

Feb. 24, 2012

MEMORANDUM

SUBJECT: Interim Guidance and Checklist for Determining Progress of State Nonpoint Source Management Programs

FROM: Tom Wall, Acting Director /s/
Assessment and Watershed Protection Division
Office of Wetlands, Oceans, and Watersheds

TO: Water Division Directors, Regions I – X
Regional NPS Coordinators

As you know, in response to inquiries from the Office of Management and Budget, EPA worked with states to develop “A National Evaluation of the CWA Section 319 Program,” which EPA submitted to OMB on November 14, 2011 (www.epa.gov/nps/pdf/319evaluation.pdf). As the Evaluation was developed, a group of State and EPA Water Division Directors (WDDs) convened to consider potential 319 program improvements, and then discussed these proposals with all states via two conference calls in August 2011. Their recommendations for greater program results and accountability are included in Appendix C of the Evaluation. One of these recommendations is that more consistent use of satisfactory progress determinations should be used to assess state progress in implementing the 319 program. The WDDs recommended development of an interim guidance for conducting satisfactory progress determinations in FY12 and a more comprehensive guidance to be used in FY13 and beyond. This memorandum transmits the interim FY12 guidance for determining progress of state nonpoint source management programs. We appreciate the active engagement of all the Regional Nonpoint Source Coordinators in the review and revision of two previous versions of this interim guidance.

Satisfactory progress determinations are set forth in section 319(h)(8), which states that the EPA Regional Administrator may not award section 319 grant funds to a State unless s/he determines that the State has made satisfactory progress during the previous fiscal year in meeting the schedule of milestones specified in the State’s Nonpoint Source (NPS) Management Program. Based on this statutory requirement, EPA’s existing section 319 guidelines (68 FR 60653, 60668, October 23, 2003) require that:

“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 years in meeting the schedule set forth in its nonpoint source management program was satisfactory.”

The guidelines also state that the Regions must include in each section 319 grant (or in a separate document) a written determination that the State has made satisfactory progress during the previous fiscal year in meeting its schedule of milestones. The Regions must include brief explanations that support their determinations.

EPA plans to work with the States in a collaborative process to develop a detailed common understanding of the components that should be included in a Region’s determination of progress

of State NPS management programs (of which the satisfactory progress determination required under 319(h)(8) is a key component) and of the information that needs to be provided by States to enable the Regions to make sound determinations. This work will inform development of more rigorous and comprehensive guidelines for determining progress of State NPS management programs that will be implemented beginning in FY13. These future guidelines may include additional expectations to those outlined here, such as specific factors to consider for determining progress of State NPS management programs, a process for upgrading State NPS programs, or other performance objectives.

Today's interim guidance is intended to clarify the types of information that Regions should consider in determining progress of State NPS management programs, including the satisfactory progress determination required under 319(h)(8) for the FY12 grant awards. This interim guidance will help initiate improvements to our documentation of satisfactory progress reviews, and will provide States with useful indications of the types of information that Regions will consider in making these determinations. This will enable States to assure that their grant documents, annual reports, and other associated documents and discussions provide to the Regions an adequate basis for making sound determinations.

We understand that at this point in the fiscal year some Regions are already beginning the process of discussing FY 12 work plans with their States. We do expect Regions to use this interim guidance in their deliberations in advance of making FY 12 grant awards. As Regions review each State NPS management program using the attached interim checklist, EPA, in concert with the State, may identify an area(s) where improvements may be needed. In any such case, I encourage the Region to work with the State to develop a plan to address any area identified for improvement.

The attached checklist is intended to move us toward a more consistent approach for documenting progress of State NPS management programs, one that has common analytical components while appropriately providing latitude in assessing these components as a whole for each State. Regions should review the progress that each State is making in implementing its NPS management program and provide written documentation of this progress together with a determination of whether the progress is satisfactory. The determination and associated documentation should be shared with each State with a transmittal letter prior to or simultaneous with the FY12 grant award.

The FY 12 process for determining progress of State NPS management programs will provide an important baseline for the development of a more comprehensive process in FY 13. It will thus be extremely useful to all of us to review these determinations and thereby improve our awareness of good models as well as identify areas that can be improved. Therefore, this spring, we will ask the Regions to send copies of each determination, decision memorandum and some or all of the documentation relied upon to support each determination to Lynda Hall, Chief of the Nonpoint Source Control Branch.

If you have any questions or comments regarding the process described above, please contact me at 202-564-14179, wall.tom@epa.gov, or have your staff contact Lynda Hall, Chief of the Nonpoint Source Control Branch, at 202-566-1210 (hall.lynda@epa.gov).

cc: State Water Division Directors
Regional Water Quality Branch Chiefs

Interim Checklist for Determining Progress of State NPS Management Programs

Regions should review the progress that each State is making in implementing its nonpoint source (NPS) management program and provide written documentation of this progress. Specifically, and at a minimum, prior to awarding the FY12 grants under section 319(h), Regions should document the extent to which each State meets foundational aspects of program progress and 319 grant management. For this interim guidance the following approach applies. These aspects should be assessed as a whole in making a determination, with each response constituting information, or a line of evidence, that will lead towards a decision based on the region's best professional judgment. Regions retain latitude for how each checklist response is weighted and have the flexibility to incorporate additional considerations in their determinations; negative responses to a question may be supplemented with a justification or description of a corrective action underway.

The final determination of progress of State NPS management programs is to be made by the Regional Administrator or delegated authority. The checklist for this determination should be completed by the appropriate regional 319 program staff (typically, the CWA Section 319 Grant Project Officer for non-PPG awards and the CWA Section 319 NPS Program Coordinator for states that include 319 grant awards in a PPG) and included with the documentation for the grant.

