

All Grantee Clean Water Act §319 Equity Listening Sessions
DRAFT Combined Commentary and Notes
January - February 2022

EPA hosted eight listening sessions with §319 grantees from January 25 through February 16th. Listening sessions included four discussions for all grantees and four discussions for tribal/nation grantees. A total of 338 attendees participated in a facilitated discussion across the eight sessions. The purpose of these listening sessions was to:

1. provide state, territory, and tribal/nation §319 grantees with an opportunity to share their experiences, including successes and challenges, and perspectives on equity and inclusion in nonpoint source (NPS) program work; and
2. help EPA identify specific actions the national NPS program could consider to support integrating equity and environmental justice (EJ) in their programs (e.g., via technical assistance, training, and §319 program reforms).

These notes are specific to the four all grantee discussions. A total of 176 participants attended and included: 65 participants from EPA, 71 state grantees, 38 tribe/nation grantees and 2 territory grantees. Grantee participants were invited to provide responses to five discussion questions via Jamboard (a virtual whiteboard that allows participants to provide comments anonymously via 'sticky notes'), verbal feedback by unmuting their microphone, and/or via the Zoom meeting room chat. Notes are organized by discussion question and summarized below¹.

EPA is transitioning into the planning phase of our national engagement for integrating environmental justice considerations into the nonpoint source program. The themes that emerged from the listening sessions fell into two major categories. These themes will inform work groups for the planning phase.

Technical Themes:

- Pollutant concerns impacting EJ communities such as nitrates in drinking water, failing septics, pathogens in recreational water, and impacts on fish for sustenance.
- Community engagement challenges for building technical capacity related to NPS. Technical aspects include watershed-based planning, monitoring, quality assurance project plans (QAPPs), the nexus between water quality concerns and community priorities. Options on how to improve the transfer of technical expertise (e.g, from community college/nonprofit to underserved community) were suggested and requested.
- Sustainability of efforts included challenges regarding long term operation and maintenance.

Partnerships and Funding Themes:

- Grantees indicated the possibility of improved coordination of funding sources within federal and state programs (e.g. SRF and 106) and improved partnerships between state agencies, states with 501c, or learning institutions.

¹Detailed notes of each discussion were shared with each discussion group for feedback and then finalized. They are available upon request. Contact Curtis.cynthia@epa.gov

- Many comments noted the challenges and varied approaches to assisting communities in meeting match requirements and the administrative burdens associated with applying for and administering NPS grants in communities.
- Partnership challenges also highlighted the importance of people in supporting large-scale program maintenance (i.e., sustaining longer term efforts) and the challenges of staff turnover. Funding concerns also noted the lack of certainty around municipal separate storm sewer system (MS4), lack of staff/ability to apply, and coordinate, sustain, and maintain work.

Legend

Check marks (✓) are included to capture the frequency of topics (Jamboard and verbal commentary) across listening sessions.

Discussion Questions and Responses:

1. *What types of equity/environmental justice issues related to NPS pollution are present in your State/Territory/Tribe/Nation?*

- Septic system issues (i.e., leaking or replacement) in low-income and coal field areas (✓✓✓✓).
- *E. coli* issues in rural communities or in areas with groups of people experiencing homelessness and lack of facilities (✓✓).
- *E. coli* in water at public lake beaches. *E. coli* in recreational waters of Iowa effects a diverse range of populations because access is free. We are starting a study to identify sources. It is important to note that practices that address a beach-shed do not address the entire watershed. Beach shed projects are being considered to address bacteria in swimming areas.
- Lack of recreational access to waters and the need to develop connections in EJ communities to address issues.
- Nutrient driven harmful algal blooms (HABs) at public beaches.
- High nitrate in drinking water (✓). High nitrate in public drinking water supplies is an issue especially in cities, towns, and small rural communities. This issue effects all income levels. 319 staff are now starting to develop phase 2 source water protection plans to help address some of these issues. State dollars are being directed to wellhead protection. 319 dollars would be for best management practices (BMPs) in those areas. Examples could be as simple as well casings (not necessarily a full water treatment plan).
- Agricultural runoff focus on Mississippi River and agricultural impairments in rural communities. Agricultural pollution (including legacy nutrients) is major source of NPS. However, many farmers operate on tight margins. Installing BMPs in agricultural lands is very challenging to balance (✓✓✓✓).
- Impaired water in urban areas (urban stormwater) (✓✓).
- Low-income communities and tribes/nations often consume fish from polluted urban streams (✓✓✓✓✓). This would be a good angle for education. Other examples included:
 - Salmon and shellfish are very culturally significant in Region 9 and 10 and have historically (or currently) provided a primary food source for some communities.
 - Methylmercury bioaccumulation in communities that rely on subsistence fishing; California recently adopted a subsistence fishing beneficial use (designated use).

