

days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

**Minutes:** Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.-4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanaras at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.org>.

Issued at Washington, DC, on October 20, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03-26761 Filed 10-22-03; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, November 12, 2003; 6 p.m.-9 p.m.

**ADDRESSES:** Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4412, Las Vegas, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Kay Planamento, Navarro Research and Engineering, Inc., 2721 Losee Road, North Las Vegas, Nevada 89130, phone: 702-657-9088, fax: 702-295-5300, e-mail [kozelskik@nv.doe.gov](mailto:kozelskik@nv.doe.gov).

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board:** The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda:**

1. The U.S. Department of Energy Nevada Site Office Environmental Management Program will update the community with a progress report on the Industrial Sites Program.

2. The CAB will discuss its recently developed FY 2004 work plan.

Copies of the final agenda will be available at the meeting.

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

**Minutes:** The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kay Planamento at the address listed above.

Issued at Washington, DC, on October 20, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03-26762 Filed 10-22-03; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7577-6]

### Nonpoint Source Program and Grants Guidelines for States and Territories

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA has developed guidelines for States' implementation of nonpoint source management programs under Section 319 of the Clean Water Act and for the award of Section 319 grants to

States to implement those programs. These guidelines apply to grants appropriated by Congress in Fiscal Year 2004 and in subsequent years. The guidelines continue EPA's policy of focusing a significant portion of Section 319 funds (\$100 million annually) to address watersheds where nonpoint source pollution has resulted in impairment of water quality. The remaining funds are to be used by States to assist in their implementation of their broad array of programs and authorities to address all of the water quality threats and impairments caused by nonpoint source pollution.

**DATES:** The guidelines are effective October 23, 2003.

**ADDRESSES:** Persons requesting additional information should contact Romell Nandi at (202) 566-1203; [nandi.romell@epa.gov](mailto:nandi.romell@epa.gov); or U.S. Environmental Protection Agency (4503T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The complete text of today's guidelines is also available at EPA's Nonpoint Source Web site: <http://www.epa.gov/owow/nps/cwact.html>.

Dated: October 7, 2003.

**Diane Regas,**

*Director, Office of Wetlands, Oceans, and Watersheds.*

### Preface

These guidelines are built upon and replace the *Nonpoint Source Program and Grants Guidance for Fiscal Year 1997 and Future Years* (May 1996), as well as all of the supplemental annual nonpoint source guidances and guidelines that have been published subsequently. The May 1996 guidance was developed collaboratively in a series of highly productive meetings between key representatives of the U.S. Environmental Protection Agency (EPA) and senior representatives of State nonpoint source agencies from each of the ten EPA Regions. The guidance was endorsed by the President of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) as well as by the State Co-Chair of the State/EPA Nonpoint Source Program Workgroup in a Forward which stated, "This guidance represents a sound framework for setting the future course of the nonpoint source program."

Nonpoint source pollution continues to be, and is increasingly recognized by the public as, the largest remaining source of water quality impairments in the nation. State and Territory (hereinafter collectively referred to as "State") nonpoint source programs, originally developed and approved under Section 319 of the Clean Water

Act in 1989–90, have developed and matured to meet this challenge. During the past five years, each State has upgraded its nonpoint source management program to address nine key elements that had been agreed to by the States and EPA in the May 1996 guidance.

In the intervening years since 1996, States have enhanced their technical tools and capabilities, strengthened and increased their partnerships, nurtured a vast network of community-based action on a watershed basis, and, in many cases, developed stronger financial bases and legal support for their upgraded programs. As a result, the nation is experiencing increasingly positive results in terms of both on-the-ground action and actual water quality improvements. Examples of these improvements are summarized in *Section 319 Success Stories, Volume III: The Successful Implementation of the Clean Water Act's Section 319 Nonpoint Source Pollution Program* (EPA 841-S-01-001, February 2002), available on the Internet at <http://www.epa.gov/owow/nps/Section319III>. Most of these successes are the direct result of State nonpoint source agencies' cooperation with other governmental agencies, private sector interests, and citizen groups at the State and watershed level.

Congress has also recognized the need for greater and more effective action to expedite our national efforts to control nonpoint source pollution and to focus our attention on sources of nonpoint pollution that contribute to impairment of waters. During the past four years of Congressional appropriations, Congress has increased its appropriations from \$105 million in FY 1998 to \$238.4 million in FY 2003 to help States focus more resources upon the restoration of impaired waters as well as to generally implement more robust programs.

Despite all of these program improvements, EPA, States, and all of our partners have continued to face daunting challenges in our efforts to implement nonpoint source programs that will protect both our good-quality and threatened waters and restore those that are impaired. To improve States' and EPA's ability to meet these remaining challenges, as well as to implement new directives or recommendations from Congress, EPA has in the past few years issued supplements to the May 1996 guidance. These have been particularly designed to focus increased attention on waters that are most in need of attention, especially those waters that remain impaired even after all required technology-based controls for point sources have been implemented (*i.e.*,

those waters that have been listed by States under Section 303(d) of the Clean Water Act as needing total maximum daily loads (TMDLs)). They have also addressed the recognized need to improve EPA's and States' ability to account for our accomplishments as well as shortcomings in implementing the national nonpoint source program.

EPA recognizes that these periodic issuances of supplemental guidance have made it more difficult to follow and comprehend the current national nonpoint source program, its central themes, and its priorities. For this reason, EPA is today publishing new guidelines that build upon and replace the *Nonpoint Source Program and Grants Guidance for Fiscal Year 1997 and Future Years* (May 1996) as well as all of the supplemental annual guidance and grants guidelines that have been published subsequently.

These new guidelines do not significantly modify the previous set of guidance documents. For the most part, they consolidate the pertinent portions of earlier guidance documents in a cohesive manner; eliminate or shorten discussion of program aspects that have reduced relevance to future activities (such as the upgrading of States' nonpoint source management programs, which all of the States have successfully completed), and clarify certain issues that States and Regions have raised from time to time with regard to the program's implementation during the past several years.

The concepts presented in these guidelines, such as the emphases on watershed-based planning and on restoring impaired waters through developing and implementing TMDLs, represent the current state of the art in fashioning watershed-based solutions to prevent and remedy water quality problems. These guidelines have benefitted significantly from a multi-year, evolving process working with States (*e.g.*, through the "State/EPA Nonpoint Source Partnership" initiated in 2000). EPA looks forward to continuing to work with the States and our other partners to implement an effective and successful nonpoint source program that makes rapid progress towards our goals of eliminating our remaining water quality problems and preventing new threats from creating future impairments.

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## I. Our Vision

Our long-term vision, established by EPA and the States in 1996, remains: All States and territories implement dynamic and effective nonpoint source programs designed to achieve and maintain beneficial uses of water.

## II. Introduction

### A. Statutory Background

Congress enacted Section 319 of the Clean Water Act in 1987, establishing a national program to control nonpoint sources of water pollution. Nonpoint source pollution is 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.

Under Section 319(a), all States and Territories (hereinafter collectively referred to as "States") have addressed nonpoint source pollution by developing nonpoint source assessment reports that identify nonpoint source pollution problems and the nonpoint sources responsible for the water quality problems. Under Section 319(b), all States have also adopted management programs to control nonpoint source pollution. Since 1990, Congress has annually appropriated grant funds to States under Section 319(h) to help them to implement those management programs.

### B. Scope of These Guidelines

These guidelines are primarily directed towards nonpoint source management programs and grants administered by State lead nonpoint source agencies designated under Section 319 of the Clean Water Act. Indian Tribes that have approved nonpoint source assessments and management programs and also have "treatment-as-a-State" status may also administer nonpoint source management programs and grants under Section 319 of the Clean Water Act. Apart from providing a brief overview in Section VI below, these guidelines are not specifically directed to Tribal nonpoint source management. Because of differing statutory provisions that apply to Tribes, EPA publishes separate

guidance for Tribal nonpoint source programs and grants.

For grants awarded in FY 2004 and subsequent years, these guidelines supersede and replace all of the following guidance documents: Nonpoint Source Program and Grants Guidance for Fiscal Year 1997 and Future Years (May 1996); Process and Criteria for Funding State and Territorial Nonpoint Source Management Programs in FY 1999 (August 18, 1998); Funding the Development and Implementation of Watershed Restoration Action Strategies under Section 319 of the Clean Water Act (December 4, 1998); Supplemental Guidance for the Award of Section 319 Nonpoint Source Grants in FY 2000 (December 21, 1999); Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants in FY 2001 (November 28, 2000; 65 FR 70899); Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2002 and Subsequent Years (September 13, 2001; 66 FR 47653); and Supplemental Guidelines for the Award of Section 319 Nonpoint Source Grants to States and Territories in FY 2003 (August 26, 2002; 67 FR 54806). (While these superceded guidance documents will no longer directly apply to State programs, they contain useful background information and will remain available for reference at EPA's nonpoint source Web site at <http://www.epa.gov/owow/nps/cwact.html>.)

These guidelines are intended to serve as the basis for a nationally consistent approach for State nonpoint source management programs and grants. Therefore, EPA Regions will not issue separate, supplemental guidelines specifically for State nonpoint source programs or grants. If particular Regional circumstances require additional clarifications on a particular issue, the Region will consult with the affected States and with EPA Headquarters on the appropriate next steps.

### C. Watershed Protection and Total Maximum Daily Loads (TMDLs)

EPA has been working with the States to realign our programs to strengthen our support for watershed-based environmental protection, whereby local stakeholders join forces to develop and implement watershed-based plans that make good sense for the particular conditions found within their communities. The watershed approach is a coordinating framework for management that focuses public and private sector efforts to address the highest priority water-related problems

within geographic areas, considering both surface and ground water flow. The watershed approach is commonly characterized by four principles: (a) Diverse, well integrated partnerships; (b) a specific geographic focus; (c) action driven by environmental objectives and by strong science and data; and (d) coordinated priority setting and integrated solutions.

These guidelines are intended to help advance the watershed approach as a means for resolving and preventing nonpoint source pollution problems and threats. In the initial stages of the national nonpoint source program, some States and EPA Regions focused their nonpoint source programs narrowly on demonstrations of particular technologies, supported by Federal Section 319 grants. In upgrading their nonpoint source programs during the last few years, many States have incorporated watershed-based approaches as a significant and sometimes central organizing theme of their programs. As a result, State nonpoint source programs have improved their capacity to solve nonpoint source pollution problems at the watershed scale. At the same time, EPA and the States have sharpened our focus upon waterbodies listed by States as impaired under Section 303(d) of the Clean Water Act. This is particularly critical, as nonpoint source pollution is reported by States and others to be responsible for the majority of remaining water pollution in the United States. The two key steps needed to solve nonpoint source problems within a watershed context are the development of a watershed-based plan that addresses a waterbody's water quality needs (including the incorporation of any TMDLs that have been developed) and the actual implementation of the plan.

These guidelines discuss the use of detailed watershed-based plans to help solve water quality problems at the watershed level. As discussed in more detail in Section III.D below, careful analysis of the sources of water quality problems, their relative contributions to the problems, and alternatives to solve those problems, provide the best basis for sound decision-making and implementation that will actually solve those water quality problems. For this reason, these guidelines emphasize using watershed-based planning and implementation processes to solve water quality problems using Section 319 funds.

### III. Nonpoint Source Management Programs

#### A. Progress to Date

Nonpoint source pollution continues to be, and is increasingly recognized as, the largest remaining threat to water quality and source of water quality impairments in the nation. State nonpoint source programs, originally developed and approved under Section 319 of the Clean Water Act in 1989–90, have developed and matured to meet this challenge. Pursuant to the May 1996 guidance, each State and Territory has upgraded its nonpoint source management program to address nine key elements that had been agreed to by the States and EPA in the May 1996 guidance. These nine elements include explicit short- and long-term goals, objectives, and strategies to protect and restore water quality; strengthened working partnerships with appropriate State, interstate, Tribal, regional and local entities, private sector groups, citizens groups, and Federal agencies; balanced approaches that emphasize both State-wide programs and on-the-ground management of individual watersheds where waters are impaired or threatened; focus on both abating existing problems and preventing new ones; and using a periodic feedback loop to evaluate progress and make appropriate program revisions.

