

Summary of Input from State, Territory, and Tribal Partners for Office of Water’s FY 2022-2023 National Program Guidance

Process for Soliciting Early Input

Name of Organization(s)	Venue	Date
Association of Clean Water Administrators, Groundwater Protection Council, Environmental Council of the States, Association of State Drinking Water Administrators, National Tribal Water Council, National Tribal Caucus	Email Soliciting Feedback	9/9/2020
National Tribal Water Council	Joined NTWC meeting to highlight an upcoming Early Engagement Meeting opportunity	9/9/2020
Association of Clean Water Administrators, Groundwater Protection Council, Environmental Council of the States and Association of State Drinking Water Administrators	Early Engagement Meeting	10/8/2020
National Tribal Water Council	Early Engagement Meeting	10/14/2020

Highlights of Early Input from States, Tribes, and Associations

- The National Water Program Guidance (NWPG) communicates operational planning priorities, strategies, key activities, key metrics, and guides grant planning with states, tribes, and territories. This document is issued on a two-year cycle, with an optional addendum in the second year to address significant changes not captured in the original guidance.
- An important phase in developing the NWPG is soliciting feedback from our partners through an early engagement period. For the Office of Water (OW), this phase ran from August to October 2020 for the development of the FY 2022-2023 NWPG. During this time, OW received comments and/or recommendations from states, tribes, and tribal and state groups. The comments and recommendations received during the early engagement period will help in developing the forthcoming NWPG. Below is a summary of the comments, recommendations, and suggestions OW received, organized by topic.

Comments on the Development Process of the NWPG

- We don’t understand why EPA is moving forward with early engagement for the development of National Program Guidances (NPGs) during the pandemic. Many of the tribal nations have been hit hard by COVID-19, causing tribal leaders to be unable to devote time and resources to this request. Would it not be better to delay the development process so tribes can provide more meaningful input?

- EPA should communicate how the NPGs will inform the next Strategic Plan. Is there a way states can help EPA with future strategic planning?
- States are interested in seeing a better alignment of the NPGs and state grant work planning.

Comments on Funding and Technical Assistance

- EPA should consider developing a priority setting process that recognizes state or interstate resource limitations. It is challenging for states to continue to prioritize all federal strategic goals without increased program funding, especially as the programs grow more complicated and confront new challenges like polyfluoroalkyl substances (PFAS) and harmful algal blooms (HABs).
- EPA should consider increasing non-monetary support to state partners such as workforce sharing, contractor deployment, providing frequently asked questions (FAQ) documents, guidance document updates, virtual meetings, webinars, trainings, database enhancements, policy simplification, public statements, research, sharing best practices, targeting tools, and regulatory improvements.
- In addition to traditional training opportunities for states and technical experts, EPA should consider investing in more training and technical, managerial, and financial assistance for permittees.
- EPA should determine if it is possible to provide additional support to updating water treatment plants nationwide through the Clean Water State Revolving Fund (CWSRF) and Water Infrastructure Finance and Innovation Act (WIFIA).
- States are seeing a shortage of water system operators due to an aging workforce, limited training opportunities, low wages and ineffective outreach to young talent. The shortage is having an impact on wastewater treatment centers especially in small and rural communities.
- On average, federal funding makes up about 27 percent of state environmental agency budgets. Overall State and Tribal Assistance Grants (STAG) funding has been flat for 18 years. Adequate federal funding and flexibility in how states can spend those funds would have a significant impact towards accomplishing our shared goals.
- We ask that EPA recognize the resource constraints faced by states, which have only been compounded by the ongoing pandemic. States would love to have the resources to spend the one-on-one time often needed not just to return a system to compliance, but to keep them in compliance for the long-term. Unfortunately, that is not possible with current levels of funding for state water programs.
- States urge continued investment in data systems, such as E-Enterprise for the environment, to improve the information exchange between states and federal databases. This support will aid technology infrastructure and the adoption of new more efficient tools.

Comments on Addressing Environmental Inequality

- Does EPA plan to develop any tools to help with environmental justice issues? State partners would like additional guidance and resources to identify and provide services to disadvantaged communities to address inequities in environmental and public health policies.
- We encourage EPA to address the environmental justice and other environmental disparities that lead to adverse health outcomes that make COVID-19 so deadly for tribal communities, the economically disadvantaged, and communities of color.

Comments on Waters of the United States

- How will the change in the definition of Waters of the United States (WOTUS) affect state

- priorities and commitments? How will the new definition impact future 106 grants funding?
- Will EPA provide clear guidance to states on determining jurisdictional waters? This would help states determine whether a facility is discharging to WOTUS without a permit. Additionally, EPA should highlight any changes to how Clean Water Act (CWA) 404 permits will be enforced.
 - The change to the definition of WOTUS may distort the progress that states have made to certain metrics. Perhaps some metrics may benefit from a baseline reset due to the change in WOTUS.

