Nonpoint Source Program and Grants Guidelines for States and Territories

Date: Issued on April 12, 2013. These guidelines apply to all § 319-funded grant activities beginning in fiscal year 2014.

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Preface

The U.S. Environmental Protection Agency (EPA) is issuing revised guidelines to states, territories, and the District of Columbia (hereinafter referred to as "states") for the award of § 319 grants under the Clean Water Act for the implementation of nonpoint source (NPS) management programs. These guidelines are requirements that apply to recipients of grants made with funds appropriated by Congress under § 319 of the Clean Water Act. States and EPA regions will implement these guidelines in fiscal year 2014 and in subsequent years. The new guidelines replace the *Nonpoint Source Program and Grants Guidelines for States and Territories* that have been in effect since the fiscal year 2004 grant cycle (hereinafter referred to as the "2004 guidelines"). These revised guidelines provide updated program direction, an increased emphasis on watershed project implementation in watersheds with impaired[1] waters, and increased accountability measures. These guidelines also emphasize the importance of states updating their NPS management programs to ensure that § 319 funds are targeted to the highest priority activities. These guidelines are not directed to tribal NPS management programs. Given the differing statutory provisions and approaches applicable to tribal programs, EPA implements separate NPS guidelines for tribes.

These guidelines were developed following a process that included state and EPA workgroups, national meetings, stakeholder outreach, and a 5-week public comment period. Nearly 80 comment submittals were received from a diverse set of individuals and organizations. EPA finalized these guidelines after considering all of the comments received.

In fiscal year 2003, the total annual appropriation for the § 319 program was $238.5 million. The 2004 guidelines set-aside $100 million of the total appropriation to be used mostly for implementation of nine-element watershed-based plans (WBPs) that address NPS impairments in watersheds that contain impaired waters. The 2004 guidelines referred to this $100 million set aside as "incremental" funds. The § 319 appropriation decreased to $165 million in fiscal year 2012 and the $100 million "incremental" set aside no longer represents a reasonable balance in the allocation of NPS management funds, given the wide variety of important uses to which

[1] For the purposes of these guidelines, impaired waters are those waters not meeting water quality standards established under § 303 of the Clean Water Act, including numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements.

states put these funds to control NPS pollution. These new guidelines recognize annual variability in appropriations for the § 319 program, and require a revised set aside of at least 50 percent of a state's allocation for watershed projects to provide an appropriate balance between implementation of WBPs and other important planning, assessment, management, and statewide NPS programs and projects. This 50 percent set aside is referred to as **watershed project funds**. The remaining funds are referred to as **NPS program funds**.

In addition to the revised watershed project set aside, other significant changes in these revised guidelines include:

- The 2004 guidelines allowed states to use a portion (up to 20%) of their "incremental" funds for the purposes of developing WBPs and total maximum daily loads (TMDLs). In an effort to increase the focus of § 319 funding on watershed project implementation, these revised guidelines remove this allowance and require planning activities to be funded with NPS program funds.
- The guidelines continue to place a strong emphasis on taking a watershed-based approach to restore NPS-impaired waters. States will focus watershed project funds primarily on these efforts. Following consultation with EPA, a limited amount of watershed project funds may also be used for projects to protect unimpaired/high quality waters when protection is cited as a priority in the state's updated NPS management program. Procedural requirements from the 2004 guidelines for protection projects have been removed.
- The guidelines include a renewed focus on updating state NPS management programs on a five year basis, with the expectation that 50% of NPS management programs will be updated by September 2013, and all management programs will be up-to-date by September 2014.
- To facilitate program efficiency and watershed implementation, the guidelines include specific requirements for supplemental information to be submitted with TMDLs developed using § 319 funds.
- The guidelines provide an increased emphasis on coordination with USDA Farm Bill programs as a way to leverage water quality investments.
- The 20% "base" funds cap on the use of § 319 funds for statewide NPS monitoring and assessment from the 2004 guidelines has been removed in recognition of the importance of these activities for measuring success and in targeting watershed restoration and protection efforts.
- For states that go well beyond an expected level of non-federal funds leveraging, the revised guidelines provide an incentive to use the Clean Water State Revolving Fund (CWSRF) and other state or local funding for NPS watershed projects by providing additional flexibility with § 319 funds when states provide funding for watershed projects equal to their total § 319 allocation.

Sections I-VIII and X-XIII of the guidelines provide important programmatic information, expectations and context for the § 319 program. Section IX describes key requirements that states must address in their § 319 NPS program and grants.

NPS pollution continues to dominate water quality impairments in the nation, and although NPS control funding needs far exceed the resources appropriated under § 319, states are creatively

addressing NPS pollution by leveraging other federal and state resources, supporting networks of community-based actions on a watershed scale, and developing statewide regulatory and non-regulatory programs. As a result, the nation is experiencing positive results in terms of both on-the-ground action and actual water quality improvements. Examples of these improvements are summarized in § 319 success stories, found at www.epa.gov/nps/success. Most of these successes are the direct result of state NPS agencies' cooperation with other governmental agencies, private sector interests, and citizen groups at the state and watershed level. EPA and the states continue to improve coordination with USDA Farm Bill conservation programs, and we expect these programs will continue to yield substantial water quality improvements in the future.

EPA looks forward to continuing to work with the states and other partners to implement an effective and successful NPS program.

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I. § 319 Nonpoint Source Program Goals

The § 319 nonpoint source (NPS) program is an integral component and funding source for state NPS management programs which aim to control NPS pollution to achieve and maintain beneficial uses of waters. Effective state NPS programs supported by § 319 maintain and improve water quality by:

- strategically focusing on water quality goals to achieve water quality standards in the state's priority waters/watersheds;
- clearly articulating program goals and developing annual work plans that reflect actions to advance those goals;
- reflecting a balance between planning, staffing, statewide action, and watershed project implementation that best utilizes resources to deliver measurable water quality results;
- leveraging and integrating with other programs to align planning, priority-setting and resources to make the best use of available resources to control NPS pollution; and
- tracking and reporting results to demonstrate program progress and success.

By supporting the variety of state NPS management programs with an integrated national framework, the § 319 program helps address the national water quality challenges posed by NPS pollution.

II. Introduction

A. Statutory Background

Congress enacted § 319 of the Clean Water Act in 1987, establishing a national program to control nonpoint sources of water pollution. Clean Water Act § 101(a)(7) states, "it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution."[2] Funding appropriated under § 319 can be used to implement state NPS programs including, as appropriate, non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects to achieve implementation of best management practices and water quality goals.

Under § 319(a), all states have addressed NPS pollution by developing NPS assessment reports that identify NPS pollution problems and sources responsible for the water quality impairments. Under § 319(b), all states have also adopted state NPS management programs to control NPS

[2] NPS pollution is not defined in the Clean Water Act. A brief definition is that NPS pollution includes pollution caused by rainfall or snowmelt moving over and through the ground and carrying natural and human-made pollutants into lakes, rivers, streams, wetlands, estuaries, other coastal waters and ground water. Atmospheric deposition and hydrologic modification are also sources of nonpoint pollution.

pollution. State NPS management programs provide the foundation for state programs to address NPS pollution. These programs should articulate each state's strategy to address nonpoint sources and to achieve/maintain water quality standards. Since 1990, Congress has annually appropriated grant funds to states under § 319(h) to implement their approved state NPS management program.

B. The Role of § 319 Grants

§ 319 grants are important resources available to states to support/assist their NPS programs to restore impaired waters and protect unimpaired/high quality waters. These guidelines provide the framework for using § 319 funds to achieve the specific goals, objectives, and milestones established in a state's approved NPS management program.

While § 319 funds are important resources, it remains critical for states to strengthen their NPS management programs and to continue to strengthen existing partnerships as well as to develop new partnerships to achieve water quality goals. § 319 funds should be considered one component of a broad-based strategy to control the wide range of NPS impairments and threats affecting our nation's waters. The effectiveness of state NPS programs will depend on the effective use and leveraging of the funds, resources, and authorities of a wide variety of public and private sector entities that have a role to play in abating and preventing NPS pollution problems.

C. Scope of These Guidelines

These guidelines are primarily directed towards NPS management programs and grants administered by state and territorial lead NPS agencies designated under § 319 of the Clean Water Act. (Hereinafter "state" refers to states and territories.) Indian tribes that have approved NPS assessments and management programs and also have "treatment in a manner similar to a state" status may also receive grants under § 319 of the Clean Water Act. Apart from providing a brief overview in section XI below, these guidelines are not specifically directed to tribal NPS management. Because of differing statutory provisions that apply to tribes, EPA publishes separate guidelines for tribal NPS programs and grants at www.epa.gov/nps/tribal.

These guidelines apply to states, the District of Columbia, and the U.S. territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the US Virgin Islands. § 319 funds for American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands may be managed through the Environmental Protection Consolidated Grants for the Insular Areas. This consolidated program support grant is an alternative assistance delivery mechanism which allows an agency eligible for assistance for two or more pollution control programs to consolidate its assistance requests into a single application and receive a single consolidated award (www.cfda.gov/programs/66.600).[3]

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[3]For more information on the consolidated grants to American Samoa, the Commonwealth of the Northern Mariana Islands and Guam, contact EPA Region 9 (www.epa.gov/region09/islands). For more information on the consolidated grant to the US Virgin Islands, contact EPA Region 2 (www.epa.gov/aboutepa/states/vi.html).

These guidelines establish a nationally-consistent framework for state NPS management programs and grants. States and EPA regions will implement these guidelines in fiscal year 2014 and they will continue to be applied in subsequent years. However, priority work such as updating state NPS management programs and working with the U.S. Department of Agriculture on the National Water Quality Initiative will continue in fiscal year 2013. Many states are currently updating their state NPS management programs to meet EPA's goal that 50% of programs be updated by September 2013 and all remaining outdated programs be updated by September 2014.

EPA regions may, when necessary, issue supplemental guidance to further advance or support the NPS programs of their states, as long as the supplemental guidance comprises an addition or complement to the basic requirements of these guidelines. For any such guidance the EPA region will consult with the national program manager for the NPS program and obtain concurrence prior to issuance.

Sections I-VIII and X-XIII of these guidelines provide important programmatic information, expectations, and context on many aspects of the § 319 program. Section IX describes key requirements that states must address in their § 319 NPS program and grants.

D. Relationship to Other State and Federal Programs

A wide array of Clean Water Act and non-Clean Water Act programs align with and are available to support state efforts to control NPS pollution. Most states take advantage of some or all of these programs as they implement their NPS management programs. In some cases these programs and their resources can be more effectively leveraged than they have been thus far. This section does not attempt to list all such programs but highlights a few that are of particular importance and potential in the management of NPS pollution.

i. United States Department of Agriculture (USDA)

EPA wants to particularly emphasize the significant benefits of working closely with the United States Department of Agriculture (USDA) to achieve our common goals of restoring and protecting water quality. This is especially important in light of the 2008 Food, Conservation and Energy Act (Farm Bill), which presents tremendous opportunities for leveraging funding and other resources to improve water quality affected by agricultural and silvicultural nonpoint sources of pollution. Information about partnership opportunities through USDA Farm Bill conservation programs such as the Environmental Quality Incentives Program (EQIP) and the Conservation Reserve Program (CRP) can be found online (www.usda.gov/farmbill and nrcs.usda.gov/wps/portal/nrcs/main/national/programs). Most notably, USDA's EQIP states that "reducing NPS pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with TMDLs where available" is a national priority to guide the allocation of resources.

In fiscal year 2014 and subsequent years, EPA, the USDA Natural Resources Conservation Service (NRCS), and states will continue to implement the National Water Quality Initiative (NWQI) to encourage and facilitate program coordination in selected watersheds nationwide.

The USDA launched the NWQI in fiscal year 2012 with the goal to assist producers in addressing high priority water quality concerns in selected watersheds. The intent of the NWQI is to invest in a selected priority watershed over multiple years to achieve widespread conservation system implementation that will yield accelerated water quality improvements that can be sustained into the future. In fiscal years 2012 and 2013 NRCS allocated 5% of EQIP general financial assistance funds, approximately $33 million each year, to address agriculture-related nutrient and sediment impairments in over 150 selected HUC-12[4] watersheds. The NWQI requires state conservationists to consult with state water quality agencies and state technical committees when considering watershed selection. A majority of the watersheds selected in fiscal year 2012 were recommended by state water quality agencies. In fiscal year 2014 and subsequent years of the initiative, EPA and the states will again coordinate with USDA to work in priority watersheds to accelerate water quality results. USDA will continue to invest EQIP financial assistance funds in priority watersheds and will consult with state water quality agencies and state technical committees prior to selecting additional watersheds. Beginning in fiscal year 2014, states will devote § 319 or other resources to monitor water quality results in selected watersheds where circumstances are aligned for assessing water quality impacts from conservation practices. Specific expectations for states are discussed further in section IX.D. Drawing lessons from EPA's National NPS Monitoring Program and USDA's Conservation Effects Assessment Project, EPA will provide additional guidance and technical information on NWQI monitoring prior to fiscal year 2014, as well as limited technical assistance for interested states.

USDA's Farm Bill conservation programs (such as EQIP, CRP, Conservation Stewardship Program, and Wetlands Reserve Program) support the implementation of agricultural conservation practices as well as a suite of conservation, restoration, and land retirement measures for wetlands, riparian areas, and other areas of critical importance to the success of water quality improvement efforts. States should build and expand partnerships with the agricultural community to support the implementation of WBPs. In most cases, the resources needed to implement an entire WBP will be significant, and success will depend on enlisting and obtaining the support of all important stakeholders and the resources they can provide, including especially, the resources made available by Congress through the Farm Bill.

Where significant EQIP or other Farm Bill resources are available to address sources of NPS pollution in critical areas of a watershed, § 319 funding can be used in a number of ways to further complement these resources. Examples of complementary activities that can be funded with § 319 include: (1) monitoring in-stream water quality to assess project effectiveness and track water quality improvements; (2) developing WBPs in watersheds with impaired waters and other high priority watersheds to identify critical areas and needed pollutant load reductions; (3) funding watershed coordinators and technical assistance providers to work with local communities to promote adoption of conservation practices.

In addition to addressing agriculture-based water quality issues, it is important to note that USDA Farm Bill conservation programs can be used for non-industrial private forest

[4] A hydrologic code or hydrologic unit code (HUC) is a sequence of numbers or letters that identifies a hydrologic feature like a river, river reach, lake, or area like a drainage basin.

landowners, defined as private landowners who own more than 10 acres. In watersheds where agriculture is less prevalent, but other land uses threaten water quality, NRCS-funded forest management plans and conservation practices are important tools to protect and improve water quality.

ii. § 303(d) Listing and TMDL Program

Under § 303(d) of the Clean Water Act, states must develop a list of "water quality limited segments" still requiring TMDLs. "Water quality limited segments" are segments where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by § 301(b) and § 306 of the Clean Water Act. States must develop TMDLs for waters on the § 303(d) list of impaired or threatened[5] waters. The TMDL calculates the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards for that particular pollutant. TMDLs also include wasteload allocations for point sources and load allocations for nonpoint sources.

Because implementation of the load allocations established by these TMDLs is not enforceable under the Clean Water Act, for waters impaired solely or partly by nonpoint sources, the primary implementation mechanism is generally the state NPS management program coupled with state, local, and federal land management programs and authorities. Thus, the § 319 program is an important mechanism to implement TMDLs and restore the impaired waters listed under § 303(d) where NPS pollution is a contributor to the water quality impairment. EPA believes that implementation of these TMDLs can best be achieved through the development of WBPs that incorporate information from TMDLs that have been developed in the watershed. The implementation of WBPs has been and continues to be one of EPA's highest priorities for the use of § 319 funds.

EPA encourages states to coordinate their Clean Water Act TMDL, § 106, and § 319 programs to align priorities and leverage resources available for assessment, planning, and implementation of water quality restoration projects. In particular, EPA encourages states to coordinate their efforts to develop and implement WBPs with state and EPA efforts to develop and implement TMDLs. This is particularly valuable when water quality models for determining TMDLs include the ability to run various best management practices (BMP) treatment scenarios. Local watershed organizations may both gain a better understanding of modeled watershed processes and contribute important local knowledge in the timing and selection of management measures. States may benefit from integrating TMDL and WBP development through efficiencies in, for example, monitoring costs and expenses associated with contractors, meetings, and outreach.

This integration may pose a challenge because TMDLs can be developed at varying watershed scales or for single segments, while the scope of WBPs often target a planning area at the HUC-12 watershed level. Development of TMDLs on a watershed basis can effectively and efficiently

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[5] States may define "threatened waters" in their assessment and listing methodologies. EPA recommends that states consider as threatened those waters that are currently attaining water quality standards, but which are expected to not meet water quality standards by the next listing cycle (every two years).

address TMDL development commitments as well as facilitate integration with the § 319 program activities. States are encouraged to use the tools and information provided in EPA's Draft *Handbook for Developing Watershed TMDLs* to determine the appropriateness of using the watershed approach in TMDL development (www.epa.gov/owow/tmdl/pdf/draft_handbook.pdf). Section IX.F specifies requirements for TMDLs developed with § 319 funding.

iii. State Revolving Fund (SRF) Programs

State NPS program managers should and frequently do coordinate their funding needs with other Clean Water Act sources of funding. The most significant of these is the Clean Water State Revolving Fund (CWSRF) under Title VI of the Clean Water Act. Over the last several years, the CWSRF has provided, on average, nearly $275 million annually to control pollution from nonpoint sources and for estuary protection. While some states are effectively using CWSRF funds for NPS control, most states have not significantly utilized this resource. EPA believes that the CWSRF is particularly well-suited to assisting in the implementation of NPS projects requiring capital investment. States are encouraged to increase their use of these financial resources to help implement WBPs and other NPS projects.

Under the CWSRF, each state develops an annual Intended Use Plan (IUP) subject to public review which describes the state's plan for the use of the CWSRF funding. Typically, IUPs indicate that a portion of the CWSRF funds will be used for implementing § 319 projects, and while not required, in some cases contain a list of the specific NPS activities under § 319 that the state expects to fund. State NPS staff should work closely with state CWSRF staff, when possible, to include high priority NPS projects from a state's NPS management program in the state's CWSRF IUP.

States may use CWSRF funding for NPS projects that require capital investment/infrastructure improvements and that meet these guidelines for funding under the § 319 program. While state rules vary, recipients of CWSRF financial assistance for NPS projects may generally be publicly-owned or privately-owned entities. EPA encourages states to develop creative funding mechanisms under the CWSRF for NPS restoration and protection projects (see www.epa.gov/watershedwebcasts for an archived version of a Watershed Academy Webcast on the use of CWSRF funds for NPS and National Estuary Program projects).

EPA continues to encourage use of CWSRF funding for NPS projects because projects incorporating low impact development are often cost-effective relative to traditional stormwater management approaches, and they do a better job of reducing stormwater pollutants and protecting stream channel integrity and habitat. Well-planned NPS projects can reduce capital needs for stormwater conveyance and treatment facilities. (See *Guidance for Federal Land Management in the Chesapeake Bay Watershed*, Chapter 3, Urban and Suburban, EPA 841-R-10-002, May 12, 2010, water.epa.gov/polwaste/nps/chesbay502_urban.cfm.)

When updating their NPS management programs, states should clearly identify their processes to use some of the significant resources of the CWSRF loan program for eligible NPS activities. Where applicable, the state NPS management program should explain how NPS projects fit into the state's prioritization scheme for CWSRF funding, and describe state efforts to increase the

use of the state CWSRF to address NPS program priorities. If there are barriers to prioritization of NPS projects, the state NPS management program should describe efforts to coordinate with the CWSRF program and potential future steps to encourage consideration of NPS projects.

In addition to leveraging CWSRF funds for NPS projects, states have increased the use of the Drinking Water State Revolving Fund (DWSRF) to fund important source water protection projects within the scope of their state NPS management programs. State NPS program managers should coordinate with their state DWSRF program and explore opportunities to leverage these DWSRF funds.

