

Memo

Guidance on Use of Clean Water Act and Safe Drinking Water Act Authorities to Address Management Needs for Lakes and Reservoirs

July 9, 1998

MEMORANDUM

SUBJECT: Guidance on Use of Clean Water Act and Safe Drinking Water Act Authorities to Address Management Needs for Lakes and Reservoirs

FROM: Robert H. Wayland III, Director /s/
Office of Wetlands, Oceans and Watersheds

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

The purpose of this supplemental guidance memorandum is: to encourage Regions and States to recognize the importance of lakes, ponds and reservoirs as key elements of the aquatic ecosystem which provide valuable habitat for fish, wildlife, and plants and important recreational opportunities for people. Natural lakes and reservoirs are often sources of drinking water. To provide these important services lakes need to be protected from pollution. A number of Clean Water Act (CWA) programs can and should help to protect and restore lakes. In particular, I want to emphasize the eligibility of lake and reservoir restoration and protection activities under section 319 of the CWA; to ensure the listing of impaired and threatened lakes and reservoirs on section 303(d) lists prepared by States, tribes and territories (referred to collectively as "States" in this guidance); and to encourage greater use of the CWA State Revolving Fund (CW-SRF) for implementing priority lake and reservoir management projects in approved State nonpoint source (NPS) management programs.

Section 319 Nonpoint Source Program

A recent survey conducted by the North American Lake Management Society (NALMS) of State lake managers indicates considerable variability in the use of the CWA section 319 NPS Program for supporting lakes-related work previously funded under the CWA section 314 Clean Lakes Program. A copy is provided for your information. In the May 1996 *Nonpoint Source Program and Grants Guidance for Fiscal Year 1997 and Future Years* we noted:

"5. Lake Protection and Restoration Activities

Lake protection and restoration activities are eligible for funding under Section 319(h) to the same extent, and subject to the same criteria, as activities to protect and restore other types of waterbodies from nonpoint source pollution. States are encouraged to use Section 319 funding for eligible activities that might have been funded in previous years under Section 314 of the Clean Water Act. However, Section 319 funds should not be used for in-lake work such as aquatic

macrophyte harvesting or dredging, *unless the sources of pollution have been addressed sufficiently to assure that the pollution being remediated will not recur.*" [emphasis added]

The following must be met for lakes work to be eligible for funding under section 319:

1. States need to ensure that critical lake and reservoir management needs are clearly identified in State section 319 NPS management programs. This is particularly important because the CWA explicitly requires that section 319(h) grants are to be made "for the purpose of assisting the State in implementing such (NPS) management program(s)." Thus, in order for an activity to be eligible for funding under section 319(h), the activity must be included in a State NPS management program. State lake managers and lake communities will need to ensure that critical lake and reservoir NPS control needs are included in any updated State NPS management programs so that such activities will be eligible for funding under section 319(h). Lake managers should also be sure to include in-lake management practices, such as aeration, dredging, etc., as part of their list of eligible NPS best management practices.
2. The same types of monitoring activities funded under section 314 are grant eligible under section 319, subject to the following limitations:

Given that the primary objective of the section 319 program is for *implementing* State NPS programs, the May 1996 guidance established that a limited amount of grant funds could be used for updating State NPS management programs and NPS assessments, including Statewide lake water quality assessments and assessments of specific lakes. Specifically, the May 1996 guidance says "States may use up to 20 percent of their section 319(h) funds or \$250,000, whichever is less, to update and refine their programs and assessments." The guidance refers to several other assessment activities that this restriction applies to, including developing total maximum daily loads and other watershed-scale strategies to reduce NPS pollution. ¹

¹More recently, in anticipation of a significant increase in funds for NPS grants in FY 1999 and beyond as highlighted in the Clean Water Action Plan, we have indicated an intent to eliminate the \$250,000 cap.

The above financial cap does not apply to monitoring or assessment activities done in the context of a specific watershed implementation project which is using baseline monitoring, in conjunction with follow-up monitoring, to determine the effectiveness of that particular NPS implementation project. In fact, the May 1996 guidance encourages evaluation of all 319 funded watershed projects in some manner and continues the national monitoring program to intensively monitor and evaluate a subset of watershed projects funded under section 319. These national monitoring program projects, some of which contain lakes, all include baseline monitoring to establish conditions before NPS controls are implemented.