Comments on Metrics

- We recommend that metrics which measure and track tribal specific water standards be reinstated in the FY 2022 – 2023 NWP. It is extremely important for tribal governments to have a metric that tracks the degradation of tribal water in Indian Country. EPA tribal partners did not agree with the Agency when it eliminated the tribal specific metrics by stating that the metrics did not meet monthly or quarterly reporting standards. Tribal partners are willing to work with the EPA to overcome these new reporting standards and find new or preexisting state metrics that could be retooled to include tribal data. Tribal governments are particularly interested in metrics that measure safe drinking water, wastewater runoff and National Pollution Discharge Elimination System (NPDES) permitting.
- How does the Agency intend to measure and articulate the success of several other CWA program areas including 319 Nonpoint Pollution Grants, Total Maximum Daily Loads (TMDLs), and assessment programs? Nonpoint source pollution remains the leading cause of water quality impairments for many states, but 319 funding remains stagnant or has seen decreases. How can states and EPA better tell the story regarding the value of the 319 Program? Reporting on the number of TMDLs reviewed and issued does not actually demonstrate progress towards water quality improvement. Are there other metrics EPA is considering for the TMDL program? States would like to see a metric that demonstrates water quality improvements or progress, even if water quality standards are not being met. Demonstrating incremental improvements is an essential part of states telling their story of progress toward improving water quality in dynamic systems.
- The metric “Watershed with surface waters not meeting standards because of nutrients that now meet standards” is too specific and therefore does not provide an adequate measure of progress. EPA should consider revising the metric to focus on nutrient reduction efforts rather than alignment with specific nutrient standards.
- Does EPA have a plan to measure progress towards addressing new challenges like PFAS and toxins associated with HABs? States are spending significant resources to address these contaminants. How does the Agency plan on reporting state progress?
- September 2022 will mark a milestone for several long-term performance goals. It would be helpful if EPA could provide information on the progress towards achieving these goals. If this information is reported, the Agency should provide context when reporting on these metrics and avoid making state to state comparisons.
- Metrics must be tied to real-world outcomes that demonstrate how states are working to improve water quality. Reporting on a reduction in permit backlogs does not necessarily demonstrate a corresponding improvement to water quality. EPA should refocus some metrics to capture environmental outcomes rather than on internal EPA processes.
- EPA should avoid establishing metrics that lead to state-by-state comparison or rankings. Without context, comparisons or rankings could lead to external parties playing one state off another to further their interests. Any comparisons should be within a state and register

improvement over time.

- If new metrics are developed, the Agency should keep in mind budgetary restraints and non-regulatory issues that state drinking water programs face.
- EPA should reevaluate and redefine the strategic breakthrough measure of “Number of community water systems, still in noncompliance with health-based standards since September 30, 2017” due to data quality issues. Not all health-based standards are equal, and some do not necessarily pose a similar risk to public health. As currently reported, this metric may inflate the actual number of violations because violations carry over for at least four quarters even if the system is back in compliance. Some of the violation should be considered for exclusion from the metric. As an example, one violation is if a system lacks a certified operator. This violation is sometime triggered if an operator fails to pay a renewal fee or an operator failed to meet the required contact hours. In these cases, it is a misrepresentation to say public health is at risk as consumers continue to receive drinking water that is safe and meets all health-based federal standards. The EPA should reconsider their long-term target for this metric as well. A 25 percent reduction may not be achievable.
- When developing the NWPG, EPA should consider reducing the percentage of monitoring and reporting violations as an alternative to “Number of community water systems, still in noncompliance with health-based standards since September 30, 2017”. Reducing the number of monitoring and reporting violations will help to ensure that states and EPA have data to make the appropriate health-based decisions.
- When considering new metrics, EPA should use information states are already required to report instead of creating new metrics that require additional data collection.
- Consider adding a metric that measures the percentage of the population served by public water systems (PWSs) that are in compliance with health-based violations and/or the percent of PWSs that serve water in compliance with health-based violations. States are already required to report this data to EPA annually. By focusing efforts on actions that ensure the highest public health protection for the most people, EPA and states may be able to achieve a better cost-benefit performance for their work and resources invested.
- Any future metric should be implemented consistently across regions. There has been some variability in implementation approaches that can create confusion amongst the primacy agencies.
- Sometimes states hear different implementation strategies espoused by OW, the Office of Enforcement and Compliance Assurance, Headquarters, and Regions. Getting everyone on the same page will ensure that states’ limited resources are used optimally, as opposed to providing similar data to different parts of the Agency in slightly different formats.
- EPA should consider conducting additional consultation with primacy agencies before developing additional metrics. Primacy agencies have significant knowledge and experience with water and data collection systems that would provide critical insights for future metrics.
- It would be beneficial to have a regular communication or check-in call with primacy agencies about the progress towards meeting the agencies goals.

Comments on Data Quality

- States have concerns about the accuracy of data and expressed frustration at technical difficulties while using EPA data systems such as Enforcement and Compliance History Online (ECHO), Integrated Compliance Information System (ICIS), Grants Reporting and Tracking System (GRTS) and Total Maximum Daily Load Tracking and Implementation System (ATTAINS). We encourage the Agency to put a high priority on quality assurance and quality control of these

critical systems. EPA should also take the necessary time to fully explain the methodology and share with states how data is being pulled from the systems. This will allow states understand how their progress is being measured and can help verify data quality.

- Multiple state water programs have observed discrepancies between data in states' Safe Drinking Water Information Systems (SDWIS) and non-SDWIS databases, compared to the federal SDWIS database. Oftentimes, federal data does not accurately represent activity at the state level.

Comments on the Effects of COVID-19

- When developing the NPGs, EPA should keep in mind that states and tribes are now facing reduced state funding due to the impact of the COVID-19 pandemic.
- State drinking water programs are facing new challenges associated with the pandemic. Some oversight activities are taking more time and are using more resources when working remotely. These activities include:
 - Monitoring drinking water systems and providing technical assistance;
 - Collaborating to anticipate future needs;
 - Developing new forms to track closed facilities and revising reopening procedures;
 - Conducting virtual meetings with drinking water systems;
 - Responding to media inquiries; and
 - Assisting with the development of continuity of operation plans.

Next Steps

- OW and the EPA Regions will consider the early input received from state, territory, and tribal partners in developing the FY 2022-2023 NWPG.