Watershed Projects Database to identify, prioritize, 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 the Clean Water Service Delivery Provider Rule (§ 39-304).
- e. The DEC Watershed Planner for a given basin will attend BWQC meetings during the tactical basin planning process to provide an introduction to the planning process and timeline, to seek input from the BWQC on recommendations for strategies to support the identification and implementation of non-regulatory projects, and for the review of the draft plan.
- a. BWQCs will reference the Implementation Tables in the most current iterations of Tactical Basin Plans to focus implementation efforts to address water quality impairments. BWQC’s shall also consider “Phase III” content of Tactical Basin Plans that includes updated reduction targets as guidance as to which sectors and subbasins should be the focus of implementation efforts during each TBP 5-year cycle.
- f. BWQC members shall coordinate with DEC Watershed Planners in Tactical Basin Plan interpretation per Implementation Table/ implementation strategies

5. Professional Conduct

CWSPs and BWQCs receive and administer public funds for the purpose of advancing projects to improve water quality of the State’s waterbodies held in the public trust. Accordingly, CWSPs and BWQCs shall at all times conduct themselves in a professional manner. More specifically, CWSPs and BWQCs should abide by the following principles:

- All parties should have respect for another’s point of view
- All parties should be committed to resolving disputes in a respectful and professional manner
- All parties should be willing to compromise
- Any disputes should be resolved in a fair and timely manner

6. Appendices

Appendix 1. Definitions will be moved to an over-arching Definition section for all Guidance Chapters

1. Definitions (as referenced in 10 V.S.A. § 924 – the “Clean Water Service Delivery” Rule)

- a. “Basin” means a watershed basin designated by the Secretary for use as a planning unit under 10 V.S.A. § 1253(d).
- b. “Basin Plan” (also known as “Tactical Basin Plan” means a plan developed and approved in accordance with 10 V.S.A. §1253(d).
- c. “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 the Clean Water Service Provider Rule (herein referred to as the “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.
- d. “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:
 - i. 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
 - ii. is within the following activities:
 2. developed lands, sub-jurisdictional practices related to developed lands including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges.
 2. 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.
 3. forestry; or
 4. agriculture, when:
 - a. it is a natural resource project as described in subdivision (ii)(2) 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.
- e. “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.

f. “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.

g. “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

g. “Department” means the Vermont Department of Environmental Conservation.

h. “Fiscal sponsor” means an organization that provides fiduciary oversight, financial management, legal status, and other administrative services to a secondary organization.

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

j. “Secretary” means the Secretary of the Vermont Agency of Natural Resources or the Secretary’s duly authorized representative.

k. “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.

l. “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.

Appendix 2. Watersheds United Vermont (WUV) - Watershed Group (“Watershed Protection Organization”) Definition and Criteria for Act 76 Rule and Guidance

As defined in the Act 76 Rule, “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.

For participation as a watershed group on a Basin Water Quality Council under the Watershed Organization category, priority shall be given to watershed groups who meet the full watershed group definition below. For basins that lack an active watershed group(s), a group should be selected that best aligns with the criteria as a “watershed group” for service on that area’s Basin Water Quality Council.

WUV Watershed Group Definition	
Category	Criteria: A group must meet <u>all</u> criteria below
WHERE	<p>A watershed group:</p> <ul style="list-style-type: none"> ● focuses on the geographic area of their watershed or subwatershed; and ● are embedded in the communities in the watershed.
WHAT	<p>A watershed group:</p> <ul style="list-style-type: none"> ● is an organization or affiliated group; ● is guided by the watershed concept - the connection between land and water; ● primarily focuses on water- and watershed-related issues; and ● works to protect or improve water quality and watershed health.
HOW	<p>A watershed group:</p> <ul style="list-style-type: none"> ● assesses and/or monitors water quality and/or other indicators of watershed health and acts as the “eyes and ears” in their watershed; ● engages and educates people in the watershed; and ● works on one or a suite of watershed protection or restoration projects and programs.
WHO	<p>A watershed group:</p> <ul style="list-style-type: none"> ● works with all watershed constituents and does not represent a specific constituency or interest group.

Watershed groups are formed by people at the community level; therefore there are subwatersheds in Vermont where a watershed group has not been formed. In some cases, conservation districts take on the primary role in watershed work in those areas and in other cases there is a notable opportunity to develop capacity for watershed work in those subbasins. It is recommended that Clean Water Service

Providers and Basin Water Quality Councils will recognize the need to help develop local watershed group capacity in those basins where there are gaps.

Additional eligibility considerations for participation on the Basin Water Quality Council

- It should be preferred that the geographic scope of the watershed group is useful to the scale of basin planning
- Should for the purposes of this work understand the intent of Vermont's Clean Water Act and the Vermont Clean Water Service Delivery Act.
- Groups should have sufficient knowledge of impairments and assessments in the basin.