These guidelines provide an incentive for states to use SRF and other state funding for NPS activities by providing additional flexibility with the federal § 319 funds for states that provide significant amounts of state funding for NPS watershed project activities. (See section IX.G.)

For more information on the CWSRF program, see water.epa.gov/grants_funding/cwsrf. For more information on the DWSRF program, see water.epa.gov/grants_funding/dwsrf.

iv. Other State and Federal Programs

In addition to USDA Farm Bill programs, EPA's § 303(d) program and SRF programs, many other federal and state programs have goals in common with the § 319 program. States' activities to expand and update their state NPS management programs in recent years have strengthened links with various federal and state programs. The wide array of ways in which § 319 funds may be used to support NPS management activities makes them well-suited to integration and coordination with other program funds, especially those limited to a specific set of activities such as BMP implementation. Program integration can achieve the coordinated design and implementation of water quality-focused programs and projects that employs the resources, authorities, and expertise of all relevant programs.

To maximize effectiveness, state NPS management programs need to assure that a wide variety of programs continue to be well-integrated and support the implementation of state NPS management programs to control NPS pollution. These include:

- The state programs implementing the National Pollutant Discharge Elimination System (NPDES) point source program, particularly with respect to urban runoff, construction and development, and concentrated animal feeding operations;
- Coastal nonpoint pollution control programs developed under § 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), which are required by CZARA to be implemented through a state's NPS management program and are applicable to coastal states and territories that have programs under the Coastal Zone Management Act;
- EPA's National Estuary Program (NEP), authorized under § 320 of the Clean Water Act, supports 28 partnership efforts that develop and implement long-term EPA-approved Comprehensive Conservation and Management Plans and annual work plans to address NPS problems and other estuarine watershed challenges;

- Wetlands protection and restoration programs implemented under § 404 of the Clean Water Act as well as pursuant to a variety of other federal and state authorities and programs;
- Source water protection (including ground water) programs and Underground Injection Control Class V Well programs under §§ 1421, 1428 and 1453 of the Safe Drinking Water Act;
- Chesapeake Bay Program (§ 117), Great Lakes Program (§ 118), Long Island Sound (§ 119), Lake Champlain (§ 120), Lake Pontchartrain program (§ 121) and the Clean Lakes Program (§ 314) of the Clean Water Act;
- Mississippi/Gulf of Mexico Watershed Nutrient Task Force's Action Plan;
- Water Quality Management Planning grants funds under Clean Water Act § 604(b) and basin planning under § 303(e) of the Clean Water Act;
- Efforts supported by Clean Water Act §106 funds to conduct ambient monitoring in watersheds where significant NPS implementation is occurring; and
- State water quality standards programs which include numeric criteria, narrative criteria, waterbody uses, and antidegradation requirements.

In addition to coordinating with these water quality programs, states should coordinate with tribal water quality programs and with programs administered by the federal land management agencies (e.g., Bureau of Land Management, Forest Service, and National Park Service), water management agencies (e.g., Bureau of Reclamation, Corps of Engineers, Federal Energy Regulatory Commission, and Tennessee Valley Authority), and other resource management agencies. For example, some state § 319 programs work closely with federal agencies to encourage development of TMDLs and implementation of NPS BMPs on federal lands.

Finally, two other federal agencies whose policies and practices can greatly influence and/or protect riparian areas, wetlands, and other sensitive areas and corridors are the Department of Transportation and the Federal Emergency Management Agency. Both of these agencies and their state counterparts have programs that can help protect or mitigate potential impairment to these areas, and both have funding programs that can be used to benefit water quality. EPA strongly encourages states to work with these partner agencies to achieve common goals.

III. Nonpoint Source Management Programs

A. Background

Clean Water Act § 319(b), enacted in 1987, required all states to adopt NPS management programs. Pursuant to EPA's 1996 guidance *Nine Key Elements of an Effective State Nonpoint Source Management Program*, each state upgraded its original NPS management program. This guidance required states to: identify explicit short- and long-term goals, objectives, and strategies to protect and restore water quality; strengthen working partnerships with appropriate state, interstate, tribal, regional and local entities, private sector groups, citizens groups, and federal agencies; establish balanced approaches that emphasize both statewide programs and on-the-ground projects to abate existing problems and prevent new ones; and use a periodic feedback loop to evaluate progress and make appropriate program revisions.

B. Renewed Focus on Up-to-Date State Programs

Although some state NPS management programs have been updated more recently, EPA's final report, *A National Evaluation of the Clean Water Act Section 319 Program* (November 2011, www.epa.gov/nps/pdf/319evaluation.pdf) found that 28 states had not updated their programs since 1999-2000. The report found that updating state NPS management programs helps states identify strategic priorities, develop goals and milestones, and work more effectively to address the evolving state of their waters and engage partners to address statewide NPS priorities.

A key recommendation from the § 319 program reform workgroup was to ensure states have updated NPS management programs and that proposed projects/activities in a state's annual § 319 grant work plan directly relate to the annual milestones in the state's NPS management program. EPA has updated the 1997 document and issued the *Key Components of an Effective State Nonpoint Source Management Program*, available at www.epa.gov/nps/319 and in appendix A of these guidelines. This revised document replaces former guidance outlined in the 1997 document.

Because of the importance of a current and relevant NPS management program to guide the use of § 319 resources, these grant guidelines require states to maintain updated NPS management programs. EPA expects 50% of state NPS management programs to be updated by September 2013 in accordance with the guidance provided in appendix A. In addition, EPA expects that the remainder of outdated state NPS management programs will be updated by September 2014. States should devote sufficient resources in their annual § 319 grant work plans to complete these updates. To keep state NPS management programs relevant, states are required to review and update their programs every five years. States that do not maintain current NPS management programs risk a determination of unsatisfactory progress under Clean Water Act § 319(h)(8). (See section IX.I.) Updates need not be comprehensive, unless warranted by significant program changes, but may focus on specific elements that are out-of-date. At a minimum, the update should ensure goals, objectives, and annual milestones are current. These state NPS management program updates must be reviewed and approved by EPA; their final approval resides with the EPA regional water division director.

C. Priority Setting and Targeting of § 319 Funds

State NPS management programs should articulate short and long-term water quality and programmatic goals/milestones, as well as the measures of success the state will use to assess progress in implementing its program. The NPS managment program update process is necessary to ensure implementation of an effective, targeted and relevant approach to address NPS pollution. NPS management programs should articulate areas of program focus and include a description of the state's strategy for prioritizing waters and watersheds in which to focus restoration and protection efforts. Further guidance on state priority setting in NPS management programs is provided in component 5 of appendix A. States should describe how this strategy will help them achieve the goals/milestones and measures of success outlined in the NPS management program. States may wish to consider a targeted approach (e.g., selecting a subset of key watersheds in which to focus § 319 funding each year) when setting priorities for watershed project funding.

Appendix B provides a list of potential measures and indicators of progress and success that states may wish to consider when developing or updating a targeted approach for the state NPS management program.

IV. Balance of Restoration and Protection Activities

NPS pollution continues to dominate water quality impairments throughout the United States. The most recent Clean Water Act § 305(b) data estimate that 53% of the nation's assessed rivers and streams, 66% of the nation's estuaries and bays, and 69% of the nation's lakes are impaired (www.epa.gov/waters/ir). EPA estimates that more than half of the waters identified on states' § 303(d) list of impaired or threatened waters are impacted primarily by nonpoint sources (water.epa.gov/resource_performance/planning/upload/FY13_OW_DraftNPMGdnce.pdf). Furthermore, an estimated 94% of the nation's TMDLs address waters that are either completely or partially listed for NPS pollution. (This estimate is captured using Expert Query at www.epa.gov/waters/tools.) Since 2002, the majority of § 319 funded projects have been targeted to restore NPS impaired waters. These and other efforts by state NPS programs and their partners have led to the partial or full restoration of more than 435 NPS impaired waterbodies since 2001 (www.epa.gov/nps/success).

Because of the vast and pressing problem of water quality impairments nationwide, and the primacy of NPS pollution as a cause of many of these impairments, through these guidelines EPA is maintaining the primary focus of § 319 funds on restoring impaired waters to meet water quality standards. This includes waters impaired by nonpoint sources and mixed sources and waters for which TMDLs have been developed. Under these guidelines, EPA requires that watershed project funds go toward restoring impaired waters through the implementation of WBPs or acceptable alternative plans. However, where a state has an updated NPS management program that identifies protection of unimpaired/high quality waters as a priority and describes its process for identifying such waters, there is flexibility to use a limited amount of watershed project funds for activities to protect identified waters following consultation with EPA through § 319 grant work plan negotiations. The proportion of § 319 watershed project funds allocated to protecting unimpaired/high quality waters could vary depending on the relative priority of restoration and protection activities in the state's NPS management program and the array of projects ready for § 319 funding and implementation in that particular year. States may also use NPS program funds to protect unimpaired/high quality waters.

This approach recognizes that while restoration of NPS-impaired waters remains the primary goal of the § 319 program, there are important water quality benefits and potential cost savings[6] from protecting high quality waters and preventing impairments in waters that currently meet water quality standards but whose condition is declining.

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[6] EPA has a fact sheet on the economic benefits of protecting healthy watersheds at water.epa.gov/polwaste/nps/watershed/ecoben_factsheet.cfm.

Activities necessary to implement WBPs or acceptable alternative plans for watersheds containing one or more impaired waters are considered to be restoration activities under these guidelines. As discussed in EPA's *Handbook for Developing Watershed Plans to Restore and Protect our Waters* (water.epa.gov/polwaste/nps/handbook_index.cfm), EPA expects WBPs to focus not only on the impaired segments within the watershed, but when possible, to identify currently unimpaired waters where protection and load reduction actions are necessary to ensure that high quality waters do not become impaired, and address conditions that may contribute to impairments downstream. In many cases, a mix of actions to restore waters and protect unimpaired waters may be necessary to comprehensively implement WBPs and successfully address NPS pollution.

Given limited resources, EPA understands that states cannot realistically address the restoration and protection of all watersheds in the state. Therefore, these guidelines emphasize the careful identification and prioritization of state NPS control activities to achieve the goals and milestones outlined in the state's NPS management program. States may wish to consider the following scenarios for prioritizing the protection of unimpaired/high quality waters:

- Watersheds or portions of watersheds with unique, valuable, or threatened species or critical aquatic habitats of these species;
- Waters and watershed areas (including ground waters where appropriate) that serve as source water for a public drinking water supply;
- Protection of high quality waters in watersheds that contain some impairments;
- Waters near geographic areas where rapid land use development is occurring;
- Waters where data trends indicate water quality degradation is occurring;
- Restored waters requiring continued water quality assessment and maintenance of BMPs to assure unimpaired status;
- Outstanding Natural Resource Waters or other state-defined categories of high quality waters;
- Watersheds contributing high nutrient loads to downstream waters.

Regardless of the prioritization method states use, it must be documented in the approved state NPS management program. EPA emphasizes that effective planning is always necessary to guide successful implementation of watershed restoration and protection projects. Planning requirements for projects undertaken with § 319 watershed project funds are outlined below. To ensure that EPA can account for the successes of protection efforts under the § 319 program, EPA plans to engage states and local partners to further discuss and consider appropriate planning frameworks and metrics specifically for watershed projects aimed at protecting unimpaired/high quality waters.

V. Watershed-based Planning

A. EPA's Continued Emphasis on Nine-Element Watershed-based Plans (WBPs)

For many years EPA has focused § 319 resources on watershed-based environmental restoration and protection, in which local stakeholders join forces to develop and implement WBPs to address NPS pollution based on the particular conditions in their communities. The watershed approach is a coordinating framework to organize public and private sector efforts to identify, prioritize, and then implement activities to address water-related problems (considering both surface and ground water). This approach is commonly characterized by diverse, well-integrated partnerships; a specific geographic focus action driven by environmental and public health objectives and by strong science and data; and coordinated priority setting and integrated solutions.

Due to the complex and diffuse nature of NPS pollution, the substantial costs to address it, and frequent reliance on voluntary action by individual landowners, successfully addressing NPS pollution to achieve water quality standards often requires years of support from a coalition of stakeholders, programs, and funding sources. Watershed-based planning helps address water quality problems in a holistic manner by fully assessing the potential contributing causes and sources of pollution, then prioritizing restoration and protection strategies to address these problems. In adopting the watershed approach over the past several years, state NPS programs have demonstrated their capability to solve NPS pollution problems. Most of the § 319 success stories document that multi-year, watershed-wide collaborations were required to deliver success.

Over the last several years states' success in restoring NPS-impaired waters through implementation of watershed-based efforts has demonstrated the critical role of watershed planning in effectively guiding NPS pollution control efforts. Additionally, a number of watershed assessment studies, such as USDA's Conservation Effects Assessment Project (CEAP), demonstrate the importance of sound planning to effectively guide project implementation. Between 2004 and 2011, USDA's National Institute of Food and Agriculture (NIFA) and NRCS jointly funded 13 projects to evaluate the effects of conservation practices on trends in water quality at the watershed scale. Findings from these NIFA-CEAP Watershed Assessment Studies demonstrated that more effective water quality outcomes are achieved when partners assess and plan conservation practice implementation at the watershed scale (in addition to the field or farm scale).

These studies found that planning at the watershed scale is needed to provide a comprehensive analysis of the causes and sources of pollution and to identify critical areas (i.e., those that generate the most pollution) in which to give priority to conservation practice implementation. In addition to selecting and applying practices that will be effective in addressing the pollutants of concern, conservation practice implementation was dependent on local willingness to adopt and maintain these practices.[7] The watershed-based planning approach can identify possible

[7] A summary of key findings from USDA's CEAP Competitive Grant Watershed Studies Synthesis Report is available here: www.nrcs.usda.gov/wps/portal/nrcs/detail/national/technical/nra/ceap/?cid=stelprdb1047821

implementation activities to address a water quality problem, and then prioritize these activities based on their relative contributions to NPS pollutant loads and the likelihood that they will be adopted and maintained by local partners.

National experience indicates that WBPs containing the nine elements identified in EPA's *Handbook for Developing Watershed Plans to Restore and Protect our Waters* (water.epa.gov/polwaste/nps/handbook_index.cfm) and in appendix C of these guidelines, provide an effective, integrated approach to address the diverse realities and needs of each watershed. WBPs provide a watershed-specific roadmap to guide cost-effective, well-informed restoration and protection efforts. EPA strongly supports this approach and continues to emphasize WBPs as the primary planning framework for § 319 watershed projects.

For WBPs in watersheds that contain wetlands, additional documents are available to assist planners to effectively incorporate wetland protection and restoration into their efforts. These include EPA Region 5's document entitled, *EPA Region 5 Wetlands Supplement: Incorporating Wetlands into Watershed Planning* (www.epa.gov/region5/agriculture), and a document produced by the Center for Watershed Protection, *Using Local Watershed Plans to Protect Wetlands* (2006) (www.cwp.org/documents/cat_view/73-wetlands-and-watersheds-article-series.html).

The level of detail needed to address the nine elements of WBPs will vary in proportion to the homogeneity or similarity of land use types and variety and complexity of pollution sources. EPA encourages states and WBP developers to refer to the *Handbook for Developing Watershed Plans to Restore and Protect our Waters* to assess the level of detail most appropriate to fully address their planning needs. EPA continues to require that watershed projects funded under § 319 directly implement a WBP addressing the nine elements. However, in select cases (described in section IX.B.ii), EPA may approve an alternative planning approach to guide implementation of watershed restoration or protection efforts. While watershed planning is an iterative and adaptive process, all plans (including WBPs and acceptable alternatives) should include the assessment necessary to provide assurance that the water quality problem can be fully addressed through the recommended management strategies outlined in the plan.

EPA encourages efficiency in the utilization of other relevant planning documents that contain some or all of the information needed to fulfill the elements of a WBP. Where necessary information already exists, is representative of current conditions, and is of sufficient quality and detail for the planning area the information may be used to fulfill some or all of the required (a) through (i) WBP elements. Examples of such documents include various state and local watershed planning documents like TMDLs and TMDL implementation plans, source water protection assessments and plans, Chesapeake Bay Watershed Implementation Plans, National Estuary Program Comprehensive Conservation and Management Plans (CCMPs) or NEP annual project work plans. In such cases, this information should be incorporated by reference in a WBP. States should ensure that WBPs, including any planning elements addressed through other existing documents, are readily accessible to watershed stakeholders and the public to maximize their utility in providing a coherent, comprehensive roadmap that can effectively guide restoration and protection efforts.

B. Balance Between Planning and Implementation

States and EPA regions should ensure that a proper balance exists between funding the development and implementation of WBPs and TMDLs to meet the approved milestones and schedules in the state NPS management program. On one hand, states should support the development of WBPs at a sufficient pace to advance implementation efforts funded through § 319 or other funding sources. On the other hand, WBP and TMDL development should not be funded at a pace that significantly exceeds the pace of implementation because these plans may become outdated before they are implemented. For those states where a large number of WBPs have been developed EPA encourages states to direct § 319 funds to the implementation of these plans if they are not being fully implemented with other sources of funding.

C. Integration of Watershed-based Plans and TMDLs

As noted in section II.D.ii, EPA encourages states to coordinate their efforts to develop and implement WBPs with efforts to develop and implement TMDLs. Where a TMDL for the affected waters has already been developed and approved or is being developed, the WBP must be designed to achieve the NPS pollutant load reductions called for in the TMDL. As described in section V.A, EPA encourages WBP developers to incorporate information from existing planning documents to meet the nine elements of a WBP. In cases where a TMDL and TMDL implementation plan exist and adequately address many of the nine elements of a WBP, EPA encourages states and WBP developers to incorporate such information by reference in the WBP.

However, where a TMDL has not yet been developed and approved, the state may use § 319 funds to develop a WBP in the absence of the TMDL. In such cases, the plan must be designed to reduce NPS pollutant loadings that are contributing to water quality threats and impairments. If a TMDL has not yet been developed, the WBP should be designed to attain water quality standards if possible, or should describe how the implementation of the WBP will make progress towards achieving water quality standards. In this way, progress towards achieving water quality standards continues even before a TMDL is established.

Once a TMDL is completed and approved, the WBP should be modified as appropriate to be consistent with the load allocation in the TMDL. Alternatively, through the course of implementing the WBP, the state may find that water quality standards are met, obviating the need to establish a TMDL. EPA believes that improving the integration of TMDLs and WBPs to implement NPS management measures will improve efficiency and help accelerate achievement of water quality standards.

D. Role of EPA Regions in Watershed-based Plan Review

EPA remains committed to ensuring that § 319-funded restoration and protection projects are guided by well-developed WBPs. Consistent with the past § 319 guidelines, EPA recognizes that the success of a state NPS management program rests significantly on developing good-quality plans and implementing them effectively.

Since 2006, EPA has conducted two national reviews of WBPs to evaluate how well stakeholders were meeting the challenge of developing high-quality WBPs in accordance with the nine minimum elements (see appendix C). Both reviews concluded that while some plans were robust and provided a good foundation for watershed projects, many plans did not contain sufficient information to support a fully successful implementation effort. Further, the reviews recommended that: greater care be taken in development of WBPs to ensure they provide as specific a roadmap to future actions in the watershed as reasonably possible; states and their watershed partners should have sufficient technical and financial capacity to develop robust plans; and EPA regions work more closely with states to ensure WBPs are adequate.

In an effort to achieve greater program consistency in the quality of WBPs, beginning in fiscal year 2014 EPA regions will annually review a sample of WBPs from each state in their region and provide feedback and recommendations to help ensure these plans lay a good foundation for efforts to restore and/or protect waters. Each EPA regional office will have the discretion to determine the appropriate number of plans to review each year. EPA expects that one WBP per state per year will serve as a minimum threshold from which to begin these discussions in fiscal year 2014 and that the actual number will vary based on regional and state experience and circumstances. EPA regions will select the plan(s) for review and conduct each review to assess whether the WBP meets the nine elements outlined in appendix C of these guidelines.

