

Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years

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Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Availability

SUMMARY: EPA has developed guidelines for the award of Clean Water Act Section 319 nonpoint source grants in FY 2002 and subsequent years. The guidelines are intended to assist States and Territories in identifying the process and criteria to be used in distributing Section 319 grants in FY 2002 and subsequent years. The process and criteria for FY 2002 are generally the same as for FY 2001, with only slight modifications. The process and criteria for FY 2003 and beyond provide for a more concentrated focus on the implementation of Total Maximum Daily Loads (TMDLs) related to NPS pollution.

DATES: The guidelines are effective September 13, 2001.

ADDRESSES: Persons requesting additional information should contact [Romell Nandi](#), (202) 260-2324; or U.S. Environmental Protection Agency (4503-F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

The complete text of today's guidelines is also available at [EPA's Nonpoint Source Web site](#)

Dated: September 5, 2001

Carl F. Myers
Acting Director, Office of Wetlands, Oceans, and Watersheds
September 5, 2001

MEMORANDUM

SUBJECT:

Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years

FROM:

Carl F. Myers (for)
Robert H. Wayland III, Director
Office of Wetlands, Oceans, and Watersheds

TO:

EPA Regional Water Division Directors
State and Interstate Water Quality Program Directors

To provide States and Territories (hereafter "States") with sufficient lead time to develop FY 2002 grant applications for nonpoint source funding (NPS) under Section 319 of the Clean Water Act (CWA), I am providing you the FY 2002 guidelines at this time. When the President signs EPA's FY 2002 appropriations bill later this year, my staff will immediately send you the State-by-State allocations based upon the long-standing 319 allocation formula. We also intend to publish guidance addressing Tribal allocations later this year.

INTRODUCTION

EPA and the States have held several significant meetings around the country during recent months in which we discussed the most appropriate means to restore waters that are listed as impaired by NPS pollution. In the national meetings of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) held in March and August of 2001, the States and EPA discussed the opportunities that exist to more effectively utilize CWA Section 319 funds to help implement TMDLs related to nonpoint source pollution (NPS TMDLs). In those meetings, State representatives expressed the view that Section 319 provides an appropriate and effective programmatic framework for States to develop and implement NPS TMDLs. This guidance is intended to strengthen the link between the Section 319 NPS program and the development and implementation of NPS TMDLs and to promote the use of Section 319 dollars to assist in the development and implementation of NPS TMDLs.

I appreciate the many helpful comments that we received from the States and EPA Regions in response to the draft guidelines that we provided to you for your review on May 24, 2001. The final

guidelines make a number of significant changes in response to your comments. Most importantly, as explained in detail below, we have established FY 2002 guidelines as a transition year towards increasing the program's focus on implementing TMDLs; the full transition as envisioned in the draft guidelines will not take place until FY 2003. This will provide States with more time to complete the development of TMDLs and watershed-based plans that will provide a strong foundation for implementation activities.

Beginning in FY 2002, the U.S. Environmental Protection Agency (EPA) intends to promote increased use of Section 319 funds to develop and implement NPS TMDLs or the NPS components of mixed-source TMDLs (hereafter, both of these types of TMDLs will be referred to as "NPS TMDLs"). NPS TMDLs, together with watershed-based plans designed to implement the NPS TMDLs, provide the necessary analytic link between actions on the ground and the water quality results to be achieved. In the absence of such an analytic framework, it is difficult to develop and implement a watershed project that will achieve water quality standards, or to determine causes of failure when that occurs. Therefore, EPA believes that improving the integration of NPS TMDLs and watershed plans to implement these NPS TMDLs will provide the most effective means to accelerate achievement of water quality standards.

The approach outlined below is intended to be used for the foreseeable future. However, as mentioned above, EPA has heard the States' concerns that States need more time to increase their focus upon implementing NPS TMDLs. Therefore, EPA will treat FY 2002 as a transitional year, so that full implementation of the new features of these guidelines will begin in FY 2003. I will first discuss the overall approach to be taken over FY 2003 and beyond, and then I will discuss the steps that we are asking the States to take in FY 2002.