Since 1996, States have enhanced their technical tools and capabilities, strengthened and expanded their partnerships, nurtured a vast network of community-based action on a watershed basis, and, in many cases, developed stronger financial bases and legal support for their programs. As a result, the nation is experiencing increasingly positive results in terms of both on-the-ground action and actual water quality improvements. Examples of these improvements are summarized in *Section 319 Success Stories, Volume III: The Successful Implementation of the Clean Water Act's Section 319 Nonpoint Source Pollution Program* (EPA 841-S-01-001, February 2002). Most of these successes are the direct result of State nonpoint source agencies' cooperation with other governmental agencies, private sector interests, and citizen groups at the State and watershed level.

In addition, to further strengthen our collective efforts to implement successful nonpoint source control programs, the States and EPA have been implementing since FY 2000 a new State/EPA Nonpoint Source Partnership. The purpose of this new cooperative process has been to identify, prioritize, and address the States' needs for technical, programmatic, and financial

assistance to overcome any remaining obstacles to successfully implementing States' nonpoint source programs. The partnership consists of a State/EPA Steering Committee and workgroups to help identify and solve States' highest-priority nonpoint source needs, including: watershed planning and implementation; nonpoint source capacity building and funding; grants management; information transfer and outreach; monitoring; documenting nonpoint source results; rural nonpoint sources; and urban nonpoint sources.

#### B. Continued Focus on Restoring Waters Impaired by Nonpoint Source Pollution

While we and our partners are achieving considerable success nationwide, significant challenges remain. Since publication of the May 1996 guidance, EPA's and States' nonpoint source programs have continued to evolve to meet these challenges. Beginning in FY 1999, EPA and the States have increased our focus on solving water quality problems in those waterbodies that are most in need of attention, including those waters that remain impaired even after all point source technological controls have been implemented (*i.e.*, those that have been listed by States under Section 303(d) of the Clean Water Act as needing TMDLs).

In FY 1999 and again in FY 2000, EPA asked Congress to double Section 319 funding from \$100 million to \$200 million. The purpose of the incremental \$100 million was to develop and implement watershed restoration action strategies (WRASs) in high-priority "Category I" watersheds (sized at the 8-digit "hydrologic unit code" level). In FY 2001, EPA recognized the need to increasingly focus Section 319 grant dollars on implementing nonpoint source TMDLs or the nonpoint source components of mixed-source TMDLs (hereafter, both of these types of TMDLs will be referred to as "NPS TMDLs"). Based on this need, EPA directed that incremental funds be used to develop and implement approved NPS TMDLs for any 303(d)-listed waterbodies (whether or not these were located within a Category I watershed), as well as to develop and implement WRASs. In FY 2002 and 2003, EPA shifted the focus of the incremental funds entirely to developing NPS TMDLs, developing watershed-based plans to implement the TMDLs, and implementing the plans. The FY 2003 guidelines provided that where a NPS TMDL for the affected waters has already been developed and approved or is being developed, the watershed-based plan must be designed to achieve the load reductions called for in the NPS TMDL. The FY 2003

guidelines further recognized that where a NPS TMDL has not yet been developed and approved or is not yet being developed for the waters, the State may use these funds to develop a watershed-based plan in the absence of the TMDL. In such cases, the FY 2003 guidelines required that the plan be designed to reduce nonpoint source pollutant loadings that are contributing to non-attainment of water quality standards. Once the TMDL is completed and approved, the plan was required to be modified as appropriate to be consistent with the TMDL.

The guidelines published today for FY 2004 and future years maintain the approach of focusing \$100 million of annual Section 319 funds on the development and implementation of watershed-based plans to achieve NPS TMDLs. NPS TMDLs, together with watershed-based plans designed to implement the NPS TMDLs, provide the necessary analytic link between actions on the ground and the water quality results to be achieved. In the absence of such an analytic framework, it is difficult to develop and implement a watershed project that will achieve water quality standards, or to determine causes of failure when that occurs. Therefore, EPA believes that continuing to focus on an analytic and implementation framework that integrates NPS TMDLs, watershed-based plans to implement these NPS TMDLs, and actual implementation of those plans, will provide the most effective means to accelerate achievement of water quality standards.

For these reasons, EPA will continue to implement the general approach that we have developed during the past few years and finalized in FY 2003, using the steps outlined below. These steps are designed to promote the development and implementation of NPS TMDLs based upon the TMDL regulations that have been published at 40 CFR 130.7 in 1985 and 1992, as well as guidance published by EPA to assist in the implementation of those regulations. (Currently applicable guidance as well as other technical and other resources concerning the TMDL program is available at <http://www.epa.gov/owow/tmdl>.)

#### General Principles for Awarding Section 319 Grants

Each year, EPA will award Section 319 grants in accordance with the following four principles:

1. States may use the "base funds" (*i.e.*, all Section 319 funds other than the "incremental funds" described below) for the full range of activities addressed in their approved nonpoint source

management programs. Thus these funds may be used both for protection of unimpaired waters and for restoration of impaired waters. For example, States may use these funds to protect sources of drinking water, critical high-quality waters, and threatened waters from current and future threats.

In general, States have great flexibility as to how to use these base funds. They may use the watershed-based approaches discussed in greater detail in Section III.D below ("Watershed-Based Plans"). States may also choose to use these funds to implement technology-based approaches. In particular, EPA recommends that coastal States use these funds to assist in the implementation of both the technology-based and water-quality-based management measures contained in their coastal nonpoint pollution control programs under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 ("CZARA").

2. States may use up to 20% of the base funds to develop NPS TMDLs (consistent with their TMDL development schedule) and watershed-based plans to implement NPS TMDLs; develop watershed-based plans in the absence of or prior to completion of TMDLs (incorporating the TMDL's load allocations once it has been completed and approved); develop watershed-based plans that focus on the protection of threatened waters, source water, or other high-priority unimpaired waters; and conduct other NPS monitoring and program assessment/development activities. (Monitoring the results of implementing a watershed project is not subject to this 20% limitation.)

3. Except as noted in the next paragraph, States must use \$100 million of Section 319 funds (referred to as "incremental funds") to develop and implement watershed-based plans that address nonpoint source impairments in watersheds that contain Section 303(d)-listed waters. (However, these plans may also include activities that address waterbodies within the watershed that are not currently impaired where appropriate to prevent future impairments within the watershed.) Regions will include in each grant a condition that provides that the State will use these funds to implement a watershed-based plan only after the State completes the development of a watershed-based plan that addresses each of the watershed planning elements (a) through (i) that are listed later in this section. (See Appendix F to these guidelines.)

Regions may authorize States to use a portion of incremental funds to address watersheds that do not include impaired

waters in special circumstances where it is necessary to address a uniquely high-priority State need to protect waters that currently are not impaired by nonpoint source pollution to assure that they remain unimpaired. This particularly includes waters in which good water quality is threatened by such factors as changing land uses and the presence of unique aquatic resources that are especially valuable and at serious risk of irreparable harm and that therefore require a special focus on protection activities (e.g., aquatic habitat for salmon migration, spawning, and rearing). These resources and threats to them should be documented in the State's 305(b) report. Prior to authorizing use of incremental funds to address a uniquely high-priority State need, the Region must find the State has established a schedule for TMDL development for its NPS-impaired waters consistent with an even pace and completion of needed TMDLs within 8 to 13 years of listing; the State is completing TMDLs in reasonable accord with the established development schedules; and the State is making reasonable progress developing and implementing watershed-based plans to implement NPS TMDL's, balancing the State's protection and restoration needs.

4. States may use up to 20% of the \$100 million incremental funds to develop: NPS TMDLs; watershed-based plans to implement NPS TMDLs; and watershed-based plans in the absence of or prior to completion of TMDLs in Section 303(d)-listed waters (incorporating the TMDL's load allocations once it has been completed and approved). The Region may authorize the State to use over 20% of the incremental funding to develop watershed-based plans in Section 303(d)-listed waters, but the Region should assure that a proper balance exists between funding the development of watershed-based plans and the implementation of watershed-based plans. On one hand, funding should support the development of watershed plans at a sufficient pace to support implementation efforts that may be implemented through 319 funding; funding from a separate State or Federally-supported program (e.g., via the U.S. Department of Agriculture); or other programs or mechanisms. See further discussion in the next section below on integrating other environmental protection programs. On the other hand, watershed-based plan development should not be funded at a pace that significantly exceeds the pace of implementation. This is necessary to maximize implementation of watershed-

based plans that have been completed and minimize the development of numerous plans that "sit on the shelf."

### *C. Integrating Other Environmental Protection Programs*

As discussed in the preceding paragraph, these guidelines authorize Regions to increase the level of incremental funding that is available to develop watershed-based plans (previously limited to 20%) so long as a proper balance exists between funding the development of watershed-based plans and the implementation of watershed-based plans. Such an increase may well be warranted where non-319 resources may be available to help implement the plans. EPA encourages States to leverage funding from other environmental protection programs to support the implementation of these plans, as discussed below.

#### *USDA-Supported Programs*

EPA wishes to particularly emphasize the significant benefits of working closely with the United States Department of Agriculture (USDA) to achieve our common goals of improving restoration and protection of water quality. This is especially important in light of the new Farm Security and Rural Investment Act of 2002 (Farm Bill), which presents tremendous opportunities for integrating funding and other resources and for creating partnerships to help achieve our common goals, including meeting water quality standards. Information about partnership opportunities through programs such as the Environmental Quality Incentives Program (EQIP) can be found on the internet at <http://www.usda.gov/farmbill> and <http://www.nrcs.usda.gov/programs/farmbill/2002>. Most notably, USDA's EQIP regulations have assigned a top priority to reducing nonpoint source pollution in impaired watersheds consistent with TMDLs, where available, and this priority will be used as a guide in the allocation of EQIP funds.

It is important to consider how Section 319 funding can be used in a way that does not duplicate, but rather complements, these other programs. Section 319 funding is especially suitable to support activities that are either not eligible for or typically do not receive significant USDA funding, including: (1) Developing watershed-based plans in Section 303(d)-listed and other high priority watersheds; (2) monitoring water quality in high priority watersheds to design and assess the effectiveness of watershed-based plans; and (3) funding watershed coordinators to work with local

communities to help assist and promote the development and implementation of watershed-based plans. The planning and development of such watershed-based plans should be done in coordination with local communities, Conservation Districts, agricultural producers, and other watershed stakeholders in a cooperative way that will result in locally led partnerships, with USDA support, choosing to implement the plan. Achieving local buy-in and commitment to implement watershed-based plans once they are complete is key to successful watershed planning and implementation.

USDA's primary conservation funding programs (Environmental Quality Incentives Program, Conservation Reserve Program, and Wetlands Reserve Program) are particularly well-designed to support the implementation of both agricultural best management practices (BMPs) and a suite of conservation, restoration, and land retirement measures for wetlands, riparian areas, and other areas of critical importance to the success of watershed-based plans. States should strive to work with the agricultural community to accomplish win-win situations whereby Farm Bill funds are actively used to support the implementation of watershed-based plans developed under Section 319. Where this approach is successful, Section 319 funds could be focused (in addition to monitoring, planning, and providing coordination support for projects) on the implementation of agricultural BMPs that are not eligible for Farm Bill funding (e.g., BMPs that are not in the Natural Resources Conservation Service's Field Office Technical Guide of conservation standards); implementation of agricultural projects in concert with other agencies and groups to help solve watershed problems; and promoting and testing emerging technologies.

EPA recognizes that situations will arise where a State appropriately places a high priority on implementing agricultural components of a watershed-based plan for which Farm Bill funding is not being provided, or is available at only modest levels that require supplementation with Section 319 funds. State and watershed managers should certainly take advantage of whatever funding sources and mechanisms are the best available and most appropriate to accomplish their watershed goals. In most cases, the resources needed to implement an entire watershed-based plan will be significant, and success will depend greatly on enlisting and obtaining the support of all important stakeholders and the resources that they can provide,

including especially the resources made available by Congress through the Farm Bill.

#### Other Environmental Programs

In addition to USDA-supported programs, many other programs that are implemented at the Federal and State level have common and overlapping areas with the Section 319 program. States' activities to upgrade their nonpoint source programs in recent years have strengthened their links with these various State and Federal programs. Today's guidelines particularly encourage the integration of State nonpoint source management programs with other environmental programs by providing for increased Section 319 funding support for the development and implementation of watershed-based plans. Such integration provides a vehicle for cooperative design and implementation of watershed-based plans in a coordinated manner that employ the resources, authorities, and expertise of all relevant programs.