EPA regional feedback should serve as the basis for dialogue between EPA, the state, and the WBP developer to discuss any opportunities for WBP improvements. Upon completion of each WBP review, the EPA region will provide written feedback to the state, identifying any opportunities for improving the plan to align with the nine minimum elements. The state will then work with the WBP developer (if not the state) to review EPA regional feedback and provide a written response describing how the suggested improvements will be addressed. In general, EPA regions have the discretion to determine when WBPs meet the nine minimum elements and thus are acceptable for implementation with watershed project funding.

EPA regions are encouraged to review draft WBPs currently under development, particularly where § 319 funds support plan development. EPA regions should ensure that each WBP review is timely so as not to interfere with plan completion nor delay implementation of the WBP. In cases when the EPA region elects to review a WBP being developed through a § 319 subgrant, EPA and the state should coordinate EPA's review so that the subgrantee has ample time and resources to make any necessary revisions before the subgrant closes. In cases when the EPA region selects a completed WBP to review, for which the § 319 subgrant may have already closed, any adjustments to the WBP based on EPA feedback should occur prior to its implementation with additional § 319 funds. As described in section IX.B.ii of these guidelines, there are select cases when an alternative plan to a WBP can serve as an effective roadmap to guide watershed project implementation. In these cases, states may use watershed project funds to implement an acceptable alternative plan. EPA regions will review and approve all alternative plans proposed for implementation in the state's § 319 grant work plan to ensure required planning elements are adequately addressed.

VI. Measuring and Tracking Our Progress

To measure and track progress on a national basis, EPA's NPS program currently relies on two quantitative national program measures.[8] The first (measure WQ-9a,b,c) tracks the estimated annual load reductions of nitrogen, phosphorus, and sediment achieved by § 319- funded projects. The second measure, WQ-10, tracks the number of waterbodies identified by states as being primarily NPS-impaired that have been partially or fully restored as a result of restoration efforts. This measure is often referred to as the "success stories" measure. EPA believes these national program measures are important to illustrate the achievements by states to control NPS pollution through § 319 investments. For example, since 2007, states have reported success in over 435 waterbodies. This is a considerable achievement, as attaining water quality standards in impaired waters typically takes years of concerted effort and investment.

Even in light of these accomplishments, EPA recognizes that the national program measures are limited in scope and likely do not capture all state successes supported under § 319. EPA is considering options for improving national program measures for the NPS program as well as for several other water programs. For the NPS program, EPA's goal is to more effectively measure state efforts in improving water quality, short of the full or partial restoration captured in the "success stories" measure. EPA will also explore developing a measure to capture state successes in protecting unimpaired/high quality waters. Finally, EPA will be developing a mechanism to improve tracking outputs and outcomes achieved with NPS program and watershed project funds through § 319 grants.

In addition to the required national program measures, states may choose to adopt other measures of progress for their NPS programs. Appendix B of these guidelines contains an illustrative set of optional indicators and measures that can help the states and the public gauge the progress and success of their NPS management programs. State measures that are part of an approved state NPS management program will be considered by EPA for demonstrating progress toward meeting annual milestones under 319(h)(8). States may identify and use other indicators and measures that are most relevant to their particular NPS problems, programs, and projects.

In these guidelines we discuss the use of the § 319 program's Grants Reporting and Tracking System (GRTS) to track implementation of programs and projects, estimate pollutant load reductions, and report the amount of acres of wetlands and feet of riparian areas protected or restored. In addition, EPA's Watershed Assessment, Tracking and Environmental Results (WATERS) Information System, which combines a variety of water quality information including from state § 305(b) reports and § 303(d) lists, provides information that indicates when an impaired waterbody achieves water quality standards. (For more general information on WATERS, and on the Consolidated Assessment and Listing Methodology (CALM) that supports the § 305(b) and § 303(d) processes, see www.epa.gov/waters and www.epa.gov/owow/monitoring/calm.html.)

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[8] In addition to these two NPS program measures, EPA's measure on improving water quality conditions in impaired watersheds using the watershed approach (measure SP-12) is also important for tracking nationwide success in the NPS program.

VII. Annual Performance and Progress Determinations

EPA has a statutory obligation under § 319(h)(8) to determine that states make satisfactory progress in meeting the schedule of relevant annual milestones specified in their NPS management programs, and is prohibited from awarding grants under § 319(h) in the absence of such a determination. This is another essential reason that EPA is requiring NPS management programs be updated and kept current – so that program objectives and milestones are relevant for each grant period. Having an updated NPS management program will be an essential foundation for a finding of satisfactory progress. Further, a key recommendation from the § 319 program reform workgroup was to broaden the accountability process to encompass other aspects of § 319 grant performance in keeping with EPA's responsibility to ensure accountability for the management of § 319(h) grant funds. EPA is authorized by § 319(h)(10), as well as under its authority to make grants, to request certain information needed to determine continuing grant eligibility and performance.

Beginning in fiscal year 2012, EPA provided a national framework and standardized template for conducting these annual performance and progress determinations that encompass the requirement under § 319(h)(8), as well as key information regarding § 319(h) grant performance more broadly. Based on experience in fiscal year 2012 with feedback and input from EPA regions and states, EPA is issuing an update to this template for use in fiscal year 2014 and beyond. This update is included in appendix E: *Guidance and Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants.*

VIII. § 319 Funding Information

This section provides general information and guidance to states on topics of interest to § 319 grant recipients, including sub-sections on funding urban stormwater activities, source water protection activities, activities to implement CZARA, and NPS water quality monitoring. This section also provides § 319 grant-specific information, including an overview of the schedule for awarding § 319 grants. For specific requirements for state § 319 grant recipients, see section IX "Grants Guidelines."

A. Activities Eligible for Funding Under § 319

Approved state NPS management programs provide the framework for determining what activities are eligible for funding under § 319(h). These guidelines emphasize the use of § 319 funds for the implementation of WBPs to restore impaired waters and require states to set aside at least 50% of the § 319 funds for watershed projects that implement WBPs. This set-aside is referred to as watershed project funding. States may use the remaining 50% of the § 319 funds, referred to as NPS program funds, for the full range of activities that support the goals of the state NPS management program. NPS program funds may be used for non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, demonstration projects, and eligible NPS monitoring. In addition, states may use NPS program funds for planning activities such as revisions to the state NPS management programs, development or implementation of WBPs (or acceptable alternatives), and the development of NPS and mixed source TMDLs. States must demonstrate that a proper

balance exists between WBP/TMDL development and implementation activities supported by § 319 funds. Areas of program priority for a state, including (but not limited to) any of the activities listed below, should be identified in the state's NPS management program.

EPA encourages each state to use § 319 funds to restore and protect the priority waterbody types for the state including all types of surface water (and ground water if applicable) as identified in the state's NPS management program. For ground water, as in the past, EPA's policy is to award all § 319 grants under § 319(h), in lieu of awarding separate grants under § 319(i). For lakes, EPA encourages states to use § 319 funding for eligible activities that might have been funded in previous years under § 314 (Clean Lakes) of the Clean Water Act. EPA has made the decision to fund activities for lakes and ground water under § 319(h) to encourage integration of ground water and lakes activities with overall state NPS management programs, while maximizing state flexibility to consider and prioritize all causes and effects of nonpoint sources of water pollution.

Ground water activities are eligible for § 319(h) grants to the extent that they are identified directly in the state's NPS management program or through incorporation in the management program by reference to the state's ground water protection strategy, comprehensive state ground water protection program, or source water protection program. If such activities are not currently included in the state's NPS management program, the program should be amended to include them if § 319 funds are to be used for this purpose.

B. Urban Stormwater Runoff

§ 319 funds may be used to fund any urban stormwater activities that do not directly implement a final municipal separate storm sewer system (MS4) NPDES permit. EPA has issued regulations implementing NPDES permit requirements of § 402(p)(2) of the Clean Water Act ("Phase I" rule). Phase I, in place since 1990, requires operators of medium and large MS4s located in incorporated places and counties with populations of more than 100,000, certain industrial activities, and construction activities disturbing 5 acres of land or more to obtain an NPDES permit to discharge stormwater. (See 55 FR 47990, November 1990.) In 1999, EPA promulgated regulations under § 402(p)(6) which expanded the federal stormwater program with the promulgation of the "Phase II" rule. (See 64 FR 68722, December 8, 1999, www.epa.gov/fedrgstr/EPA-WATER/1999/December/Day-08/w29181a.htm.) Phase II requires operators of small MS4s (non-Phase I regulated MS4s) in "urbanized areas" and small construction activities disturbing between 1 and 5 acres of land to obtain an NPDES permit.

States may use § 319 funds for those urban stormwater activities that do not directly implement a final NPDES permit (e.g., not explicitly required in a permit or plan required by the permit) or an order applicable to regulated stormwater discharges under Clean Water Act § 402(p). These include aspects of Phase I and II activities that may support but do not directly implement activities required by Phase I or Phase II permits, as well as activities that go above and beyond permit requirements. In addition, states may use § 319 funds for stormwater management activities that are not subject to NPDES permitting requirements under either §§ 402(p)(2) or 402(p)(6).

EPA recognizes the benefits of integrating § 319 funds and stormwater activities as much as is legally allowable. EPA also recognizes the importance of green infrastructure and low impact development in managing stormwater and supports flexibility to fund these activities through § 319 where appropriate. Under many existing stormwater NPDES permits, green infrastructure that simulates natural hydrology by capturing stormwater where it falls and infiltrating, evapotranspiring, or harvesting and using it, often does not directly implement the terms of the permit. In these cases green infrastructure activities may be fundable under § 319. Specific examples include green roofs, infiltration basins, curb cuts and landscaped swales, and wetland/riparian area protection and restoration. Listed below are some urban runoff management activities in addition to green infrastructure that may generally be considered eligible for § 319 funding as long as they do not directly implement a final NPDES permit (this list is not meant to be comprehensive):

- Technical assistance to state and local stormwater programs;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- BMPs for pollution prevention and runoff control (except for BMPs that directly implement NPDES permits);
- Outreach and education programs outside of the general scope outlined within the NPDES permit;
- Technology transfer and training;
- Development and implementation of regulations, policies, and local ordinances to address storm water runoff (These may apply to areas covered by NPDES permits, provided that the regulations, policies and ordinances apply to non-permitted areas as well.); and
- Stormwater projects occurring outside of the NPDES permit area.

In addition to not being used to directly implement final NPDES stormwater permits, § 319 funds may not be used to implement permit application requirements of EPA's stormwater regulations. For example, § 319 funds may not be used to meet permit application requirements such as mapping stormwater systems, identifying illicit connections, characterizing stormwater discharges, or monitoring required by permits. § 319 funds may not be used to pay for BMPs or "end of pipe" treatments which are required as part of a NPDES permit. These prohibitions are based on the statutory limitations on the use of § 319 funds, including Congressional intent that these funds be used to address nonpoint sources, rather than permitted point sources. Congress determined that permitted point sources would generally comply with NPDES permit requirements without obtaining federal grants. (However, "publicly owned treatment works," which include publicly owned methods or systems for preventing, abating, reducing, storing, treating, separating or disposing of "stormwater runoff" are eligible to receive financial assistance under the Clean Water State Revolving Fund program.)

As stormwater permits continue to evolve, more of them may include retention-based requirements and greater specificity in required management practices. In this instance, a case-by-case consideration may be needed to determine eligibility of specific projects for § 319 funding. In these cases states should consult with EPA on § 319 funding eligibility. In addition, states should consider whether municipal governments are sufficiently utilizing other available

funding sources for innovative stormwater management, such as funds derived from stormwater-related fees and CWSRF financial assistance.

C. Source Water Protection

EPA's NPS program shares several common goals with the source water protection program under the Safe Drinking Water Act, and EPA seeks to improve the linkages and coordination between the programs. Source water information such as assessment reports and delineations, protection plans, drinking water program violation data, as well as source water partnerships can support targeted watershed protection efforts. EPA encourages the coordination of state NPS programs, the Drinking Water State Revolving Fund and the CWSRF in funding source water protection projects.

State NPS program staff should work with state source water protection coordinators (www.ASDWA.org/sourcewatercontacts) to leverage these opportunities. In addition, MyWATERS Mapper provides information about the density of drinking water intakes and wellheads at the 12-digit HUC level (watersgeo.epa.gov/mwm), as does the Nitrogen and Phosphorus Data Access Tool (NPDAT, www.epa.gov/nutrientpollution/npdat). The latter also provides modeling estimates of nitrogen loading.

EPA encourages states to integrate source water assessments and protection plans into their NPS planning efforts, and in doing so, to consider the effects of climate change on water quality and water availability. This will increase the coordination of programs, authorities, and funding sources to protect sources of drinking water from NPS pollution and improve the effectiveness and efficiency of both programs' efforts. States may use § 319 funds for source water protection projects for both surface water and ground water, consistent with the provisions of these guidelines.

D. CZARA Implementation

EPA encourages states with coastal nonpoint pollution control programs under § 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 ("CZARA") to use § 319 funds to assist in the implementation of management measures contained in these programs. CZARA requires states to "implement the program, including the management measures… through changes to the state plan for control of nonpoint source pollution approved under section 319…" State NPS program staff should therefore work closely with state coastal nonpoint program staff to coordinate the state coastal nonpoint pollution control program with the state NPS management program. For states with expired conditional approvals of their coastal nonpoint pollution control program, these guidelines specify that states set aside a portion of § 319 funds annually to complete the development of these programs. (See section IX.J.)

E. NPS Monitoring

EPA recognizes that monitoring is an important component of a state NPS program and is essential for documenting the restoration of impaired waters. EPA encourages states to use § 319

funds as appropriate for eligible NPS monitoring activities identified in the state NPS management program. (See section IX.E.)

i. Integration with Ambient Monitoring and Assessment Efforts

EPA encourages state NPS programs to coordinate with state ambient monitoring and assessment efforts to ensure that NPS monitoring needs are considered in the design and planning of the state water quality monitoring program. State NPS programs can benefit from leveraging existing ambient monitoring programs for water quality trends, using and expanding flow gauging stations, and coordinating with monitoring programs that routinely address water quality standards attainment through the use of state scale statistical surveys or monitoring on a rotating basin basis. Approaches that can provide useful information for the NPS program include ambient water quality monitoring (e.g., small watersheds, multiple watersheds, in-lake monitoring, monitoring by public water systems), beneficial use assessment (e.g., biological/ habitat assessment, attainment of biocriteria and water quality standards), tracking of implementation or land use activities affecting water quality (e.g., BMP audits, activity tracking, geographic information system tracking of land use and land management), and photographic evidence. Statewide monitoring councils, made up of local, state, university, and federal agencies involved in monitoring, can help state NPS programs by providing a forum for routine sharing of monitoring activities and by supporting efforts such as citizen monitoring programs.

States are also encouraged to explore other cost-effective approaches to conducting monitoring or obtaining available data. For example, the US Geological Survey, US Forest Service, US Bureau of Land Management, universities, US Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, USDA's Natural Resources Conservation Service, conservation districts, and others support assessment of various types and may house useful data. Some of these organizations can also provide technical support and monitoring assistance. In addition, volunteer monitoring programs are used by many states to obtain water quality data in a cost-effective manner. Any water quality monitoring or assessment program that has a quality assurance project plan that has been reviewed and approved by the state (allowing a level of confidence in the data as it is considered for use by the NPS management program) should be utilized as appropriate.

ii. National NPS Monitoring Program

To provide national documentation of the feasibility of controlling and preventing pollution from nonpoint sources, and to improve technical understanding of NPS pollution and the effectiveness of control technologies and approaches, EPA and many states have been implementing a rigorous and standardized monitoring framework that can be used for a representative subset of watershed projects funded under § 319. This framework is referred to as the National NPS Monitoring Program. Monitoring for this subset of selected watershed projects is being conducted at appropriate frequency intervals and for appropriately long periods of time that include monitoring before, during, and following implementation to ensure accounting for sources of variation.

EPA's National NPS Monitoring Program is an ongoing source of technical information and assistance for state NPS monitoring programs. EPA has developed a framework for selecting national monitoring projects, issued guidelines for minimum monitoring activities, and developed guidance on statistical methods for assessing, managing, and reporting data. To date, 28 national projects have been selected across the country through a rigorous but collaborative process involving the states, EPA regions, and EPA headquarters. Additional high-quality monitoring projects will be selected in future years using the same collaborative process. For all projects, EPA provides specialized technical support in project development, monitoring design, data management and analysis, and reporting. From time to time, and in close collaboration with relevant states and project managers, EPA will publish progress reports and results.

EPA encourages states to use the information generated from these projects to design the monitoring element of WBPs, collect pre-project baseline data, and track the success of WBPs. The 2011 status report on these projects can be found online at www.bae.ncsu.edu/programs/extension/wqg/319monitoring.

EPA has also published several detailed guidance documents to assist states and others in conducting monitoring programs to both track implementation and determine the success of on-the-ground projects in achieving water quality improvement goals. (See *Monitoring Guidance for Determining the Effectiveness of Nonpoint Source Controls*, U.S. Environmental Protection Agency, Office of Water, EPA 841-B-96-004, 1997 and other publications that are listed at water.epa.gov/polwaste/nps/pubs.cfm#monitoring.)

F. Allocation of Funds

EPA uses the allocation formula presented in appendix D to determine the amount of funding to be awarded to each state. The factors used in the allocation formula, as well as the weights used in the formula, have remained the same since the § 319 grants program began. Each year, after accounting for tribal § 319 program funds, the Congressional appropriation for § 319 will be multiplied by the applicable percentage presented in appendix D to determine each state's allocation for that year. Upon receiving the annual Congressional § 319 appropriation and final Agency Operating Plan, EPA headquarters will notify the EPA regional offices of each state's allocation, and the regions will notify the states. In advance of the final appropriation, the EPA regions and states will begin grant negotiations based on the previous year's award amount or the President's budget, whichever is higher, as described in Grants Policy Issuance 12-06, *Timely Obligation, Award, and Expenditure of EPA Grant Funds*.

G. Schedule for Awarding § 319 Grants

i. State Project Solicitation and Selection Process

States are strongly encouraged to begin their internal project development and project solicitation processes (such as identification of priority areas for funding and request for proposals (RFPs)) as early as possible to ensure that project proposals are secured in advance of, or as early as possible in, the fiscal year for § 319 grant award. States should reference their approved state NPS management programs (e.g., in a request for proposal) so that project sponsors are focusing

on activities consistent with the state NPS management program. States and EPA regions are also encouraged, where feasible, to discuss proposed projects prior to submission of the draft work plan to EPA program staff so that the subsequent submission can be reviewed and approved quickly. In particular, EPA encourages states to submit subgrantee project proposals to EPA as soon as possible if they believe that there are difficult issues that may arise (e.g., whether the proposed project is legally fundable or meets criteria established in applicable guidelines) or if they desire technical assistance from EPA. EPA will approve projects for funding through the approval of state § 319 work plans.

EPA encourages states to review and make appropriate adjustments to state project solicitation processes and project selection criteria as necessary to ensure that criteria reflect the priorities in the state's NPS management program. Project selection criteria are critical to ensuring the selection of well-designed projects implemented by project proponents with the capacity to deliver water quality improvements.

EPA regions will ensure subgrants comply with EPA's Assistance Administration Manual 5700, Part 2, Section 01, *Subawards Under EPA Assistance Agreements*.

ii. Process for Awarding § 319 Grants

EPA recognizes that there is a wide variation among states for awarding § 319 grants (e.g., due to differing fiscal years, state RFP processes), and is presenting this process to provide a general outline of the steps to be followed without dictating a uniform schedule for state submissions. EPA regions should review and comply with Grants Policy Issuance 12-06, *Timely Obligation, Award, and Expenditure of EPA Grant Funds*, and Grants Policy Issuance 11-01, *Managing Unliquidated Obligations and Ensuring Progress under EPA Assistance Agreements*. Among other provisions, these policies limit most grants to 5-year project periods, and require EPA regional program offices to negotiate a target outlay strategy with their states to ensure the timely drawdown of federal funds.

