

Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999

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[This guidance was signed on August 18, 1998]

MEMORANDUM

SUBJECT: Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999

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

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

The *Clean Water Action Plan*, released by the President in February 1998, presents a broad vision of watershed protection. A central aspect of the *Clean Water Action Plan* is its set of actions that are designed to promote a renewed focus by state, territorial, federal, tribal, and local governments and their stakeholders to (1) identify watersheds with the most critical water quality problems, and (2) work together to focus resources and implement effective strategies to solve these problems. To assist in implementing the *Clean Water Action Plan*, the President has requested that new federal resources be made available in FY 1999 and beyond and be targeted to support implementation of actions called for in Watershed Restoration Action Strategies.

The most significant resources to be provided under the Clean Water Act ("CWA") to assist in the implementation of Watershed Restoration Action Strategies will be made available under Section 319 of the CWA. While the precise dollar figure has not yet been decided upon by the Congress, I anticipate that the increase in Section 319 funds will be substantial. In anticipation of this funding increase, and consistent with the goals of the *Clean Water Action Plan*, this memorandum establishes guidance on the use of these incremental Section 319 funds.

Please note that, except as modified below, the *Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years*, issued by EPA in May 1996, remains in effect.

WATERSHED RESTORATION ACTION STRATEGIES

The *Clean Water Action Plan* provides that states and territories should work with other appropriate agencies, governments, organizations, and the public to create Unified Watershed Assessments that identify watersheds that do not meet clean water and other natural resource goals and where preventive action is needed to sustain water quality and aquatic resources. As explained in June 9, 1998, guidance from James R. Lyons, Under Secretary for Natural Resources and Environment, U.S. Department of Agriculture, and Robert Perciasepe, Assistant Administrator, Office of Water, U.S. Environmental Protection Agency, entitled *Clean Water Action Plan – Unified Watershed Assessment Framework*, draft watershed assessments were scheduled for public comment by August 1, 1998, and final assessments are scheduled to be completed by October 1, 1998.

The *Clean Water Action Plan* next provides that states and territories should work with appropriate agencies, organizations, and the public to define watershed restoration priorities, with special attention to watersheds most in need of restoration and protection. This schedule must be coordinated with Section 303(d) of the Clean Water Act and provide an opportunity to bundle total maximum daily loads ("TMDLs") on a watershed scale. The schedule should identify the highest priority watersheds to be addressed in the first two years (through 2000). The *Unified Watershed Assessment Framework* provides that these watershed restoration priorities are to be defined by October 1, 1998.

The next step identified in the *Clean Water Action Plan* is for states and territories to work with public agencies and private-sector organizations and citizens to develop, based on the initial schedule for the first two years, Watershed Restoration Action Strategies, for watersheds most in need of restoration. At the end of the year 2000 and periodically thereafter, EPA and USDA, in consultation with other Federal and State agencies and the National Watershed Forum, will submit a Watershed Restoration Progress Report to the President, the nation's governors, tribal leaders, and the public, evaluating progress in implementing restoration actions and recommending any actions needed to improve progress toward meeting clean water goals.

GUIDELINES FOR INCREMENTAL SECTION 319 NONPOINT SOURCE GRANTS IN FY 1999

The following guidelines apply to the award and use of any Section 319 funds that are appropriated by the U.S. Congress in excess of \$100 million (the amount that is identified in the *Clean Water Action Plan* as the base, above which the provisions of this guidance apply). In the discussion below, we refer to the funds exceeding \$100 million as the "incremental Section 319 grant funds".

1. Allocation Formula: EPA will use the existing section 319 allocation formula (described in Appendix G of the May 1996 Nonpoint Source Program and Grants Guidance) to initially allocate any incremental Section 319 grant funds to states, territories, and tribes. These initial allocations may be modified as explained in the following paragraph.

2. Completion of Unified Watershed Assessments and Watershed Restoration Priorities: The incremental Section 319 grant funds are being provided to help states, territories, and their partners implement Watershed Restoration Action Strategies for watersheds identified in Unified Watershed Assessments. Therefore, incremental grant funds will be allocated only to states and territories that have completed their Unified Watershed Assessments and their Watershed Restoration Priorities by October 1, 1998, consistent with the *Unified Watershed Assessment Framework*. If any state or territory has failed to complete its Unified Watershed Assessment and Watershed Restoration Priorities by that date, EPA will distribute its allocation to all other states and territories that have completed their Unified Watershed Assessments and Watershed Restoration Priorities in accordance with the Section 319 allocation formula.

3. Use of Incremental Funding: Incremental Section 319 funds are subject to the same eligibility criteria and requirements as all other Section 319 funds. Thus states must meet for these funds the basic legal and program requirements that are set forth in Section 319 and in the May 1996 *Nonpoint Source Program and Grants Guidance* with regard to all Section 319 grants. For example, the 10% cap on administrative expenses contained in Section 319(h)(12) will apply to the entire amount of the Section 319 grant.

