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# CHAPTER 1: Introduction

## I. BACKGROUND

This guidance specifying management measures for sources of nonpoint pollution in coastal waters is required under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). It provides guidance to States and Territories on the types of management measures that should be included in State and Territorial Coastal Nonpoint Pollution Control Programs. This chapter explains in detail the requirements of section 6217 and the approach used by the U.S. Environmental Protection Agency (EPA) to develop the management measures.

### A. Nonpoint Source Pollution

#### 1. What Is Nonpoint Source Pollution?

Nonpoint source pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Technically, the term "nonpoint source" is defined to mean any source of water pollution that does not meet the legal definition of "point source" in section 502(14) of the Clean Water Act. That definition states:

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

Although diffuse runoff is generally treated as nonpoint source pollution, runoff that enters and is discharged from conveyances such as those described above is treated as a point source discharge and hence is subject to the permit requirements of the Clean Water Act. In contrast, nonpoint sources are not subject to Federal permit requirements. The distinction between nonpoint sources and diffuse point sources is sometimes unclear. Therefore, at several points in this document, EPA provides detailed discussions to help the reader discern whether a particular source is a point source or a nonpoint source. Refer to Chapter 2, Section II.B.1 (discussing applicability of management measures to confined animal facility management); Chapter 4, Section I.E (discussing overlaps between this program and the storm water permit program for point sources); and Chapter 5, Section I.G (discussing overlaps between this program and several other programs, including the point source permit program).

Nonpoint pollution is the pollution of our nation's waters caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural pollutants and pollutants resulting from human activity, finally depositing them into lakes, rivers, wetlands, coastal waters, and ground waters. In addition, hydrologic modification is a form of nonpoint source pollution that often adversely affects the biological and physical integrity of surface waters. A more detailed discussion of the range of nonpoint sources and their effects on water quality and riparian habitats is provided in subsequent chapters of this guidance.

#### 2. National Efforts to Control Nonpoint Pollution

##### a. Nonpoint Source Program

During the first 15 years of the national program to abate and control water pollution, EPA and the States have focused most of their water pollution control activities on traditional "point sources," such as discharges through pipes from sewage treatment plants and industrial facilities. These point sources have been regulated by EPA and the States through the National Pollutant Discharge Elimination System (NPDES) permit program established by

section 402 of the Clean Water Act. Discharges of dredged and fill materials into wetlands have also been regulated by the U.S. Army Corps of Engineers and EPA under section 404 of the Clean Water Act.

As a result of the above activities, the Nation has greatly reduced pollutant loads from point source discharges and has made considerable progress in restoring and maintaining water quality. However, the gains in controlling point sources have not solved all of the Nation's water quality problems. Recent studies and surveys by EPA and by State water quality agencies indicate that the majority of the remaining water quality impairments in our nation's rivers, streams, lakes, estuaries, coastal waters, and wetlands result from nonpoint source pollution and other nontraditional sources, such as urban storm water discharges and combined sewer overflows.

In 1987, in view of the progress achieved in controlling point sources and the growing national awareness of the increasingly dominant influence of nonpoint source pollution on water quality, Congress amended the Clean Water Act to focus greater national efforts on nonpoint sources. In the Water Quality Act of 1987, Congress amended section 101, "Declaration of Goals and Policy," to add the following fundamental principle:

It is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

More importantly, Congress enacted section 319 of the Clean Water Act, which established a national program to control nonpoint sources of water pollution. Under section 319, States address nonpoint pollution by assessing nonpoint source pollution problems and causes within the State, adopting management programs to control the nonpoint source pollution, and implementing the management programs. Section 319 authorizes EPA to issue grants to States to assist them in implementing those management programs or portions of management programs which have been approved by EPA.

### ***b. National Estuary Program***

EPA also administers the National Estuary Program under section 320 of the Clean Water Act. This program focuses on point and nonpoint pollution in geographically targeted, high-priority estuarine waters. In this program, EPA assists State, regional, and local governments in developing comprehensive conservation and management plans that recommend priority corrective actions to restore estuarine water quality, fish populations, and other designated uses of the waters.