Prior to beginning the award process, EPA regions will discuss with each state a submittal/negotiation schedule to ensure timely award of the § 319 grant. If any national annual guidance is needed, EPA headquarters will strive to issue such guidance as early as possible in the preceding fiscal year.

- **Step 1: States begin subgrantee proposal processes, if applicable.**
  States should expeditiously implement their processes to develop or solicit subgrantee proposals (e.g., the RFP process used by many states to solicit grant projects). States are encouraged to solicit input from EPA regions on draft state RFPs when appropriate. They should also develop expeditious processes to review project proposals and select the top projects for inclusion in their draft work plan. States should provide clear written guidance to all project applicants to assure they are aware of federal requirements for project eligibility, state NPS program priorities, and state criteria for project selection. If the state is soliciting projects for the protection of unimpaired/high quality waters, the state should provide project applicants with

specific selection criteria consistent with this priority in their state NPS management program.

EPA regional involvement in the state subgrant process will follow EPA's Assistance Administration Manual 5700, Part 2, Section 01, *Subawards Under EPA Assistance Agreements*.

- **Step 2: States submit draft work plans to EPA regional office.**
  Each state will submit a draft work plan to EPA regional program staff. Each EPA region will work closely with the state to provide input as the state develops the grant work plan. EPA regions must be able to determine from the draft work plans that they conform to all applicable legal requirements of § 319, EPA's general grant regulations in 40 CFR parts 31 and 35 Subpart A, (www.epa.gov/quality/qa_cfrs.html), the requirements of OMB Circulars[9] A-21, A-87, A-102, A-110, A-122, A-133 (www.whitehouse.gov/omb/circulars_default) and all other applicable EPA orders and policies including these guidelines. The EPA region will work with the state to ensure that the work plan (1) is designed to help achieve the goals and objectives contained in these guidelines and in the state's NPS management program, and to assess the state's success in meeting these goals; (2) has programmatic, technical, and/or scientific merit; (3) includes costs that are eligible, reasonable, necessary, allowable and consistent with the grant, including costs for state and local staff; (4) is well-coordinated with other state and federal programs; (5) identifies and resolves gaps between program objectives and planned activities; (6) clearly identifies the specific outcomes, outputs, and other results (e.g., water quality restoration targets) that are linked to funding and includes target dates and milestones for achieving them; (7) facilitates tracking progress toward national goals in reducing NPS pollutant loads and in achieving and maintaining water quality standards.

- **Step 3: EPA regions conduct reviews of state draft work plans and provide comments to the state.**
  EPA regional staff will review each state's draft work plan and communicate with the state to resolve any technical or administrative issues. EPA regions will strive to conduct such reviews and provide feedback to states as quickly as possible. This feedback should focus on consistency with the factors described in step 2 above. EPA regions may also provide technical comments to the state on ways in which particular proposed projects or programs could be clarified, improved, or otherwise modified to result in a better project or program.

- **Step 4: States submit final work plans and grant applications to EPA regions.**
  States are encouraged to submit final work plans and grant applications to EPA regions as quickly as possible. States should contact EPA to discuss any questions and

[9] Four of these OMB Circulars have been codified in 2 CFR. Listed in the same order as the text above, they have been codified as 2 CFR Part 220, 2 CFR Part 225, not codified, 2 CFR Part 215, 2 CFR Part 230, and not codified.

the intended responses to EPA comments on the draft work plan, and the final work plan must address all comments.

- **Step 5: EPA regions award grants to state.**
  Each EPA region will review final state grant work plans. If a state work plan meets all the requirements described under steps 2 and 3 above, the EPA region will award the final grant as quickly as possible. EPA regions will conduct final reviews of complete state work plans and approve the work plan within 60 days of receipt (see 40 CFR Part 35.110). Where any issues remain unresolved, the EPA region and/or the state will elevate discussions to more senior management levels to quickly achieve resolution. The EPA region will strive to inform a state within 30 days of receipt of the state's grant application if the state application is not complete. In the event that funds cannot be fully awarded to a particular state within a reasonable time, the region may reallocate the funds to another state.

  The grant award is contingent upon the EPA region determining in writing that the state has made "satisfactory progress" in the preceding fiscal year in meeting the schedule and milestones specified in the state NPS management program. (See section IX.L.)

- **Step 6: States obligate funds as expeditiously as possible.**
  States will obligate the awarded funds as quickly as possible and conduct funded activities according to the schedules contained in the approved work plan. EPA has interpreted § 319(h)(6) to provide that § 319 funds granted to a state shall remain available for obligation to subawards and contracts by the state for one year from the grant award. For example, grant funds awarded to a state on December 1, 2013, remain available for obligation until December 1, 2014. The amount of any such funds that cannot be obligated by one year from the grant award shall, under § 319(h)(6), be available to EPA for granting to other states. EPA regions should include in each grant a condition requiring the grant recipient to award all proposed subgrants, contracts and interagency agreements within one year after the grant award.[10] Note that the term "obligate" does not mean to "expend." As defined in 40 CFR 31.3, "obligations" means "the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period of time that will require payment by the grantee during the same or a future period." (ecfr.gpoaccess.gov)

  EPA recognizes that each state has a different process, often governed or influenced by state laws, regulations, or control mechanisms that result in varying time periods for subgrants and contracts to implement projects. States should make every effort, including modifying state procedures, if appropriate, to assure that the funds are made available to project implementers as soon as possible after the grant is awarded to the state.

[10] This grant condition and others, including the sufficient progress term and condition to comply with GPI 11-01, are included in EPA's nationally consistent § 319 grant terms and conditions list for fiscal year 2014 and beyond (see appendix F).

iii. State Expenditure of Awarded Funds

Funds appropriated by Congress should be efficiently and effectively used for their intended purpose, and should not remain unused for significant amounts of time. States must expend appropriated and awarded funds as rapidly as practicable based on the approved work plan and the funds outlay strategy negotiated by the region and the state. Where states are funding multi-year watershed project subgrants, the preferred approach may be to award the funds gradually over a period of years rather than to award all of the funds at one time, to increase the rate of expenditure of awarded funds. EPA will continue to work with the states to streamline the § 319 grant award process and to facilitate best practices to ensure the rate of expenditure of § 319 funds is appropriate and commensurate with the outlay strategy and approved work plan negotiated with the state, and that all funds awarded to the state are drawn down within the 5 year project period.

H. Relationship to PPGs

Performance Partnership Grants (PPGs) are grant delivery tools that allow states and tribes to combine up to 20 eligible State and Tribal Assistance Grant Program grants, including Clean Water Act § 319 grants, into one multi-program grant. PPGs typically reduce administrative costs by streamlining paperwork and accounting procedures, provide flexibility to direct resources toward the highest priority environmental problems, and support cross-media approaches or initiatives. Administrative benefits typically include a single grant work plan, budget, performance progress report, and federal financial report. Additionally, the PPG non-federal cost share is a composite of the cost shares for each of the grants in the PPG and can be met using any combination of the appropriate funds the state has available.

The § 319 funds are eligible for inclusion in a PPG. States that wish to include the § 319 grant in a PPG should use these guidelines to develop their NPS work plans. Many states use a Performance Partnership Agreement (PPA), or portions of the PPA, as the PPG work plan. All state grant work plans, including PPGs, must meet the requirements of 40 CFR 35.107(b) and the portions of the PPA that serve as a grant work plan must meet all of these requirements. In addition, the portions of the PPA that are used as the work plan must be clearly identified and distinguished from other portions of the PPA and meet the requirements in 40 CFR 35.107(b). (See 40 CRF 35.107(c)(1).) PPG work plans also are required by 40 CFR 35.107(b) to specify workplan components to be funded under the PPG and the related NPS activity category and the work plan commitments to be produced for each category. (See 40 CRF 35.268(d)(4).) (See the Code of Federal Regulations at ecfr.gpoaccess.gov.)

States with § 319 funding included in PPGs are subject to the same program reporting, evaluation, and other accountability requirements contained in EPA's grants regulations. As with any other EPA grant, states are held accountable for achieving the outcomes and outputs set out in PPG work plans. States are required to submit work plans, annual reports, and to provide reporting under the GRTS at a level of detail to ensure that EPA regions can measure and track outcomes and outputs to ensure accountability. To meet basic NPS national program requirements under these guidelines, PPG states will be required to identify work plan outcomes and outputs as NPS program or watershed project funded work, and to provide other identifiers

such as whether a project is focused on restoration or protection. However, states will not be required to track specific fund expenditures via GRTS under the PPG.

In keeping with the goals of PPGs, 40 CFR 35.107(a)(1) provides flexibility for states to propose grant work plans that differ from the goals, objectives and measures in the *National Water Program Guidance* (water.epa.gov/resource_performance/planning). If a state proposes a work plan that is significantly different from the goals and objectives, priorities, or core performance measures for NPS activities in the *National Water Program Guidance*, the regional administrator must consult with the NPS national program manager before agreeing to the work plan.

I. Multi-Year Work Plans

EPA encourages states to develop multi-year work plans for § 319 grants when a multi-year work plan can improve efficiency in grants management or program implementation. For example, the state may wish to present a three-year work plan which would guide the state's grant activities for the next three years. This work plan, when approved by EPA, would not have to be resubmitted and re-approved except to the extent that the state wishes to change it to address new circumstances. In addition to the information required in section IX.H below, the work plan should include the interim milestones and final dates for completion of activities. The interim milestones should be sufficiently frequent to assure timely performance throughout the project period, so that the state can identify problems and correct them expeditiously.

For multi-year awards, states should apply for the total amount of funds expected for the period covered by the award and include any required match in the application; the state work plan should cover the same time period. EPA will fund the application incrementally as funds become available.

The multi-year planning approach can reduce paper work and improve long-term planning and implementation with respect to both programmatic activities and specific watershed projects. States and EPA will, however, retain the option of negotiating modifications to multi-year work plans on an annual basis.

IX. Grants Guidelines

A. Use of § 319 Funds

§ 319 grants must meet certain statutory, regulatory and other administrative criteria that have been established to ensure that § 319 funds are used in a fiscally prudent manner. All § 319 grants must be consistent with applicable provisions of § 319 of the Clean Water Act; EPA's general grant regulations in 40 CFR parts 31 and 35 (ecfr.gpoaccess.gov); OMB circulars; applicable EPA Orders and Policies, and these guidelines.

State NPS program managers should note EPA’s grant regulations at 40 CFR Part 35. (See 66 FR 1725-1747.) These regulations contain sections 35.260--268, which address the purpose of NPS management grants (section 260); the maximum Federal share (section 265); the

maintenance of effort requirement (section 266); and some of the award limitations contained in § 319 (section 268). (The full Code of Federal Regulations can be found at ecfr.gpoaccess.gov.)

B. Watershed Project Funds

i. 50 Percent of Total § 319 Funding for Watershed Project Implementation

States must use at least 50% of the annual appropriation of § 319 funds (watershed project funds) to implement watershed projects guided by WBPs. (WBPs are described in section V.A of these guidelines and WBP elements are outlined in appendix C). In select scenarios as outlined below, projects may implement acceptable alternative plans to a WBP.

These guidelines further require that watershed project funds go toward restoring impaired waters through the implementation of WBPs or acceptable alternative plans. Activities necessary to implement WBPs or acceptable alternative plans for watersheds containing one or more impaired waters are considered restoration activities. Where a state has an updated NPS management program that identifies protection of unimpaired/high quality waters[11] as a priority and describes its process for identifying such waters, there is flexibility to use a limited amount of watershed project funds for activities to protect identified waters following consultation with EPA through § 319 grant work plan negotiations. The proportion of watershed project funds allocated to protecting high quality waters could vary depending on the relative priority of restoration and protection activities in the state's NPS management program and the array of projects ready for § 319 funding and implementation in that particular year.

Protection projects can reduce or eliminate current and future threats to unimpaired/high quality waters. Because EPA's current program measures are primarily aimed at tracking the restoration of impaired waters due to NPS pollution control efforts (pollutant load reductions, waters improving or restored to water quality standards), EPA encourages states investing in protection to adopt programmatic measures and indicators aimed specifically at measuring the environmental and water quality results of protection efforts. (See appendix B for a list of measures and indicators to consider.) In the near future, EPA will also give consideration to other potential measures of success for the § 319 program, including measures for protection efforts. To ensure that watershed project funds go to restoring impaired waters, EPA will enable GRTS to track § 319-funded watershed projects according to their primary goal: restoration or protection.

Watershed project funds may not be used for planning activities such as WBP and TMDL development. However, as part of a 319-funded project to implement an existing completed WBP whose technical analyses may need minor updates, EPA regions may allow states to use a very limited amount of watershed project funds to support necessary technical revisions (e.g., updates to watershed modeling to account for changes in land use) as part of a project to implement that WBP. In these instances watershed project funds may not be used to conduct

[11] For example, a state may wish to identify headwater streams, wetlands, and/or other high priority unimpaired waters for protection.

other planning work related to the WBP including more general updates to the plan, soliciting public comment, etc.

ii. Alternatives to Nine-Element Watershed-based Plans (WBPs)

As discussed in section V.A. of these guidelines, effective planning is always necessary to successfully guide watershed restoration or protection efforts. National experience indicates that WBPs provide an effective, integrated approach to address the diverse situations and needs of each NPS-impaired watershed. WBPs provide a framework to comprehensively assess the causes and sources of NPS pollutants contributing to impairment, and then prioritize restoration and protection strategies to address these water quality problems. The level of detail needed to address the nine elements of WBPs will vary depending on the scale and complexity of pollution sources. EPA continues to expect that states will put the primary focus of § 319-funded watershed projects on implementing WBPs to restore impaired waters.

EPA recognizes that many states and local groups already have in place or are developing watershed plans and strategies at varying levels of scale, scope, and specificity that might contribute significantly to the elements of a WBP. EPA encourages states and others to build on existing planning documents that adequately address some or all of the required (a) through (i) WBP elements. Existing planning documents, such as TMDLs and TMDL implementation plans, may serve as valuable building blocks for a WBP and where applicable, should be incorporated by reference in the WBP.

In a few select cases listed below, EPA recognizes that alternative plans to a WBP may provide an effective roadmap to achieve the water quality goals of § 319-funded restoration or protection efforts. In such cases, states must provide the EPA region with justification for why a complete WBP is not necessary and why an alternative plan is sufficient to guide watershed project implementation. This justification may be described through, or included in, the state's § 319 work plan.

Except when addressing a NPS pollution emergency or urgent NPS public health risk, EPA requires that all projects implementing a WBP or acceptable alternative plan directly address priorities outlined in the state NPS management program. Additionally, the state must ensure that alternative plans reflect a geographically-appropriate scale to achieve water quality goals. Prior to implementation, all plans should include analysis sufficient to ensure that the water quality problem or threat can be fully addressed through the recommended management strategies outlined in the plan.

EPA regions will review and approve all alternative plans proposed for implementation in the state's § 319 grant work plan to ensure the following planning elements are adequately addressed:

- Identification of the causes or sources of NPS impairment, water quality problem, or threat to unimpaired/high quality waters;
- Watershed project goal(s) and explanation of how the proposed project(s) will achieve or make advancements towards achieving water quality goals;
- Schedule and milestones to guide project implementation;

- Proposed management measures (including a description of operation and maintenance requirements) and explanation of how these measures will effectively address the NPS impairment identified above; and
- Water quality results monitoring component, including description of process and measures (e.g., water quality parameters, stream flow metrics, biological indicators) to gauge project success.

EPA regions may approve the use of watershed project funding to implement alternative plans containing the above elements in the following circumstances:

a. When the impairment is not specific to a pollutant.
The current WBP approach places emphasis on identifying major NPS pollutant sources in critical areas as well as planning for and achieving NPS pollutant load reductions. In scenarios where the impairment is not caused by a pollutant, but rather by a non-pollutant-based water quality problem (e.g., obstructions for migratory fish or addressing flow regime alterations), an alternative plan may be sufficient to guide § 319 funded watershed projects. In such cases, the state should provide assurance that appropriate watershed analyses were conducted to ascertain that the water quality problem will be fully addressed by dealing with the non-pollutant source of impairment.

b. When responding to a NPS pollution emergency or urgent NPS public health risk.
In scenarios when the proposed § 319 project(s) responds to an urgent, unplanned NPS pollution emergency or urgent NPS public health risk in an area for which a WBP does not exist (e.g., efforts to control erosion and re-establish vegetation in the immediate aftermath of a forest fire, to reduce pollution affecting drinking water safety), an alternative plan may be developed to ensure the timely, targeted use of watershed project funds.

c. When protecting assessed unimpaired/high quality waters.
Where a watershed includes both impaired and unimpaired/high quality waters, a WBP should be developed to address all actions needed to maintain and restore water quality. In scenarios where a state has assessed waters that are largely or fully attaining water quality standards and are located in watersheds where only protection actions are needed (i.e., measures to prevent future degradation), an alternative to a WBP may be warranted.

d. When addressing an isolated, small-scale water quality problem resulting from one or a few sources of pollution.
An alternative plan may be acceptable when the NPS problem and solution are extremely limited in scope and scale, such that the water quality problem is caused by one or a very few pollution sources (e.g., a failing septic system). In such cases, the state must demonstrate (through up- and downstream monitoring, watershed characterization studies, etc.) that this impairment is isolated from other potential contributing causes/sources of pollution in the watershed. Additionally, the state must provide assurance that the proposed watershed project will fully address the water quality

problem within one grant period. In meeting these conditions, the state will ensure that multiple smaller problems are not dealt with in a piecemeal fashion when they are actually part of a larger water quality problem involving multiple pollution sources in the watershed.

iii. Types of Staff Activities Eligible for Watershed Project Funding

States may use watershed project funds to support all eligible activities that implement a WBP or acceptable alternative plan. This includes funds to support staff for time spent directly implementing a WBP or acceptable alternative plan.[12] As watershed project implementation is, for the most part, a locally-driven and managed process, EPA expects that the majority of staff supported with watershed project funds will be local staff. To the extent that state staff play a direct role in implementing watershed projects (see below for a list of examples of eligible staff activities), these staff activities may be eligible for watershed project funding. As described below, state staff time spent providing watershed project oversight (e.g., managing subgrantee work plans, progress reports, project deliverables) or managing other statewide NPS efforts (e.g., NPS program coordination, statewide NPS education and outreach, general NPS water quality monitoring) is not eligible for watershed project funding, so must be supported with NPS program funds.

The following lists provide examples of the types of staff activities that may be eligible for watershed project funding. As all activities are ultimately contingent on EPA approval of the state § 319 grant work plan, EPA requires that work plans clearly describe all proposed staff activities to be supported with § 319 funds, including a description of how watershed project-funded staff will directly implement a WBP or acceptable alternative plan.

Watershed project funds may be used for staff time spent providing technical assistance in the prioritization and implementation of BMPs, including but not limited to activities such as:

- Implementing a local cost share program to fund BMPs in critical areas described in the WBP or acceptable alternative plan.
- Providing one-on-one technical assistance to confirm landowner participation in watershed project(s) and to determine which suite of BMPs are most appropriate to achieve water quality targets articulated in a WBP or acceptable alternative plan.
- Providing technical expertise with siting and designing BMPs.
- Tracking implementation efforts in the watershed to evaluate progress towards the water quality targets in the WBP or acceptable alternative plan.

In addition, watershed project funds may be used for staff time spent implementing watershed restoration and/or protection projects through activities such as:

- Providing coordination support among key partners in addressing NPS pollution within the watershed.

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[12] Where a single § 319 project funds both the development AND initial implementation of a WBP or acceptable alternative plan, a state may use watershed project funding for the component(s) of the project aimed at implementing the WBP or acceptable alternative plan.