A number of EPA/State programs are closely related to nonpoint source pollution control and to watershed protection. To maximize effectiveness, State nonpoint source programs need to continue to be well integrated with these other State programs to best meet States' water quality needs. These include:

- The National Pollutant Discharge Elimination System (NPDES) point source program, particularly with respect to urban runoff, construction, inactive and abandoned mines, concentrated animal feeding operations, and marinas;

- Coastal protection programs, including especially coastal nonpoint pollution control programs under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA, co-administered by EPA and the National Oceanic and Atmospheric Administration and co-implemented by our State counterparts), as well as the National Estuary Program;

- Wetlands protection programs implemented under Section 404 of the Clean Water Act as well as pursuant to a variety of other Federal and State authorities and programs;

- Source water protection programs under the Safe Drinking Water Act;
- Clean Lakes programs and wetlands protection and restoration programs under the Clean Water Act;
- Watershed planning programs; and
- Ambient monitoring programs.

In addition to coordinating program implementation with these various programs, State NPS program managers

should coordinate their funding needs with other CWA sources of funding. Most significant is the Clean Water State Revolving Fund (SRF) under Title VI of the Clean Water Act. The SRF is currently providing over \$200 million annually to control pollution from nonpoint sources and for estuary protection. However, most States have under-utilized this resource to date. EPA believes that the SRF is particularly well suited to assisting in the implementation of nonpoint source projects requiring capital investment. States are encouraged to increase their use of this copious financial resource to help implement their nonpoint source watershed-based plans and other nonpoint source projects. For more information on the SRF program, see <http://www.epa.gov/owm/cwfinance/cwsrf/index.htm>.

In addition to coordinating with these water quality programs, States should coordinate 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 resource management agencies. For example, Section 319 funds may be used to benefit Federal lands, which strengthens the ability of States to coordinate nonpoint source and TMDL implementation with Federal land management programs and policies.

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 have programs that can help protect these areas 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.

#### D. Watershed-Based Plans

These guidelines promote the use of Section 319 funding for developing and implementing watershed-based plans to protect unimpaired waters and restore impaired waters. Watershed-based plans to restore impaired waters are required, as described above, for all projects implemented with incremental dollars. However, even for watershed projects implemented with base funds, EPA recommends that whenever feasible, watershed-based plans be developed

and implemented for all watershed projects, whether they are designed to protect unimpaired waters, restore impaired waters, or both.

For projects funded with incremental dollars, where a NPS TMDL for the affected waters has already been developed and approved or is being developed, the watershed-based plan must be designed to achieve the load reductions called for in the NPS TMDL. However, where a NPS TMDL has not yet been developed and approved or is not yet being developed for the waters, the State may use Section 319 funds to develop a watershed-based plan in the absence of the TMDL. In such cases, the plan must be designed to reduce nonpoint source pollutant loadings that are contributing to water quality threats and impairments. Where feasible, the plan should be designed to meet water quality standards. In this way, progress towards achieving water quality standards continues even before a TMDL is established. Once the TMDL is completed and approved, the plan must be modified as appropriate to be consistent with the load allocation portion contained within the TMDL. Alternatively, through the course of implementing the plan, the State may find that water quality standards are met, obviating the need to establish the TMDL. EPA believes that improving the integration of TMDLs and watershed plans to implement nonpoint source management measures will provide the most effective means for accelerating achievement of water quality standards.

To ensure that Section 319 projects make good progress towards remediating waters impaired by nonpoint source pollution, a watershed-based plan must have been completed before a State implements a watershed-based plan funded with incremental Section 319 dollars. These watershed-based plans must include the information set forth in items (a)–(i) below. This information will help provide assurance that the nonpoint source load allocations identified in the NPS TMDL (and/or anticipated in NPDES permits for the watershed) will be achieved. Furthermore, this information is critical in any case for ensuring the development of realistic plans to achieve protection goals or water quality standards, while at the same time providing a significant degree of flexibility to work with stakeholders in the watershed to use a range of innovative approaches to implement the plan.

To the extent that necessary information already exists in other documents (e.g., various State and local watershed planning documents, or

watershed plans developed to help implement conservation programs administered by USDA), the information may be incorporated by reference. In addition, we encourage States to incorporate by reference any voluminous material that already exists in other documents. Thus, the State need not duplicate any existing process or document that already provides needed information.

#### Components of a Watershed-Based Plan

Beginning in FY 2004, the following information must be included in watershed-based plans to restore waters impaired by nonpoint source pollution using incremental Section 319 funds. These requirements are not retroactive to watershed plans developed in accordance with the FY 2002 or FY 2003 Section 319 guidelines; those plans may continue to be developed and implemented with funds available in FY 2004 and future years in accordance with the previously applicable requirements of the Section 319 guidelines.

a. An identification of the causes and sources or groups of similar sources that will need to be controlled to achieve the load reductions estimated in this watershed-based plan (and to achieve any other watershed goals identified in the watershed-based plan), as discussed in item (b) immediately below. Sources that need to be controlled should be identified at the significant subcategory level 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).

b. An estimate of the load reductions expected for the management measures described under paragraph (c) below (recognizing the natural variability and the difficulty in precisely predicting the performance of management measures over time). Estimates should be provided at the same level as in item (a) above (e.g., the total load reduction expected for dairy cattle feedlots; row crops; or eroded streambanks).

c. A description of the NPS management measures that will need to be implemented to achieve the load reductions estimated under paragraph (b) above (as well as to achieve other watershed goals identified in this watershed-based plan), and an identification (using a map or a description) of the critical areas in

which those measures will be needed to implement this plan.

d. An 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. As sources of funding, States should consider the use of their Section 319 programs, State Revolving Funds, USDA's Environmental Quality Incentives Program and Conservation Reserve Program, and other relevant Federal, State, local and private funds that may be available to assist in implementing this plan.

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

f. A schedule for implementing the NPS management measures identified in this plan that is reasonably expeditious.

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

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 towards attaining water quality standards and, if not, the criteria for determining whether this watershed-based plan needs to be revised or, if a NPS TMDL has been established, whether the NPS TMDL needs to be revised.

i. A monitoring component to evaluate the effectiveness of the implementation efforts over time, measured against the criteria established under item (h) immediately above.

EPA recognizes the difficulty of developing the information described above with precision and, as this guidance reflects, believes that there must be a balanced approach to address this concern. On one hand, it is absolutely critical that States make, at the subcategory level, a reasonable effort to identify the significant sources; identify the management measures that will most effectively address those sources; and broadly estimate the expected load reductions that will result. Without such information to provide focus and direction to the project's implementation, it is much less likely that the project can efficiently and effectively address the nonpoint sources of water quality impairments. On the other hand, EPA recognizes that even with reasonable steps to obtain and analyze relevant data, the available

information at the planning stage (within reasonable time and cost constraints) may be limited; preliminary information and estimates may need to be modified over time, accompanied by mid-course corrections in the watershed plan; and it often will require a number of years of effective implementation for a project to achieve its goals. EPA fully intends that the watershed planning process described above should be implemented in a dynamic and iterative manner to assure that projects with plans that contain the information above may proceed even though some of the information in the watershed plan is imperfect and may need to be modified over time as information improves.

#### *E. Scale and Scope of Watershed-Based Plans*

The watershed-based plan must address a large enough geographic area so that its implementation will address all of the sources and causes of impairments and threats to the waterbody in question. These plans should include mixed ownership watersheds when appropriate to solve the water quality problems (*e.g.*, Federal, State, and private lands). While there is no rigorous definition or delineation for this concept, the general intent is to avoid single segments or other narrowly defined areas that do not provide an opportunity for addressing a watershed's stressors in a rational and economic manner. At the same time, the scale should not be so large as to minimize the probability of successful implementation. Once a watershed plan that contains the information identified in Section III.D has been established, a State may choose to implement it in prioritized portions (*e.g.*, based on particular segments, other geographic subdivisions, nonpoint source categories in the watershed, or specific pollutants or impairments), consistent with the schedule established pursuant to item (f) above.

EPA recognizes that States already have in place or have been developing watershed plans and strategies of varying levels of scale, scope, and specificity that may contribute significantly to the process of developing and implementing watershed-based plans. We encourage States to use these plans and strategies, where appropriate, as building blocks for developing and implementing the watershed-based plans. In doing so, to the extent that other documents contain the information identified above in Section III.D, this information may be incorporated by reference into States' watershed-based plans. (Where these plans and strategies have been

developed at a large geographic scale, they will in many cases need to be refined at a smaller watershed scale to provide the information needed to produce effective watershed-based plans.) In particular, we recommend that States use their continuing planning processes, water quality management plans (WQMPs), Watershed Restoration Action Strategies (WRASs), comprehensive conservation and management plans (CCMPs), CZARA programs, and other similar holistic watershed documents, to help guide their watershed-based approaches to watershed-based plan development and implementation.

EPA encourages States to develop NPS TMDLs or, where applicable, sets of NPS TMDLs on a watershed basis. We encourage States to implement watershed-based plans holistically, as this approach usually provides the most technically sound and economically efficient means of addressing water quality problems. Consistent with this approach, EPA encourages States to include in their watershed-based plans approaches that will address all of the sources and causes of impairments and threats to the watersheds in question. Thus, the watershed-based plans should address not only the sources of water quality impairment, but also any pollutants and sources of pollution that need to be addressed to assure the long-term health of the watershed, including both surface and ground water that serve as sources of drinking water. Finally, since watersheds with completed TMDLs have the best documentation of the load reductions needed to achieve water quality standards, EPA recommends that States assign the highest priority to implementing watershed-based plans for waters that have completed TMDLs.

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

#### *F. Monitoring Our Progress*

As States continue to strengthen their focus upon restoring waters that have been listed as impaired on their Section 303(d) lists, as well as to protect waters that are currently not impaired, it is critical that they monitor both: (1) the progress that they are making towards achieving and maintaining water quality standards; and (2) the implementation of their programs and projects to assure that they are successfully implemented. In Section IV.E below, we discuss the use of the Section 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 that which is developed by States in Section 305(b) reports and 303(d) lists, will provide 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 <http://www.epa.gov/waters> and <http://www.epa.gov/owow/monitoring/calm.html>.)

There are a variety of technical tools that can be used by States to monitor their progress at a program or project level. EPA strongly encourages States to enter their water quality monitoring data, for data collected in a waterbody pursuant to the implementation of a Section 319 project, into EPA's "storage and retrieval" (STORET) data system. States that are not yet prepared to use STORET for storage of data generated in the development and implementation of Section 319 watershed projects should in the interim store their assessment in an accessible electronic database.

We discuss some recommended tools and methods immediately below. In addition, States with approved CZARA programs are responsible under CZARA for monitoring and tracking progress through successful implementation of CZARA management measures. 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 <http://www.epa.gov/owow/nps/bestnpsdocs.html#nps>.

### 1. Environmental Indicators

States need to use several sets of measures to fully determine their success in implementing their nonpoint source programs. These include measures that indicate progress towards achieving and maintaining beneficial uses of water; towards other long-term goals of the State's program (e.g., achieving load reductions, installing appropriate technology at all animal waste facilities that need to be upgraded, or implementing particular watershed projects); and towards shorter-term goals and objectives (e.g., successfully implementing a particular technology) that are designed to lead to the achievement of longer-term goals.

As discussed in Section IV.E of these guidelines, States must include in their annual reports at least the three measures of progress that are required by Section 319(h)(11), including implementation milestones, available information on reductions in nonpoint source pollutant loadings, and available information on improvements in water quality. Approaches that can be used to meet either short-term tracking or longer-term project evaluation needs include ambient water quality monitoring (e.g., edge-of-field, small watersheds, multiple watersheds, in-lake, in-aquifer monitoring), beneficial use assessment (e.g., biological/ habitat assessment, attainment of water quality standards), implementation monitoring (e.g., audits, activity tracking, geographic information system tracking of land use and land management), model projections, and photographic evidence. Ambient monitoring and beneficial use assessment tracking should be included for projects wherever feasible.