Several earlier guidance documents govern the Section 319 grants process, and they remain in effect except to the extent that they are specifically modified in this memorandum. These are summarized in Appendix A to this memorandum. Next year, EPA will consolidate all current requirements and recommendations into a single document to make reference easier.

FOCUS ON RESTORING WATERS IMPAIRED BY NPS POLLUTION

In FY 1999 and 2000, EPA directed that \$100 million (referred to as "incremental funds") be used to develop and implement watershed restoration action strategies ("WRASs") in "Category I" watersheds that the states identified as most in need of attention. In FY 2001, EPA recognized the need to increasingly focus Section 319 grant dollars on implementing approved NPS TMDLs, under EPA's existing effective TMDL regulations and guidance. Based on this need, EPA stated that incremental funds may be used to develop and implement approved NPS TMDLs for any 303(d)-listed waterbodies (whether or not these were located within a Category I watershed), as well as to develop and implement WRASs.

Beginning in FY 2002, EPA will continue to strengthen its support for State efforts to implement NPS TMDLs. A focused and sustained effort to restore impaired waters is essential. NPS TMDLs, together with watershed-based plans to implement NPS TMDLs, provide the technical underpinning for defining the problems and designing the solutions to our nation's most pressing water quality problems. EPA has been pleased to observe that all of the upgraded State nonpoint source programs now place emphasis on the restoration of impaired waters.

For these reasons, EPA has decided to strengthen support for the State efforts with the steps outlined below. These steps are designed to promote the development and implementation of NPS TMDLs based upon the TMDL regulations that have been published at 40 C.F.R. 130.7 in 1985 and 1992, as well as guidance published by EPA to assist in the implementation of those regulations.

FY 2003 and Beyond

Beginning in FY 2003, the following three principles will be applied:

- States may continue to use up to 20% of the "base" funds (i.e., funds other than the incremental funds) to develop NPS TMDLs and watershed-based plans to implement NPS TMDLs, or to conduct other NPS monitoring and program assessment/development activities, as in the past. EPA anticipates that States will prioritize their NPS TMDL development activities in accordance with their TMDL schedules that they have developed pursuant to their Section 106 grants. (See pages 2–3 of the February 16, 2001, memorandum from Michael Cook, Director of EPA's Office of Wastewater Management, entitled "FY 2001 Clean Water Act Section 106 Grant Guidance.")
- States may use 20% of the "incremental" \$100 million funds to develop NPS TMDLs as well as watershed-based plans that describe the actions that are necessary to implement NPS TMDLs. In doing so, EPA asks the States to bear in mind that developing sets of NPS TMDLs on a watershed basis as a unified whole, and implementing those NPS TMDLs holistically, usually provides the most technically sound and economically efficient means of addressing water quality problems. Therefore, EPA encourages States to include in their watershed-based plans approaches that will address all of the sources of impairments and threats to the watersheds in question. Thus, the watershed-based plans should address not only NPS TMDLs, but also any pollutants and sources of pollution that must be addressed to assure the long-term health of the watershed.

We recognize that some States have not yet developed sufficiently detailed watershed-based plans to help the States and their partners determine which management measures or practices should be implemented in particular places in the watershed to assure that the load reduction identified in a NPS TMDL is achieved and that all significant water quality problems in the watershed are successfully addressed. In such cases, a State may need to use more than 20% of its incremental funds to develop sound watershed-based plans that can then be implemented successfully. Where this is the case, the State and the Region should discuss the State's need to devote greater resources

to completing watershed-based plans, recognizing at the same time the urgent need to focus most 319 funds on actual implementation efforts to achieve water quality improvements. Based on these discussions, the Region may authorize the State to use more than 20% of the incremental funds to develop these watershed-based plans.