- Leveraging and targeting other state, private, and non-§ 319 federal funds in the watershed.
- Conducting targeted local education/outreach events (such as technology transfer workshops) that promote the voluntary implementation of BMPs.
- Providing technical assistance to support the implementation of a watershed restoration or watershed protection project.
- Subgrantee time spent managing project work plans, deliverables, reimbursements, modifications, and reporting for watershed project(s).
- Water quality results monitoring to assess the effectiveness of on-the-ground activities to improve water quality **as part of the implementation of a completed WBP** or acceptable alternative plan, regardless of the entity conducting this monitoring.[13]
- Monitor water quality results in NWQI watersheds including, if necessary, in cases where a WBP has not been developed.

C. NPS Program Funds

NPS program funds comprise up to 50% of the total state § 319 funding allocation and may be used for the full range of activities to support the goals of the state's approved NPS management program within the parameters provided by these guidelines and other applicable statutory, regulatory, and administrative criteria. This includes all activities eligible for watershed project funding, such as projects to implement watershed-based plans for the restoration of impaired waters. As with watershed project funds, states may use NPS program funds to support eligible NPS activities at the state level or through § 319 subgrants. These funds may be used for non-regulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects to achieve implementation of best management practices and water quality goals. Under these guidelines all planning activities funded by § 319, including the development of WBPs and TMDLs, must be conducted using NPS program funds. Given the critical role watershed planning can play in effectively guiding project implementation, EPA encourages states to develop WBPs or acceptable alternative plans to guide watershed projects funded with NPS program funds, as well as with other non-§ 319 funds. NPS program funds may also be used for protection of unimpaired/high quality waters including healthy watersheds assessments, actions, and leveraging of other sources of funding for watershed protection.

D. National Water Quality Initiative

To support the NWQI in fiscal year 2014 (and subsequent years in which the NWQI continues) states with NWQI watersheds will devote sufficient § 319 resources in their grant work plans to coordinate with NRCS on selection of such watersheds. States with NWQI watersheds recommended by the state water quality agency will plan for and provide appropriately designed and timed water quality monitoring in selected watersheds where circumstances are aligned to assess the effects of conservation practices. EPA will elaborate on these expectations and provide

[13] Baseline monitoring, monitoring to identify sources or characterize a watershed, and monitoring to support the development of a WBP or TMDL are <u>not eligible</u> for watershed project § 319 funding.

proposed selection criteria for watersheds to be monitored in forthcoming guidance and technical information. States are encouraged to use their existing monitoring and QA/QC approaches. Monitoring approaches should consider the extent of conservation practices put in place in the watershed and the lag time between adoption of conservation practices and expected water quality results.

E. Monitoring Activities

States may use § 319 funds for the following eligible NPS monitoring activities:

- NPS program funding may be used for monitoring in specific waterbodies consistent with the state NPS management program to (1) identify nonpoint sources of pollution, (2) support the development of a WBP or acceptable alternative plan, or a NPS or mixed-source TMDL, or (3) evaluate the restoration of NPS-impaired waters following implementation of NPS pollution control project(s) funded by § 319 or other sources.
- Watershed project funding may be used for water quality results monitoring to assess the effectiveness of on-the-ground activities to improve water quality (e.g., pollutant loading trend analysis) **as part of the implementation of a completed WBP** or acceptable alternative plan, regardless of the entity conducting this monitoring.
- Both NPS program and watershed project funding may be used to monitor water quality results in NWQI watersheds including, if necessary, in cases where a WBP has not been developed.

Monitoring that is not targeted toward identifying nonpoint sources of pollution, developing a WBP or TMDL, or assessing the impact of NPS pollution control activities is ineligible and may not be supported with either NPS program or watershed project funds.

F. TMDL Development Activities

NPS program funds may be used for the development of NPS-only and mixed source TMDLs. EPA strongly encourages states to prioritize § 319-funded TMDL development in NPS priority watersheds (identified in the state's NPS management program) where local partners are poised to plan and implement management strategies sufficient to achieve the TMDL load reductions in the near future. As discussed in section II.D.ii of these guidelines, it is desirable for states to integrate TMDL and WBP development to achieve greater efficiencies in addressing the common elements required in these planning documents.

In order to ensure § 319-funded TMDLs have maximum utility for informing and facilitating the implementation of NPS projects, as a condition of using § 319 funds to develop TMDLs, the state will include the following supplemental information to support the load allocations specified in the TMDL: (1) an identification of total NPS existing loads and total NPS load reductions necessary to meet water quality standards, by source type; (2) a detailed identification of the causes and sources of NPS pollution by source type to be addressed in order to achieve the load reductions specified in the TMDL (e.g., acres of various row crops, number and size of animal feedlots, acres and density of residential areas); and (3) an analysis of the NPS management measures by source type expected to be implemented to achieve the necessary load

reductions, with the recognition that adaptive management may be necessary during implementation.

Provision of this supplemental information will facilitate the development of WBPs by providing a sufficiently detailed assessment to comprise elements (a) and (b), and parts of element (c) of the WBP, at least for the portions of the watershed to which the TMDL applies. (See appendix C for a description of WBP elements.) This will also promote greater efficiency in integration of TMDLs and WBPs in that states will be able to use this additional information submitted with the TMDL to inform the WBP. Because the submission of this additional information is a § 319 NPS program requirement, the information provided may be reviewed for adequacy by EPA regional NPS program staff as part of the grant oversight process. Such review is separate from the review by EPA regional staff pursuant to Clean Water Act § 303(d) and EPA's TMDL regulations at 40 CFR Part 130.7, of the proposed TMDLs submitted by states.

EPA encourages state NPS staff to work with state TMDL staff during TMDL development. NPS staff can bring knowledge of BMP effectiveness and feasibility to ensure that NPS load reduction goals in the TMDL are achievable. Additionally, coordination between the two programs will provide a smoother transition from development of the TMDL to its implementation.

G. Exemption from 50 Percent Watershed Project Funding Requirement for Substantial State Fund Leveraging

EPA recognizes and expects that all states devote and leverage significant non-federal resources in the course of implementing their NPS management program. This is required through the 40% non-federal match for each § 319 grant, and leveraging well beyond match is expected as a best practice for implementation of state NPS management programs. This expectation is articulated in EPA's guidance *Key Components of an Effective State Nonpoint Source Management Program* (see appendix A). Most states routinely engage a wide array of state programs and agencies, federal programs, and local stakeholders in the implementation of their NPS programs, leveraging staff and funds to address NPS pollution problems. In fact, the § 319 success stories demonstrate that this type of sustained partnership building and leveraging is foundational to achieving water quality results.

This exemption provision applies to states that go well beyond this expected level of funds leveraging. To encourage leveraging of CWSRF and other state or local funding sources, these guidelines provide an exemption to the 50% watershed project funding allocation requirement for states that invest substantial state and/or local funding towards NPS watershed project implementation as defined by these guidelines. If a state qualifies for this exemption, federal watershed project funds allocated to the state may be used for the full range of activities to implement approved state NPS management programs, subject to these guidelines. To qualify for this exemption, states must demonstrate that state or local funding equivalent to the state's total federal § 319 allocation (i.e., twice the total amount of a state's watershed project funds) will be used for implementing WBPs or acceptable alternative plans for watershed restoration and/or protection projects aligned with the priorities described in the state NPS management program.

Consistent with the greater emphasis in these guidelines on watershed implementation, EPA wants to ensure that this exemption results in more, not less, on-the-ground implementation of watershed projects. If local funds are used to meet this exemption, the state must have a mechanism in place to ensure that the projects will meet the goals of the watershed project funding requirement, and that the projects will be completed.

As expected with § 319 funded projects, states must include all of the state or locally funded projects used to meet this exemption in the annual § 319 grant work plans. Additionally, all state or locally funded projects used to meet this exemption must be reported in EPA's Grants Reporting and Tracking System (GRTS) in the same manner as § 319 funded projects and all nationally-mandated elements are required for these projects.

No federal funds may be counted toward this leveraging exemption. However, "recycled" CWSRF funds[14] may be used after they have been loaned and paid back to the state. (Note that CWSRF funds can only be used for CWSRF eligible activities.) Other federal funding for NPS projects, such as USDA's Farm Bill resources, may not be used to meet this exemption. Non-federal funds used to meet the required 40% match for the § 319 grant award may not be used to meet this exemption.

H. § 319 Grant Work Plan Requirements

§ 319 of the Clean Water Act provides that § 319 grants are to be made to assist the states in implementing state NPS management programs. The state grant work plan must be designed to "implement" the approved state NPS management program. Each funded program activity or project in the state grant work plan must lead to accomplishment of management program objectives identified in the updated state NPS management program. State grant work plans must link the funded activities or projects to the relevant element(s) of the state NPS management program. State grant work plans must comply with all applicable EPA orders, policies, and guidelines/guidance.

For each of the § 319 grant projects and activities proposed, the state grant work plan should include a brief and concise synopsis explaining the state's strategy for using § 319 funds in the current fiscal year. This synopsis should outline the following:

- The problems to be addressed; the task's goals and objectives;
- The lead implementing agency and other agencies that will be authorized to expend project funds;
- The types of measures or practices that will be implemented;
- The projected implementation schedule;
- The outputs to be produced; and
- The environmental outcomes supported by the tasks, as well as the indicators and/or other performance measures that will be used to evaluate success.

[14] "Recycled" CWSRF funds are funds that have been loaned by the state and subsequently repaid by the borrower to the state.

Activities funded with § 319 watershed project funds should be clearly identified as such in the state work plan. The state work plan synopsis should provide references to locate the WBP or acceptable alternative plan for the project including online sources where available. Additionally, work plans must identify the water quality targets, anticipated outcomes and outputs of the selected projects.

State work plans must include well-defined outputs and outcomes to the maximum extent practicable. Outputs for activities should always be quantified whenever it is practicable to do so (e.g., all on-the-ground implementation projects must have quantified outputs). States that include all or a portion of their § 319 funds in a Performance Partnership Grant should note that their work plan is required by regulation to describe each significant category of NPS activity to be addressed and the state work plan outcomes and outputs to be produced for each category. (See 40 CFR 35.268(d)(4) at ecfr.gpoaccess.gov.) Outputs for all activities, including those funded through the NPS program funds, should be linked to water quality outcomes. It is not sufficient to describe the funding of state or local staff positions to implement the state NPS program. Staff time should be described in support of a specific outcome or activity that is geared toward water quality results.

EPA regions must ensure state grant work plans negotiated under § 319 follow all relevant EPA policies, including EPA Order 5700.7, *Environmental Results Under Assistance Agreements*, GPI 11-03, *State Grant Workplans and Progress Reports*, and GPI 12-06, *Timely Obligation, Award and Expenditure of EPA Grant Funds*.

I. State NPS Management Program Updates

As described in section III, EPA expects states to maintain current and relevant NPS management programs. EPA therefore requires states to review and update their NPS management programs every five years. Updates do not require wholesale revisions unless significant program changes warrant a major revision. Instead, updates should target the parts of the program that are out-of-date. At a minimum, EPA requires updating the goals, objectives and annual milestones, so that they remain current and relevant for achieving water quality goals. For more guidance on NPS management program updates see appendix A.

J. CZARA Set Aside

States that have chosen to develop state coastal zone management programs under the Coastal Zone Management Act (CZMA) of 1972 are required to develop and implement state coastal nonpoint pollution control programs (CNPCPs) under CZARA. CZARA requires these CNPCPs to be implemented through a state's NPS management program administered under § 319, as well as through updates to state coastal zone management programs. For any state that has developed a coastal zone management program, but which has not yet completed development of an approvable CNPCP, the state will set aside, at a minimum, the lesser amount of five percent of its federal allocation or $100,000 in § 319 funds annually to complete the development of an approvable program. This requirement may be met on an average annual basis—for example, a § 319 funded project that commits triple the state's annual minimum set-aside in one grant year will also meet set-aside requirements for the following two grant years (provided § 319 funding

allocations do not significantly increase in those years). This set-aside requirement shall be in place until EPA and NOAA have fully approved a state's CNPCP. This set aside shall not apply to any state that has not been issued a Findings document for a new or re-established CNPCP or for the period prior to the expiration of any federally-placed conditions on a new or re-established CNPCP. EPA shall allot this set aside prior to determining the split between the watershed project funds and NPS program funds; that is, the set aside is not subject to the split between watershed implementation and program implementation. States must detail the use of this set aside in their annual § 319 grant work plans to describe how it will support advancement towards full program approval under CZARA.

K. Reporting Requirements

i. Background on Reporting Requirements

All § 319(h) grants are subject to EPA's general grant regulations in 40 CFR parts 31 and 35 (ecfr.gpoaccess.gov), which specify a variety of basic grant reporting requirements for awarding grants to states and localities. The grant regulations outline a range of administrative reporting requirements, including performance and financial reports.

In addition to the broad rules specified in 40 CFR parts 31 and 35, § 319 contains two significant provisions that are specifically focused on reporting for the § 319 program:

- § 319(h)(10) authorizes EPA to request information, data and reports as necessary to determine a state's continuing eligibility to receive § 319 grants.
- § 319(h)(11) requires states to report annually on their progress in meeting the schedule of milestones contained in their NPS management programs, and to report available information on reductions of NPS pollutant loadings and on improvements to water quality resulting from implementation of NPS management programs.

EPA regions and states should work together to assure that appropriate reporting requirements are incorporated into each grant, either through specific grant conditions, or within the work plan. (See appendix F for a list of nationally consistent conditions for § 319 grants.) The specific reporting requirements for § 319 grants are discussed immediately below. EPA regions and states should assess the effectiveness of the reporting process and determine annually if adjustments or modifications are necessary.

In general, reporting should be sufficiently detailed to enable a reviewer to ascertain whether outputs and milestones are being achieved on schedule, to identify any problems that may be arising in carrying out tasks in the grant work plan, to identify corrective actions to address such problems expeditiously, and to adequately account for all federal funds expended.

ii. Reporting Procedures and the Grants Reporting and Tracking System (GRTS)

The Grants Reporting and Tracking System (GRTS) is an online database which enables states and EPA regions to fulfill § 319 grant reporting requirements (www.epa.gov/nps/grts). This comprehensive database of NPS program information is used to track § 319 program activity and

information, enhance the understanding of NPS projects and programs, and provide a basis for responding to inquiries from Congress, the Office of Management and Budget, the Government Accountability Office, state NPS program staff, nonprofit organizations, the public, and other federal, state and local agencies. GRTS information aids in the accountability of the program, the transparency of the funds being awarded and leveraged, and the successes being achieved.

States are required to use GRTS to report all nationally mandated elements[15] described in the most recent GRTS memorandum located on the GRTS website (www.epa.gov/nps/grts). The mandated elements are comprised of parameters that EPA needs in order to successfully account for accomplishments of the § 319 program. GRTS has the capacity to accept additional information on state programs and projects beyond the mandated elements outlined in the most recent GRTS guidance. States may, if they choose, upload copies of WBPs (or acceptable alternative plans), project implementation plans, or other documents such as photographs, evaluations, and invoices into the GRTS system.

States may also choose to allow subgrantees that receive § 319 funds to directly enter data into GRTS, thereby reducing the state's own reporting burden. States are responsible for the quality of any data entered into GRTS by any subgrantee, and must adopt practices to ensure this accuracy. States are encouraged to work with EPA regions on development of such practices. Additionally, states are encouraged to take advantage of non-mandated fields within GRTS as a means for more complete data management and project reporting.

EPA regions are encouraged to work with their states to design reporting procedures utilizing GRTS, which will promote efficiency and eliminate duplication of work. States may also attach appropriate portions of their § 319(h)(11) annual report as well as information needed by EPA regions to make annual performance and progress determinations as required by § 319(h)(8) and these guidelines in GRTS. Specifics should be discussed with the appropriate EPA region.

EPA will be enhancing GRTS to incorporate improved tracking and reporting requirements. EPA will communicate with the states on the development of these enhancements and will ensure adequate notification, training and direction is provided. EPA intends to ensure that any new financial reporting requirements implemented through updates to GRTS are consistent with PPG regulations. The goal of these enhancements is to improve tracking and reporting while minimizing reporting burden to the states and/or sub-state organizations. GRTS updates will include the following elements:

- Tracking the proportion of watershed project funds spent on restoration and protection activities.
- Tracking of projects funded using the required 40% non-federal match. In select cases where a state is unable to report on specific accounting of state match, states will be asked to report all other mandated elements, as outlined in the most recent GRTS guidance.
- Tracking of all federal § 319 and state-match funded projects and activities funded as a result of a state's request for exemption from the 50% watershed project funding

[15] PPG states will not be required to track specific fund expenditures via GRTS under the PPG.

requirement. States exercising this exemption will be required to report all mandated elements for these activities.

The guidance on GRTS reporting and tracking will also be updated as a separate process from these guidelines. For the most up-to-date guidance pertaining to GRTS reporting and tracking visit the GRTS website (www.epa.gov/nps/grts) or contact the National GRTS coordinator.

Since GRTS is an official reporting vehicle for programs or projects conducted by states under § 319(h) grants, a state's cost to enter data and otherwise utilize GRTS is eligible for NPS program funding. Regions and states should work together to ensure that sufficient resources are available to meet reporting requirements and support needs. Examples of GRTS support needs include: providing adequate staff support; purchasing necessary equipment, materials, and supplies (including high-speed data switches or other links that enable fast and efficient transfer of data to and from GRTS); and attending GRTS workshops and participating in GRTS training opportunities.

In many cases GRTS-related activities (e.g., estimating and entering load reductions and programmatic information from a project) can be considered a program activity and need not be counted toward the 10% cap on administrative costs. (See section IX.Q.)

iii. Annual Reports

§ 319(h)(11) requires states to report annually on progress in meeting the schedule of milestones contained in their NPS management programs, and, to the extent information is available, report reductions in NPS pollutant loadings and improvements in water quality resulting from program implementation. This information may be provided in the format suggested immediately below. States may wish to use GRTS to meet some of their annual reporting requirements.

- A brief summary of progress, including evidence/examples, in making progress toward meeting approved milestones and the short and long-term goals and objectives identified in the state NPS management program.
- A matrix displaying milestones from the current year for the approved state NPS management program with the following information for each milestone:
  - Applicable project or program
  - Scheduled project completion date
  - Percent completed
  - Leveraged funds
- A discussion of the extent to which federal agencies, lands and activities within the state are supporting the state in meeting approved milestones.
- A summary of the available information on the extent of reductions in NPS loadings achieved as a result of NPS program implementation. (More detailed information should be provided through GRTS.)
- A summary of the available information on the improvement in water quality (including aquatic habitat quality) as a result of NPS program implementation. This can address, for example, progress towards water quality standards, TMDL load

reductions implemented, trends in aquatic biology or other measures of progress used by the state. (More detailed information should be provided through the GRTS.)

- Where information is not yet available on load reductions and water quality improvement for waters or watersheds where implementation is underway, surrogate measures of environmental progress should be used and progress should be reported in terms of the degree or percentage of completion of the project.