Within this existing framework, incremental funding under Section 319 will be focused upon implementing Watershed Restoration Action Strategies in areas identified by states' and territories' Unified Watershed Assessments as being "in need of restoration". These areas, referred to as "Category I" watersheds, are defined in the June 9, 1998 guidance, *Clean Water Action Plan – Unified Watershed Assessment Framework*, as those watersheds that "do not now meet, or face imminent threat of not meeting, clean water and other natural resource goals." (Category I watersheds are described more completely in Appendix A to this memorandum. Watershed Restoration Action Strategies are described on pages 13 and 14 of the *Unified Watershed Assessment Framework*.) We recommend that the states emphasize restoration of the highest priority watersheds that the states have identified as needing to be addressed in FY 1999 and 2000.

4. Updating and Refining Nonpoint Source Programs and Assessments: I am revising the May 1996 nonpoint source program and grants guidance, which has previously allowed states and territories to use up to 20 percent of their Section 319 funds or \$250,000, whichever is less, to upgrade and

refine their nonpoint source programs and assessments. (See further discussion of the program upgrade process below under the heading, "Looking Towards FY 2000".) Beginning in FY 1999, states and territories are authorized to use up to 20 percent of their entire Section 319 allocation to upgrade and refine their nonpoint source programs and assessments, without any dollar limitation. States and territories may use these funds for any of the broad set of assessments and program development purposes outlined in detail on page 21 of the May 1996 guidance (which is reproduced in Appendix B), except that the incremental portion of this 20 percent (i.e., 20 percent of the appropriations that exceed the base allocation of \$100 million) must be focused particularly on activities that will assist in the implementation of Watershed Restoration Action Strategies. A prominent example of such activities is the development of total maximum daily loads (TMDLs) to help implement a Watershed Restoration Action Strategy.

5. Schedule for FY 1999 Grant Applications and Awards

The schedule for states and territories to submit grant applications and for EPA to approve work plans and award grants for the base allocation of \$100 million remains as set forth in Appendix D of the May 1996 Nonpoint Source Program and Grants Guidance. That guidance suggests that states and territories submit draft work plans by June 1; EPA provide response to work plans by July 8; states and territories submit final work plans and grant applications by August 1; and EPA approve work plans and award grants by October 1.

I recognize that the schedule described above is too ambitious to apply to the large increase in funds that are expected to be become available for FY 1999, particularly since the amount of the increase is likely to be determined in September 1998 at the earliest. Therefore, for the incremental funds in FY 1999, I am establishing the following schedule:

- EPA provides funding targets which include reallocated funds
- States submit draft work plans to EPA Regions
- EPA Regions provide response to work plans
- States submit final work plans and grant applications to EPA Regions
- EPA Regions approve work plans and award grants

- 30 days after appropriation
- January 16, 1999
- February 13, 1999
- March 13, 1999
-
- April 17, 1999

1. Upgrading States' and Territories' Nonpoint Source Management Programs

The *Clean Water Action Plan* establishes an additional condition, beginning in FY 2000, for the award of the incremental Section 319 grant funds. This condition is based upon the May 1996 nonpoint source program and grants guidance which establishes a framework for States and Territories to upgrade their nonpoint source programs to address nine key elements of successful nonpoint source programs. The key action in the *Clean Water Action Plan* states:

"EPA and other Federal agencies will provide technical assistance to states and tribes to help upgrade polluted runoff programs to address all nine key program elements. Beginning in FY 1999, EPA and all states, territories, and tribes will expedite incorporation of the nine key elements established in national guidance into section 319 nonpoint source management programs. Also in FY 1999, EPA will advise states and tribes that, beginning in FY 2000, EPA will award any section 319 monies exceeding the \$100 million authorized level only to those states and tribes that have incorporated all nine key elements into an approved section 319 nonpoint source management program."

On May 26, 1998, I sent to you a memorandum entitled "Process for Approval of Upgraded State and Territorial Nonpoint Source Management Programs", that provides guidance to assist the States in achieving the *Clean Water Action Plan* goal of upgrading the State nonpoint source programs by FY 2000. EPA is committed to working closely with the States to assure that they succeed in upgrading their programs and in subsequently receiving increased funds to implement these upgraded programs. To that end, we strongly encourage States to submit preliminary drafts of their upgraded programs to EPA so that EPA can provide early feedback and engage in constructive dialogue with the States prior to their formal submission of the programs.