To ensure that Section 319 projects succeed in restoring waters impaired by nonpoint source pollution, watershed-based plans that are developed with Section 319 funds should include the following elements. These elements will help provide reasonable assurance that the nonpoint source load allocations identified in the NPS TMDL will be achieved, as discussed in the Assistant Administrator's August 8, 1997 memorandum, "New Policies for Establishing and Implementing Total Maximum Daily Loads (TMDLs)." (See also Appendix C of the May 1996 Nonpoint Source Guidance for more discussion of a "well-designed watershed implementation plan", which specifically discusses most of the elements listed below):

- An identification of the sources or groups of similar sources that will need to be controlled to achieve the load reductions established in the NPS TMDL (and to achieve any other watershed goals identified in the watershed-based plan) ;
- A description of the NPS management measures that will need to be implemented to achieve the load reductions established in the NPS TMDL (as well as to achieve other watershed goals identified in the watershed-based plan); an estimate of the load reductions expected for these management measures (recognizing the natural variability and the difficulty in precisely predicting the performance of management measures over time); and an identification of the critical areas in which those measures will need to be implemented to achieve the NPS TMDL;
- An estimate of the sources of technical and financial assistance needed, and/or authorities that will be relied upon, to implement the plan. As sources of funding, States should consider the use of their 319 programs, State Revolving Funds, USDA's Environmental Quality Incentives Program and Conservation Reserve Program, and other relevant Federal, State, local and private funds that may be available to assist in implementing the plan;
- An information/education component that will be used to enhance public understanding of the project and encourage their participation in selecting, designing, and implementing the NPS management measures;
- A schedule for implementing the NPS management measures identified in the plan that is reasonably expeditious;
- A description of interim, measurable milestones (e.g., amount of load reductions, or improvement in biological or habitat parameters) for determining whether NPS management measures or other control actions are being implemented;
- A set of criteria that can be used to determine whether substantial progress is being made towards attaining water quality standards and, if not, the criteria for determining whether the NPS TMDL needs to be revised.
- A monitoring component to evaluate the effectiveness of the implementation efforts, measured against the criteria established under item (g) immediately above.
- States should use any remaining incremental funds to implement NPS TMDLs for which watershed-based plans have been completed. To assure that the implementation of NPS

TMDLs actually results in the restoration of watersheds, as well as to maximize efficiencies, we recommend that States use these incremental 319 funds on a watershed basis to develop and implement the NPS TMDLs for all the waters impaired by nonpoint source pollution in a watershed. In addition, as in the plan development stage, we recommend that States' implementation activities funded by the grant also address other significant nonpoint sources and pollutants in these watersheds that are not addressed in the NPS TMDL, but that nonetheless should be controlled to assure a successful long-term solution to the watershed's existing and threatened water quality problems.

We recognize that States already have in place or have been developing watershed plans and strategies of varying levels of scale, scope, and specificity that may contribute significantly to the process of developing and implementing watershed-based plans. We encourage States to use these plans and strategies, where appropriate, as building blocks for developing and implementing the watershed-based plans. In particular, we recommend that States use their WRASs, water quality management plans (WQMPs), comprehensive coastal management plans (CCMPs), and other similar holistic watershed documents, to help guide their watershed-based approaches to NPS TMDL development and implementation.

We further recommend that States give their highest funding priority to projects that are supported by additional funding by other Federal, State, and local agencies, SRF funds, or private sector funding. Additionally, States should consult their SRF Program's Integrated Planning and Priority Setting System, if such system is in use, to address the highest priority water quality improvement projects (see www.epa.gov/owm/finan.html). Given the significant expense of many watershed projects, such an approach will help expedite successful implementation of needed practices and thus speed the restoration of water quality. It will also help assure that watersheds are addressed in a holistic manner that accounts for the broad variety of stressors in each watershed.

FY 2002: Transition to Increased Focus on Implementing TMDLs

EPA recognizes that the approach outlined above cannot be implemented immediately in all States. Some States are already implementing well-designed watershed projects in impaired waters for which no NPS TMDL has yet been established, and halting such a project pending development of a NPS TMDL and a watershed-based plan to implement the NPS TMDL may well be counterproductive. Furthermore, some States have already published requests for new project proposals to be submitted by local watershed groups and conservation districts for FY 2002 funding, and watershed projects have already been planned and submitted to the State by such groups.