- Mercury contamination of wild caught fish disproportionately affects tribes/nations with sustenance fishing rights and high fish consumption rates.
- Native American communities are impacted by issues in the watershed and downstream along the Rio Grande. Tribal/Nation lands in Region 9 and 10 are often situated downstream on the receiving end of watershed practices upstream. Therefore, increased loads can be an issue.
- Areas with acid mine drainage and impacts from abandoned hardrock mines for private, lower-income landowners (✓✓).
- In HI/Pacific Islands, cesspools MAY be more prevalent in underserved communities.
- Relating instream water quality to its impact on communities. Especially when census groups cover large areas and multiple watersheds.
- Legacy military contamination (heavy metals, fuel oils, unexploded ordnance) comprise difficult and expensive cleanups.
- Legacy impacts from timber harvest found in northern region of California state; communities in that area are typically not considered "environmental justice" communities because air quality is high and population is low.
- Topics noted without additional discussion:
 - Land use and hydromodification (✓)
 - Climate impacts on watershed
 - Unregulated and underregulated pollutants limit the effectiveness in solving problems

2. In your experience, what obstacles prevent communities from engaging with the §319 program)?
(Overarching themes were used to group comments)

Awareness and Engagement

- The bulk of applicants or projects in Maine go to areas of the state that have entities with the ability to develop and implement projects. In Texas the same entities apply (universities or council of governments) because they have the administrative capacity to handle the grant functions/billing. They also can use salary as match. Typically, the more populated areas are not EJ areas, but have more water quality issues because of development. Underserved areas, typically agriculture, don't have the ability to develop and implement projects (✓).
- Lack of awareness of funding opportunities, funding requirements, and opportunities to participate in planning, designing, etc. regarding projects (✓✓✓). Additionally, there is lack of knowledge regarding NPS pollution and/or direct benefits to the community if the waterbody is not classified as source water.
- Limited staff resources to do outreach and education to the communities.
- Many communities are remote and difficult to reach so not much is known about NPS pollution in these areas.
- Relationship building with disadvantaged communities. For example, some communities do not want/fear government support (✓). Additionally, depending upon the community, there can be a lot of hand holding to get them interested in funding, through the grant application, and the project administration process.

- Some NPS priorities may not intersect with an overburdened/underserved community (i.e., private waterfront property). Nearly all of our grants are awarded to partners on lakes, ponds, estuaries, and rivers who have cash or in-kind match in hand. Making it a struggle to hit EJ targets.
- Language barriers and lack of translation services, especially for non-profits and small rural entities.

Urban MS4

- Urbanized areas with potential EJ populations are constrained by the EPA prohibition to use 319 funds for stormwater and green infrastructure in MS4 communities (✓✓).
 - In Pennsylvania (PA), municipalities with MS4s may apply for other PA Department of Environmental Protection (DEP) grant funds for these kinds of projects.
- Lack of BMP or green infrastructure adoption in low-income or disadvantaged areas and neighborhoods (✓✓).