Appendix A of these guidelines contains an illustrative set of these and other indicators and measures, including those required to implement Section 319(h)(11) and TMDLs, that can help the States and the public gauge the progress and success of their programs. States may identify and use other indicators and measures that are most relevant to their particular nonpoint source problems, programs, and projects. However, States should in all cases use environmental indicators to the greatest extent feasible, so that the State and the public may best recognize the State's progress in addressing water quality problems in terms that are most relevant to the public's concerns.

### 2. Monitoring in Watershed Projects

Appropriate monitoring of watershed project implementation is an essential tool to enable States to identify nonpoint source pollution problems, develop effective watershed-based plans, evaluate the effectiveness of actions taken, and meet reporting requirements under Section 319(h)(11). All watershed projects designed to implement a watershed-based plan must describe how the plan's monitoring component will be used to evaluate the effectiveness of the implementation efforts over time, measured against the specific criteria that are established in the watershed plan. As described in Section III.D ("Watershed-Based Plans"), the criteria against which progress is being monitored should be designed to focus on whether loading reductions are being achieved over time and substantial progress is being made towards attaining or maintaining water quality standards. This can be achieved through watershed-scale monitoring to measure the impacts of multiple programs, projects, and trends over time (i.e., monitoring need not be conducted for individual BMPs unless that is particularly relevant to the project). Information on reductions in nonpoint pollutant loads will then be tracked and reported in the Section 319 Grants Reporting and Tracking System (GRTS) as described below in Section IV.E.

While States may use Section 319(h) grant funds for monitoring activities for particular watershed projects, States are encouraged to also explore other cost-effective approaches to conducting monitoring. For example, the U.S. Geological Survey and the National Oceanic and Atmospheric Administration hold an array of ambient data and can provide support for various monitoring activities. In addition, volunteer monitoring programs are used by many States to obtain water quality data in a cost-effective manner.

### 3. National Monitoring Program

To provide a national documentation of the feasibility of controlling and preventing pollution resulting from nonpoint sources, and to improve technical understanding of nonpoint source pollution and the effectiveness of nonpoint source control technology and approaches, EPA and many States have been implementing a more rigorous and standardized monitoring framework that can be used for a representative subset of watershed projects funded under Section 319. 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 assure the accounting of various sources of variation. We encourage States to conduct intensive water quality monitoring of one or more of their projects as part of this national evaluation.

EPA has developed a framework for selecting national monitoring projects, issued guidelines for minimum monitoring activities, and developed software for managing and reporting data. To date, 23 high-quality 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. The most recent report, *Section 319 National Monitoring Program Projects* (December 2001), includes information on each of the 23 projects and highlights the documented water quality improvements achieved by some of the projects to date. To view or download this report, or to obtain further information on the National Monitoring Program, see <http://h2osparc.wq.ncsu.edu/319index.html>. This report illustrates the water quality benefits of well-designed and implemented watershed projects.

### IV. Grants

Section 319 grants are important resources available to States to restore impaired waters and to protect threatened and good-quality waters. These guidelines provide States with a framework to use Section 319 grant funds in a manner that will implement their nonpoint source management programs effectively to achieve the vision established at the beginning of these guidelines and to achieve the specific goals and objectives established in their upgraded State nonpoint source management programs. Moreover, EPA and States will continue to minimize administrative responsibilities to assure that the funds are being used effectively and in a legally appropriate manner.

While Section 319 funds are important resources, it remains critical for States to continue to build their existing partnerships and to develop

new ones as necessary to achieve their water quality goals. While Section 319 funds have grown, they remain, taken alone, only a modest response to the broad range of national nonpoint source impairments and threats. Therefore, the effectiveness of State nonpoint source programs will depend on the effective use of their funds, authorities, and other resources to leverage the funds, resources, and authorities of other public and private sector entities that have a role to play in abating and preventing nonpoint source pollution problems.

#### *A. Relationship to Performance Partnership Grants*

On January 9, 2001, EPA published rules to revise and update its grant regulations that apply to Section 319 and other EPA grants programs. (See 66 FR 1725–1747 (January 9, 2001), 40 CFR part 35, available at [http://www.access.gpo.gov/su\\_docs/](http://www.access.gpo.gov/su_docs/).) The regulation advances ongoing efforts to build more effective State-EPA partnerships and to improve environmental conditions by providing States with increasing flexibility to direct resources where they are needed most to address environmental and health needs.

EPA believes that the States' efforts to upgrade State nonpoint source programs during the past five years have much in common with goals and principles of the Performance Partnership Grants (PPG) program and the broader National Environmental Performance Partnership System (NEPPS) of which the PPG program is a part. These included promoting a focus upon improved environmental results by directing scarce public resources toward the States' highest priority, highest value activities; providing States with greater flexibility to achieve those results; improving public understanding of environmental conditions and choices; and enhancing accountability to the public and taxpayers.

These new guidelines have similarly been drafted to be consistent with the overall framework of the NEPPS and PPG. They focus on broad environmental goals (e.g., achieving water quality standards in impaired waters through the implementation of TMDLs) while providing flexibility to States in prioritizing their efforts among their many impaired waters and in developing and implementing appropriate practices and systems to solve their water quality problems. They also focus on reporting environmental outcomes (e.g., "reductions in nonpoint source pollutant loading and improvements in water quality" as

called for in Section 319(h)). The nonpoint source program is an eligible grant program in a PPG. For those States that wish to include the nonpoint source program in their request for a PPG and/or NEPPS Agreement, these guidelines should be used as the foundation for substantive discussions on establishing nonpoint source environmental goals and program performance expectations.

#### *B. Funding Process*

##### *1. 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 as they have been since the Section 319 grants program began. Each year, the Congressional appropriation for Section 319 will be multiplied by the applicable percentage presented in Appendix E to determine each State's allocation for that year. As soon as the annual Section 319 appropriation is made by Congress, EPA Headquarters will immediately notify the EPA Regional offices of each State's allocation, and the Regions will immediately notify the States.

EPA will continue to award funds to States in two portions. EPA will first subtract \$100 million from the total Section 319 appropriation. That portion is referred to as the "incremental funds" while the remaining portion is referred to as the "base" funds. Both of these portions are allocated to the States in accordance with the allocation formula discussed in the preceding paragraph. As discussed in Section III.B above, the base funds are to be used by the States to generally implement all aspects of their nonpoint source programs, while the incremental funds are to be primarily focused upon the implementation of watershed-based plans to restore waters impaired by nonpoint source pollution.

##### *2. Schedule for Awarding Section 319 Grants*

###### *a. Background*

These guidelines present a six-step process for awarding Section 319 grants. EPA recognizes that there is a wide disparity among States as to their desired schedules (e.g., due to differing fiscal years, timeliness of weather-related projects, etc.), and is presenting this process to help provide States and EPA with a general outline of the steps to be followed without dictating a uniform schedule for State submissions.

States are strongly encouraged to begin their internal project development processes (such as identification of priority areas for funding and solicitation of project proposals) as early as possible to assure more time for the State and other project proponents to develop excellent projects in advance of the formal grant application process. States should reference their approved nonpoint source management programs (e.g., in a Request for Proposal) so that project sponsors are focusing on activities consistent with the State's program. States and Regions are also encouraged, where feasible, to informally discuss proposed projects prior to formal submission of the draft application to EPA so that the subsequent submission can be reviewed and approved quickly and smoothly. In particular, EPA encourages States to submit early drafts of project proposals to EPA 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.

##### *b. Six-Step Process to Awarding Section 319 Grants*

- *Step 1:* EPA Headquarters issues brief annual guidance.

EPA Headquarters will strive to issue brief annual guidance, if any is needed, in the early Spring preceding the Fiscal Year for which the Section 319 funding will be applicable.

- *Step 2:* States submit draft grant applications, including a draft work plan.

States should expeditiously implement their processes to develop or solicit draft grant applications (e.g., the Request for Proposals process used by many States to solicit grant projects from agencies, watershed groups, and other organizations within the State). They should also develop expeditious processes (e.g., using State Nonpoint Source Task Forces such as have been established in many States) to review project proposals and select the best ones for inclusion in their draft work plan, so that they can submit good-quality draft applications in a timely manner.

EPA strongly recommends that the State provide clear written or oral guidance to all project applicants to assure that the applicants are aware of Federal requirements for project eligibility and State criteria for project selection.

Each State will submit a draft grant application, including a draft work plan. EPA encourages States choosing to submit any voluminous materials do so

electronically to minimize resources and expenses. Each Region will work closely and collaboratively with each State at this stage to promote the development and submission of high-quality work plans. Regions must be able to determine from the draft work plans that: (1) They conform to all applicable legal requirements of Section 319, EPA's general grant regulations in 40 CFR parts 31 and 35, and the requirements of OMB Circulars A-21, A-87, A-102, A-110, A-122, A-133; (2) they are consistent with these guidelines and with the goals, objectives and priorities in the State nonpoint source management program; (3) they only include expenditures that are necessary, eligible, reasonable, and consistent with the grant; (4) the State and EPA will mutually be able to assess the success of grant activities in meeting State program goals; (5) nation-wide progress in reducing nonpoint source pollutant loads and in achieving and maintaining water quality standards can be tracked, as discussed in Section IV.E below.

#### Work Plans To Develop Watershed-Based Plans

The work plan to develop a watershed-based plan must include, at a minimum: (1) An identification of the geographical extent of the watershed to be covered by the plan; (2) a schedule for developing the watershed plan; and (3) an estimate of the Section 319 funds that will be used for developing the watershed plan. All watershed-based plans that are developed with Section 319 funds must ultimately include all of the information identified in Section III.D above ("Watershed-Based Plans").

#### Work Plans To Implement Watershed-Based Plans

States are not required to submit their detailed watershed-based plans for EPA approval. However, they must submit a brief work plan that: (1) Identifies the watershed-based plan that will be implemented; (2) provides a schedule for implementing the watershed-based plan; (3) includes a brief summary of the plan; and (4) provides an estimate of the Section 319 funds that will be used to implement the watershed plan. If a State requests funding to implement a watershed-based plan at the same time that it submits a request for funding to develop the plan, the State must make its best effort to provide the information regarding the implementation phase of the project. If the State believes that it does not yet have enough information to do so, the Region and State should discuss whether the State has enough information at this time to provide a

reasonable basis for the State to make a request for implementation funding prior to completing the development of the watershed-based plan. When appropriate, the request for implementation funding may be regarded as premature and deferred to the following year.

In lieu of requiring States to submit their watershed-based plans to EPA for approval, EPA has chosen to defer to States' expertise and judgment in developing and implementing these plans. However, EPA recognizes that watershed-based plans are such critical components that the success of a State NPS management program rests significantly on States' success in developing good-quality plans and implementing them effectively. Therefore, EPA expects that Regional management and oversight of Section 319(h) grants (see Section V of these guidelines) will place a special emphasis on reviewing these activities from time to time and that Regions will therefore periodically review and discuss State progress in developing plans in conformity with these guidelines and implementing them effectively. Regions must include a condition in the grant that contains the language set forth in Appendix F to these guidelines. That language provides that, upon Regional request, the State will provide copies of any (*i.e.*, one or more, depending on the Region's request) 319-funded watershed-based plans and other information relevant to implementing those plans. This information would provide a basis for periodic Regional reviews of, and discussions with the State regarding, the State's implementation of its Section 319 program, its Section 319 grants and, more specifically, its development and implementation of watershed-based plans that are in conformity with these guidelines.

#### Work Plans for All Other Section 319 Projects and Activities

Work plans for all other projects and activities should include a brief and concise synopsis explaining the State's strategy for using Section 319 funds in the current fiscal year. This synopsis should outline the problem to be addressed; the project'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 by performance of the project; and the environmental indicators and/or other performance

measures that will be used to evaluate the success of the project.

Outputs for activities should always be quantified whenever it is practicable to do so (*e.g.*, all on-the-ground implementation projects should have quantified outputs). States that include all or a portion of their Section 319 grants in a Performance Partnership Grant should note that their work plan similarly is required by regulation to describe each significant category of nonpoint source activity to be addressed and the work plan commitments to be produced for each category. (See 40 CFR 35.268(d)(4)).

#### Multi-Year Work Plans

EPA encourages States to develop multi-year work plans for Section 319 grants. 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 above (as applicable), 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.