### ***c. Pesticides Program***

Another program administered by EPA that controls some forms of nonpoint pollution is the pesticides program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Among other provisions, this program authorizes EPA to control pesticides that may threaten ground water and surface water. FIFRA provides for the registration of pesticides and enforceable label requirements, which may include maximum rates of application, restrictions on use practices, and classification of pesticides as "restricted use" pesticides (which restricts use to certified applicators trained to handle toxic chemicals). The requirements of FIFRA, and their relationship to this guidance, are discussed more fully in Chapter 2, Section II.D, of this guidance.

## **B. Coastal Zone Management**

The Coastal Zone Management Act of 1972 (CZMA) established a program for States and Territories to voluntarily develop comprehensive programs to protect and manage coastal resources (including the Great Lakes). To receive Federal approval and implementation funding, States and Territories had to demonstrate that they had programs, including enforceable policies, that were sufficiently comprehensive and specific both to regulate land uses, water uses, and coastal development and to resolve conflicts between competing uses. In addition, they had to have the authorities to implement the enforceable policies.

There are 29 federally approved State and Territorial programs. Despite institutional differences, each program must protect and manage important coastal resources, including wetlands, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitats. Resource management and protection are accomplished in a number of ways through State laws, regulations, permits, and local plans and zoning ordinances.

While water quality protection is integral to the management of many of these coastal resources, it was not specifically cited as a purpose or policy of the original statute. The Coastal Zone Act Reauthorization Amendments of 1990, described below, specifically charged State coastal programs, as well as State nonpoint source programs, with addressing nonpoint source pollution affecting coastal water quality.

## C. Coastal Zone Act Reauthorization Amendments of 1990

### 1. Background and Purpose of the Amendments

On November 5, 1990, Congress enacted the Coastal Zone Act Reauthorization Amendments of 1990. These Amendments were intended to address several concerns, a major one of which is the impact of nonpoint source pollution on coastal waters. In section 6202(a) of the Amendments, Congress made a set of findings, which are quoted below in pertinent part.

"1. Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

"2. Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have grown from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.

"3. Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of \$12,000,000,000 a year.

"4. Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated \$5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

"5. Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, runoff from agricultural activities may add to coastal pollution.

"6. Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect coastal resources.

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"8. There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality."

Based upon these findings, Congress declared that:

"It is the purpose of Congress in this subtitle [the Coastal Zone Act Reauthorization Amendments of 1990] to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems." (Section 6202(b))

## 2. State Coastal Nonpoint Pollution Control Programs

To address more specifically the impacts of nonpoint source pollution on coastal water quality, Congress enacted section 6217, "Protecting Coastal Waters," which was codified as 16 U.S.C. §1455b. This section provides that each State with an approved coastal zone management program must develop and submit to EPA and the National Oceanic and Atmospheric Administration (NOAA) for approval a Coastal Nonpoint Pollution Control Program. The purpose of the program "shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities."

Coastal Nonpoint Pollution Control Programs are not intended to supplant existing coastal zone management programs and nonpoint source management programs. Rather, they are to serve as an update and expansion of existing nonpoint source management programs and are to be coordinated closely with the existing coastal zone management programs. The legislative history indicates that the central purpose of section 6217 is to strengthen the links between Federal and State coastal zone management and water quality programs and to enhance State and local efforts to manage land use activities that degrade coastal waters and coastal habitats. The legislative history further indicates that State coastal zone and water quality agencies are to have coequal roles, analogous to the sharing of responsibility between NOAA and EPA at the Federal level.

Section 6217(b) states that each State program must "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g) to protect coastal waters generally," and also to:

- (1) Identify land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of (a) coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, or (b) coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources;
- (2) Identify critical coastal areas adjacent to coastal waters identified under the preceding paragraph;
- (3) Implement additional management measures applicable to land uses and areas identified under paragraphs (1) and (2) above that are necessary to achieve and maintain applicable water quality standards and protect designated uses;
- (4) Provide technical assistance to local governments and the public to implement the additional management measures;
- (5) Provide opportunities for public participation in all aspects of the program;
- (6) Establish mechanisms to improve coordination among State and local agencies and officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety; and
- (7) Propose to modify State coastal zone boundaries as necessary to implement NOAA's recommendations under section 6217(e), which are based on NOAA's findings that inland boundaries must be modified to more effectively manage land and water uses to protect coastal waters.