Capacity

- Lack of capacity (i.e., staff, funding, technical expertise) to help understand and apply for 319 grants (✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓). Additionally, many underserved communities don't have the capacity accept free resources related to NPS BMPs and services.

Additional examples noted include:

- Technical: Understanding technical side of work (i.e., total maximum daily loads (TMDLs), watershed plan, BMP effectiveness), project management, and leadership in communities to implement watershed plans/BMPs.
- Funding: Inability to pay upfront and get reimbursed. Lack of 501(c)(3) entity or government entity to receive funds that represents the disadvantaged community.

Match/Funding

- Non-federal match requirements stop many communities from applying. Some grantees express interest but don't put in an application because they can't meet the match requirement. Projects are often big-ticket undertakings and match tracking is administratively burdensome and time consuming (✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓✓). Small groups are often partners, but not applicants.
- In North Carolina applicants may request a full or partial reduction in match for the projects that benefits an underserved community and involve them in the implementation of project. We are planning to cover this from state staff positions.
- Match requirement can be a challenge, especially during COVID, when in person events have been curtailed.
- When we help homeowners replace/repair failing septic tanks, homeowners are hard pressed to provide 40% match. Those that can't afford it don't have it done.

- The challenging requirements and administrative burdens of 319 request for proposals (RFPs) also deter applicants. In New Hampshire, the Governor and Council approval process can add three to six months of delays in getting to implementation (✓✓✓).
- Not enough time to implement projects
- Often projects are more cost effective and more likely to get governing board support when directing water to a project through a pipe or a ditch, but the strict definition of NPS severely limits eligibility.
- Some groups have had trouble with the monitoring requirements (producing a QAPP, etc.). We have found ways to deal with this, but it is still a friction point.
- Limited scope of what you can actually use 319 dollars for. For example, not able to use 319 for implementation and limited experience.
- NPS Program funds severely limited for new initiatives (✓✓✓).

Watersheds

- 319 funding is limited to areas with approved watershed-based plans (WBPs). Disadvantaged communities may not have an approved WSB plan. There is now a disconnect between where NPS project funds can go (WBP) and where they are needed (no WBPs) (✓✓✓).
- The time and effort to develop a 9-element plan can be a challenge for some partners to complete. Some areas not impaired due to lack of monitoring (✓✓).
- The EJ concerns or focus may not align with the WBP and/or water quality impairment (✓✓✓✓).
 - In urban areas, the water quality impairment might be for chloride, but the EJ community may be concerned with stormwater runoff causing streambank erosion. If a state does not have criteria for sediment and/or nutrients, then a streambank restoration project would not be eligible.
 - When balancing other community priority needs, NPS falls lower on list. For example, sometimes these EJ communities are less worried about NPS and more worried about food.
 - Mismatch between current needs and the timeline for government action. For example, pollutant in fish or shellfish. However, the time it takes government to complete plans is decades so there is a gap in addressing the need [in a timely fashion].
- Farmers not able to afford new equipment (no-till, cover crop application). Additionally, BMPs take land out of agricultural production and creates a situation of competing interests. This is a contentious political and economic issue (✓).
- Building capacity to maintain best management practices (BMPs) after project implementation has been completed and for the life of the BMP. There is no local tax base to support ongoing project maintenance (✓✓).

- This is also a barrier in areas with a high fire regime. For example, it is a safety issue to leave vegetated areas unmanaged. It can be a challenge to balance the ecological function while still maintaining a safe corridor.

Tribal/Nation Specific Challenges

- As a tribe we have not accessed state 319 funds (Maine) because they use different priorities. Our projects would not rank high because state priorities focus on already heavily impaired waters. Tribes/nations may have different priorities with a focus on prevention or waters that are not meeting tribal/nation goals. We have lower tree canopy coverage in some EJ communities compared to others. Off-reservation NPS impacts both up and downstream areas on tribal/nation reservations.
- Turnover in tribal/nation governments
- Not enough base funding to implement tribal/nation projects, only enough to covers salaries.
- Rural tribes/nations lack technical capacity & representation in agricultural communities. Some tribes/nations have been part of the agriculture community for decades but some are new and haven't established capacity or connections to stakeholder groups.
- State requires a waiver of sovereign immunity in order to receive 319 funds. It is a huge barrier we've noticed with some of our tribal/nation organizations (✓).

