

Process For Approval of Upgraded State and Territorial Nonpoint Source Management Programs and Formal Recognition of Enhanced Benefits Status

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[This guidance was signed on January 7, 1999]

MEMORANDUM

SUBJECT: Process For Approval of Upgraded State and Territorial Nonpoint Source Management Programs and Formal Recognition of Enhanced Benefits Status

FROM: J. Charles Fox
Assistant Administrator

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

I am writing you to review the specific process that EPA is using to approve upgraded State and Territorial Nonpoint Source Management Programs and to formally recognize Enhanced Benefits Status, as described in the *Nonpoint Source Program and Grants Guidance for Fiscal Years 1997 and Future Years (Guidance, May, 1996)*. Many of these same points were made by Robert Wayland, Director of the Office of Water's Office of Wetlands, Oceans, and Watersheds, in his May 26, 1998, memorandum to you. In addition, these issues were discussed in detail at the most recent meeting of the State-EPA Operating Committee in Chicago on October 23, 1998, and we agreed in that meeting that I would send you a memorandum that reviews our process for reviewing and approving upgraded State programs.

At the outset, I wish to emphasize that upgrading State nonpoint source programs is of critical importance if we are to succeed in our efforts to solve the remaining water quality problems in the United States. It is for this reason that EPA and the States worked closely together in 1995 and 1996 to jointly develop the nine key elements of effective nonpoint source programs that are set forth in the *Guidance*. Those nine key elements (outlined in Attachment A) are critical to developing specific goals and objectives that will guide each State's program in both the short and long term; fostering broad and productive partnerships with all parties that have a stake in solving nonpoint source pollution problems; and implementing necessary measures and practices expeditiously and effectively.

When EPA published the May 1996 *Guidance*, we anticipated that the States would expeditiously begin the process of strengthening their nonpoint source management programs so that they are consistent with the nine key elements of a dynamic and effective nonpoint source management program. Unfortunately, progress in many States has to date been slower than anticipated. During the two and one-half years since the *Guidance* was published, only two States' nonpoint source management program upgrades have been approved and recognized for Enhanced Benefits Status. We are aware that many States are well along in their processes to upgrade their programs, but it also appears that a significant number of States have not yet progressed very far in this effort.

Improved program design and implementation are critical to accelerate achievement of our water quality goals. In addition, there are two direct benefits to States that upgrading their nonpoint source management programs: decreased EPA oversight on section 319 grants monies and additional section 319 funding. As specified in the recently published *Clean Water Action Plan*, announced by the President in February 1998, new section 319 monies above the \$100 million authorized level will be awarded, beginning in FY 2000, only to those States with EPA-approved nonpoint source management program upgrades:

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

As you know, in FY 1999, the President proposed, and Congress appropriated, an increase of Section 319 nonpoint source grants to \$200 million. Under the Clean Water Act Plan, we anticipate continued support of this level of funding. This huge increase in nonpoint source funds reflects Congress' recognition of both the significance of nonpoint source pollution and the need to expedite our national efforts to control this pollution. It also represents Congress' expectation that State nonpoint source programs will provide an effective vehicle to control nonpoint source pollution. It is critical in this light that States upgrade their programs so that they can use their 319 funds effectively and, working in collaboration with their many partners in both the public and private sectors, solve nonpoint source pollution problems and restore water quality.

In light of the importance of this effort to improve State nonpoint source programs, I am asking my staff and EPA regional staff to work closely with the States and actively assist them in developing high-quality, approvable programs. We stand ready to assist in any way possible, including meeting with State staff, reviewing preliminary drafts and providing technical assistance.

Please note as well that the incremental Section 319 dollars are to be focused on the development and implementation of Watershed Restoration Action Strategies for Category I watersheds that have been identified in the States' Unified Watershed Assessments. On August 18 and December 4, 1998,

Bob Wayland sent you two memoranda that outline the process and criteria for using the incremental 319 dollars to achieve these objectives. I encourage the States and EPA Regional offices to work closely together to ensure that the goal of restoring the highest priority waters is met.

Elements of Program Upgrade Approval

To assist you in your efforts to upgrade State nonpoint source management programs, I am summarizing below the program upgrade approval process. In addition, I have enclosed a reproduction (in index form) of Appendix A of the *Guidance* that we recommend for use by both States and EPA as a tool to thoroughly address and review the nine key elements.