To enable such projects to go forward and provide States and their local partners an adequate opportunity to transition into the use of a TMDL-based framework, EPA will use the following approach for the incremental 319 funds in FY 2002:

Step 1. If a State has developed any watershed-based plans to implement TMDLs, implementation of the TMDLs in those watersheds will receive the highest funding priority.

Step 2. A State may use any incremental 319 funds remaining after Step 1 to address Section 303(d) – listed waterbodies even in the absence of a NPS TMDL, provided that a watershed-based plan has already been developed which identifies the pollutants that are causing the water quality impairment and generally describes the types of measures or practices to be implemented to solve the water quality problem.

Step 3. For any watershed project addressing Section 303(d)-listed waterbodies and funded under the Section 319 grant, the State must commit in the work plan (and may use 319 funding) to develop a NPS TMDL and a watershed-based plan to implement the NPS TMDL. Continued funding of the project in FY 2003 would be contingent upon completion of the NPS TMDL and watershed-based plan.

PROTECTION OF THREATENED WATERS

While States need to place very high priority on the need to restore waters impaired by nonpoint source pollution, as described above, I wish to recognize and emphasize the continued need to protect waters that currently are not impaired by nonpoint source pollution to assure that they remain unimpaired. This particularly includes waters whose good quality is threatened by such factors as changing land uses. EPA recommends that States place a high priority for the use of their base Section 319 funding on such protective activity. This includes both on-the-ground projects and broader educational and regulatory programs established by the State to promote broad awareness and implementation of activities that can help protect these waters from degradation by new and expanded land use activities which cause nonpoint source pollution.

OPERATION AND MAINTENANCE

The question has arisen as to grantees' obligations to continue operating and maintaining measures and practices that have been funded with Section 319 dollars. Each Section 319 grant should contain a condition requiring that the State assure that its project sub-awards (e.g., sub-contracts and sub-grants) include a provision that any management practices implemented for the project be properly operated and maintained. For assistance in developing appropriate grant condition language, Regions should work with their Office of Regional Counsel. States may wish to consult with colleagues implementing similar programs, such as USDA's Environmental Quality Incentives Program, for information on how to develop appropriate contract language that is tailored to the types of practices expected to be funded in a particular project.

REPORTING NPS RESULTS

Section 319(h)(8) of the CWA requires EPA to determine, prior to awarding a Section 319 grant, that the State has made "satisfactory progress" in meeting the schedule set forth in its NPS management program. In addition, Section 319(h)(11) requires that States report annually to EPA concerning their progress in meeting their schedules of milestones contained in their nonpoint source management programs and, to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality. These annual reports in turn can assist the Region in making the satisfactory determination required by Section 319(h)(8).

To provide tools that facilitate these determinations and reports, EPA is in the process of modifying the nonpoint source grants computer-based data system, the Grants Reporting and Tracking System (GRTS), which will include new and modified data elements to be reported by States.

The most significant new mandated fields will be to: (1) identify the location of the stream (or other waterbody) reach or reaches that are intended to be affected by each 319-funded project; (2) describe the project; (3) state whether the project consists of one or more of (a) the development of a NPS TMDL, (b) the development of a NPS TMDL implementation plan to achieve specific load-reduction goals, (c) the actual implementation of such a plan or (d) none of the above; and (4) annually provide (for nitrogen, phosphorus, and/or sediments) an estimate of load reductions achieved by the project. EPA intends to use these data as a means of tracking and reporting to Congress and the public the progress being made by States to successfully implement their NPS TMDLs and other projects to improve water quality.

We have now web-enabled GRTS, with appropriate password protections, to make it easier for States to use the system and to enable State sub-grantees to use GRTS as well (if the State chooses to allow them access). Furthermore, EPA has released the first version of WATERS (a new data system that currently contains 303(d) and water quality standards data), and we will now begin to link GRTS to WATERS through common geolocational identifiers. Thus, 319-funded watershed projects will be linked through geolocational data to water quality status and, over time, to water quality improvement information contained in WATERS. While there are likely to be a number of factors contributing to improvements in a particular waterbody's quality (e.g., point source controls as well as various non-319 funds and programs that address nonpoint sources), the geolocational link will enable EPA, States, and the public to at least note the contribution that 319-funded projects are making to such improvements.