In the past, some states have chosen to include additional information in their annual report, using the report as a means of assessing progress to date and the need to modify the program, providing case studies of particular projects, and conveying information to a broader audience on the activities being conducted by the state. States may wish to include the following types of information in their reports, or to include such information on their websites and refer to the information in their reports:

- Brief case studies of any particularly successful NPS control efforts.
- Information on increased public awareness of NPS pollution and engagement in addressing it.
- Copies of products produced by the state program (e.g., outreach materials or BMP documents).
- Successful efforts to integrate and align Clean Water Act programs to better deliver water quality results, or other especially successful partnerships.

iv. Grantee Performance Reports

40 CFR 31.40(b)(1) requires states to submit performance reports on the status of § 319 grants. At a minimum, states should submit these reports on an annual basis by a date agreed to by the EPA region and the state. Final reports are due 90 days after the expiration or termination of grant agreement, pursuant to 40 CFR Part 31. (The full Code of Federal Regulations can be found online at ecfr.gpoaccess.gov.) Performance reports should include at a minimum:

- Performance/milestone summary: A listing of major program and project accomplishments for the period (based on the project and program milestones or commitments contained in the approved work plans, grant agreements, or special terms and conditions), as well as progress made toward meeting future milestones. The state may accomplish some or this entire reporting requirement through its annual report, as discussed above.
- Slippage reports: Provide reasons for delays in meeting scheduled milestones/commitments and discuss what actions (state, federal or other) will be taken to resolve any current or anticipated problems.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns, unanticipated events/consequences, etc.

v. Federal Financial Reports

40 CFR § 31.41(b) (ecfr.gpoaccess.gov) requires grantees to submit federal financial reports using Standard Form 425 or 425(a) to report the status of funds under each grant. At a minimum,

states should submit financial reports annually. Final financial reports are due within 90 days after the expiration or termination of the grant agreement.

vi. STORET

EPA requires states to enter their water quality monitoring data, for data collected in a waterbody as a part of the implementation of a § 319 project, into EPA's "storage and retrieval" (STORET) data system. All water quality data generated with § 319 funding, either directly or by sub-award, are required to be transmitted into the STORET data warehouse using either the Water Quality Exchange (WQX) or WQXweb. Water quality data that are appropriate for STORET include physical, chemical, and biological sample results for water, sediment and fish tissue. The data may include toxicity data, microbiological data, and the metrics and indices generated from biological and habitat data. WQX is the water data schema associated with the EPA, State and Tribal Exchange Network. More information about WQX, WQXweb, and the STORET warehouse, including tutorials, can be found at www.epa.gov/storet.

vii. Reporting and Record-Keeping for Subgrantees

Just as the grant agreement specifies outputs and milestones to be achieved by the states, states should assure that agreements with subgrantees specify outputs, milestones, and reporting and record keeping requirements. As indicated in the preceding section, states may include in these agreements a provision requiring the subgrantees to enter data into STORET and GRTS. Access for subgrantees to GRTS data entry should be arranged between the state and EPA region. It is the state's responsibility to review data entered into GRTS for accuracy and the state must adopt practices to ensure data reliability.

Where a subgrantee provides a portion of the state's match, the state should ensure that adequate records are kept with respect to that portion. 40 CFR 31.41(a)(2) (ecfr.gpoaccess.gov) specifies that grantees shall not impose more burdensome requirements on subgrantees than they are subject to themselves.

L. States Must Demonstrate Satisfactory Progress

§ 319(h)(8) of the Clean Water Act provides that no § 319 grant may be made to a state in any fiscal year unless EPA determines that the state has made satisfactory progress in the preceding fiscal year in meeting the schedule specified in its NPS management program.

EPA regions must determine, based on an examination of state activities, reports, reviews, and other documents, as well as discussions with the state in the previous year, whether the state's progress for the previous fiscal year in meeting the schedule set forth in its NPS management program was satisfactory.

EPA regions must include in the § 319 grant funding recommendation, or separate document such as a grant issuance cover letter, a written determination that the state has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in the state's NPS management program. The EPA regions must include brief explanations to support

these determinations. Starting in fiscal year 2012, EPA has established a practice of conducting these satisfactory progress determinations within the broader context of annual performance and progress determinations.

Grants reporting requirements are discussed in the preceding section. Since § 319(h)(11) requires each state to report "on an annual basis concerning… its progress in meeting the schedule of milestones," these annual reports are expected to provide the written information needed by the EPA regions to determine whether the states have made satisfactory progress.

M. Obligate Funds Within One Year

§ 319(b)(6) of the Clean Water Act contains a requirement for state obligation[16] of funds within one year. EPA has interpreted § 319(h)(6) to provide that § 319 funds granted to a state shall remain available for obligation by the state for one year from the date of grant award. For example, grant funds awarded to a state on December 1, 2013, remain available for obligation until December 1, 2014. The amount of any such funds that cannot be obligated by one year from the grant award shall, under § 319(h)(6), be available to EPA for granting to other states. This requirement is intended to apply to obligations for sub-awards or contracts, and not to internal, staff-related costs.

N. Non-federal Share 40 Percent or Greater

§ 319(h)(3) provides: "The federal share of the cost of each management program implemented with federal assistance …in any fiscal year shall not exceed 60 percent of the cost incurred by the state in implementing such management program and shall be made on the condition that the non-federal share is provided from non-federal sources." The match need not be on an item-by-item basis; rather, it is a single figure that covers the entire non-federal share of the costs of implementing a § 319 -funded state grant work plan. The non-federal match does not need to be contributed at the time of the grant award, but the funds must be contributed as needed to meet the schedules established in the work plan milestones, and must occur during the project period of the grant award. EPA regions must verify that grantees have satisfied the match requirements upon review and submittal of the grantee's final federal financial report.

"Recycled" Clean Water State Revolving Funds under Title VI of the Clean Water Act can be used to provide a match for § 319 grants. These are funds that have been loaned by the state and subsequently repaid by the borrower to the state. The repaid funds are then recycled by the Clean Water State Revolving Fund program to provide loans that fund other water quality projects. These recycled funds are not treated as federal funds for the purposes of match and therefore are eligible to be used as match for § 319 funds, provided that they, like any other § 319 match funds, are used to implement the approved § 319 state NPS management program.

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[16] For the purpose of these guidelines, "state obligation" is when the state creates a definite liability against the state's § 319 grant award. For many states, this occurs when the subgrants and contracts are executed.

O. Cost Sharing for Demonstration Projects

§ 319(h)(7) provides that states may use § 319 funds to provide financial assistance to "persons" if the costs are related to implementing "demonstration projects." EPA does not interpret this provision to mean that a BMP or management measure may be funded in only one location. A successful or potentially successful approach may need to be assessed and demonstrated in many locations to indicate its widespread utility in a variety of hydro-geological and sociological settings. Moreover, projects should be implemented in a variety of locations within each state so that they may in fact provide education, information, and outreach to others who may wish to avail themselves of the same approaches used in the projects.

In particular, EPA does not believe that Congress intended to preclude the funding of demonstration watershed projects that may require the state to share the cost of a particular practice or set of practices at a number of sites within the watershed in order to demonstrate the overall effectiveness of the adopted approach in solving the water quality problem. EPA's and the states' experiences have demonstrated that watershed problems cannot generally be solved without implementing a comprehensive plan with appropriate measures and practices at appropriate sites throughout the watershed. Each state needs to continue to implement watershed-scale projects that demonstrate how to successfully implement WBPs to restore and protect watersheds.

To ensure widespread implementation of BMPs in demonstration projects in high priority watersheds, we encourage states to supplement § 319 cost-share to individuals with additional cost-share from state funds, as well as to work with other funding authorities and persons that can contribute resources. Where such an approach is followed, the total cost-share to an individual from § 319, state and other federal (e.g. USDA) funds may not exceed 100% of the total cost of the practice.

P. States Must Maintain Level of Effort

§ 319(h)(9) of the Clean Water Act requires any state applying for § 319 grants to establish and maintain its aggregate annual level of state NPS pollution control expenditures for improving water quality at the average level of such expenditures in fiscal years 1985 and 1986. This is referred to as the state's "Maintenance of Effort" (MOE) requirement. The MOE is based on fiscal years 1985 and 1986 investments and is based on expenditures by the lead state agency or agencies responsible for the state's NPS pollution control activities. Federal funds may not be included in calculating the MOE base level.

- Calculation of expenditures is based on activities of the state lead NPS agency or agencies responsible for the state's NPS pollution control activities, not on what might be termed related activities of other state agencies with primary missions other than NPS control. For example, if the state water quality agency and agricultural agency both have specific NPS water quality control programs, these should be counted in the MOE. State soil conservation programs having water quality improvement or maintenance as a primary objective also should be included in a state's MOE.

- The MOE base level or annual level cannot include the MOE or matching expenditures for other federal programs, such as § 106, § 319, § 205(j)(5), § 314, and § 117.
- Determination of whether the state expenditures meet the MOE level for purposes of awarding a § 319 grant will be based on the grantee expenditures projected in the grant application. (The state will report whether it has met its MOE requirements in its final federal financial report at the end of the budget year.)

Q. Cap on Administrative Costs

Pursuant to § 319(h)(12), administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with the grant shall not exceed 10% of the grant award. The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer are not subject to this limitation. Activities, subawards, and projects that fall under the six exempted categories listed above are not required to track administrative costs for the purposes of this provision.

In many cases GRTS-related activities (e.g., estimating and entering load reductions and programmatic information from a project) can be considered a program activity and do not need to be counted toward this 10% cap on administrative costs.

X. Management and Oversight of § 319 Grants

In conducting oversight activities, EPA will rely to a significant extent on information and reports provided by the state as well as data entered into STORET and GRTS. Relevant information includes the updated state NPS management program, the annual report required by § 319(h)(11), the annual grant work plan along with grant progress reports, references in annual work plans to WBPs and other plans guiding § 319-funded projects, and reported load reductions and water quality improvements under measures WQ-9 and WQ-10. EPA will contact states if additional information is needed. In addition to reviewing reports, EPA regions will confer at least annually with each state to discuss progress in implementing the state NPS management program. EPA regions may also conduct periodic reviews of a state's NPS management program.

Of primary importance is: the discussion of state progress in updating and implementing state NPS management programs; submitting annual work plans that link to the goals and milestones in the state NPS management programs; developing work plans that represent an appropriate balance of staffing, programmatic activities and projects to meet the goals of the state NPS management programs; implementing WBPs or acceptable alternative plans; and achieving on-the-ground results. EPA regions will review and approve revised state NPS management programs. EPA regions should also review and discuss with the state the balance between development and implementation of TMDLs and WBPs, and review and provide feedback on a portion of WBPs.

EPA headquarters and regions will coordinate to ensure that there is an appropriate level of program oversight in the implementation of these revised grant guidelines. EPA headquarters will work with regions and states to provide nationally consistent guidance for state NPS management programs, annual performance and progress reviews, and other appropriate templates or guidance as needed. EPA will also provide updated guidance when the new GRTS reporting elements and procedures are finalized. This guidance will be posted on the GRTS website (www.epa.gov/nps/grts). Appendix F of these guidelines contains a nationally-consistent list of § 319 grant terms and conditions which will be used by the EPA regions as a basis for the final terms and conditions contained in each state § 319 grant award.

EPA will use the above reports and information to conduct an annual evaluation of state performance and progress. (See section IX.L.) Among other considerations, this review will include an assessment of satisfactory progress in meeting the schedule provided in the state's NPS management program as required by § 319(h)(8).

States are encouraged to discuss ways in which EPA can assist in implementing the state NPS management program. Types of assistance to be considered include: support for state efforts to assess water quality problems and/or project effectiveness; support for development and implementation of WBPs; and technical assistance to help the state develop a methodology to prioritize watersheds most in need of restoration and protection.

XI. Grants to Indian Tribes

These guidelines are not directed to tribal NPS management programs. Given the differing statutory provisions and approaches applicable to tribal programs, EPA publishes separate NPS guidance for tribes. However, we present a brief overview below. For detailed information about tribal NPS programs, refer to the *Handbook for Developing and Managing Tribal Nonpoint Source Pollution Programs* (EPA-841-B-10-001, February 2010) as well as additional online guidance documents written for tribal NPS programs (www.epa.gov/nps/tribal).

Tribes, like states, must have EPA-approved NPS assessments and management programs (as well as approval for treatment in a similar manner as a state) in order to be eligible for § 319(h) grants. EPA is pleased that, to date, more than 170 tribes have approved NPS assessments and management programs. EPA encourages other tribes that have significant NPS pollution problems to similarly develop assessments and programs that focus on their highest priority NPS problems. While § 319 funds may not be used to develop NPS assessments and management programs, other EPA funding programs are available to tribes to develop these documents. Technical assistance with the development of assessment and management programs is available from EPA.

§ 518(f) of the Clean Water Act states that the EPA Administrator may reserve for tribes treated similarly to states not more than one-third of one percent of the amount appropriated for any fiscal year under § 319. In past fiscal years, Congress has authorized EPA to exceed the 1/3% limitation and EPA has done so. EPA will annually inform the tribes as to the amount of funding available. To be eligible for § 319 nonpoint source grants, tribes must meet the requirements in

§ 518(e) of the Clean Water Act, as well as applicable provisions of EPA's general grant regulations in 40 CFR parts 31 and 35 (ecfr.gpoaccess.gov).

Tribes are required to meet the 40% matching and maintenance-of-effort requirements under § 319(h); however, if a tribe can demonstrate financial cause, its match requirement may be reduced under certain circumstances. (See guidance for tribal NPS programs at www.epa.gov/nps/tribal.)

XII. Waiver Process

Circumstances may arise in which a state believes it has no choice but to develop and submit a work plan for a particular year that fails to meet one or more requirements in these guidelines. If such circumstances arise, and the state believes the circumstances justify a waiver from one or more requirements in these guidelines, the state may submit a request for a waiver to the EPA regional water division director. The request should identify the requirement from which a waiver is requested; the circumstances requiring the waiver (explaining why the waiver is necessary to successfully implement the approved state NPS management program); a description of the activities and projects that the state will be implementing in lieu of those required by these guidelines; and a commitment to adhere to the guidelines to the greatest extent possible. The regional division director may approve the waiver for the year requested with the concurrence of the NPS national program manager in EPA's Office of Water.

The waiver provision is intended for use only in unusual circumstances. For example, a waiver may be considered if national § 319 funding levels are substantially reduced and compliance with the guidelines would result in substantially less environmental benefit (nonpoint source pollution reduction) than the state's proposed alternative use of the funds.

This waiver process applies only to the requirements established by these guidelines; it does not apply to any statutory or regulatory requirements or requirements in the EPA orders or policies referenced in these guidelines.

XIII. Appendices

Appendix A—Key Components of an Effective State Nonpoint Source Management Program

This guidance is an update of the nine key elements guidance contained in the U.S. Environmental Protection Agency's (EPA's) *1997 Guidance for Section 319(h) Grants* (water.epa.gov/polwaste/nps/npsguid1.cfm#IIIa), and contains a description of the key components that characterize an effective state nonpoint source (NPS) management program. The original guidance was developed by EPA with input from state lead NPS control agencies. Similarly, during the spring of 2012, EPA convened an EPA-state workgroup to inform section 319 program improvements; this update was developed with input from this workgroup and further refined by comments and input from other states.

EPA expects all states to review and, as appropriate, revise and update their NPS management programs every five years. An updated, comprehensive program is critical to the states and EPA. It will allow EPA and the states to ensure that section 319 funding, technical support and other resources are directed in an effective and efficient manner to support state efforts to address water quality issues on a watershed basis. States should refer to these key components during review and update of their programs. States will then submit their updated programs to EPA for approval.

1. The state program contains explicit short- and long-term goals, objectives and strategies to restore and protect surface water and ground water, as appropriate.

The state's long-term goals reflect a strategically focused state NPS management program designed to achieve and maintain water quality standards and to maximize water quality benefits. The shorter-term objectives consist of activities, with annual milestones, designed to demonstrate reasonable progress toward accomplishing long-term goals as expeditiously as possible. Since the NPS management program is a longer-term planning document, the annual milestones may be more general than are expected in an annual section 319 grant workplan, but are specific enough for the state to track progress and for EPA to determine satisfactory progress in accordance with section 319(h)(8). Annual milestones in a state's NPS management program describe outcomes and key actions expected each year, e.g., delivering a certain number of WQ-10 success stories or implementing projects in a certain number of high priority impaired watersheds. The state program includes objectives that address nonpoint sources of surface water and ground water pollution as appropriate (including sources of drinking water) in alignment with the goals of the Clean Water Act. The objectives include both implementation steps and how results will be tracked (e.g., water quality improvements or load reductions).

The state program includes long-term goals and shorter-term (e.g., three- to five-year) objectives that are well integrated with other key environmental and natural resource programs, such as those described under component #3. State program goals and objectives are periodically revised as necessary to reflect progress or problems encountered, strategies to make progress towards achieving the goals, and indicators to measure progress.

2. The state strengthens its working partnerships and linkages to appropriate state, interstate, tribal, regional, and local entities (including conservation districts), private sector groups, citizens groups, and federal agencies.

The state uses a variety of formal and informal mechanisms to form and sustain these partnerships. Examples include memoranda of agreement, letters of support, cooperative projects, sharing and combining of funds, and meetings to share information and ideas.

The state NPS lead agency works collaboratively with other key state and local NPS entities in the coordinated implementation of NPS control measures in high priority watersheds. Interagency collaborative teams, NPS task forces, and representative advisory groups can be effective mechanisms for accomplishing these linkages, as can more informal but ongoing program coordination and outreach efforts. The state works to ensure that its local partners and grantees have the capacity to effectively carry out watershed implementation projects funded to support its NPS management program.

Further, the state seeks public involvement from local, regional, state, interstate, tribal and federal agencies, and public interest groups, industries, academic institutions, private landowners and producers, concerned citizens and others as appropriate, to comment on significant proposed program changes. This involvement helps ensure that environmental objectives are well integrated with those for economic stability and other social and cultural goals.

3. The state uses a combination of statewide programs and on-the-ground projects to achieve water quality benefits; efforts are well-integrated with other relevant state and federal programs.

The state has the flexibility to design its NPS management program in a manner that is best suited to achieve and maintain water quality standards. The state may achieve water quality results through a combination of watershed approaches and statewide programs, including regulatory authorities, as appropriate. The state NPS management program emphasizes a watershed management approach and includes an explanation of the state's approach to prioritizing waters and watersheds to achieve water quality restoration and protection.

The state NPS management program is well integrated with other relevant programs to restore and protect water quality, aligning priority setting processes and resources to increase efficiency and environmental results. These include the following programs, as applicable:

- Total Maximum Daily Loads (TMDLs);
- Clean Water State Revolving Fund (CWSRF);
- U.S. Department of Agriculture (USDA) farm bill conservation programs;
- state agricultural conservation;
- state nutrient framework or strategy
- source water protection;
- point sources (including stormwater, confined animal feeding operations, and enforcement of permitted facilities);
- ground water;

- drinking water;
- clean lakes
- wetlands protection;
- national estuary program;
- coastal nonpoint pollution control program;
- pesticide management;
- climate change planning;
- forestry, both federal (U.S. Forest Service) and state;
- U.S. Army Corps of Engineers programs;
- and other natural resource and environmental management programs.

Because of the significant resources potentially available through USDA conservation programs, the state makes a strong sustained effort to coordinate and leverage with USDA NRCS. Similarly, a state NPS management program is well-integrated and clearly identifies processes to incorporate some of the significant resources of the CWSRF loan program for eligible nonpoint source activities.

Where applicable, the state NPS management program explains how NPS projects fit into the state's prioritization scheme for CWSRF funding, and describes state efforts to increase the use of the state CWSRF for the NPS management program. If there are barriers to prioritization of NPS projects, the state NPS management program describes efforts to coordinate with the CWSRF program and potential future steps to encourage NPS projects are considered.

If, in reviewing federal programs, the state identifies federal lands and activities that are not managed consistently with state nonpoint source program objectives, the state may seek EPA assistance to help resolve issues at the federal agency level. Federal programs subject to review by the state include the land management programs of the Bureau of Land Management and the U.S. Forest Service, USDA's conservation programs, and the U.S. Army Corps of Engineers waterway programs, as well as development projects and financial assistance programs that are, or may be, inconsistent with the state's NPS management program.

As a federal agency, EPA has a role to play in support of the state's NPS management program by working with other federal agencies to enhance their understanding of the significance of nonpoint source pollution and of the need to work cooperatively with the state to solve nonpoint source problems. Where appropriate, EPA will assist in resolving particular issues that arise between the state and federal agencies with respect to federal consistency with the state NPS management program. As EPA becomes aware of these issues, EPA works at a national level to improve consistency among federal programs.

4. The state program describes how resources will be allocated between (a) abating known water quality impairments from NPS pollution and (b) protecting threatened and high quality waters from significant threats caused by present and future NPS impacts.

The program describes its approach to addressing the twin demands of remedying waters that the state has identified as impaired by NPS pollution and preventing new water quality problems

from present and reasonably foreseeable future NPS impacts, especially for waters which currently meet water quality standards.