At present, all States and Territories have approved Clean Water Act (CWA) section 319 nonpoint source assessment plans and management programs. With few exceptions, the programs address all applicable nonpoint source categories and have been fully approved according to statutory requirements. Because the approval of program upgrades is not a statutorily mandated process, it does not require the same steps specified in CWA section 319 for initial program approval, e.g., submittal from the governor to EPA. (Note, however, that portions of management programs which have not received initial approval, such as a portion addressing a category or categories of nonpoint sources not previously included in partially approved programs, continue to be subject to the level of review and certification specified in section 319 and previously applied to the remainder of the State's nonpoint source program.) An upgraded program is one that addresses the nine key elements for all significant nonpoint sources of pollution.

As noted above, there is no statutory requirement in Section 319 that States submit and EPA approve upgraded nonpoint source management programs. However, as discussed in the *Guidance*, the States and EPA have agreed that all States should review and, as appropriate, revise their nonpoint source management programs and submit the upgraded programs to EPA for approval. Only EPA-approved programs will be eligible for recognition as Enhanced Benefits States.

EPA strongly recommends that, before the States and Territories and EPA mutually agree that a State's or Territory's program upgrade officially incorporates the nine key elements, the revised nonpoint source management program document be made available by the State for public review and comment. Public review is critical to insure involvement in and commitment to long-term program implementation by all stakeholders and partners. The process for public review need not be an elaborate one involving public hearings but rather could be any procedure that notifies interested stakeholders and the public of the proposed changes and provides them with an opportunity to provide input and to indicate how they would like to assist in program implementation before the program upgrade is officially submitted to EPA.

Approval Process for Management Program Upgrades

1. EPA Regional offices work closely on early drafts of nonpoint source management program upgrades with the lead State nonpoint source agencies.
2. When the State has completed its drafting process, we recommend that it makes the revised nonpoint source management program document available for public review and comment. Once public comment has been addresses, the State sends the final draft copy to the EPA Regional office for concurrent review by the EPA Region and Headquarters.
3. EPA Regional office and EPA Headquarters review the State's final draft document submittal according to the suggested outline for assessments of State programs in Appendix A of the *Guidance*.
4. EPA Regional office and EPA Headquarters discuss and collaborate to have a unified set of concerns, strengths, and suggestions for improvement. (After this review, there may be informal interaction between the State and EPA Regional office regarding clarification of issues or the addition of information, not present in the draft, that is necessary for approval.)
5. EPA Regional office drafts EPA's official review.
6. The State modifies its draft program document as appropriate in light of EPA's comments and the State's Water Division Director submits one copy each of the official submittal to the EPA Regional Administrator and to the Director of the Assessment and Watershed Protection Division at EPA Headquarters.
7. In cases of program upgrade approval, the EPA Regional Administrator grants official approval of a State's NPS management program upgrade in writing, with the written concurrence by EPA's Assistant Administrator for Water.
8. EPA Regional office officially notifies the State that it has an approved nonpoint source management program upgrade (and therefore eligible for additional section 319 monies according to the Clean Water Action Plan) and Enhanced Benefits Status.
9. EPA Regional Office and the State develop and implement the appropriate communications strategy related to provide public recognition of the State's Enhanced Benefits Status.

In cases where EPA is unable to give program upgrade approval, the EPA Regional Office will communicate with the State about future actions to include improvements and changes in the upgrade. The State may submit a further upgrade for approval at a later date.

Guidelines for Incorporation of the Nine Key Elements

The attached suggested index (Attachment B) is a reformatted copy of Appendix A in the 1996 *Guidance*, which was designed for use by States and EPA Regional offices in evaluating State

progress in reviewing, updating, revising, and implementing their State nonpoint source programs. Use of the index is not required, but is strongly recommended as a useful means to identify how thoroughly a State program addresses the nine key elements. The index breaks these elements down into component parts that will assist both States and EPA reviewers in evaluating State programs' effectiveness in achieving these nine program elements. The index may be used as a guide by Nonpoint Source Enhanced Benefits States for their self-assessments (see Section IV-A of the *Guidance*) and by any other State that chooses to conduct a self-assessment, as well as by EPA Regions that conduct assessments of State programs. EPA Regional Offices and States choosing to use this worksheet may wish to tailor the components of particular elements to ensure that they most appropriately address particular Regional or State needs.

EPA requests that the State include with its submittal a cover memo briefly summarizing how it meets each of the nine key elements. EPA also recommends that States attach a completed index to their official program upgrade submittal, including the page numbers where key elements are addressed. This will help both the States and EPA identify how the State's upgraded program meets the nine key elements.