EPA would like to clarify that the use of a multi-year work plan does not require the award of all project funds in a single year. It may rather be used to establish the State's and EPA's mutual intent to award funds over a several-year period to implement subsequent phases of the work plan. This may be particularly appropriate in the case of a watershed-based plan that will require multiple years to implement.

The multi-year planning approach will reduce paper work and will improve the State's ability to engage in long-term planning and implementation with respect to both programmatic activities and specific watershed projects. States will, however, retain the option of developing and modifying aspects of their programs or projects on an annual basis where they deem appropriate.

- *Step 3:* Regions conduct reviews of State draft applications and provide written comments to the State.

The Region will review each State's draft application and meet or conduct a telephone conversation with each State to resolve any technical or administrative issues. Following this

collaboration, the Region should provide a written reply to the State. Regions will strive to conduct such reviews and provide feedback to States within 60 days of receipt of the State application.

The Regional response should include written comments on the State's draft application, paying particular attention to its consistency with applicable legal requirements; applicable guidelines and guidance; and the goals, objectives, and priorities established in the State management program. The Region will work with the State to jointly ensure that: The work plan is designed to help achieve the goals and objectives contained in EPA's guidelines and in the State's nonpoint source management program; the work plan has programmatic, technical, and/or scientific merit; the costs are reasonable and necessary; the work plan is well-coordinated with other State and Federal programs; gaps between program objectives and planned activities are identified and resolved; and the work plan clearly identifies the specific outcomes, outputs, and other results that are linked to funding and includes target dates and milestones for achieving them.

In addition to commenting on the consistency of the State program with applicable requirements, guidelines, guidance, and State program goals, objectives, and priorities, 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. These comments should be offered as technical suggestions and should not be regarded by the Region or State as a prerequisite to grant award unless they raise significant concerns that a proposed project may fail for technical reasons.

- *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 the intended responses to EPA comments and concerns, and the final work plan must provide a response to all comments. Good communication between the States and EPA will help assure work plan approval will occur as quickly as possible and reduce the need for additional rounds of comment from EPA.

- *Step 5:* Regions award grants to State.

Each Region will review its States' final work plans. If the State's work programs meet all applicable legal requirements, guidelines and guidance, and the goals, objectives, and priorities established in the State management program, the Region will award the final grant as quickly as possible. Regions will strive to conduct final reviews and award the grant to the State within 60 days of receipt of the final work plans. Where issues remain, the Region will elevate discussions to more senior management levels quickly to achieve a satisfactory resolution of the problem. 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. However, the Region and State should make all reasonable efforts to avoid such an unsatisfactory result.

The grant award is contingent upon the Region determining in writing that the State has made "satisfactory progress" in the preceding fiscal year in meeting the schedule specified in the State's Section 319 nonpoint source management program (as discussed further below in Section IV.D).

- *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 Section 319(h)(6) to provide that Section 319(h) funds granted to a State shall remain available for obligation by the State for one year from the grant award. For example, grant funds awarded to a State on December 1, 2003, remain available for obligation until December 1, 2004. The amount of any such funds that cannot be obligated by one year from the grant award shall, under Section 319(h)(6), be available to EPA for granting to other States. Regions should include in each grant a condition requiring the grant recipient to award all proposed contracts and interagency agreements within one year after the grant award.

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 the award of State sub-grants or sub-contracts to implement the 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. Projects often depend upon the active cooperation of private individuals, many of whom are not

professional nonpoint source personnel; it is important to be responsive to their needs to assure that credibility of the State's program is maintained and that participation in the program continues to grow.

The term "obligate" does not mean to "expend." As defined in 40 CFR Section 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."

EPA believes that it is important that funds appropriated by Congress do not languish unused for significant amounts of time. Generally speaking, it is in the public interest for States to expend appropriated and awarded funds as rapidly as practicable upon receipt by the State. Where States are implementing multi-year watershed projects, 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. Regions and States are encouraged to work together to assure that funds awarded are sufficient to support any implementation activities in the watershed that may occur within a reasonable time, while agreeing that additional funds would be made available in future funding years to enable the project to be fully implemented over a period of years. EPA intends to engage in dialogue with the States during the coming year to assure that we meet the dual goals of putting the public's funds to work expeditiously while at the same time providing assurance to the States that they will receive enough funds to carry implementation efforts to successful completion.

### C. Grant Eligibility

Section 319 grant funds are to be directed towards the States' and EPA's common vision that all States implement dynamic and effective programs designed to achieve and maintain beneficial uses of water. Approved State nonpoint source management programs provide the framework for determining what activities are eligible for funding under Section 319(h). While these guidelines emphasize the use of Section 319 funds for the development and implementation of watershed-based plans to restore priority waters, States may also use Section 319 base funds for other activities that will generally support these goals, as well as water quality protection goals, including nonregulatory or regulatory programs

for enforcement; technical assistance, including staffing; financial assistance; education; training; technology transfer; demonstration projects; and monitoring to assess the success of specific nonpoint source implementation projects.

### 1. Ground-Water Activities and Source Water Protection Programs

As in the past, EPA's policy will be to award all Section 319 grants under Section 319(h), in lieu of awarding separate grants under Section 319(i). Thus, these guidelines apply to all Section 319 grants. This approach will encourage integration of ground-water activities with overall State nonpoint source control 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 Section 319(h) grants to the extent that they are identified directly in the State's nonpoint source 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 nonpoint source management program, the program should be amended to include them.

EPA encourages States to coordinate their nonpoint source management programs with their source water protection programs. This will assure that programs, authorities, and funding sources to protect sources of drinking water from nonpoint source pollution are appropriately coordinated to maximize the effectiveness and efficiency of both programs' efforts.

### 2. Urban Storm Water Runoff

Section 319 funds may be used to fund any urban storm water activities that are not specifically required by a draft or final NPDES permit. EPA has issued several "phases" of regulations defining what activities are subject to the NPDES permit requirements of Section 402(p)(2) of the Clean Water Act. Phase I, in place since 1990, requires operators of medium and large municipal separate storm sewer systems (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 storm water runoff (see 55 FR 47990, November 1990). In 1999, EPA expanded the Federal storm water program with the promulgation of the

"Phase II" rule (see 64 FR 68722, December 8, 1999). 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 section 319(h) funds for those urban storm water discharges that are not addressed by Phase I and Phase II stormwater program requirements. These include aspects of Phase I and II activities that support but do not directly implement activities required by Phase I or Phase II permits.

EPA and the States recognize the benefits of integrating nonpoint source funds and storm water activities as much as is legally allowable. Listed below are a variety of urban runoff management activities that could be eligible for Section 319(h) funding:

- Technical assistance to State and local storm water programs;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- Best management practices for pollution prevention and runoff control (except for BMPs required by a draft or final NPDES permit);
- Information and education programs;
- Technology transfer and training; and
- 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.)

Historically, urban storm water management control efforts have focused on water drainage problems (i.e., water quantity). Now many storm water control BMPs are designed to control both water quantity and water quality. Section 319(h) funds may be used to assist in the incremental funding of certain water quality components of such practices, except as described below.

Section 319(h) nonpoint source control funds may not be used to implement specific requirements of draft or final NPDES storm water permits, nor to implement permit application requirements of EPA's storm water regulations. For example, Section 319(h) funds may not be used to meet permit application requirements such as mapping storm water systems, identifying illicit connections, characterizing storm water discharges, or monitoring required by permits. Section 319(h) grant funds may not be used to pay for BMPs or "end of pipe"

treatments which are required as part of a draft or final NPDES permit.

These prohibitions are based on the statutory limitations on the use of Section 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, EPA notes that "publicly owned treatment works," which includes publicly owned methods or systems for preventing, abating, reducing, storing, treating, separating or disposing of "storm water runoff" are eligible to receive Federal loans under the State Revolving Loan Fund program.)

### 3. Abandoned Mine Lands

Abandoned mine land reclamation projects that are designed to restore water quality are eligible for Section 319 funding except where funds are used to implement specific requirements in a draft or final NPDES permit. For example, Section 319 funds cannot be used to build treatment systems required by an NPDES permit for an inactive mine, but they may be used to fund a variety of other remediation activities at the same mine. Examples of activities that could be eligible for funding include:

- Remediation of water pollution from abandoned mines that have not yet been issued a draft or final permit;
- Remediation of water pollution from portions of abandoned mine sites that are not covered by a draft or final permit;
- Mapping and planning remediation at abandoned mine land sites;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- Technical assistance to State and local abandoned mine land programs;
- Information and education programs;
- Technology transfer and training; and
- Development and implementation of policies to address abandoned mine lands.

The Natural Resources Conservation Service and local soil conservation districts have a vast array of on-the-ground experience in the area of rural abandoned mine lands. In addition, the Office of Surface Mining has a 10% set-aside from its Abandoned Mine Land program to address water quality problems from abandoned mines.

#### 4. Animal Feeding Operations

Section 319 funds may be used to support the implementation of a wide range of animal waste storage, treatment, and disposal options for animal feeding operations (AFO) that are not subject to NPDES permits requirements. The NPDES regulations, published on December 15, 2002, may be reviewed at <http://cfpub.epa.gov/npdes/afo/cafofinalrule.cfm>. Any AFO that is defined or designated to be a "concentrated" AFO (*i.e.*, a "CAFO") under 40 CFR section 122.23 is ineligible for funding under Section 319. However, the off-site management of wastes that have been generated by a CAFO and then transported to an off-site facility that is not subject to NPDES permit requirements is eligible for funding if it is managed consistently with the State's nonpoint source management program.

In March 1999, EPA and USDA published the Unified Animal Feeding Operation Strategy (AFO Strategy). (This Strategy is available at <http://www.epa.gov/owm>.) This Strategy discusses the relationship between AFOs and environmental and public health; sets forth a national performance expectation for all AFO owners and operators; and presents a series of actions to minimize public health impacts and improve water quality while complementing the long-term sustainability of livestock production.

The AFO Strategy includes a goal that all AFOs will have comprehensive nutrient management plans ("CNMP's"). USDA and EPA funding assistance programs such as the Environmental Quality Incentives Program and the Section 319 grants program are critical tools to help assure the development and implementation of several hundred thousand CNMP's for non-permitted AFOs in the United States. To this end, Regions must assure that all Section 319 grants that include programs or projects that assist AFOs include a provision (either as a grant condition or through a separate document such as a workplan or BMP implementation plan) to assure that any AFO that receives financial assistance pursuant to the grant has and will implement a CNMP. (Any aspect of a CNMP that is not directly related to water quality concerns—*e.g.*, is related to dust or odor suppression—is not fundable under Section 319 and is therefore excluded from this requirement.)

USDA has developed a variety of practice standards, guidance documents, and other technical assistance tools to assist in the development and implementation of

CNMP's. We recommend that any CNMP for Section 319-funded AFO projects be developed, reviewed, or approved by a person who has been certified through a certification program accepted by USDA or by another equivalent certification program. An "equivalent certification program" may include State programs for certifying private and public sector nutrient management planners.

#### 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. Where a lake is listed as impaired on the Section 303(d) list, Section 319 funding can be used to develop and implement watershed-based plans that contain the information in Section III.D.

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. 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. This policy is fully consistent with the Clean Lakes regulations at 40 CFR 35.1650–2 (5)(i) and (ii) which provide:

The project does not include costs for harvesting aquatic vegetation, or for chemical treatment to alleviate temporarily the symptoms of eutrophication, or for operating and maintaining lake aeration devices, or for providing similar palliative methods and procedures, unless these procedures are the most energy efficient or cost effective lake restorative method.

A recommendation by the Senate Appropriations Committee (see Senate Report 106–161) suggests that each State use at least 5 percent of its Section 319 funds for Clean Lakes activities to address the restoration and protection needs of priority lakes, ponds and reservoirs. We suggest that States give priority to funding:

##### a. Lake Water Quality Assessment (LWQA) Projects

LWQA projects are projects which are intended to compile a comprehensive statewide assessment of lake water quality, to enhance overall State lake management programs, and to increase public awareness and commitment to protecting lakes. Specific activities might include: developing a statewide

lake monitoring program; developing an integrated Section 305(b) water quality report and Section 303(d) list of impaired waters; building and enhancing the State's lake-related public outreach and volunteer monitoring activities; and developing and enhancing state lakes programs including travel/training for program managers to attend the annual meeting on "Enhancing State Lake Management Programs."