With limited resources, the state will likely need to make choices about the relative emphasis on restoring impaired waters and protecting high quality waters. The state's program describes how it will approach setting priorities and aligning resources between these two areas of emphasis based on their water quality challenges and circumstances.

5. The state program identifies waters and watersheds impaired by NPS pollution as well as priority unimpaired waters for protection. The state establishes a process to assign priority and to progressively address identified watersheds by conducting more detailed watershed assessments, developing watershed-based plans and implementing the plans.

The state identifies waters impaired by nonpoint source pollution based on currently available information (e.g., in reports under sections 305(b), 319(a), 303(d), 314(a), and 320), and revises its list periodically as more up-to-date assessment information becomes available. As feasible, the state also identifies important unimpaired waters that are threatened or otherwise at risk from nonpoint source pollution.

In addition the state identifies the primary categories and subcategories causing the water quality impairments, threats, and risks across the state. At regular intervals the state updates the identification of waters impaired or threatened by NPS pollution preferably as part of a single comprehensive state water quality assessment which integrates reports required by the Clean Water Act. The state establishes a process to assign priority and to progressively address identified waters and watersheds by conducting more detailed watershed assessments, developing watershed-based plans, and implementing the plans. Factors used by the state to assign priority to waters and watersheds may include a variety of considerations, for example:

- human health considerations including source water protection for drinking water;
- ecosystem integrity, including ecological risk and stressors;
- beneficial uses of the water;
- value of the watershed or ground water area to the public;
- vulnerability of surface or ground water to additional environmental degradation;
- likelihood of achieving demonstrable environmental results;
- degree of understanding of the causes of impairment and solutions capable of restoring the water;
- implementability (site-specific technical feasibility);
- adequacy of existing water quality monitoring data or future monitoring commitments;
- degree to which TMDL allocations made to point sources are dependent on NPS reductions being achieved;
- extent of partnerships with other federal agencies, states, local public and private agencies/organizations and other stakeholders to coordinate resources and actions;
- availability and access of funding sources other than section 319(h); and
- readiness to proceed among stakeholders and project partners.

The state links its prioritization and implementation strategy to other programs and efforts such as those listed under component #3. In establishing priorities for ground water activities, the state considers wellhead protection areas, ground water recharge areas, and zones of significant ground water/surface water interaction, including drinking water sources.

There are different approaches for prioritizing waters for restoration and protection and EPA offers several tools to assist. For example, EPA's Recovery Potential Screening Tool, available at www.epa.gov/recoverypotential, is useful for comparing restorability of impaired waters across various watersheds. Also, the Nitrogen and Phosphorus Pollution Data Access Tool (NPDAT), at www.epa.gov/nutrientpollution/npdat, is a GIS-based tool designed to assist in identifying priority watersheds to address nutrient pollution.

6. The state implements all program components required by section 319(b) of the Clean Water Act, and establishes strategic approaches and adaptive management to achieve and maintain water quality standards as expeditiously as practicable. The state reviews and upgrades program components as appropriate. The state program includes a mix of regulatory, nonregulatory, financial and technical assistance, as needed.

Under section 319(b) state NPS management programs include all of the following components:

(i) An identification of measures (i.e., systems of practices) that will be used to control NPS pollution, focusing on those measures which the state believes will be most effective in achieving and maintaining water quality standards. These measures may be individually identified or presented in manuals or compendiums, provided that they are specific and are related to the category or subcategory of nonpoint sources. They may also be identified as part of a watershed approach towards achieving water quality standards, whether locally, within a watershed, or statewide;

(ii) An identification of the key programs to achieve implementation of the measures, including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects. The state is free to decide the best approaches for solving the problems that it identifies under key component #5 above. These approaches may include one or all of the following:

- watershed or water quality-based approaches aimed at meeting water quality standards directly;
- iterative, technology-based approaches based on best management practices or measures, applied on either a categorical or site-specific basis; or
- an appropriate mix of these approaches.

(iii) A description of the processes used to coordinate and, where appropriate, integrate the various programs used to implement NPS pollution controls in the state;

(iv) A schedule with goals, objectives, and annual milestones for implementation at the earliest practicable date: legal authorities to implement the program; available resources; and institutional relationships;

(v) Sources of funding from federal (other than section 319), state, local, and private sources;

(vi) Federal land management programs, development projects and financial assistance programs; and

(vii) A description of monitoring and other evaluation programs that the state will conduct to help determine short- and long-term NPS management program effectiveness.

In addition, the state incorporates existing baseline requirements established by other applicable federal or state laws to the extent that they are relevant. For example, a coastal state or territory with an approved coastal zone management program incorporates its approved state coastal nonpoint pollution control programs required by section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) of 1990, into its NPS management program since CZARA requires implementation through the state's NPS management program. In this manner, the state ensures that this program and other relevant baseline programs are integrated into, and consistent with, section 319 programs.

7. The state manages and implements its NPS management program efficiently and effectively, including necessary financial management.

The state implements its program to solve its water quality problems as effectively and expeditiously as possible, and makes satisfactory progress each year in meeting program goals. To help assure that priority water quality problems are addressed cost-effectively and in a timely manner, the state includes in its program a process for identifying priority problems and/or watersheds, and deploys resources in a timely fashion to address priorities, including any critical areas requiring treatment and protection within watersheds.

The state employs appropriate programmatic and financial systems that ensure section 319 dollars are used efficiently and consistent with its legal obligations, and generally manages all section 319 funds to maximize water quality benefits. The state ensures that section 319 funds complement and leverage funds available for technical and financial assistance from other federal sources and agencies.

8. The state reviews and evaluates its NPS management program using environmental and functional measures of success, and revises its NPS management program at least every five years.

The state establishes appropriate measures of progress in meeting programmatic and water quality goals and objectives identified in key component #1 above. The state also describes a monitoring/evaluation strategy and a schedule to measure success in meeting those goals and objectives. The state integrates monitoring and evaluation strategies with ongoing federal natural resource inventories and monitoring programs.

The state NPS management program is reviewed and revised every five years. The revision is not necessarily a comprehensive update unless significant program changes warrant a complete

revision; instead, an update targets the parts of the program that are out-of-date. At a minimum, this includes updating annual milestones and the schedule for program implementation, so that they remain current and oriented toward achieving water quality goals.

Appendix B—Potential Measures and Indicators of Progress and Success

The following list illustrates optional measures and indicators that states may choose from or add to that will help the states and the public measure the progress and success of their programs. Some of the examples and categories below are approaches that have been successfully used by states and others, and some were identified by EPA regions and state NPS programs (including during a measures session at the June 2012 National NPS Program Meeting). Some of the measures listed below may not be applicable in all locations/settings, and states will decide which measures are appropriate to their particular conditions.

1. Water Quality Improvement from Nonpoint Source Controls

a) Number (or percentage) of river/stream miles, lake acres, wetlands, and estuarine and coastal square miles that fully meet all water quality standards.
b) Number (or percentage) of river/stream miles, lake acres, wetlands, and estuarine and coastal square miles that come into compliance with one or more designated uses (e.g., a river segment that is neither fishable nor swimmable becomes fishable), or with one or more numeric water quality standard (e.g., achieves a standard for phosphorus while continuing to exceed a standard for nitrogen).
c) Opening of previously closed shellfish beds.
d) Lifting of fish consumption advisories.
e) Prevention of new impairments (e.g., number of river miles removed from the "threatened" lists, or number of miles of high-quality waters protected).
f) Reduced beach closures.

2. Interim Progress Toward Restored Water Quality and Hydrology

a) Develop environmental "success stories" to document interim progress toward restoration, which can be submitted to EPA as type 2 NPS success stories (see www.epa.gov/nps/success).
b) Percentage of attainment of watershed specific interim load reduction goals (e.g., interim goal of 5,000 lbs/year reduction of phosphorus for a specific watershed).
c) Percentage of TMDL or WBP-recommended BMPs implemented.
d) Percentage of landowners in a watershed cooperating in the program by implementing targeted water quality practices.
e) Track trends toward watershed-based targets for N, P, TSS, E. coli and/or bacteria in rivers.
f) Track trends toward target trophic status scores (Carlson's), secchi disk transparency depths and chlorophyll-a concentrations in lakes.
g) Between 20XX and 20XX, the number of streams showing increased flow variability will not increase.
h) Set targets for impervious surfaces within watersheds.
i) Green infrastructure installed within watersheds (e.g., track the number of projects or square footage converted to green infrastructure).
j) Number of curb and gutter roadways within watersheds.
m) Number of watersheds that have or require shoreline buffers.

3. Protection of High Quality Waters

a) Long-term protection of X acres in priority watersheds by 20XX.
b) Long-term protection projects will prevent of X tons of sediment, Y pounds of nitrogen and Z pounds of phosphorus from entering waters of the state by 20XX.
c) No waterbodies or reaches in high quality watersheds will be moved to the nonattainment lists due to NPS causes or pollution.
d) Maintenance of filtration avoidance for certain water supply systems (i.e., no additional treatment or alternative sources of drinking water supply).
e) Specific load reduction or maintenance goals (X lbs. of P per year) in protection oriented plans covering high value waters.
f) Number or percentage of watersheds that hit their protection oriented goals each year.
g) Improve trends in water quality of waterbodies that are threatened but not yet impaired so that the waterbodies remain off the nonattainment list.
h) Number and type of BMPs implemented at critical source areas (demonstrating effective targeting).
i) Length and width of improved or protected shoreline or riparian areas along streams.
j) Stable or improving water quality/trophic status in lakes.
k) Increase in the amount of lake shorelands (length and width) protected or maintained in a natural condition.
l) Stable or improving water quality (biocriteria, DO, bacteria) in streams.

4. Nonpoint Source Pollutant Load Reduction

a) Reductions in pollutant loadings (e.g., by pounds or percentage) from nonpoint sources in watersheds of impaired/threatened waters.
b) Reductions in pollutant loadings (e.g., by pounds or percentage) from nonpoint sources in high-priority watersheds identified by the state's NPS management program.
c) State-wide reduction in pollutant loadings from nonpoint sources.
d) In the case of NPS pollution which may result from activities conducted in the future, prevention or minimization of new loadings, and/or offset of new loadings by reductions from existing sources.

5. Implementation of Nonpoint Source Controls

a) Number of measures implemented in watersheds of impaired/threatened waters (e.g., number of on-the-ground practices implemented that reflect, for example, the "best practicable" approach to solve the identified problem.)
b) Percentage of "needed" measures implemented in watersheds of impaired/threatened waters (e.g., where watershed analysis has shown the need to implement measures at 20 sites, annual progress in implementing a watershed project can be shown by the number of BMPs installed).
c) Statistically-based survey of implementation rates (e.g., results of state-approved BMP use and effectiveness surveys).
d) Percent of priority ground water addressed by NPS controls.
e) Number (or percent) of measures implemented in source water protection areas.

6. Public Education, Awareness, and Action

a) Participation rates in education programs specifically directed to solving particular NPS pollution problems.
b) Statistically-based survey of public awareness, knowledge, and action to measure changes in attitudes and action over time.
c) Participation rates in various NPS activities, such as citizen monitoring and watershed resource restoration activities.
d) Participation rates in various public awareness and education efforts.
e) Number of information and education (I/E) "success stories" by 20XX. I/E success stories document quantifiable changes in knowledge or behavior related to NPS pollutant issues.
f) Use statistically-based social monitoring procedures to document a positive change in social indicator scores or responses for all I/E projects evaluated.
g) Calculate and track a "measure of local interest" score to assess the diversity and productivity of local watershed groups.

7. Program Measures of Success

a) Track number and diversity of partners in statewide NPS plan goals and watershed project implementation.
b) Number of new 9-element watershed-based plans reviewed and accepted for funding by 20XX.
c) Document the successful completion of categories of planned work (e.g., tracking materials developed, reports generated, producer contacts, management measures implemented) in a specified in a state's NPS management program.

Appendix C—Minimum Elements of a Watershed-based Plan

Although many different elements may be included in a watershed plan, EPA has identified nine minimum elements that are critical for achieving improvements in water quality. In general, EPA requires that nine-element watershed-based plans (WBPs) be developed prior to implementing project(s) funded with § 319 watershed project funding. In many cases, state and local groups have already developed watershed plans and strategies for their rivers, lakes, streams, wetlands, estuaries, and coastal waters that address some or all of the nine elements. EPA encourages states to use these plans and strategies, where appropriate, as building blocks for developing and implementing WBPs. If these existing plans contain all nine elements listed below, they can be used to fulfill the WBP requirement for watershed projects. If the existing plans do not address all nine elements or do not include the entire watershed planning area, they can still provide valuable components to inform, develop, and update WBPs.

For example, some watershed management plans contain information on hydrology, topography, soils, climate, land uses, water quality problems, and management practices needed to address water quality problems but lack the quantitative analysis of current pollutant loads or expected load reductions from proposed management practices. In this case, the WBP developer could incorporate such existing information into the plan to help fulfill the nine WBP elements. If separate documents contain information that help meet the nine WBP elements listed below but are too lengthy to be included in the WBP, they can be summarized and referenced in the appropriate sections of the plan, as long as the information is readily available.

Note: EPA recognizes that in select cases (outlined in section IX.B.ii of these guidelines) alternatives to WBPs can provide an effective roadmap to achieve the water quality goals of a § 319 funded watershed project. These alternative plans do not need to address the nine elements listed below, but must include the planning components listed in section IX.B.ii of these guidelines. EPA still encourages plan developers to build on prior planning efforts and incorporate related information, as described above, when developing these alternative plans.

Nine Elements of Watershed-based Plans (WBPs)

The nine elements, as well as short explanations of how each element fits in the context of the broader WBP, are provided below. Although they are listed as *a* through *i*, they do not necessarily take place sequentially. For example, element *d* asks for a description of the technical and financial assistance that will be needed to implement the WBP, but this can be done only after you have addressed elements *e* and *i*.

The level of detail needed to address the nine elements of WBPs will vary in proportion to the homogeneity or similarity of land use types and variety and complexity of pollution sources. For example, densely developed urban and suburban watersheds often have multiples sources of pollution from historic and current activities (Superfund sites, point sources, solid waste disposal, leakage from road salt storage, oil handling, stormwater-caused erosion, road maintenance, etc.) in addition to some agricultural activities. Plans will be more complex than in predominantly rural settings in these cases. For this reason, plans for urban and suburban watersheds may need to be developed and implemented at a smaller scale than watersheds with agricultural lands of a similar character.

Element a. Identification of causes of impairment and pollutant sources or groups of similar sources that need to be controlled to achieve needed load reductions, and any other goals identified in the watershed plan. Sources that need to be controlled should be identified at the significant subcategory level along with estimates of the extent to which they are present in the watershed (e.g., X number of dairy cattle feedlots needing upgrading, including a rough estimate of the number of cattle per facility; Y acres of row crops needing improved nutrient management or sediment control; or Z linear miles of eroded streambank needing remediation).

What does this mean?
Your WBP source assessment should encompass the watershed of the impaired waterbody(ies) throughout the watershed, and include map(s) of the watershed that locates the major cause(s) and source(s) of impairment in the planning area. To address these impairments, you will set goals to meet (or exceed) the appropriate water quality standards for pollutant(s) that threaten or impair the physical, chemical, or biological integrity of the watershed covered in the plan.

This element will usually include an accounting of the significant point and nonpoint sources in addition to the natural background levels that make up the pollutant loads causing problems in the watershed. If a TMDL or TMDLs exist for the waters under consideration, this element may be adequately addressed in those documents. If not, you will need to conduct a similar analysis (which may involve mapping, modeling, monitoring, and field assessments) to make the link between the sources of pollution and the extent to which they cause the water to exceed relevant water quality standards.

Element b. An estimate of the load reductions expected from management measures.

What does this mean?
On the basis of the existing source loads estimated for element *a*, you will similarly determine the reductions needed to meet water quality standards. After identifying the various management measures that will help to reduce the pollutant loads (see element *c* below), you will estimate the load reductions expected as a result of implementing these management measures, recognizing the difficulty in precisely predicting the performance of management measures over time.

Estimates should be provided at the same level as that required in the scale and scope described in element *a* (e.g., the total load reduction expected for dairy cattle feedlots, row crops, eroded streambanks, or implementation of a specific stormwater management practice). For waters for which TMDLs have been approved or are being developed, the plan should identify and incorporate the TMDLs; the plan needs to be designed to achieve the applicable load reductions in the TMDLs. Applicable loads for downstream waters should be included so that water delivered to a downstream or adjacent segment does not exceed the water quality standards for the pollutant of concern at the water segment boundary. The estimate should account for reductions in pollutant loads from point and nonpoint sources identified in the TMDL as necessary to attain the applicable water quality standards.

Element c. A description of the nonpoint source management measures that will need to be implemented to achieve load reductions in element b, and a description of the critical areas in which those measures will be needed to implement this plan.

What does this mean?

The plan should describe the management measures that need to be implemented to achieve the load reductions estimated under element *b*, as well as to achieve any additional pollution prevention goals outlined in the watershed plan (e.g., habitat conservation and protection). Pollutant loads will vary even within land use types, so the plan should also identify the critical areas[17] in which those measures will be needed to implement the plan. This description should be detailed enough to guide needed implementation activities throughout the watershed and can be greatly enhanced by developing an accompanying map with priority areas and practices. Thought should also be given to the possible use of measures that protect important habitats (e.g. wetlands, vegetated buffers, and forest corridors) and other non-polluting areas of the watershed. In this way, waterbodies would not continue to degrade in some areas of the watershed while other parts are being restored.

Element d. Estimate of the amounts of technical and financial assistance needed, associated costs, and/or the sources and authorities that will be relied upon to implement this plan.

What does this mean?

You should estimate the financial and technical assistance needed to implement the entire plan. This includes implementation and long-term operation and maintenance of management measures, information/education (I/E) activities, monitoring, and evaluation activities. You should also document which relevant authorities might play a role in implementing the plan. Plan sponsors should consider the use of federal, state, local, and private funds or resources that might be available to assist in implementing the plan. Shortfalls between needs and available resources should be identified and addressed in the plan.

Element e. An information and education component used to enhance public understanding of the plan and encourage their early and continued participation in selecting, designing, and implementing the nonpoint source management measures that will be implemented.

What does this mean?

The plan should include an I/E component that identifies the education and outreach activities or actions that will be used to implement the plan. These I/E activities may support the adoption and long-term operation and maintenance of management practices and support stakeholder involvement efforts.

Element f. Schedule for implementing the nonpoint source management measures identified in this plan that is reasonably expeditious.

What does this mean?

You should include a schedule for implementing the management measures outlined in your watershed plan. The schedule should reflect the milestones you develop in *g* and you should

[17] Critical areas are those producing disproportionately high pollutant loads.

begin implementation as soon as possible. Conducting baseline monitoring and outreach for implementing water quality projects are examples of activities that can start right away. It is important that schedules not be "shelved" for lack of funds or program authorities; instead they should identify steps towards obtaining needed funds as feasible.

Element g. A description of interim measurable milestones for determining whether nonpoint source management measures or other control actions are being implemented.

What does this mean?
The WBP should include interim, measurable implementation milestones to measure progress in implementing the management measures. These milestones will be used to track implementation of the management measures, such as whether they are being implemented according to the schedule outlined in element *f*, whereas element *h* (see below) will develop criteria to measure the effectiveness of the management measures by, for example, documenting improvements in water quality. For example, a watershed plan may include milestones for a problem pesticide found at high levels in a stream. An initial milestone may be a 30% reduction in measured stream concentrations of that pesticide after 5 years and 50 percent of the users in the watershed have implemented Integrated Pest Management (IPM). The next milestone could be a 40% reduction after 7 years, when 80% of pesticide users are using IPM. The final goal, which achieves the water quality standard for that stream, may require a 50% reduction in 10 years. Having these waypoints lets the watershed managers know if they are on track to meet their goals, or if they need to re-evaluate treatment levels or timelines.

Element h. A set of criteria that can be used to determine whether loading reductions are being achieved over time and substantial progress is being made toward attaining water quality standards.