CONCLUSION

We have reached a critical juncture in the maturation of the national nonpoint source program into a fully effective tool to help solve our remaining water quality problems. I and my staff are eager to actively assist you in the process of developing and approving high-quality, upgraded programs that will ensure that we successfully achieve these goals of protecting and restoring our nation's waters.

If you have any questions or comments, please call me at (202) 260-5700 or Bob Wayland at (202) 260-7040, or have your staff contact Dov Weitman at (202) 260-7088.

Attachment

cc:
State and Territorial Nonpoint Source Coordinators
EPA Regional Nonpoint Source Coordinators
Roberta Savage, ASIWPCA

SUGGESTED INDEX FOR ASSESSMENTS OF STATE PROGRAMS

(Recommended for attachment to official submittal)

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

	Page #
A. State program includes a vision Statement.	
B. State has specific long-term goals that are linked to its vision and are directed towards the expeditious achievement and maintenance of beneficial uses of water.	
C. State has specific short-term (e.g., 1-5 year) objectives, expressed as activities, that are linked to its goals.	
D. State has identified measures and indicators that will be used to assess the State's success in achieving its goals and objectives.	
E. State has identified specific, expeditious milestones for its activities.	
F. State has identified implementation steps and the expected effects of those steps on its water resources.	
G. Additional program information	

2. The State strengthens its working partnerships and linkages with appropriate State, Tribal, regional, and local entities (including conservation districts), private sector groups, citizens groups, and Federal agencies.

	Page #
A. The State uses a State-wide collaborative team, nonpoint source task force, or advisory group, or other appropriate process, to provide for input and recommendations from representatives of Federal, State, Tribal, and local agencies, private sector groups and citizens groups, regarding nonpoint source program direction, project selection, and other similar aspects of program administration.	
B. The team, task force or advisory group meets regularly and promotes collaborative and inclusive decision making.	
C. The State program specifies procedures to provide for periodic public input into the program.	
D. The State effectively incorporates a variety of organizations and interests into its implementation of nonpoint source activities and projects.	
E. The State uses its partnerships effectively to avoid the transfer of problems among environmental media.	
F. Additional information:	

3. The State uses a balanced approach that emphasizes both State-wide nonpoint source programs and on-the-ground management of individual watersheds where waters are impaired and threatened.

	Page #
A. Annual or multi-year work plans contain nonpoint source implementation actions directed at both specific priority watersheds and activities of a State-wide nature.	
B. State tracks both State-wide activities and watershed projects.	
C. State has institutionalized its program beyond the annual implementation of 319-funded activities and projects.	
D. State uses an integrated watershed approach for assessment, protection and remediation that is well integrated with other water or natural resource programs.	
E. Additional information:	

4. The State program (a) abates known water quality impairments from nonpoint source pollution⁽¹⁾ and (b) prevents significant threats to water quality from present and future activities.

	Page #
A. State has comprehensively characterized water quality impairments and threats throughout the State which are caused or significantly contributed to by nonpoint sources.	
B. State has comprehensively characterized reasonably foreseeable water quality impairments and threats that are likely to be caused by nonpoint source pollution in the future.	
C. State program addresses all significant nonpoint source categories and subcategories.	
D. State program has identified specific programs to abate pollution from categories of nonpoint sources which cause or substantially contribute to the impairments identified in its assessments.	
E. State has identified specific programs to prevent future water quality impairments and threats that are likely to be caused by nonpoint source pollution.	
F. Additional information:	

5. The State program identifies waters and their watersheds impaired by nonpoint source pollution and identifies important unimpaired waters that are threatened or otherwise at risk. Further, the State establishes a process to progressively address these identified waters by conducting more detailed watershed assessments and developing watershed implementation plans, and then by implementing the plans.

	Page #
A. State water quality assessments (including those performed under section 305(b), 319(a), 303(d), 314, and others), along with analysis of changing land uses within the State, form the basis for the identification of the State's planned nonpoint source activities and projects.	
B. State activities focus on remediating the identified impairments and threats, and on protecting the identified at-risk waters.	
C. State has provided for public participation in the overall identification of problems to be addressed in the State program, and in the establishment of a process to progressively address these problems.	
D. State nonpoint source priorities are communicated to, consistent with, and reflected in program planning and implementation activities by other water resource management agencies operating within the State	
E. State revises its identification of waters and revisits its process for progressively addressing these problems periodically (e.g., once every 5 years).	
F. Additional information:	

6. The State reviews, upgrades, and implements all program components required by section 319(b) of the Clean Water Act, and establishes flexible, targeted, and iterative approaches to achieve and maintain beneficial uses of water as expeditiously as practicable. The State programs include:

(a) An mix of water quality-based and/or technology-based programs designed to achieve and maintain beneficial uses of water; and

(b) A mix of regulatory, non-regulatory, financial and technical assistance as needed to achieve and maintain beneficial uses of water as expeditiously as practicable.