##### b. Phase 1 Diagnostic/Feasibility Studies

Phase 1 Diagnostic/Feasibility Studies are studies which are intended to: perform comprehensive studies of particular lakes included on State's priority lists including Section 303(d) lists; determine the causes, sources, and extent of pollution to the lake; evaluate possible solutions; and recommend the most feasible and cost-effective methods and measures for restoring and protecting lake resources.

The specific requirements for Phase 1 studies are listed in the Section 314 Clean Lakes Program regulations (40 CFR part 35, subpart H). The Clean Lakes Program regulations are still valid and provide a sound basis for the design of Phase 1 studies, and thus, we suggest that you consult these regulations when you develop work plans for Phase 1 projects. In many cases, Phase 1 studies should provide the basis for the development of a TMDL and watershed-based plan for a particular lake or reservoir.

##### c. Phase 2 Restoration/Implementation Projects

Phase 2 Restoration/Implementation Projects are projects which are intended to implement lake protection and restoration measures recommended in Phase 1 studies. For lakes that are listed as impaired on the Section 303(d) list, such restoration measures should be integrated into a watershed-based plan that contains the information in Section III.D.

##### d. Phase 3 Post-Restoration Monitoring Studies

Phase 3 Post-Restoration Monitoring Studies are studies to determine the longevity and effectiveness of various restoration techniques and to advance the science of lake restoration. Funding priorities should support the primary purpose of these studies which is to assess the effectiveness of restoration techniques that have been applied through Phase 2 projects. Lower priority consideration should be given to projects that generally support activities to improve and advance the science of lake restoration and management but are

not specifically assessing Phase 2 projects.

Section 319-funded Clean Lakes activities should be funded in the same manner as other parts of a State's Section 319 work program, and all operative Section 319 grant requirements and guidelines (including provisions for the use of incremental funds, and reporting on the amount of funding devoted to Clean Lakes activities) will apply to these projects as well. Please note that while a State may decide to fund a LWQA and several Phase 2 studies with Section 319 funds, such funds are included within the overall limitation allowing States to use no more than 20 percent of their entire Section 319 allocation to upgrade and refine their nonpoint source programs and assessments. Additionally, Clean Lakes activities should be funded only in lakes that are publicly owned and that have public access, consistent with the Clean Lakes regulations at 40 CFR 35.1605-3.

EPA has published additional, separate guidance for lakes and reservoirs. (See "Guidance on Use of Clean Water Act and Safe Drinking Water Act Authorities to Address Management Needs for Lakes and Reservoirs," issued July 9, 1998, signed by Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds (available at: <http://www.epa.gov/owow/lakes/policy.html>). This guidance discusses eligibility of lake and reservoir restoration and protection activities under Section 319; listing of impaired and threatened lakes and reservoirs on Section 303(d) lists; and the use of additional funding authorities such as the Clean Water Act State Revolving Fund for implementing priority lake and reservoir management projects in approved State nonpoint source management programs.

#### *D. Criteria That Apply to the Award of Section 319 Grants*

As noted previously, Section 319 grants must meet certain statutory, regulatory and other administrative criteria that have been established to assure that Section 319 funds are used in a fiscally prudent manner. (A reference document produced by the State-EPA Nonpoint Source Partnership Grants Management Workgroup in March 2003 provides an overview of the Federal requirements for administering Section 319 grants. This document can be found at: <http://www.epa.gov/owow/nps/funding.html>.) All Section 319 grants must be consistent with applicable provisions of Section 319 of the Clean Water Act; EPA's general grant regulations in 40 CFR parts 31 and

35; OMB circulars; and applicable EPA guidelines.

State nonpoint source program managers should note that EPA has most recently revised the grant regulations at 40 CFR part 35 on January 9, 2001. (See 66 FR 1725-1747.) These regulations contain new Sections 35.260-268, that address the purpose of nonpoint source 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 Section 319 (Section 268).

We discuss below some of the most significant criteria that apply to the award of Section 319 grants.

#### **1. The Work Plan Must Demonstrate That Each Funded Element Will Implement Specific Activities Identified in the Approved Management Program**

Section 319(h) of the Clean Water Act provides that Section 319(h) grants are to be made "for the purpose of assisting the State in implementing such management program." The grant work program must therefore be designed to "implement" the approved nonpoint source management program. Each funded program activity or project must in fact lead to accomplishment of management program objectives that are identified in the State's approved and upgraded nonpoint source management program. Grant work plans must link the funded activities or projects to the relevant element or elements of the States nonpoint source management program.

#### **2. Section 319 Grants Must Be Awarded as Continuing Environmental Program Grants**

All Section 319(h) grants must be awarded as continuing environmental program grants, consistent with 40 CFR, part 35. Section 319(h) grants have some unique administrative characteristics (i.e., multi-year vs. one-year budget and project periods), which are different from other EPA continuing environmental grant programs. Unlike most other continuing environmental grants, Section 319(h) grants are not required to be closed out annually. However, Regions are encouraged to award new continuing environmental program grants each year rather than to add funds to an existing State grant through amendments. This will allow for greater program accountability over the multi-year duration of these grants. The Regions must also ensure that all existing State grants are properly closed out at the conclusion of the project period.

#### **3. The Non-Federal Share Must Be at Least 40 Percent**

Section 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, a single figure that covers the entire non-Federal share of the costs of implementing a State's Section 319 program. The non-Federal match does not need to be contributed at the time of the grant award, but the funds must be contributed in a timely manner as needed to meet the schedules established in the work plan milestones. EPA Regions must verify that grantees have satisfied the match requirements upon review and submittal of the grantee's final financial status report.

Nonpoint source program managers should be aware that recycled State Revolving Funds under Title VI of the CWA can be used to provide a match for Section 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 State Revolving Fund program to provide loans that fund other water quality projects. These recycled funds are regarded as State monies and therefore are eligible to be used as match for Section 319 funds, provided that they, like any other Section 319 match funds, are used to implement the State's approved Section 319 management program.

#### **4. Section 319 May Provide Cost Sharing to Individuals Only in the Case of Demonstration Projects**

Section 319(h)(7) provides that States may use Section 319(h) funds to provide financial assistance to "persons" only 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 during the past decade 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.

Although there have now been an increasing number of nonpoint source success stories that have improved water quality on a very small geographic scale, our nation has generally not yet achieved success in abating or preventing nonpoint source pollution at a scale that achieves the restoration or protection of entire watersheds to meet water quality standards. Thus, at this early stage in our collective attempts to protect and restore watersheds by abating nonpoint source pollution, each State needs to implement watershed-scale projects that demonstrate how to successfully implement nonpoint source watershed-based plans to restore and protect watersheds. For this reason, as discussed earlier in Section III.B of this guidance, EPA is focusing incremental Section 319 funds upon the development and implementation of watershed-based plans to implement NPS TMDLs that will restore water quality.

To ensure widespread implementation of BMPs in demonstration projects in high-priority watersheds, we encourage States to supplement Section 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 Section 319, State and other Federal (e.g. USDA) funds may not exceed 100% of the total cost of the practice.

#### 5. The State Must Demonstrate Satisfactory Progress

Section 319(h)(8) of the Clean Water Act provides that no Section 319 grant may be made to a State in any fiscal year unless the Administrator "determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)." Section 319(b)(2) in turn provides that States'

approved Section 319 management programs shall include:

A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

The Region must determine, based on an examination of State activities, reports, reviews, and other documents and 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 nonpoint source management program was satisfactory. A very high level of significance should be assigned to the State's development and implementation of watershed-based plans in accordance with these guidelines and in accordance with any schedules that have been established. In addition, for States with approved CZARA programs, successful implementation of CZARA management measures can assist Regions in determining satisfactory progress.

Regions must include in each Section 319 grant (or in a separate document, such as the grant-issuance cover letter, that is signed by the same EPA official who signs the grant), a written determination that the State has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified by the State in its nonpoint source management program. The Regions must include brief explanations that support their determinations.

We discuss States' grants reporting requirements in Section IV.E below. These reports can, if appropriately done, provide much of the written information needed by the Regions to determine whether the States have made satisfactory progress.

#### 6. States Must Maintain Their Level of Effort

Section 319(h)(9) of the Clean Water Act requires any State applying for Section 319 grants to establish and maintain its aggregate annual level of State nonpoint source pollution control expenditures for improving water quality at the average level of such expenditures in FY 1985 and 1986. This is referred to as the State's "Maintenance of Effort" (MOE) requirement. States should establish their FY 1985 and 1986 levels and annual levels based on expenditures by

the lead State agency or agencies responsible for the State's nonpoint source 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 nonpoint source agency or agencies responsible for the State's nonpoint source pollution control activities, not on what might be termed related activities of other State agencies with primary missions other than nonpoint source control. For example, if the State water quality agency and agricultural agency both have specific nonpoint source 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 Sections 106, 319, 205(j)(5), 314, and 117.

- Determination of whether the State expenditures meet the MOE level for purposes of awarding a Section 319(h) 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 Financial Status Report at the end of the budget year.)

(For additional guidance regarding MOEs, see memorandum Nonpoint Source FY-88-39, issued by EPA's Office of Water on July 12, 1988).

#### 7. Administrative Costs Funded by Section 319 Funds May Not Exceed 10% of the Grant Award

Pursuant to Section 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 percent 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.

#### 8. Section 319 Grants Must Contain a Condition Requiring Operation and Maintenance

Each Section 319 grant must contain a condition requiring that the State assure that any management practices implemented for the project be properly operated and maintained for the intended purposes during its life span. Operation includes the administration, management, and performance of non-

maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

The condition must require the State to assure that any sub-award of Section 319 funds similarly include the same condition in the sub-award.

Additionally, such condition must reserve the right of EPA and the State, respectively, to periodically inspect a practice during the life span of the project to ensure that operation and maintenance are occurring, and shall state that, if it is determined that participants are not operating and maintaining practices in an appropriate manner, EPA or the State, respectively, will request a refund for that practice supported by the grant.

The life span of a project will be determined on a case-by-case basis, tailored to the types of practices expected to be funded in a particular project, and should be specified in the grant condition. For assistance in determining the appropriate life span of the project, States may wish to consult with colleagues implementing similar programs, such as USDA's conservation programs. For example, for conservation practices, it may be appropriate to construct the life span consistent with the life span for similar conservation practices as determined by the Commodity Credit Corporation (pursuant to the implementation of the Environmental Quality Incentives Program). Following the approach used in many State and Federal funding programs, practices will generally be operated and maintained for a period of at least five to ten years.

A sub-awardee and the State may agree to transfer a grant to another party. The transferee must be determined by the State to be eligible to participate in the administration of the Section 319 grant and must assume full responsibility under the grant, including operation and maintenance of those practices already installed and to be installed as a condition of the grant. The State should require a participant to refund all or a portion of the grant if the participant sells or loses control of the land under the grant and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

#### *E. Reporting Requirements To Be Included in All Grants*

All Section 319(h) grants are subject to EPA's general grant regulations in 40 CFR parts 31 and 35, 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, section 319 contains two significant provisions that are specifically focused upon reporting for the Section 319 program:

1. Section 319(h)(10) authorizes EPA to request information, data and reports as necessary to determine a State's continuing eligibility to receive Section 319 grants.

2. Section 319(h)(11) requires States to report annually on their progress in meeting the schedule of milestones contained in their nonpoint source management programs, and to report available information on reductions of nonpoint source pollutant loadings and on improvements to water quality resulting from implementation of nonpoint source management programs.

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 program document (see Appendix B for generic grant condition language). The specific reporting requirements reflected in that language are discussed immediately below. The Regions and States are encouraged to assess the effectiveness of the reporting process and determine annually if adjustments or modifications are necessary and mutually beneficial.

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 developing 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.

#### 1. Basic Reporting Requirements

Recipients of funds awarded under Section 319(h) are required by applicable laws and regulations to provide information to EPA under the following reporting categories, each of which is further described below: (a) Grantee performance reports; (b) nonpoint source annual reports; and (c) financial status reports.

a. *Grantee Performance Reports.* 40 CFR section 31.40(b)(1) requires States to submit performance reports on the status of Section 319(h) grants. At a

minimum, States should submit these reports on an annual basis by a date agreed to by the Region and the State. Final reports are due 90 days after the expiration or termination of grant support, pursuant to 40 CFR part 31.