To ensure that required information is input into GRTS, each Section 319 grant award must include a condition requiring that the State enter all mandated data elements into GRTS. Information that is available at the time of grant award (e.g., project location and description) should generally be entered into GRTS within 3 months of the receipt of the grant or by a specific date agreed to by the Region and State. Other information should be entered at the appropriate time after project implementation has begun (e.g., load reductions would be reported annually once project implementation has begun).

CONCLUSION

Significant challenges remain in our efforts to abate NPS pollution, protect threatened waters, and restore impaired aquatic resources. EPA will work with States to make the most effective use of Federal resources to meet these challenges.

If you have any questions or comments, please contact [Robert Wayland](#), 202-260-7166 or have your staff contact [Dov Weitman](#), Chief of the Nonpoint Source Control Branch, 202-260-7088

cc:

State Nonpoint Source Coordinators
EPA Regional Water Quality Branch Chiefs
EPA Regional Nonpoint Source Coordinators
EPA Regional Clean Lakes Coordinators
EPA Regional TMDL Coordinators
Robbi Savage (ASIWPCA)

APPENDIX A

SIGNIFICANT NONPOINT SOURCE GRANTS GUIDANCE DOCUMENTS EPA has published several guidance documents that apply to the Section 319 grants guidance process. These documents are listed and briefly summarized below. Each of them may be reviewed online from the following address at [EPA's Nonpoint Source Web site](#)

(1) Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years (May 1996). This 33-page document is the chief national nonpoint source program document. It describes criteria and processes for States and Territories to upgrade their nonpoint source management programs; summarizes statutory and regulatory provisions that apply to the award of nonpoint source grants; and provides guidance designed to assist States and Territories in implementing effective programs and projects.

(2) Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999 (August 18, 1998). This 6-page document established guidelines for the use of incremental dollars (\$100 million) that were anticipated to be appropriated later that year. The guidance (1) authorized States and Territories to use up to 20 percent of their Section 319 funds to upgrade and refined their nonpoint source programs and assessments; (2) directed that the incremental dollars be focused upon implementation of watershed restoration action strategies in high-priority watersheds identified by the States and Territories as not meeting clean water and other natural resource goals; and (3) established a schedule for the award of the incremental funds.

(3) Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act (December 4, 1998). This 4-page document reiterated the

priority placed on using the incremental \$100 million to address the States' and Territories' high-priority watersheds that do not meet clean water and other natural resource goals, focused particularly in sub-watershed where NPS control activities are likely to have the greatest positive impact. It identified 303(d) sub-watersheds as high-priorities for such work.

(4) Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000 (December 21, 1999). This 10-page document (1) asked Regions to assure that, for all 319-funded programs or projects that assist animal feeding operations (AFOs), the 319 grants include a provision (either as a grant condition or through a separate document such as a work plan or BMP implementation plan) to assure that any AFO that receives financial assistance pursuant to the grant has and will implement a comprehensive nutrient management plan; (2) recommended steps intended to achieve a suggestion by the congressional appropriations committees that 5 percent of the Section 319 funds be allocated to clean lakes; and (3) announced and discussed EPA's intention to work with the States to consider changes to the Section 319 reporting/tracking system to support program needs, including promoting better integration with Section 305(b) data and Section 303(d) lists.

(5) Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2001 (65 FR 70899-70905, Nov. 28, 2000). This document (1) discussed how States and Territories may use funding increases appropriated in FY 2001; (2) broadened the use of the "incremental" (\$100 million) to authorize their use to develop and implement TMDLs for any 303(d)-listed waterbodies throughout the State; and (3) directed EPA Regional offices to condition grants to those States with conditional approval under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 ("CZARA") devote at least \$100,000 of its FY 2001 319 grant dollars to specific actions that are designed to meet all outstanding conditions for NOAA and EPA approval.