Congress required that, within 30 months of EPA's publication of final guidance, States must develop and obtain EPA and NOAA approval of their Coastal Nonpoint Pollution Control Programs. Failure to submit an approvable program (i.e., one that meets the requirements of section 6217(b)) will result in a reduction of Federal grant dollars under the nonpoint source and coastal zone management programs. The reductions will begin in Fiscal Year 1996 (FY 1996) as a 10 percent cut, increasing to 15 percent in FY 1997, 20 percent in FY 1998, and 30 percent in FY 1999 and thereafter.

### 3. Management Measures Guidance

Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 requires EPA to publish (and periodically revise thereafter), in consultation with NOAA, the U.S. Fish and Wildlife Service, and other Federal agencies, "guidance for specifying management measures for sources of nonpoint pollution in coastal waters." "Management measures" are defined in section 6217(g)(5) as:

economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

The management measures guidance is to include at a minimum six elements set forth in section 6217(g)(2):

"(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

"(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

"(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

"(D) quantitative estimates of the pollution reduction effects and costs of the measures;

"(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

"(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality."

State Coastal Nonpoint Pollution Control programs must provide for the implementation of management measures that are in conformity with this management measures guidance.

The legislative history (floor statement of Rep. Gerry Studds, House sponsor of section 6217, as part of debate on Omnibus Reconciliation Bill, October 26, 1990) confirms that, as indicated by the statutory language, the "management measures" approach is technology-based rather than water-quality-based. That is, the management measures are to be based on technical and economic achievability, rather than on cause-and-effect linkages between particular land use activities and particular water quality problems. As the legislative history makes clear, implementation of these technology-based management measures will allow States to concentrate their resources initially on developing and implementing measures that experts agree will reduce pollution significantly. As explained more fully in a separate document, *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, States will follow up the implementation of management measures with additional management measures to address any remaining coastal water quality problems.

The legislative history indicates that the range of management measures anticipated by Congress is broad and may include, among other measures, use of buffer strips, setbacks, techniques for identifying and protecting critical coastal areas and habitats, soil erosion and sedimentation controls, and siting and design criteria for water-related uses such as marinas. However, Congress has cautioned that the management measures should not unduly intrude upon the more intimate land use authorities properly exercised at the local level.

The legislative history also indicates that the management measures guidance, while patterned to a degree after the point source effluent guidelines' technology-based approach (see 40 CFR Parts 400-471 for examples of this approach), is not expected to have the same level of specificity as effluent guidelines. Congress has recognized that the effectiveness of a particular management measure at a particular site is subject to a variety of factors too complex to address in a single set of simple, mechanical prescriptions developed at the Federal level. Thus, the legislative history indicates that EPA's guidance should offer State officials a number of options and permit them considerable flexibility in selecting management measures that are appropriate for their State. Thus, the management measures in this document are written to allow such flexibility in implementation.

An additional major distinction drawn in the legislative history between effluent guidelines for point sources and this management measures guidance is that the management measures will not be directly or automatically applied to categories of nonpoint sources as a matter of Federal law. Instead, it is the State coastal nonpoint program, backed by the authority of State law, that must provide for the implementation of management measures in conformity with the management measures guidance. Under section 306(d)(16) of the CZMA, coastal zone programs must provide for enforceable policies and mechanisms to implement the applicable requirements of the State Coastal Nonpoint Pollution Control Program, including the management measures developed by the State "in conformity" with this guidance.

## D. Program Implementation Guidance

In addition to this "management measures" guidance, EPA and NOAA have also jointly published *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*. That document provides guidance to States in interpreting and applying the various provisions of section 6217 of CZARA. It addresses issues such as the following: the basis and process for EPA/NOAA approval of State Coastal Nonpoint Pollution Control Programs; how EPA and NOAA expect State programs to implement management measures "in conformity" with this management measures guidance; how States may target sources in implementing their programs; changes in State coastal boundaries to implement their programs; and other aspects of State implementation of their programs.