3. *Equity/environmental justice efforts currently underway: Are there additional equity or inclusion efforts other than what we captured so far (This can include past actions, or efforts that are not as visible as in an RFA)?*

RFP

- In our new RFP, we are solicitating new watershed implementation plan (WIP) development in EJ areas along with implementation grants.
- Translating items into Spanish has been done for outreach & education. Maybe it can/should be done for the RFP?
- Our RFP was updated to note that an EJ community would be ranked higher for funding but have yet to have a EJ community apply.
- Our 319 RFP includes giving extra consideration to applicants that include disadvantaged communities in their proposals.
- 319 application includes extra points for EJ areas. However, the applications might only include a tiny EJ area so, we need to figure out how to give priority to EJ areas on the number of populations served versus area covered while still accounting for miles of stream or acres of lake protected.

Capacity Building

- We have had trouble sustaining our efforts in generally disadvantaged areas.
- Some of our most impaired waters do not have local groups or associations associated with them. In one ultra-urban area, we worked with the New Hampshire Rivers Council and they

"adopted" a watershed to protect native trout. They were a voice for the voiceless and achieved a pair of NPS Success Stories in our largest city in the state.

- Our NPS Program is partnering with Natural Resources Conservation Services (NRCS) with National Water Quality Initiative (NWQI) to serve the agricultural community where resources are limited and incomes are very low. Operators trust NRCS staff however they see New Hampshire Department of Environmental Services (NHDES) as only a regulatory arm. Working through and with NRCS is key for us to tap that sector and get NPS dollars on the ground.
- In New York we provide grants from \$2,500 - \$50,000 to community-based organizations for research and education projects that address multiple environmental harms and risks.
- State Watershed Council grants that we're trying to use to build local capacity. We have included EJ considerations, but they are not well defined. We ask applicants to tell us about their EJ barriers and what they plan to do to address those barriers.

Match

- While not previously identified as an "equity" issue, the Maine 319 program has been able to reduce non-federal match requirement on selected past projects, and will continue to do so on a case by case basis moving forward (using SRF recycled funds).

Maps, Data Layers, and Tools

- The use of EJScreen tool or other socioeconomic data layers for targeting or the development of adding metrics to the EPA's Recovery Potential Tool (RPT). They are not quite where we would like them to be, but may be implemented in the future (✓✓).
- State Environmental Health Disparities map
<https://www.doh.wa.gov/DataandStatisticalReports/WashingtonTrackingNetworkWTN/WashingtonEnvironmentalHealthDisparitiesMap>
- All staff in our agency recently completed required racial equity training. We've also started using a Racial Equity Impact Assessment Tool to assess programs and projects.

Overarching Program Efforts

- Efforts are focused on a balanced approach of environment, society, and economy.
- New York State Department of Environmental Conservation (DEC) recently named the agency's first Deputy Commissioner for Equity and Justice. The Deputy Commissioner will oversee DEC's Office of Environmental Justice and lead internal efforts to encourage diversity, equity, and inclusion among incoming and current staff and enhance DEC's outreach to disadvantaged communities across the state.
- Will include metrics (climate vulnerability and environmental justice) in the TMDL prioritization process in late 2022.
- The assumption here is that EJ communities are NOT accessing 319 funds. But some are. Can we recognize that in late 2022?
- Including low-income neighborhoods that might not show up in official low-income designated areas.
- CA adopted a racial equity resolution:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2021/rs2021_0

[050.pdf](#) the resolution "Commits to making racial equity, diversity, inclusion, and environmental justice central to our work as we implement our mission so that the access the State Water Board creates, and outcomes we influence, are not determined by a person's race and the benefits are shared equitably by all people".