What does this mean?
As projects are implemented in the watershed, you will need water quality benchmarks to track progress towards attaining water quality standards. The *criteria* in element *h* (not to be confused with *water quality criteria* in state regulations) are the benchmarks or waypoints to measure against through monitoring. These interim targets can be direct measurements (e.g., fecal coliform concentrations, nutrient loads) or indirect indicators of load reduction (e.g., number of beach closings). These criteria should reflect the time it takes to implement pollution control measures, as well as the time needed for water quality indicators to respond, including lag times (e.g., water quality response as it is influenced by ground water sources that move slowly or the extra time it takes for sediment bound pollutants to break down, degrade or otherwise be isolated from the water column). Appendix B of these guidelines, "Measures and Indicators of Progress and Success," although intended as measures for program success, may provide some examples that may be useful. You should also indicate how you will determine whether the WBP needs to be revised if interim targets are not met. These revisions could involve changing management practices, updating the loading analyses, and reassessing the time it takes for pollution concentrations to respond to treatment.

***Element i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under element* h.**

What does this mean?
The WBP should include a monitoring component to determine whether progress is being made toward attaining or maintaining the applicable water quality standards for the waterbody(ies) addressed in the plan. The monitoring program should be fully integrated with the established schedule and interim milestone criteria identified above. The monitoring component should be designed to assess progress in achieving loading reductions and meeting water quality standards. Watershed-scale monitoring can be used to measure the effects of multiple programs, projects, and trends over time. Instream monitoring does not have to be conducted for individual BMPs unless that type of monitoring is particularly relevant to the project.

For more detailed information on developing watershed-based plans, please see *A Handbook for Developing Watershed Plans to Restore and Protect Our Waters*, U.S. EPA, EPA 841-B-08-002 March 2008, (water.epa.gov/polwaste/nps/handbook_index.cfm). Other resources for watershed planning are available on the Watershed Central website - including the Watershed Central Wiki and Plan Builder tool at (water.epa.gov/type/watersheds/datait/watershedcentral/index.cfm).

Appendix D—State-by-State § 319 Allocation

This appendix sets forth, for each state, its percentage of the total allocation of § 319 dollars each year. To calculate the allocation provided to a particular state in a particular year, do the following:

1. Begin with the total § 319 funding appropriated by Congress for the year in question.

2. Subtract at least 1/3% of the total § 319 appropriation for distribution to Indian Tribes. (The Clean Water Act allows EPA to provide only up to one-third of one percent of the total 319 appropriation to Tribes. However, for each of the past several years, Congress has removed that limitation for the year in question, and EPA has provided that $6 million of the total § 319 appropriation should be distributed to eligible Tribes. Since this depends on annual Congressional appropriations language, the annual allocation of § 319 funds to Indian Tribes cannot be reliably predicted.)

3. Multiply the funds remaining after step #2 by the applicable state percentage below.

	Percentage
Region 1	
Connecticut	0.98
Maine	1.17
Massachusetts	1.36
New Hampshire	0.76
Rhode Island	0.68
Vermont	0.74
Region 2	
New Jersey	1.67
New York	3.40
Puerto Rico	0.56
Virgin Islands	0.27
Region 3	
Delaware	0.72
Dist. Of Col	0.63
Maryland	1.34
Pennsylvania	2.95
Virginia	1.97
West Virginia	1.10
Region 4	
Alabama	1.96
Florida	3.92
Georgia	2.34
Kentucky	1.71
Mississippi	1.92
N. Carolina	2.33
S. Carolina	1.56
Tennessee	1.59
Region 5	
Illinois	4.12
Indiana	2.25
Michigan	2.93
Minnesota	3.46

Ohio	3.04
Wisconsin	2.59
Region 6	
Arkansas	1.97
Louisiana	2.44
New Mexico	1.22
Oklahoma	1.58
Texas	4.75
Region 7	
Iowa	2.29
Kansas	1.85
Missouri	2.31
Nebraska	1.82
Region 8	
Colorado	1.27
Montana	1.33
N. Dakota	2.42
S. Dakota	1.64
Utah	0.92
Wyoming	0.98
Region 9	
Arizona	1.64
California	5.34
Hawaii	0.77
Nevada	0.85
Am. Samoa	0.27
Guam	0.27
Marianas	0.27
Region 10	
Alaska	1.22
Idaho	1.24
Oregon	1.39
Washington	1.92

Appendix E—Guidance and Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants

Regions shall review the progress that each state is making in implementing its nonpoint source (NPS) management program and provide written documentation of this progress. Specifically, prior to approving funding recommendations for the award of section 319 funds, the Regions shall complete this checklist covering the prior section 319 grant or PPG reporting period. The checklist applies to all states that receive funds from section 319; however, Section 5 applies only to states that include these funds in Performance Partnership Grants (PPGs). Note that the Rate of Expenditure analysis in Section 4(B) is not required for section 319 funds incorporated into a PPG.

The checklist is designed to document the extent to which each state meets foundational aspects of program progress and CWA section 319 grant management requirements, including those specified in binding section 319 grant guidelines available at www.epa.gov/nps/319. These aspects should be assessed as a whole in making a determination, with each response constituting information, or a line of evidence, that will lead towards a decision based on the Region's best professional judgment. Negative responses to a question may be supplemented with a justification or description of a corrective action underway or necessary. Yes-or-no questions should typically begin with "yes" or "no" responses (and sparingly with other responses such as "n/a", "unknown", or "somewhat"); additional succinct assessments or explanations are strongly encouraged, where helpful. With only one question in the checklist – question 1(A)(iv) – does a "no" response constitute a de facto finding of unsatisfactory progress, per CWA section 319(h)(8).

The final determination of progress of state NPS management programs is to be made by the Regional Administrator or delegated authority (e.g., water division director or program manager). The checklist for this determination should be completed by the appropriate regional NPS program staff (typically, the CWA section 319 Grant Project Officer for non-PPG awards and the CWA section 319 NPS Program Coordinator for states that include section 319 grant funds in a PPG). A transmittal letter or memo for each determination shall include a summary of any significant outstanding concerns and notice of corrective action plan, if needed. Each state NPS program manager shall receive a copy of this transmittal letter/memo and the completed checklist, with a copy to the state water division director. The completed checklist and transmittal letter/memo may be attached to the grant funding recommendation.

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1. <u>Meeting Statutory and Regulatory Requirements and Demonstrating Water Quality Results</u>

A. Section 319(h)(8) requires EPA to determine if a state has made satisfactory progress in meeting a schedule of annual milestones to implement its NPS management program.

i) Does the state's NPS management program include relevant, up-to-date and trackable annual milestones for program implementation?

ii) If the state does not yet include up-to-date annual milestones in its NPS management program, in what document(s) is this schedule located?

iii) Has the state reported its progress in the annual report required under CWA section 319(h)(11) in meeting its milestone(s) for the preceding fiscal year?

iv) Has the state demonstrated satisfactory progress in meeting its schedule of milestone(s) for the preceding fiscal year? Briefly elaborate. (If no, in accordance with CWA section 319(h)(8), the 319 grant award for the coming year cannot be awarded.)

B. Section 319(h)(11) requires each state to report on an annual basis reductions in NPS pollutant loading and improvements in water quality.

i) For all active projects that have NPS reduction goals for nutrients or sediment, did the state report load reductions (WQ-9) into GRTS during the reporting period after the first year that practices were installed or implemented achieved?

ii) Has the state reported improvements in water quality that have occurred in the current reporting period resulting from implementation of its NPS management program and/or previous years' section 319(h) grant work plans? (e.g., reporting on SP-12 or other improvements such as shellfish bed and beach openings that have not yet led to attainment of water quality standards)?

iii) Did the state meet its annual commitment/target/goal (if any) under WQ-10 to remove impaired waters from the 303(d) list?

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2. Overall GRTS Reporting

For this question, it is sufficient to report on the results of previously conducted post-award grants monitoring. No additional monitoring may be needed.

A. To ensure that the state meets the reporting requirements in section 319(h)(11), did the state enter all mandated data elements into GRTS (including geolocational tags where available) for all applicable projects in the previous section 319 grant award?

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3. Focus on Watershed-Based Implementation

For this question, it is sufficient to document the results of previous findings, if this was determined during the Region's reviews of the state's active grant work plans.

A. Is the state implementing nine-element watershed-based plans – or approved alternative plans - at required grant expenditure levels in accordance with EPA's guidelines for CWA section 319(h) grants? That is, in fiscal year 2014 and subsequent years, was 50% of the state's grant used to implement watershed based plans, unless the state provided state funding for watershed projects equal to its total section 319 allocation? If no, please explain.

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4. Ensuring Fiscal Accountability

For this section, it is sufficient to briefly report on the results of previously conducted grants management and oversight required of all grants.

A. *Tracking and Reporting*. For all active section 319(h) grants, using existing post-award monitoring or best professional judgment:

   i) Is the state's RFP process efficient and timely for selecting and funding projects within the work plan timeframe?

   ii) Did the State obligate all of the section 319(h) funds in the previous year's award within one year per current section 319 grant guidelines?

B. *Rate of Expenditures*. For categorical grants, include and examine a summary of expenditures for all open section 319 grant awards listing the following: state; grant #; FY; project period; grant award amount; balance (unliquidated obligation); percent unliquidated obligation. See example below, which contains information readily available through Compass, EPA's financial data warehouse. This information could also be obtained from other EPA tools such as GRTS or the Post Award Baseline Tracking Tool. Include a state total of grant award amount, balance and percent unliquidated obligation. Please reference the source and date of information used to answer the question below. ("SA" in column 1of the example below = State Abbreviation.)
   Note: This analysis is not required for section 319 funds incorporated into a PPG.

CWA Section 319(h) Funds, Rates of Expenditures (Unliquidated Obligations)								
Based on Compass Federal Data Warehouse Online on **<PROVIDE DATE>**								
	Grant #	**FY**	**Project**		**Period**	**Grant Award Amount**	**Balance (ULO)**	**% ULO**
SA	C9-97956808	08	07/01/08	-	06/30/13	$ 2,699,664	$ 89,089	3.3%
SA	C9-97956809	09	07/01/09	-	06/30/14	$ 2,759,386	$ 482,893	17.5%
SA	C9-97956810	10	07/01/10	-	06/30/15	$ 2,608,349	$ 957,264	36.7%
SA	C9-97956811	11	07/01/11	-	06/30/16	$ 2,257,140	$ 938,970	41.6%
SA	C9-97956812	12	07/01/12	-	06/30/17	$ 2,257,732	$ 1,763,289	78.1%
SA	**Total:**					**$ 12,582,271**	**$ 4,231,505**	**33.6%**

i) Relying on best professional judgment, do the figures in the Rate of Expenditures chart substantially match the expected drawdown rates or the negotiated outlay strategy from the associated grant work plan schedules? If not, briefly explain.

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5. PPG Considerations

For states that include section 319 funds in Performance Partnership Grants (PPGs), briefly report on the following.

A. Has the state followed the goals, objectives and measures of the national program guidelines and priorities in implementing its NPS program? If not, did the state negotiate with the EPA region a work plan that differs significantly from the National Program Manager (NPM) guidance? (If yes, the EPA Region was required to consult with the NPS NPM.) Please explain.

B. Using best professional judgment, has the state adequately documented progress consistent with its listed priorities?

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6. Identifying and Addressing Performance Issues/Progress Concerns

A. Considering issues itemized on this checklist, briefly summarize any significant outstanding section 319 grant performance issues or progress concerns, including recommendation(s) for corrective action(s). For states with out-of-date NPS management programs or schedule of milestones, Regions are to ensure that forthcoming section 319 grant awards are contingent on completing updates to these programs or milestones.

B. Are there other significant outstanding section 319 grant performance issues or progress concerns that were not identified through this checklist? If so, please describe, including any recommendation(s) for corrective action(s), as may be appropriate.

Appendix F-- Nationally Consistent Programmatic § 319 Grant Conditions

1) Reporting Requirements

The recipient agrees to comply with all reporting requirements required by EPA regulation (40 CFR parts 31 and 35), §§ 319(h)(10) and (11) of the Clean Water Act, and by the *Nonpoint Source Program and Grants Guidelines for States and Territories*. (2013) Failure to comply with the above referenced reporting requirements may result in a disruption of grantee funding and/or early termination of the grant agreement in accordance with 40 CFR part 31.43.

2) Project Reports

The recipient agrees to submit reports for all projects identified in the approved work plan, including those performed by the recipient, subgrantees, contractors, and through interagency agreements. Reports shall include a comparison of actual accomplishments to the outputs/outcomes established in the workplan for that period, the reasons for slippage if those outputs/outcomes could not be met, and any other pertinent information such as cost overruns. Reports are due **[annually/semi-annually]** on **[insert date(s)]** each year until the grant is closed. Reports can be submitted in GRTS. In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions arise which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

A final project report is due to the EPA project officer within 90 days after the end of the Assistance Agreement Project Period. The report must describe project activities and identify and discuss the extent to which project goals have been achieved, and the amount of funds spent on the project. The report should emphasize successes, failures, lessons learned, load reduction data, and should include any available water quality and habitat data demonstrating project results. Acceptance and approval of final project reports is the responsibility of the recipient. Final project reports will be provided electronically as attachments in GRTS, and submitted in hard copy if required. In addition, the GRTS database should be updated to reflect the project status as complete.

3) Annual Nonpoint Source (NPS) Program Report:

The recipient agrees to provide information required under § 319(h)(11) of the Clean Water Act for the purpose of annual reporting on progress under the State's NPS management program. The § 319 Annual Program Report will be due by **[insert date]**. At a minimum, the report shall contain a summary of progress, including rationale/evidence, in meeting the schedule of milestones in the approved management program and reductions in NPS pollutant loading and improvements in water quality that has resulted from implementation of the NPS management program. Failure to submit the annual NPS program report may affect the recipient's eligibility for future § 319 grant funding.

4) GRTS:

The recipient shall enter all mandated data elements into the Grants Reporting and Tracking System (GRTS) for NPS projects funded under § 319 of the Clean Water Act, according to deadlines specified by EPA **[insert date if desired]**.

Initial data entry is due 90 days from award and includes all mandated data elements except the geographic area (if still to be determined), best management practices (BMPs) and load reduction data. The recipient will report BMP and load reduction data as projects are implemented. At a minimum, the BMP and load reduction data will be reported by February 15th of each year for projects implementing BMPs in the previous fiscal year.

5) Quality Assurance[18]

The recipient agrees to continue to implement and adhere to its EPA-approved Quality Management Pan (QMP) in accordance with EPA QA/R-2, EPA Requirements for Quality Management Plans. If not included under the approved QMP, a stand-alone QAPP is required for those projects/activities that result in the collection and/or generation of environmental information, metrics or data. The recipient agrees to ensure that an approved site specific QAPP is completed for each project. The QAPPs will be reviewed and approved by the Recipient prior to the reimbursement for collection of any environmental information or data. A copy of the approved QAPPs must be retained with the recipient's official records for this Agreement.

6) STORET Data Reporting

The recipient agrees to enter water quality monitoring data, for data collected in a waterbody pursuant to the implementation of a § 319 project, into EPA's "storage and retrieval" (STORET) data system. All water quality data generated with § 319 funding, either directly or by sub-award, are required to be transmitted into the STORET data warehouse using either the Water Quality Exchange (WQX) or WQXweb.

7) Sufficient Progress

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project. In determining sufficient progress, EPA may also consider the rate of expenditure of funds (unliquidated obligations), as well as the findings from the most recent § 319 performance and progress determination. (See EPA's *Guidance and Checklist for Determining Progress of State NPS Management Programs and Performance of CWA Section 319 Grants*.)

8) Watershed-based Plans

Under the § 319 guidelines, use of § 319 "watershed project" funds requires that a watershed-based plan which includes all of the information in elements (a)-(i) as described in the § 319 grant guidelines, or an acceptable alternative plan be completed prior to implementation of on-the-ground projects. The recipient shall ensure a watershed-based plan or acceptable alternative plan is completed prior to beginning to implement any on-the-ground project with § 319 watershed project funds.

[18] Regions may substitute this condition with a state-specific grant condition on quality assurance.

Upon request by EPA, the recipient shall provide a copy of any watershed-based plan or acceptable alternative plan funded under § 319 as well as any available information regarding the status of implementation activities and results, including but not limited to any reports on BMP's implemented; § 319 funds expended; contributions of funds by other sources to assist in implementation of the watershed-based plans (to the extent this information is readily available to the State); results achieved; and other relevant and appropriate information.

9) Operation and Maintenance

The recipient will assure the continued proper operation and maintenance of all nonpoint source management practices that have been implemented for projects funded under this agreement. Such practices shall be operated and maintained for the expected lifespan of the specific practice and in accordance with commonly accepted standards. The recipient shall include a provision in every applicable sub-agreement (subgrant or contract) awarded under this grant requiring that the management practices for the project be properly operated and maintained. Likewise, the sub-agreement will assure that similar provisions are included in any sub-agreements that are awarded by the sub-recipient.

10) Maintenance of Effort/ Required Non-Federal Match

State expenditures for NPS implementation activities must meet the maintenance of effort (MOE) level required under § 319(h)(9) of the Clean Water Act. A 40% non-federal program match is also required. The state should assure that the MOE and match requirements have been satisfied and report this through the final Federal Financial Report (FFR) at the end of the budget period.

11) Limitation on Administrative Costs

In accordance with § 319(h)(12) of the Clean Water Act, administrative costs in the form of salaries, overhead, or indirect costs shall not exceed in any fiscal year 10 percent of the amount of the grant except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

12) Obligation and Outlay of Funds

In accordance with § 319(h)(6) of the Clean Water Act, the recipient will show commitment to expend the funds awarded in this grant and to complete the funded projects in accordance with its EPA approved Nonpoint Source management program and the approved work plan. The recipient will award all proposed contracts, subgrants and interagency agreements within one year after grant award.

13) Food and Refreshments

Unless the event(s) and all of its components (i.e., receptions, banquets and other activities that take place after normal business hours) are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

I. An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);

II. A description of the purpose, agenda, location, length and timing for the event.
III. An estimated number of participants in the event and a description of their roles.

Recipients may address questions about whether costs for light refreshments, and meals for events are allowable to the recipient's EPA project officer. However, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.11)

14) Permits

The recipient agrees to ensure that all necessary permits (such as Clean Water Act § 404) are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state or local laws. The subgrantee's project implementation plan must identify permits that may be needed to complete work plan activities. The recipient must keep documentation regarding necessary permits in the project file. EPA approval of a workplan does not imply nor guarantee that a federal, state, or local permit will be issued for a particular activity.

15) Participation in Regional and National Meetings

The recipient agrees to attend annual NPS Manager's meetings and GRTS users meeting, as scheduled, unless agreed upon in advance by the EPA Project Officer.

16) NPS Success Stories

The recipient must draft and submit to EPA all applicable NPS Program Success Stories which highlight projects resulting in the restoration of waterbodies.

17) Substantial Involvement condition
[if a cooperative agreement (only if applicable):]

Substantial Federal involvement with the recipient is anticipated during the performance of the cooperative agreement. This Federal involvement may include:

1. Monitoring by EPA of the recipient's performance.

2. Consultation and collaboration on technical matters that will help the recipient carry out the agreement effectively.

3. EPA's prior review and approval of project phases if developed and the substantive terms of the proposed subawards the recipient enters into to carry out specific elements of the scope of work.

18) TMDLs Developed Under Section 319 Grant

For each § 319-funded TMDL, the recipient will provide the following supplemental information to support the load allocations specified in the TMDL: (1) an identification of total NPS existing loads and total NPS load reductions necessary to meet water quality standards, by source type;

(2) a detailed identification of the causes and sources of NPS pollution by source type to be addressed in order to achieve the load reductions specified in the TMDL (e.g., acres of various row crops, number and size of animal feedlots, acres and density of residential areas); and (3) an analysis of the NPS management measures by source type expected to be implemented to achieve the necessary load reductions, with the recognition that adaptive management may be necessary during implementation.