## II. DEVELOPMENT OF THE MANAGEMENT MEASURES GUIDANCE

### A. Process Used to Develop This Guidance

Congress established a 6-month deadline (May 5, 1991) for publication of the proposed management measures guidance and an 18-month deadline (May 5, 1992) for publication of the final guidance.

EPA published the proposed guidance on June 14, 1991, and, in the interest of promoting the broadest possible consideration of the proposal by a wide variety of interested Federal and State agencies, affected industries, and citizens groups, provided a 6-month comment period. EPA received 477 public comments on the proposed guidance. In addition, EPA maintained an open process of consultation and discussion with many of the commenters and other experts. EPA's response to those comments, both written and oral, is reflected in the final guidance and is summarized in a separate document available from EPA entitled *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters: Response to Public Comments*.

In developing the final guidance, EPA continued to draw upon a diversity of knowledgeable sources of technical nonpoint source expertise by using a work group approach. Since the guidance addresses all nationally significant categories of nonpoint sources that impact or could impact coastal waters, EPA drew upon expertise covering the very wide range of subject areas addressed in this guidance.

Because experts in the field of nonpoint source pollution tend to specialize in particular source categories, EPA decided to form work groups on a category basis. Thus, in consultation with NOAA, the U.S. Fish and Wildlife Service, and other Federal and State agencies, EPA established five work groups to develop this guidance:

- (1) Urban, Construction, Highways, Airports/Bridges, and Septic Systems;
- (2) Agriculture;
- (3) Forestry;
- (4) Marinas and Recreational Boating; and
- (5) Hydromodification and Wetlands.

Each of these work groups held many 1- or 2-day meetings to discuss the technical issues related to the guidance. These meetings, which included State and Federal non-EPA participation, were very helpful to EPA in formulating the final guidance. EPA, however, made all decisions on the final contents of the guidance.

### B. Scope and Contents of This Guidance

#### 1. Categories of Nonpoint Sources Addressed

Many categories and subcategories of nonpoint sources could affect coastal waters and thus could potentially be addressed in this management measures guidance. Including all such sources in this guidance would have required more time than the tight statutory deadline allowed. For this reason, Congressman Studds stated in his floor statement, "The Conferees expect that EPA, in developing its guidance, will concentrate on the large nonpoint sources that are widely recognized as major contributors of water pollution."

This guidance thus focuses on five major categories of nonpoint sources that impair or threaten coastal waters nationally: (1) agricultural runoff; (2) urban runoff (including developing and developed areas); (3) silvicultural (forestry) runoff; (4) marinas and recreational boating; and (5) channelization and channel modification, dams, and streambank and shoreline erosion. EPA has also included management measures for wetlands, riparian areas, and vegetated treatment systems that apply generally to various categories of sources of nonpoint pollution.

## **2. Relationship Between This Management Measures Guidance for Coastal Nonpoint Sources and NPDES Permit Requirements for Point Sources**

### ***a. Urban Runoff***

Historically, there have always been ambiguities in and overlaps between programs designed to control urban runoff nonpoint sources and those designed to control urban storm water point sources. For example, runoff may often originate from a nonpoint source but ultimately may be channelized and discharged through a point source. Potential confusion between these two programs has been heightened by Congressional enactment of two important pieces of legislation: section 402(p) of the Clean Water Act, which establishes permit requirements for certain municipal and industrial storm water discharges, and section 6217 of CZARA, which requires EPA to promulgate and States to provide for the implementation of management measures to control nonpoint pollution in coastal waters. The discussion below is intended to clarify the relationship between these two programs and describe the scope of the coastal nonpoint program and its applicability to urban runoff in coastal areas.

### ***b. The Storm Water Permit Program***

The storm water permit program is a two-phase program enacted by Congress in 1987 under section 402(p) of the Clean Water Act. Under Phase I, National Pollutant Discharge Elimination System (NPDES) permits are required to be issued for municipal separate storm sewers serving large or medium-sized populations (greater than 250,000 or 100,000 people, respectively) and for storm water discharges associated with industrial activity. Permits are also to be issued, on a case-by-case basis, if EPA or a State determines that a storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. EPA published a rule implementing Phase I on November 16, 1990.