For additional clarification regarding section 319 lakes-related policy see the attached "Questions and Answers on the Relationship Between the Sec. 319 Nonpoint Source Program and the Sec. 314 Clean Lakes Program," issued by EPA in November 1996.

Other Clean Water Act Authorities and Initiatives

In addition to section 319 other CWA-related authorities and initiatives should be used to ensure that priority lake and reservoir management needs are met including the following:

1. A major action item in the *Clean Water Action Plan* is the development of unified watershed assessments. Guidance has recently been issued which calls for States to submit draft unified watershed assessments and watershed restoration priorities for federal and broad public review by August 1, 1998 and for final assessments and priorities to be completed by October 1, 1998. Most of the new federal resources proposed for FY 1999 and beyond will be targeted to developing and implementing watershed restoration action strategies for the watersheds identified in these unified watershed assessments in most in need of restoration.

The implementation of the *Clean Water Action Plan* provides further impetus for placing high priority especially on restoring lakes that are in need of restoration. Lake managers' input should be solicited to assure the inclusion of lakes with impaired water quality in States' unified watershed assessments, and appropriate priority should be placed on the development and implementation of watershed restoration action strategies to solve these lakes' problems. I encourage States to use section 319 funds to help assist in the implementation of these strategies, with particular emphasis on watersheds in most need of restoration.

2. States also need to ensure that lakes and reservoirs which are impaired or threatened, and require total maximum daily loads (TMDLs) are included on state section 303(d) lists. The Clean Water Action Plan stresses the importance of giving priority to waters identified on section 303(d) lists in unified watershed assessments, including priority for new funding available in FY 1999 and beyond.
3. EPA is encouraging greater use of the Clean Water State Revolving Fund (CW-SRF) to address NPS problems. In creating the CW-SRF, Congress ensured that it would be able to fund virtually any type of water quality project, including NPS, wetlands, estuary and other types of watershed projects, as well as the more traditional municipal wastewater treatment systems. Of importance to lake managers, the CW-SRF can fund virtually any type or category of NPS pollution as long as the problem is identified in State NPS management programs. The CW-SRFs have in excess of \$24 billion in assets and since 1989, the SRF has funded more than \$650 million in NPS projects. Thus, in addition to the annual grant funds available under section 319, an enormous potential exists for using the CW-SRF to fund lake and reservoir restoration and protection projects as well as projects for other waterbody types. See the CW-SRF website for more information at: <http://www.epa.gov/OWM/finan.htm>[BROKEN]
4. Finally, the Safe Drinking Water Act Amendments of 1996 (SDWA) include new provisions for protecting source waters, including ground and surface water sources of drinking water. EPA issued guidance for the SDWA Source Water Assessment and Protection Program in August 1997 and now source water assessments are to be completed for all public water

supplies, many of which are lakes or reservoirs. In EPA's guidance for the Source Water Assessment Program we encouraged States to use existing lake and reservoir studies conducted under section 314 and 319 in the development of source water assessments. Once the State Source Water Assessment and Protection Programs are completed and approved by EPA, these will provide the basis for identifying additional implementation needs which can be met through section 319, the CW-SRF, the separate Drinking Water State Revolving Fund (DWSRF) created by the new SDWA, and other programs. See EPA's Office of Ground Water and Drinking Water website for more information on the SDWA Source Water Assessment and Protection Program and the DWSRF at: <http://www.epa.gov/OGWDW/programs.html>[BROKEN]

Next Steps

The above policy clarification is intended to assist EPA regional, State, tribal, territorial and local staff working on lake and reservoir programs, the section 319 program, the TMDL program, the CW-SRF and the SDWA program to address the management needs of lakes and reservoirs. EPA Regional staff should meet or discuss with their counterparts in the States how the above policy considerations can be applied to meet lake and reservoir management needs in a particular State. This integration of lake and reservoir management needs into the section 319 and the 303(d) program is an important component of watershed based efforts to ensure that priority lake and reservoir problems are addressed under section 319, the CW-SRF and other programs.

If you have any questions or comments, please call me at (202) 260-7166 or Geoff Grubbs at (202) 260-7040.

Attachments

cc. Robert Perciasepe
Office of Water Office Directors
EPA Regional Administrators
EPA Regional Nonpoint Source Coordinators
EPA Regional Clean Lakes Coordinators
EPA Regional TMDL Coordinators
EPA Regional CW-SRF Branch Chiefs
EPA Regional Drinking Water Branch Chiefs