Meeting Statutory and Regulatory Requirements and Demonstrating Water Quality Results

1. Section 319(h)(8) requires EPA to determine if a state has made satisfactory progress in meeting a schedule of milestones to implement its NPS management program.
 - a) Has the state updated its NPS Management Program with up-to-date trackable performance milestones and/or has the state established up-to-date trackable performance milestones for reducing NPS pollution as a result of an ongoing continuous planning process?
 - b) In what document(s) is this schedule located? States that include 319 grants in PPGs should also consider any Priorities and Commitments associated with the State's NPS management program.
 - c) Has the State reported its progress in meeting the schedule of milestones? In what document is this progress reported (annual report, other—specify)?
 - d) Does this report required by section 319(h)(11) cover progress made over the previous fiscal year (i.e., not two or more years ago)?
2. Section 319(h)(11) requires each State to report on an annual basis reductions in NPS pollutant loading and improvements in water quality.

- a) Considering projects and activities from all open grants as applicable, has the State reported improvements in water quality resulting from implementation of its NPS management program and/or previous years' 319(h) grant work plans? Using best professional judgment, did the State report on incremental water quality improvements for NPS-impaired waterbodies or watersheds (e.g., improvements that have not yet led to attainment of water quality standards)?
 - b) Did the State meet its annual commitment/target/goal (if any) under WQ-10?
 - c) If applicable, did the State meet its annual commitment/target/goal under WQ-SP12 for NPS-impaired watersheds?
 - d) To the extent that information is available, did the State achieve and report load reductions for pollutants beyond sediment and nutrients (e.g., bacteria) pursuant to implementation of TMDLs and watershed plans? [Per 319(h)(11), this applies to the state's NPS management program, not just the 319-funded portion.] Briefly explain.
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GRTS Reporting

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

1. To ensure that the State meets the reporting requirements in section 319(h)(11), did the State enter all mandated data elements into GRTS (including geolocational tags where available) for all projects in the previous 319 grant award on time? Please also specify what length of time the Region allows for this. [The national requirement is "within 90 days of grant award"; the Regional requirement may be shorter.]
 2. For all active projects that have nonpoint source reduction goals for nutrients or sediment, is the State reporting load reductions (WQ-9) into GRTS after the first year of project implementation? Did the State report them by the February 15 deadline for the previous fiscal year? (i.e., Were load reductions reported for all projects implementing BMPs in FY2010 entered by Feb 15, 2011?)
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Implementing Priority Watershed-Based Plans

1. Is the State implementing nine-element watershed-based plans with at least 80% of its incremental funds in accordance with EPA's guidelines for CWA 319(h) grants? If this was determined during the Region's reviews of the State's active grant workplans, it is sufficient to document the results of these previous findings.
2. Are plans being implemented for the highest priority NPS-impaired watersheds consistent with EPA's guidelines for CWA 319(h) grants (e.g., those with completed TMDLs, those where other state, federal or local agencies are also contributing funding) or in special circumstances for protection of high priority watersheds that are not yet impaired?

Ensuring Fiscal Accountability

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

1. *Tracking and Reporting.* For all active 319(h) grants using existing post-award monitoring or best professional judgment:
 - a) Does the State have adequate tracking and fiscal reporting practices in place for financial accountability?
 - b) Is State's RFP process efficient and timely for selecting and funding projects within work plan timeframe?
 - c) Did the State obligate all 319(h) funds within one year per current 319 grant guidelines?
2. *Rate of Expenditures.* Examine a summary of expenditures for all open 319 grant awards listing the following: State; grant #; FY; project period; grant award amount; balance (unliquidated obligation); percent unliquidated obligation. See example below for California, which was pulled from Compass (EPA's financial data warehouse). This information could also be pulled from other EPA tools such as GRTS or the Post Award Baseline Tracking Tool. Include a State total of grant award amount, balance and percent unliquidated obligation. Please reference the source and date of information used to answer the question below.

CWA 319 Grant Balances (Unliquidated Obligations)								
Based on Compass Federal Data Warehouse Online on January 4, 2012								
	Grant #	FY	Project		Period	Grant Award Amount	Balance (ULO)	% ULO
CA	C9 00903907	07	07/01/07	-	06/30/12	\$ 10,271,000	\$ 607,167	5.9%
CA	C9 97957509	08	07/02/08	-	06/30/13	\$ 10,798,656	\$ 2,463,323	22.8%
CA	C9-97957510	09	07/01/09	-	06/30/14	\$ 11,037,545	\$ 4,981,755	45.1%
CA	C9-97957511	10	07/01/10	-	06/30/15	\$ 10,433,394	\$ 4,356,150	41.8%
CA	C9-97957512	11	7/1/2011	-	6/30/2016	\$ 9,028,558	\$ 7,323,938	81.1%
CA	Total:					\$ 51,569,153	\$ 19,732,334	38.3%

- a) Relying on best professional judgment or empirical evidence as may be available, do the figures in the Rate of Expenditures chart substantially match the expected drawdown rates from the associated grant work plan schedules? If not, briefly explain.

Considering PPG Priorities and Commitments

1. If a State puts part or all of its 319 grant funding in a PPG, using best professional judgment, has the state adequately documented progress consistent with its Priorities and Commitments?

Identifying and Addressing Performance Issues/Progress Concerns

- 1) Briefly describe any significant outstanding 319 grant performance issues or progress concerns, including if any corrective actions are underway.