Under Phase II, EPA is to prepare two reports to Congress that assess the remaining storm water discharges; determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and establish procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. Then, EPA is to issue regulations that designate storm water discharges, in addition to those addressed in Phase I, to be regulated to protect water quality, and EPA is to establish a comprehensive program to regulate those designated sources. The program is required to establish (1) priorities, (2) requirements for State storm water management programs, and (3) expeditious deadlines.

These regulations were to have been issued by EPA not later than October 1, 1992. Because of EPA's emphasis on Phase I, however, the Agency has not yet been able to complete the studies and issue appropriate regulations as required under section 402(p).

### ***c. Coastal Nonpoint Pollution Control Programs***

As discussed above, Congress enacted section 6217 of CZARA in late 1990 to require that States develop Coastal Nonpoint Pollution Control Programs that are in conformity with this management measures guidance published by EPA.

### ***d. Scope and Coverage of This Guidance with Respect to Storm Water***

EPA is excluding from coverage under this section 6217(g) guidance all storm water discharges that are covered by Phase I of the NPDES storm water permit program. Thus EPA is excluding any discharge from a municipal separate storm sewer system serving a population of 100,000 or more; any discharge of storm water associated with industrial activity; any discharge that has already been permitted; and any discharge for which EPA or the State makes a determination that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. All of these activities are clearly addressed by the storm water permit program and therefore are excluded from the coastal nonpoint pollution control program.



EPA is adopting a different approach with respect to other (non-Phase I) storm water discharges. At present, EPA has not yet promulgated regulations that would designate additional storm water discharges, beyond those regulated in Phase I, that will be required to be regulated in Phase II. It is thus not possible to determine at this point which additional storm water discharges will be regulated by the NPDES program and which will not. Furthermore, because of the great number of such discharges, it is likely that it would take many years to permit all of these discharges, even if EPA allows for relatively expeditious State permitting approaches such as the use of general permits.

Therefore, to give effect to the Congressional intent that coastal waters receive special and expeditious attention from EPA, NOAA, and the States, storm water runoff that potentially may be ultimately covered by Phase II of the storm water permit program is subject to this management measures guidance and will be addressed by the States' Coastal Nonpoint Pollution Control Programs. Any storm water runoff that ultimately is regulated under an NPDES permit will no longer be subject to this guidance once the permit is issued.

In addition, it should be noted that some other activities are not presently covered by NPDES permit application requirements and thus would be subject to a State's Coastal Nonpoint Pollution Control Program. Most importantly, construction activities on sites that result in the disturbance of less than 5 acres, which are not currently covered by Phase I storm water application requirements<sup>1</sup>, are covered by the Coastal Nonpoint Pollution Control Program. Similarly, runoff from wholesale, retail, service, or commercial activities, including gas stations, which are not covered by Phase I of the NPDES storm water program, would be subject instead to a State's Coastal Nonpoint Pollution Control Program. Further, onsite disposal systems, which are generally not covered by the storm water permit program, would be subject to a State's Coastal Nonpoint Pollution Control Program.

Finally, EPA emphasizes that while different legal authorities may apply to different situations, the goals of the NPDES and CZARA programs are complementary. Many of the techniques and practices used to control urban runoff are equally applicable to both programs. Yet, the programs do not work identically. In the interest of consistency and comprehensiveness, States have the option to implement management measures in conformity with this guidance throughout the State's 6217 management area, as long as NPDES storm water requirements continue to be met by Phase I sources in that area. States are encouraged to develop consistent approaches to addressing urban runoff throughout their 6217 management areas.

#### **e. Marinas**

Another specific overlap between the storm water program and the coastal nonpoint source programs under CZARA occurs in the case of marinas (addressed in Chapter 5 of this guidance). In this guidance, EPA has attempted to avoid addressing marina activities that are clearly regulated point source discharges. Any storm water runoff at a marina that is ultimately regulated under an NPDES permit will no longer be subject to this guidance once the permit is issued. The introduction to Chapter 5 contains a detailed discussion of the scope of the NPDES program with respect to marinas and of the corresponding coverage of marinas by the CZARA program.

