

Questions and Answers on the Relationship Between the Sec. 319 Nonpoint Source Program and the Sec. 314 Clean Lakes Program

1. What is the Section 319 Nonpoint Source Program?

Congress amended the Clean Water Act (CWA) in 1987 to establish the section 319 Nonpoint Source (NPS) Management Program because it recognized the need for greater federal leadership to help focus state and local NPS control efforts. Under section 319, States, Territories and Indian Tribes (hereinafter referred to as just "States") follow a two-step process to qualify for grant money under section 319(h). First, States must complete a NPS assessment report, identifying NPS water quality problems. Second, States are to develop NPS management programs describing what they are going to do about their nonpoint water quality problems over the next 4 years. As of Nov. 1994, all States, as well as six Tribal governments and six Territories, have completed assessments and management programs.

Since 1990, EPA Regional offices have funded projects under section 319(h) to supplement States' ongoing NPS management programs. As of the end of fiscal year 1996, EPA has awarded about \$470 million nationwide in grants to States to implement NPS management programs. These funds support a wide variety of activities including nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, demonstration projects, and monitoring to assess the success of specific NPS implementation projects. Notably, a portion of the section 319 grant funds have been used by States to support implementation of NPS controls in lake watersheds and to monitor the effectiveness of such controls.

2. What is the Section 314 Clean Lakes Program?

The Clean Lakes Program is a Federal grant program which was established in 1972 as section 314 of the Federal Water Pollution Control Act (now known as the CWA), to provide financial and technical assistance to States in restoring publicly-owned lakes. The early focus of the program was on research, development of lake restoration techniques, and evaluation of lake conditions (Lake Classification Studies). The Clean Lakes Program regulations (40 CFR 35 Subpart H), promulgated in 1980, redirected program activities to diagnose the current condition of individual lakes and their watersheds, determine the extent and sources of pollution, develop feasible lake restoration and protection plans (Phase I Diagnostic/Feasibility Studies), and to implement these plans (Phase II Restoration/Protection Implementation Projects).

With the passage of the 1987 Amendments to the CWA, the Agency expanded the program to include Statewide assessments of lake conditions (Lake Water Quality Assessment grants). The Agency has encouraged States to use these assessment funds to also develop the institutional and administrative capabilities to carry-out their lakes programs. The Agency also established Phase III Post Implementation Monitoring studies to evaluate the longevity and effectiveness of various restoration and protection techniques (including watershed best management practices) implemented under Phase II grants.

The Clean Lakes Program has funded a total of approximately \$145 million of grant activities since 1976 to address lake problems but there have been no appropriations for the program since 1994. EPA has not requested funds for the Clean Lakes Program in recent years, but rather has encouraged States in its recent section 319 guidance to use section 319 funds to fund "eligible activities that might have been funded in previous years under Section 314."

3. What does the new section 319 nonpoint source guidance say about the use of 319 funds to do work that was previously done under 314?

On May 16, 1996, EPA issued new guidance for implementing effective State NPS management programs under section 319 and for awarding section 319(h) grants to States. Key aspects of the guidance include: States are encouraged to update their NPS management programs; the guidance eliminates the competitive grants process starting in FY 1997; and the guidance allows the use of section 319 funds to update State NPS assessment reports and management programs. The guidance also includes a new section on "Lake Protection and Restoration Activities" which reads as follows:

"5. Lake Protection and Restoration Activities

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

4. Can work which was previously done under the section 314 Clean Lakes Program be funded under section 319 grants?

The May 1996 section 319 grants guidance clearly states that "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." **Thus, Phase I, II, and III projects, and lake water quality assessments which were previously done under the section 314 Clean Lakes Program are eligible for funding under section 319(h) grants.** However, the section 319 guidance further states that "(l)ake 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." Thus, for example, following are several key criteria that lakes-related work will need to meet in order to be eligible for funding under section 319:

- Section 319(h) of the CWA provides that section 319(h) grants are to be made "for the purpose of assisting the State in implementing such (NPS) management program." Thus, in order for an activity to be eligible for funding under section 319(h) the activity must be included in a State NPS management program. State lake managers and lake communities

will need to ensure that critical lake NPS control needs are included in any updated State NPS management programs so that such activities will be eligible for funding under section 319(h).

- The May 1996 guidance allows States to use section 319 funds to update State NPS management programs and NPS assessments, including Phase I Clean Lakes Diagnostic-Feasibility Studies and statewide lake water quality assessments, subject to the following limitations. The guidance provides that "States may use up to 20 percent of their section 319(h) funds or \$250,000, whichever is less, to update and refine their programs and assessments."
- The May 1996 guidance continues the national monitoring program to evaluate the effectiveness of watershed implementation projects funded under section 319 projects. In fact, a number of the national monitoring projects include lakes.

5. What about in-lake work such as aquatic macrophyte harvesting and dredging, etc.?

The May 1996 guidance states that "(s)ection 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 remediated will not occur." Restrictions were put on in-lake work such as aquatic macrophyte harvesting and dredging due to concerns that the sources of the pollution need to be addressed first and also due to cost considerations. The May 1996 guidance is consistent with the Clean Lakes Program regulations at 40 CFR Part 35.1650-2 which state that projects may 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... Palliative approaches can be supported only where pollution in the lake watershed has been controlled to the greatest extent, and where such methods and procedures are a necessary part of a project during the project period..."

6. How can we assure that work that was previously done under section 314 is supported under section 319 in the future?

EPA Regional Clean Lakes Coordinators and EPA Regional Nonpoint Source Coordinators and their counterparts at the State/local level will need to work together to assure that critical lake NPS management needs are addressed through section 319. Key actions include assuring that lake management needs are included in updated State NPS assessment and management programs so that these activities are grant eligible and assuring that high priority lake management activities including Phase I, II, III and statewide lake water quality assessment activities are included in annual work programs for section 319(h) grants.