The State includes in its program and implements the following eight items:

	Page #
1A. Identification of the measures to be used to control nonpoint sources of pollution, focusing on those measures which will be most effective to address the specific types of nonpoint source pollution prevalent within the State. These measures may be individually identified or presented in manuals or compendiums, provided that they are specific and are related to the category or subcategory of nonpoint sources. They may also be identified as part of a watershed approach towards achieving water quality standards, whether locally, within a watershed, or State-wide;	

1 B. Identification of programs to achieve implementation of the measures;	
1 C. Processes used to coordinate and, where appropriate, integrate various programs used to implement nonpoint source controls in the State;	
1 D. A schedule with goals, objectives, and annual milestones for program implementation; legal authorities to implement the program; available resources; and institutional relationships;	
1 E. Attorney General certification (if program is changed substantially);	
1 F. Sources of funding from Federal (other than 319), State, local, and private sources;	
1 G. Identification of Federal programs and projects that the State will review for their effects on water quality and their consistency with the State program; and	
1 H. Monitoring and other evaluation programs to help determine short- and long-term program effectiveness.	

2. The State program also incorporates or cross-references existing baseline requirements established by other applicable Federal or State laws to the extent that they are relevant. Examples include but are not limited to:

	Page #
2A Approved State coastal nonpoint source pollution programs required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA);	
2B. State Forest Management Practices Acts;	
2C. State construction, erosion or nutrient management laws; and	
2D. Federal or State transportation laws which govern construction site or maintenance Runoff.	

7. The State identifies Federal lands and activities which are not managed consistently with State nonpoint source program objectives. Where appropriate, the State seeks EPA assistance to help resolve issues.

	Page #
A. The State reviews Federal financial assistance programs, development projects, and other activities that may result in nonpoint source pollution for consistency with the State program.	
B. The State works with Federal agencies to resolve potential inconsistencies between Federal programs and activities and the State programs.	

C. Where the State cannot resolve Federal consistency issues to its satisfaction, it requests EPA assistance to help resolve the issues.	
D. The State coordinates with Federal agencies to promote consistent activities and programs, and to develop and implement joint or complementary activities and programs.	
E. Additional information:	

8. The State manages and implements its nonpoint source program efficiently and effectively, including necessary financial management.

	Page #
A. The State's plans for watershed projects and State-wide activities are well-designed, with sufficient detail to assure effective implementation.	
B. The State's watershed projects focus on the critical areas, and critical sources within those areas, that are contributing to nonpoint source problems.	
C. State implements its activities and projects, including all tasks and outputs, in a timely manner.	
D. State has established systems to assure that the State meets its reporting obligations.	
E. State utilizes the Grants Tracking and Reporting System effectively	
F. State has developed and uses a fiscal accounting system capable of tracking expenditures of both 319 funds and non-Federal match.	
G. Nonpoint source projects include appropriate monitoring and/or environmental indicators to gauge effectiveness.	
H. Additional information:	

9. The State periodically reviews and evaluates its nonpoint source management program using environmental and functional measures of success, and revises its nonpoint source assessment and its management program at least every five years.

	Page #
A. The State has and uses a process to periodically assess both improvements in water quality and new impairments or threats.	
B. The State uses a feedback loop, based on monitoring and other evaluative information, to assess the effectiveness of the program in meeting its goals and objectives, and revises its activities and tailors its annual work plans, as appropriate, in light of its review.	
C. Using its feedback loop, the State periodically reviews and assesses the goals and objectives of the nonpoint source management program, and revises the program as appropriate in light of its review.	