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 within approved work plans, grant agreements, or special conditions/agreements), as well as progress made toward meeting future milestones. (The State may accomplish some or all of this reporting requirement through its annual report, as discussed below.)

- *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.

b. *Annual Reports.* Section 319(h)(11) requires States to report annually on progress in meeting the schedule of milestones contained in their nonpoint source management programs, and, to the extent that appropriate information is available, report reductions in nonpoint source pollutant loadings and improvements in water quality resulting from program implementation. This information may be provided in a streamlined format suggested immediately below. As noted in Section IV.E.2 below, some States may wish to use the Grants Reporting and Tracking System to meet appropriate portions of their annual reporting requirements.

1. A brief summary of progress in meeting approved milestones and the short- and long-term goals and objectives identified in the State nonpoint source management program.

2. A matrix displaying milestones from the current year for the approved State program with the following information for each milestone:

- a. Applicable project or program
- b. Scheduled project completion date
- c. Percent completed

3. A discussion of the extent to which Federal agencies, lands and activities within the State are supporting the State in meeting approved milestones.

4. A summary of the available information on the extent of reductions in nonpoint source loadings achieved as a result of nonpoint source program implementation. (More detailed information would be provided through

the Grants Reporting and Tracking System, discussed below.)

5. A summary of the available information on the amount of improvement in water quality (including aquatic habitat quality) as the result of nonpoint source program implementation. (More detailed information would be provided through the Grants Reporting and Tracking System, discussed below.)

6. Where information is not yet available under items 4 and 5 above for waters or watersheds where implementation is being assisted, surrogate measures of environmental progress (such as environmental indicators) 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 continue to include such additional information, as a supplement to the basic information required by law. States may wish to include the following types of information in their reports, or to include such information on their Web sites and refer to the information in their reports:

1. Listing of further actions necessary to achieve the goals of the Clean Water Act, including any recommendations for future State or national programs to control nonpoint source pollution.

2. Brief case studies of any particularly successful nonpoint source control efforts.

3. Information on increases in public awareness of nonpoint source pollution and public involvement in addressing it.

4. Copies of products produced by the State program (e.g., outreach materials or BMP documents).

The Results Workgroup of the State/EPA Nonpoint Source Partnership has discussed ways in which annual reports can be written and presented in a manner that (analogous to contemporary corporate reports) promotes greater public knowledge and understanding of nonpoint source pollution and of States' efforts to prevent and reduce nonpoint source pollution. Several States have begun to do so, and the results are promising to improve communication with both the public and decision-makers about nonpoint source pollution. Possible outputs of that workgroup include guidance, suggested formats, and examples of such annual

reports. Another option may be to do a separate shorter, reader-friendly annual report that is designed specifically for public education. EPA encourages all States to consider how their annual reports can be improved in terms of content, format, presentation, and style to enhance public support for their programs.

c. *Financial Status Reports.* 40 CFR section 31.41(b) requires grantees to submit financial status reports using Standard Form 269 or 269(a) to report the status of funds under each grant. At a minimum, States should submit financial status reports annually. Final financial status reports are due within 90 days after the expiration or termination of the grant agreement.

## 2. Reporting Procedures and the Grants Reporting and Tracking System

EPA has developed a computerized system, which States and EPA Regions may now access directly on the World Wide Web, to manage and report data on Section 319 grants. This system, known as Section 319 Grant Reporting and Tracking System (GRTS), provides States with the capability to fulfill grant reporting requirements and has created a database of nonpoint source program information which can be used to enhance State, Regional, and national understanding of nonpoint source projects and programs.

States are required to use GRTS to report the specific nationally mandated data elements listed in Appendix C. This list consists of information needed by EPA and the States to account successfully to Congress, State legislatures, and the public for our accomplishments in implementing the national nonpoint source program. A memorandum, *Modifications to Nonpoint Source Reporting Requirements for Section 319 Grants* (September 27, 2001), that discusses each of the mandated data elements in detail, as well as other improvements to GRTS, is available on EPA's Web site at <http://www.epa.gov/owow/nps/section319/grts.html>.

The most important new features of the modified GRTS are: (1) Precisely geo-locating Section 319 projects; (2) including a concise summary of each project; (3) using common geo-locational information to link funded projects to improvements in waters quality over time, which will be reported through EPA's WATERS database (which includes States' 305(b) and 303(d) information); and (4) providing information on reductions in nonpoint pollutant loads. The new GRTS assists the States in meeting the load reduction reporting requirements

of Section 319(h)(11) by providing computer-based tools and formats that have been designed to simplify the effort as much as possible.

In addition to these mandated elements, GRTS has the capacity to accept a great deal of additional information on State programs and projects. States can, if they choose, include detailed project descriptions or project implementation plans, and attach maps, tables, photographs, and spreadsheets. In fact, States can attach appropriate portions of their Section 319(h)(11) annual report to GRTS. Similarly, States can provide much or all of the information needed by EPA Regions to make annual "satisfactory progress" determinations as required by Section 319(h)(8). Finally, due to its Web-enabled format, States may allow sub-State organizations that receive Section 319 funds to directly enter data into the system, thereby reducing the States' own reporting burdens.

Regions are encouraged to work with their States to design reporting procedures utilizing GRTS that will promote efficiency and eliminate duplication of work. In particular, States are encouraged to use GRTS to submit grantee performance reports pursuant to 40 CFR 31.40(b)(1). States are also encouraged to use GRTS' project description, project evaluation, and other data fields for more complete data management and project reporting purposes. In addition, the Regions should explore ways to coordinate and synchronize the submittal of performance reports of other EPA programs managed within the same State office (e.g., Section 106, 104(b), 305(b) and 604(b)).

Since GRTS is an official reporting vehicle for programs or projects conducted by States under Section 319(h) grants, a State's cost to enter data and otherwise utilize GRTS is itself eligible for funding under Section 319. Regions and States should work together to ensure that the States are provided sufficient resources in their Section 319 grants to meet these reporting requirements and management 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 conferences and training.

## 3. STORET

In March 2003, EPA published "Elements of a State Water Monitoring and Assessment Program" (available at

<http://www.epa.gov/owow/monitoring/repguide.html>). The document recommends the ten basic elements of a State water monitoring program. One of the ten elements is the use of an accessible electronic data system for water quality that meets State/Federal geo-locational standards with timely data entry and public access. EPA's new STORET (STORage and RETrieval) system provides an accessible, nationwide central repository of water information of known quality.

In the future, EPA will require that all States use STORET either directly or indirectly (e.g., via the Central Data Exchange (CDX) which will include the Monitoring Data Standard). For States that do not currently operate STORET, the Elements document cited above states that these States' monitoring strategies should provide for the use of STORET as soon as it is practicable. In the interim, the document states that States should store their assessment information in an accessible electronic database. Consistent with this approach, States that are not yet prepared to use STORET for storage of data generated in the development and implementation of Section 319 watershed projects should in the interim store their assessment in an accessible electronic database.

EPA's goal is that, as soon as possible, all States will use STORET to store data generated in the development and implementation of Section 319 watershed projects. STORET broadly contains water quality data with actual concentrations of pollutants that are measured in the water or other similar parameters that may be used, such as macroinvertebrate counts. Because STORET is publicly accessible and utilized on a large scale, it is critical that monitoring data from all EPA-funded projects be entered into STORET so that the information can be available to all interested practitioners. Over the past decade EPA has developed a modernized STORET system that has improved the quality of entered data (including adding biological data) and is fully interactive and more user friendly. For more information on STORET, see <http://www.epa.gov/storet>.

#### 4. Reporting and Record-Keeping for Sub-State Organizations

Just as the grant agreement specifies outputs and milestones to be achieved by the States, States should assure that agreements with sub-State organizations specify outputs, milestones, and reporting and record keeping requirements in memoranda of agreement, contracts or other appropriate documents. As indicated in the preceding section, States may,

where appropriate, include in these agreements a provision requiring the sub-State organization to enter data into STORET and GRTS reporting worksheets for entry into GRTS.

Where a sub-grantee provides a portion of the State's match, the State should ensure that adequate records are kept with respect to that portion. 40 CFR section 31.41(a)(2) specifies that grantees shall not impose more burdensome requirements on sub-grantees than they are subject to themselves.

#### V. Management and Oversight of Section 319(h) Grants

EPA's oversight approach will emphasize cooperative partnerships based upon EPA's and the States' mutual goal of implementing dynamic and effective national nonpoint source programs designed to achieve and maintain beneficial uses of water. The guidelines established in a new joint performance evaluation process will promote continuous monitoring throughout the life of projects to help ensure the mutual understanding of expectations and outputs of particular grants (see 40 CFR 35.115 and EPA Order 5700.6).

In conducting its oversight activities, EPA will rely to a significant extent on information and reports provided by the State as well as data entered by the State into STORET and GRTS. EPA will review this information and then contact the States if EPA needs additional information. In addition to reviewing the State's reports, EPA or the State should endeavor to meet at least annually to discuss the State's progress in implementing its program.

Of primary importance is the discussion of State progress in developing and implementing watershed-based plans and achieving results from these implementation activities. To the extent relevant and appropriate to fully evaluating this progress, Regions should review at least some of the State's watershed-based plans and discuss both their strengths and weaknesses with the State. Regions should also review and discuss with the State the rate of progress in successfully implementing these plans.

EPA and the State should also discuss ways in which EPA can better assist the State during the forthcoming year in implementing the State's program. Types of assistance to be considered include: support for State efforts to assess water quality problems; support for State design and implementation of watershed-based plans; technical assistance to help the State monitor the progress and results of watershed

projects; and assistance in the development of outreach tools.

When evaluation results show that grant and contract provisions have not been substantially achieved, the State and Region should work cooperatively to take corrective action. If performance or the results achieved by the State are poor, the Region may be required to determine that the State has not made "satisfactory progress" under Section 319(h)(8) and to deny the State's grant application the following year. As discussed above, one particular area of importance for Regional determination is whether States have made satisfactory progress in addressing their impaired waters through the development and implementation of watershed-based plan. Other forms of corrective action are described at 40 CFR 31.43.

When a State lead nonpoint source agency is providing EPA grant funds to other State or local agencies to carry out the terms of a nonpoint source grant, the lead agency remains responsible for all outputs in its Section 319(h) work program. Thus, if a local agency has difficulties performing particular funded activities, the Region should work with the State lead agency to resolve the problem.

#### Periodic Reviews

Using its "feedback loop" established in States' upgraded nonpoint source management programs, the State should periodically review and evaluate its nonpoint source management program (i.e., every five years). Using environmental and functional measures of success, the State will assess the goals and objectives of the nonpoint source management program, and revise the program as appropriate, in light of its review.

#### VI. Grants to Indian Tribes

These guidelines are not specifically directed to Tribal nonpoint source management programs. Given the differing statutory provisions and approaches applicable to Tribal programs, EPA publishes separate nonpoint source guidance for Tribes. However, we present a brief overview below. For detailed information about Tribal nonpoint source programs, we recommend referring to the *Tribal Nonpoint Source Planning Handbook* (EPA-841-B-97-004, August 1997) as well as additional guidance documents written for Tribal nonpoint source programs that are located at <http://www.epa.gov/owow/nps/tribal.html>.

Tribes, like States, must have EPA-approved nonpoint source assessments and management programs (as well as approval for treatment in a similar

manner as a State) in order to be eligible for Section 319(h) grants. EPA is very pleased that to date, more than 80 Tribes, comprising over 70% of all Indian country, have approved nonpoint source assessments and management programs. EPA encourages other Tribes that have significant nonpoint source pollution problems to similarly develop assessments and programs that focus on their highest priority nonpoint source problems. While Section 319 funds may not be used to develop nonpoint source assessments and management programs, other EPA funding programs are available to Tribes to develop nonpoint source assessment reports and management programs. Technical assistance with the development of assessment and management programs is available from EPA.

Section 518(f) states that the Administrator may reserve for Indian Tribes treated similarly to States not more than one-third of one percent of the amount appropriated for any fiscal year under Section 319(j) for Sections 319(h) and (i). In each of the Fiscal Years 2000–2003, 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 that is available for the forthcoming year. To be eligible for Section 319 nonpoint source grants, Tribes must meet the requirements in Section 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.