#### **f. Other Point Sources**

Overlapping areas between the point source and nonpoint source programs also occur with respect to concentrated animal feeding operations. Operations that meet particular size or other criteria are defined and regulated as point sources under the section 402 permit program, while other confined animal feeding operations are not currently regulated as point sources. Other overlaps may occur with respect to aspects of mining operations, oil and gas extraction, land disposal, and other activities.

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<sup>1</sup> On May 27, 1992, the United States Court of Appeals for the Ninth Circuit invalidated EPA's exemption of construction sites smaller than 5 acres from the storm water permit program in *Natural Resources Defense Council v. EPA*, 965 F.2d 759 (9th Cir. 1992). EPA is conducting further rulemaking proceedings on this issue and will not require permit applications for construction activities under 5 acres until further rulemaking has been completed.

EPA intends that the Coastal Nonpoint Pollution Control Programs to be developed by the States, and the management measures they contain, apply only to sources that are not required under EPA's current regulations to obtain an NPDES permit. For any discharge ultimately covered by Phase II of the storm water permitting program, the management measures will continue to apply until an NPDES permit is issued for that discharge. In this guidance, EPA has attempted to avoid addressing activities that are regulated point source discharges.

### 3. Contents of This Guidance

#### a. General

Each category of sources (agriculture, forestry, etc.) is addressed in a separate chapter of this guidance. Each chapter is divided into sections, each of which contains (1) the management measure; (2) an applicability statement that describes, when appropriate, specific activities and locations for which the measure is suitable; (3) a description of the management measure's purpose; (4) the basis for the management measure's selection; (5) information on management practices that are suitable, either alone or in combination with other practices, to achieve the management measure; (6) information on the effectiveness of the management measure and/or of practices to achieve the measure; and (7) information on costs of the measure and/or practices to achieve the measure.

#### b. What "Management Measures" Are

Each section of this guidance begins with a succinct statement, set off in bold typeface in a box, that specifies a "management measure." As explained earlier, "management measures" are defined in CZARA as economically achievable measures to control the addition of pollutants to our coastal waters, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

These management measures will be incorporated by States into their coastal nonpoint programs, which under CZARA are to provide for the implementation of management measures that are "in conformity" with this guidance. Under CZARA, States are subject to a number of requirements as they develop and implement their Coastal Nonpoint Pollution Control Programs in conformity with this guidance and will have some flexibility in doing so. The application of these management measures by States to activities causing nonpoint pollution is described more fully in *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, published jointly by EPA and NOAA.

#### c. What "Management Practices" Are

In addition to specifying management measures, this guidance also lists and describes management practices for illustrative purposes only. While State programs are required to specify management measures in conformity with this guidance, State programs need not specify or require the implementation of the particular management practices described in this document. As a practical matter, however, EPA anticipates that the management measures typically will be implemented by applying one or more management practices appropriate to the source, location, and climate. The practices listed in this document have been found by EPA to be representative of the types of practices that can be applied successfully to achieve the management measures. EPA has also used some of these practices, or appropriate combinations of these practices, as a basis for estimating the effectiveness, costs, and economic impacts of achieving the management measures. (Economic impacts of the management measures are addressed in a separate document entitled *Economic Impacts of EPA Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*.)

EPA recognizes that there is often site-specific, regional, and national variability in the selection of appropriate practices, as well as in the design constraints and pollution control effectiveness of practices. The list of practices for each management measure is not all-inclusive and does not preclude States or local agencies from using other technically sound practices. In all cases, however, the practice or set of practices chosen by a State needs to achieve the management measure.

EPA recognizes as well that many sources may already achieve the management measures, or that only one or two practices may need to be added to achieve the measures. Existing NPS progress should be recognized and appropriate credit given to those who have already made progress toward accomplishing our common goal to control NPS pollution. There is no need to spend additional resources for a practice that is already in existence and operational. Existing practices, plans, and systems should be viewed as building blocks for these management measures and may need no additional improvement.