2. Other Key Provisions in the Clean Water Action Plan

The increased Section 319 funding resources to be made available in FY 1999 and beyond provide an opportunity for States to implement two other key actions of the *Clean Water Action Plan*. The first of these commits EPA and, in coastal States and Territories NOAA, to promote by the year 2000 the establishment of enforceable State authorities needed to ensure the implementation of nonpoint source controls to achieve water quality standards. The second commits EPA to work with the States to increase the number and dollar amount of loans made through state revolving loan fund (SRF) programs for priority projects to prevent polluted runoff, with the goal of increasing the annual percentage of funds loaned for this purpose to at least 10 percent by the year 2001.

I encourage States to apply their increased Section 319 funds, as part of their program development activities, to ongoing efforts to strengthen their nonpoint source management programs, both to improve and enhance their current enforceable authorities where needed to ensure implementation of controls to achieve water quality standards and to increase the use of SRF funds to support nonpoint source control efforts. Both stronger authorities and enhanced funding (including both increased Section 319 funds and SRF funds for nonpoint source control), used to implement upgraded State nonpoint source management programs, promise to provide the full range of tools

needed to successfully solve our nation's remaining polluted runoff problems and achieve water quality standards.

TRIBAL PROGRAMS

Like their State counterparts, Tribes will share in the increased Section 319 funds made available in FY 1999 and beyond. As in the past, Tribes will continue to be awarded Section 319 grant funds in accordance with a separate national awards process. Therefore, the general processes, requirements, and deadlines outlined above for States and Territories will not be applied to Tribes. EPA will continue to support and assist Tribes in their efforts to complete Unified Watershed Assessments and to develop and implement Watershed Restoration Action Strategies.

CONCLUSION

Polluted runoff is the greatest source of water quality problems in the United States today. The *Clean Water Action Plan* presents us all with exciting opportunities to focus our efforts and enhance our resources to solve these remaining water quality problems as well as to sustain good water quality. The application of increased funds to focus on solving our highest-priority problems, as described above, will enable us to make great strides in our efforts to achieve our water quality goals. I look forward to continuing to work closely with you in these endeavors.

If you have any questions concerning the implementation of the nonpoint source program and the *Clean Water Action Plan*, please call me at (202) 260-7166 or Geoff Grubbs, Director of the Assessment and Watershed Protection Division, at (202) 260-7040, or have your staff call Dov Weitman, Chief of the Nonpoint Source Control Branch, at (202)260-7088; fax: (202) 260-7024; e-mail: weitman.dov@epamail.epa.gov.

Attachments

cc: Roberta Savage, ASIWPCA

cc: Tribal Leaders

APPENDIX A

CATEGORY I: WATERSHEDS IN NEED OF RESTORATION

Category I watersheds, as defined in the June 9, 1998, USDA/USEPA joint memorandum entitled, "Clean Water Action Plan -- *Unified Watershed Assessment Framework*", are those watersheds that do not now meet, or face imminent threat of not meeting, clean water and other natural resource goals. Selection factors include --

- nonattainment of national clean water goals (including exceedances of state or tribal water quality standards, or impaired drinking water sources, etc.);
- nonattainment of natural resource goals related to aquatic systems, including goals related to habitat, ecosystem health, and living resources;
- other appropriate measures and indicators of degraded aquatic system conditions (e.g., wetland condition and current and historical loss rates, percent impervious surface, and other measures of aquatic habitat);
- decline in the condition of living and natural resources that are part of the aquatic system in the watershed (e.g., decline in the populations of rare and endangered aquatic species, decline in healthy populations of fish and shellfish, etc.).

APPENDIX B

REVISING MANAGEMENT PROGRAMS AND ASSESSMENTS

(Excerpted from the May 1996 Nonpoint Source Program and Grants Guidance)

"[S]tates may use section 319 funds to update and refocus their State nonpoint source management programs and nonpoint sources assessments to improve program effectiveness. To assist States in these efforts, 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.

"In refining their programs to reflect the most pressing needs and highest-priority water quality problems in the State, States may need to carry out additional activities and analyses. Based on the key elements of State programs that are described in the preceding section of this guidance, program revisions that may be supported with section 319 grants include: establishing appropriate indicators and milestones to gauge program progress; developing total maximum daily loads and other watershed-scale strategies to reduce nonpoint source pollution; focusing on determination of the most effective measures and practices to abate or prevent nonpoint pollution; strengthening

links with Federal land management agencies; developing enhanced processes to involve public, private, and Federal partners in the design and implementation of State nonpoint source management programs; and instituting systems to assess program effectiveness and make appropriate revisions.

"In addition, states may need to carry out a number of activities that have generally been associated with nonpoint source assessments. For example, State may require additional assessment work either as part of specific watershed projects, or as part of an overall Statewide, regional, or ecoregional effort. Such additional assessment work will enable States to more clearly identify and prioritize their nonpoint source problems, evaluate the effectiveness of their nonpoint source management programs, and measure progress toward environmental goals."

* This \$250,000 limitation has been eliminated in this guidance.