Indian Tribes are required to meet the 40 percent matching and maintenance-of-effort requirements under Section 319(h); however, if a Tribe can demonstrate financial cause, its match requirement may be reduced to 10 percent, with the Federal share of Section 319(h) funds increased to 90 percent. In addition, Tribes, like States, may use in-kind contributions to meet matching requirements.

## VII. Waiver Process

Circumstances may arise in which a State believes it is required 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 EPA's Regional Water Division Director. The request should identify the requirement from which a waiver is requested; the circumstances requiring the waiver; 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 Director of the Assessment and Watershed Protection Division (a division of the Office of Water in EPA Headquarters).

This waiver process applies only to the requirements established by these guidelines; it does not apply to any statutory or regulatory requirements reiterated in these guidelines. In addition, this process is not required for any Regional authorization of the use of more than 20% of incremental funds to develop watershed-based plans as discussed earlier in these guidelines in Section III.B.

## Appendix A—Measures and Indicators of Progress and Success

To measure the progress and success of their nonpoint source programs, States will generally need to use at least three sets of measures. These include measures to indicate progress towards: (1) The State's overall water quality vision of achieving and maintaining beneficial uses of water; (2) the long-term goals set by the State in its program (e.g., successfully completing the implementation of a watershed-based plan and achieving water quality standards, or installing appropriate technologies at all animal waste facilities that need to be upgraded within a watershed); and (3) the shorter-term goals and objectives set by the State (e.g., successfully demonstrating a particular technology).

The following list illustrates measures and indicators which States may choose from or add to that will help the States and the public measure the progress and success of their programs. States may identify and use other measures and indicators that are most relevant to their nonpoint source problems, programs, and projects. However, States must report on at least the three measures of progress that are identified in Section 319(h)(11) (i.e., implementation milestones, available information on reductions in nonpoint source pollutant loadings, and available information on improvements in water quality).

Well-designed State programs will usually include several appropriate measures and indicators from each of the categories set forth below for each of their projects or program activities. For overall program status and trends, States will generally include measure 1.A. below as part of their Section 305(b) reports.

The categories below are approaches which have been successfully used as water-quality and implementation measures and indicators, as well as measures of enhanced public education, awareness and action. They are presented as examples, not requirements, and should be used as starting points for discussion.

### 1. Water Quality Improvement From Nonpoint Source Controls

- a. Number (or percentage) of river/stream miles, lake acres, and estuarine and coastal square miles that fully meet all water quality standards.
- b. Number (or percentage) of river/stream miles, lake acres, 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. Demonstrable improvements in relevant surface and ground water quality parameters.
- d. Demonstrable improvements in biological or physical parameters (e.g., increase in diverse fish or macroinvertebrate populations, or improved riparian areas or other measures of habitat).
- e. Opening of previously closed shellfish beds.
- f. Lifting of fish consumption advisories.
- g. Prevention of new impairments (e.g., number of river miles removed from the "threatened" lists, or number of miles of high-quality waters protected).

### 2. 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.
- c. State-wide reduction in pollutant loadings from nonpoint sources.
- d. In the case of nonpoint source 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.
- e. Reductions in frequencies, or prevention of increases, of peak flows in developing or developed areas.

### 3. 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. Combination of 2.b and 3.b.
- d. Number of approved or certified plans (e.g., written to address erosion and sediment control, storm water, nutrient management, or pest management).
- e. Percent of the watershed(s) covered by plans described in item 3d.
- f. Percent of facilities covered by plans described in item 3d.
- g. Statistically-based survey of implementation rates (e.g., results of State-approved BMP use and effectiveness surveys).

h. Percent of priority ground water addressed by nonpoint source controls.

4. *Public Education, Awareness, and Action*

- a. Participation rates in education programs specifically directed to solving particular nonpoint source 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 nonpoint source activities, such as citizen monitoring and watershed resource restoration activities.
- d. Participation rates in various public awareness and education efforts.

**Appendix B—Generic Grant Condition Establishing State Reporting Requirements**

The recipient (name of State lead nonpoint source agency) agrees to comply with all reporting requirements required by EPA regulation and Sections 319(h)(10) and (11) of the Clean Water Act. All reporting information will be submitted according to the schedule(s) required in 40 CFR parts 31 and 35 regulations and in the “Nonpoint Source Program and Grants Guidelines” or as subsequently amended. The three basic reporting categories include: Grantee Performance Reports [40 CFR, part 31.40(b)(1)]; Nonpoint Source Progress Reports [CWA, Section 319(h)(11)]; and Financial Status Reports [40 CFR, part 31.41(b)].

The recipient agrees to use the Agency’s Grants Reporting and Tracking System (GRTS) to provide all nationally mandated

data elements listed in Appendix C of the nonpoint source program and grants guidelines.

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.

**Appendix C—Nationally Mandated Data Elements Under Section 319 Grants Reporting and Tracking System (GRTS)\***

Following is a list of mandated reporting elements for State Section 319 Programs:

1. *Project Identification*  
 NPS Program or Project Title  
 NPS Category (choose from list)
  - a. Primary Category (e.g., agriculture, silviculture, or hydrologic modification)
  - b. Secondary Category of Pollution (e.g., non-irrigated crop production, road construction/maintenance, or riparian area degradation)
 NPS Functional Category (choose from list)  
 NPS Waterbody Type (choose from list)  
 NPS Stream Reach Code (linked to WATERS for easy on-line identification; for estuaries, latitude/longitude are used in lieu of a stream reach code)  
 Pollutant Type (choose from list)  
 TMDL Check-off (identifying projects that consist of the development of a NPS TMDL; the development of a watershed-based plan to implement a TMDL; or the actual implementation of such a plan)  
 Clean Lakes check-off boxes (yes/no, and if yes, 3 follow-up questions)

2. *Project Description*

Best Management Practices (choose from list, or enter a new one if not listed)  
 Pollutant Type (choose from list)  
 Project Description (text field with template provided)

3. *Accounting for Results on the Ground*

- a. Load Reductions for Projects Designed to Reduce Nutrients and/or Sediment
  - Identify if project is a BMP implementation project for nutrients or sediment
  - If so, provide an estimate of sediment and/or nutrient load reductions
  - State whether estimate is based on monitoring or modeling
  - Name of model
- b. *Wetlands/Streambanks/Shorelines:*  
 Account for feet of streambanks/shorelines restored or protected, and acres of wetlands restored or protected

4. *Accounting for Expenditures of Funds and Implementation of Programs and Projects*

NPS Budget 319(h) Funds  
 Number of State Employees (FTEs) supported by 319(h) Funds Under this Grant  
 Amount of 319(h) Funds Allocated to Sub-State Recipients Under this Grant  
 NPS Program or Project Start Code/Date  
 NPS Program or Project Completion Code/Date  
 Estimated expenditure breakdown for main source categories after project is completed

**Appendix D**

**FACTORS IN PLANNING TARGET FORMULA**

Factor	Data source	Weighting	Rationale
I. Statutory set-aside for Indian Tribes .....	§ 106 allocation formula .....	0.0033	§ 518(f).
II. Other:			
Minimum amount for the States and Territories.	N/A .....	0.2643	All States, D.C. and territories receive funds to institutionalize NPS control activities & program.
1988 Section 305(b) Report .....	1988 Draft–10/89 .....	N.A	National data used to determine the weighting factors for ag, urban, mining, & forestry as indicated below.
Population .....	1980 Census .....	0.2861	Factors include State fraction of national population, population density, and population growth.
Cropland Acreage .....	1987 Ag Census .....	0.1581	Cropland is used as a surrogate for sediment and nutrient problems, which account for about 85% of ag NPS problems. Modeling approach based partly on 1986 ASIWPCA national data.
Pasture & Rangeland Acreage .....	1987 NRI Data .....		
Forest Harvest Acreage .....	1980 Census Data .....		
Wellhead Protection Areas .....	1986 ASIWPCA NPS Report .....	0.0205	Animal units & animal units/farm acre used as surrogate for BOD & bacteria problems, which account for about 11% of the ag NPS problem.
Critical Aquatic Habitats .....	1987 Ag Census .....	0.0429	Acreage of private & Federal forest harvested annually.
	EPA .....	0.1135	Factors include relative risk to ground water, number of people potentially impacted, number of wellheads to be protected & size of States.
	Wellhead Protection Program .....		
	Allotment .....		
	Formula—EPA .....		
	Dahl, T.E 1990. Wetland Losses in the United States 1970s 1980s. U.S. Dept. of the Interior, Fish & Wildlife Service, Washington, D.C. ....	0.0500	State share of total wetland acreage is a meaningful surrogate for critical aquatic habitat since it covers both fresh and saline waters.

FACTORS IN PLANNING TARGET FORMULA—Continued

Factor	Data source	Weighting	Rationale
Other Use Impact—319(a)	N/A	N/A	All NPS factors for ag, urban, forestry & mining are based upon land-based activities, therefore addressing impaired & threatened waters.
Mining	1987 NRI 1980 RCA Appraisal	0.0572	State's fraction of mined acres as surrogate for mining.
Pesticides	1987 NRI 1986 National Pesticide Usage Data Base, RFF & EPA	0.0074	Amount & rate of application of active ingredients for pesticides recommended for inclusion in EPA's National Pesticide Survey.

\*The weighting for "Other Factors" is based on the allocation after National set-asides have been subtracted from the total appropriated funds. As a result, the sum of the weighting for "Other Factors" is unity.  
**Note:** These factors are unchanged from EPA's current formula.

Appendix E

State-by-State Section 319 Allocation

This Appendix sets forth, for each State, its percentage of the total allocation of Section 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 Section 319 funds to Indian Tribes cannot be reliably predicted.)
3. Multiply the funds remaining after step #2 by the applicable State percentage below.

	Percentage
<b>Region 15</b>	
Connecticut	0.98
Maine	1.17
Massachusetts	1.36
New Hampshire	0.76
Rhode Island	0.68
Vermont	0.74
<b>Region 2</b>	
New Jersey	1.67
New York	3.40
Puerto Rico	0.56
Virgin Islands	0.27
<b>Region 3</b>	
Delaware	0.72
Dist. Of Col.	0.63
Maryland	1.34
Pennsylvania	2.95
Virginia	1.97
West Virginia	1.10
<b>Region 4</b>	
Alabama	1.96
Florida	3.92
Georgia	2.34
Kentucky	1.71
Mississippi	1.92
N. Carolina	2.33
S. Carolina	1.56

	Percentage
Tennessee	1.59
<b>Region 5</b>	
Illinois	4.12
Indiana	2.25
Michigan	2.93
Minnesota	3.46
Ohio	3.04
Wisconsin	2.59
<b>Region 6</b>	
Arkansas	1.97
Louisiana	2.44
New Mexico	1.22
Oklahoma	1.58
Texas	4.75
<b>Region 7</b>	
Iowa	2.29
Kansas	1.85
Missouri	2.31
Nebraska	1.82
<b>Region 8</b>	
Colorado	1.27
Montana	1.33
N. Dakota	2.42
S. Dakota	1.64
Utah	0.92
Wyoming	0.98
<b>Region 9</b>	
Arizona	1.64
California	5.34
Hawaii	0.77
Nevada	0.85
Am. Samoa	0.27
Guam	0.27
Marianas	0.27
<b>Region 10</b>	
Alaska	1.22
Idaho	1.24
Oregon	1.39
Washington	1.92

provide a copy of any watershed-based plan funded under Section 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.

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**EXPORT-IMPORT BANK**

[Public Notice 56]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments should be received on or before November 24, 2003 to be assured of consideration.

**ADDRESSES:** Direct requests for additional information to Angela Beckman, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565-3418. Direct comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB Room 10202, Washington, DC 20503, (202) 395-3897.

**SUPPLEMENTARY INFORMATION:**

**Appendix F—Generic Grant Condition Regarding Watershed-Based Plans**

The recipient [name of State lead nonpoint source agency] has received a grant to implement one or more watershed-based plans. The recipient shall complete the development of a watershed-based plan, including all of the information required by elements (a)—(i) in Section III. D of these guidelines ("Watershed-Based Plans"), prior to beginning to implement it with Section 319 funds.

Upon request by EPA, the recipient [name of State lead nonpoint source agency] shall