### III. TECHNICAL APPROACH TAKEN IN DEVELOPING THIS GUIDANCE

#### A. The Nonpoint Source Pollution Process

Nonpoint source pollutants are transported to surface water by a variety of means, including runoff, snowmelt, and ground-water infiltration. Ground water and surface water are both considered part of the same hydrologic cycle when designing management measures. Ground-water contributions of pollutant loadings to surface waters in coastal areas are often very significant. Hydrologic modification is another form of nonpoint source pollution that often adversely affects the biological and physical integrity of surface waters.

##### 1. Source Control

Source control is the first opportunity in any nonpoint source control effort. Source control methods vary for different types of nonpoint source problems. Examples of source control include:

- (1) Reducing or eliminating the introduction of pollutants to a land area. Examples include reduced nutrient and pesticide application.
- (2) Preventing pollutants from leaving the site during land-disturbing activities. Examples include using conservation tillage, planning forest road construction to minimize erosion, siting marinas adjacent to deep waters to eliminate or minimize the need for dredging, and managing grazing to protect against overgrazing and the resulting increased soil erosion.
- (3) Preventing interaction between precipitation and introduced pollutants. Examples include installing gutters and diversions to keep clean rainfall away from barnyards, diverting rainfall runoff from areas of land disturbance at construction sites, and timing chemical applications or logging activities based on weather forecasts or seasonal weather patterns.
- (4) Protecting riparian habitat and other sensitive areas. Examples include protection and preservation of riparian zones, shorelines, wetlands, and highly erosive slopes.
- (5) Protecting natural hydrology. Examples include the maintenance of pervious surfaces in developing areas (conditioned based on ground-water considerations), riparian zone protection, and water management.

##### 2. Delivery Reduction

Pollution prevention often involves delivery reduction in addition to appropriate source control measures. Delivery reduction practices intercept pollutants leaving the source prior to their delivery to the receiving water by capturing the runoff or infiltrate, followed either by treating and releasing the effluent or by permanently keeping the effluent from reaching a surface water or ground-water resource. Management measures in this guidance incorporate delivery reduction practices as appropriate to achieve the greatest degree of pollutant reduction economically achievable, as required by the statute.

By their nature, delivery reduction practices often bring with them side effects that must be accounted for. For example, management practices that intercept pollutants leaving the source may reduce runoff, but also may increase infiltration to ground water. For instance, infiltration basins trap runoff and allow for its percolation. These devices, although highly successful at controlling suspended solids, may not, because of their infiltration properties, be suitable for use in areas with high ground-water tables and nitrate or pesticide residue problems. Thus, the reader should select management practices with some care for the total water quality impact of the practices.

The performance of delivery reduction practices is to a large extent dependent on suitable designs, operational conditions, and proper maintenance. For example, filter strips may be effective for controlling particulate and soluble pollutants where sedimentation is not excessive, but may be overwhelmed by high sediment input. Thus, in many cases, filter strips are used as pretreatment or supplemental treatment for other practices within a management system, rather than as an entire solution to a sedimentation problem.

These examples illustrate that the combination of source control and delivery reduction practices, as well as the application of those practices as components of management measures, is dependent on site-specific conditions. Technical factors that may affect the suitability of management measures include, but are not limited to, land use, climate, size of drainage area, soil permeability, slopes, depth to water table, space requirements, type and condition of the water resource to be protected, depth to bedrock, and pollutants to be addressed. In this management measures guidance, many of these factors are discussed as they affect the suitability of particular measures.

## **B. Management Measures as Systems**

Technical experts who design and implement effective nonpoint source control measures do so from a management systems approach as opposed to an approach that focuses on individual practices. That is, the pollutant control achievable from any given management system is viewed as the sum of the parts, taking into account the range of effectiveness associated with each single practice, the costs of each practice, and the resulting overall cost and effectiveness. Some individual practices may not be very effective alone but, in combination with others, may provide a key function in highly effective systems. This management measures guidance attempts to adopt an approach that encourages such system-building by stating the measures in general terms, followed by discussion of specific management practices, which combined encourage the use of appropriate situation-specific sets of practices that will achieve the management measure.

## **C. Economic Achievability of the Proposed Management Measures**

EPA has determined that all of the management measures in this guidance are economically achievable, including, where limited data were available, cost-effective. Congress defined "management measures" to mean "*economically achievable* measures ... which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives."