D. The State's annual report successfully portrays the State's progress in meeting milestones, implementing BMPs, and achieving water quality goals.	
E. Additional information:	

STATE	FY99 Base	FY99 Increment	FY99 Enacted Total
REGION 1	5,672.5	5,672.5	11,345.0
CONNECTICUT	975.4	975.4	1,950.8
MAINE	1,169.6	1,169.6	2,339.2
MASSACHUSETTS	1,351.6	1,351.6	2,703.2
NEW HAMPSHIRE	761.9	761.9	1,523.8
RHODE ISLAND	675.8	675.8	1,351.6
VERMONT	738.2	738.2	1,476.4
REGION 2	5,882.4	5,882.4	11,764.8
NEW JERSEY	1,662.7	1,662.7	3,325.4
NEW YORK	3,392.1	3,392.1	6,784.2
PUERTO RICO	558.3	558.3	1,116.6
VIRGIN ISLANDS	269.3	269.3	538.6
REGION 3	8,668.8	8,668.8	17,337.6
DELAWARE	715.5	715.5	1,431.0
DIST. OF COL.	623.1	623.1	1,246.2
MARYLAND	1,331.2	1,331.2	2,662.4
PENNSYLVANIA	2,935.5	2,935.5	5,871.0
VIRGINIA	1,963.9	1,963.9	3,927.8
WEST VIRGINIA	1,099.6	1,099.6	2,199.2
REGION 4	17,291.7	17,291.7	34,583.4
ALABAMA	1,957.9	1,957.9	3,915.8
FLORIDA	3,909.3	3,909.3	7,818.6

GEORGIA	2,332.3	2,332.3	4,664.6
KENTUCKY	1,708.4	1,708.4	3,416.8
MISSISSIPPI	1,915.2	1,915.2	3,830.4
N. CAROLINA	2,321.3	2,321.3	4,642.6
S. CAROLINA	1,557.8	1,557.8	3,115.6
TENNESSEE	1,589.5	1,589.5	3,179.0
REGION 5	18,324.4	18,324.4	36,648.8
ILLINOIS	4,107.8	4,107.8	8,215.6
INDIANA	2,238.6	2,238.6	4,477.2
MICHIGAN	2,917.9	2,917.9	5,835.8
MINNESOTA	3,446.1	3,446.1	6,892.2
OHIO	3,031.0	3,031.0	6,062.0
WISCONSIN	2,583.0	2,583.0	5,166.0
REGION 6	11,921.9	11,921.9	23,843.8
ARKANSAS	1,962.7	1,962.7	3,925.4
LOUISIANA	2,427.9	2,427.9	4,855.8
NEW MEXICO	1,219.7	1,219.7	2,439.4
OKLAHOMA	1,578.9	1,578.9	3,157.8
TEXAS	4,732.7	4,732.7	9,465.4
REGION 7	8,252.7	8,252.7	16,505.4
IOWA	2,283.0	2,283.0	4,566.0
KANSAS	1,844.2	1,844.2	3,688.4
MISSOURI	2,306.8	2,306.8	4,613.6
NEBRASKA	1,818.7	1,818.7	3,637.4
REGION 8	8,517.6	8,517.6	17,035.2
COLORADO	1,262.6	1,262.6	2,525.2
MONTANA	1,321.2	1,321.2	2,642.4
N. DAKOTA	2,410.5	2,410.5	4,821.0
S. DAKOTA	1,633.2	1,633.2	3,266.4

UTAH	916.7	916.7	1,833.4
WYOMING	973.4	973.4	1,946.8
REGION 9	9,390.3	9,390.3	18,780.6
ARIZONA	1,639.0	1,639.0	3,278.0
CALIFORNIA	5,324.4	5,324.4	10,648.8
HAWAII	770.1	770.1	1,540.2
NEVADA	848.9	848.9	1,697.8
CNMI	0.0	0.0	0.0
AM. SAMOA	269.3	269.3	538.6
GUAM	269.3	269.3	538.6
MARIANAS	269.3	269.3	538.6
REGION 10	5,747.7	5,747.7	11,495.4
ALASKA	1,215.3	1,215.3	2,430.6
IDAHO	1,233.1	1,233.1	2,466.2
OREGON	1,382.9	1,382.9	2,765.8
WASHINGTON	1,916.4	1,916.4	3,832.8
TOTAL to Regions	99,670.0	99,670.0	199,340.0
HQ: INDIANS	330.0	330.0	660.0
GRAND TOTAL	100,000.0	100,000.0	200,000.0

¹ State nonpoint source programs should recognize the contribution of atmospheric deposition to nonpoint source-caused water quality problems and take general note of the success of air pollution control programs in reducing atmospheric deposition. States are not expected to abate this source in the context of their NPS management programs.