- There are workgroups at agency, program, and unit levels working to address this. Our unit stopped because we needed clarity on federal requirements to know how to move forward.
- California EPA has an environmental justice program - <https://calepa.ca.gov/envjustice/>
- "Distressed communities " <https://esd.wa.gov/labormarketinfo/distressed-areas#:~:text=Distressed%20areas%20are%20counties%20where%20the%20three-year%20unemployment,Code%20of%20Washington%2C%20which%20took%20effect%20in%202005.>
- California EPA is reconsidering designation practices and the eventual issuance of a new designation of disadvantaged communities. Accepted public comments through November 15, 2021.

4. What challenges have you encountered? Has your program taken any steps to engage and incorporate diverse perspectives as you set NPS program goals (e.g., during 5-year NPS plan update)? What's worked well? What challenges have you encountered?

- In New Hampshire, we have had success with symposia and roundtables for our 319 grantees and our commercial winter salt applicator communities to get their voices and needs identified. Those symposia help feed our NPS Plan.
- Presenting to community on past accomplishments. This was more effective than trying to request input on a plan. NPS can be a challenge at times to explain to the general public.
- Kansas Department of Health and Environment leverages funds on soil health or regenerative agricultural practices. However, a group of farmers approached us and expressed an interest to focus on addressing the mental health aspect as an avenue to soil health aspects. In a few cases this approach has worked exceptionally well. The state will continue to explore this approach moving forward.
- We used a statewide survey to help get input on NPS issues and took extra efforts to reach as many communities and organizations as possible to provide input.
- Our funding program holds quarterly meetings with a group of representatives from eligible entities across the state to get input to inform funding process/policy.
- Kentucky has always tried to utilize a Basin Team model that brings together the stakeholders in major river basins, but have never examined if we were doing a good job reaching all groups. Currently trying to assess who isn't at the table and make sure they are involved.
- As we tweak our program we will be engaging with our EJ Coordinator.
- Georgia's statewide NPS planning process relies heavily on input from state-level organizations. To have greater impact to EJ communities, we need to get more local input/data into our next plan update.
- One of the challenges is the balance between water quality related priorities vs equity. Do the communities that you are trying to include live within the watersheds/lakes that are listed as

priority waters that the state is trying to address? I don't see tribal/nation/territory waters listed in the areas of priority watersheds in our state.

- Sometimes it feels like we write our NPS workplan in a silo and assume we know what to include and what constituents want - but I'd like to get more input and different perspectives.
- Biggest challenge is trust and transparency in NPS Program. This likely stems from different terminology, different information/education, and overlap with active citizen groups with an identified mission. The 319 program tries to help in areas that will benefit long term, but groups are interested in short term results, and we can't provide that assistance under the mission of the 319 program.

5. What is the one change to the §319 program you'd like EPA to consider to better facilitate equity and inclusion in the delivery of NPS program benefits?

Guidelines and Program/Project Funding

- Update the Federal Regulation Guidance regarding 319. Currently there is no mention of EJ.
- Increase funding to 319/NPS program to specifically address EJ issues. These funds should be for program activities not just project (✓).
- Make EJ projects eligible for project funds (✓). Flexibility in requirement to spend 50% of grant on project implementation. Funding for underserved communities but also for state programs facilitating the work. Additionally, provide capacity building funding to communities.
- Allowing NPS funds to be used in areas that don't meet a state's specific priority watersheds, but address issues that are in EJ communities. Revise 319 allocation calculation (hasn't been updated since 1990 early 2000's) to include addressing EJ areas.
- Consider optional EJ tracking in GRTS or lumping small projects together to save time.

Measures and Definition

- Measures for 319 work in EJ communities has different criteria than other areas.
- Clearer picture on definitions of targeted communities/partner types, and examples of suitability of certain projects in meeting EJ, etc. goals with the 319 program. Does EPA find it reasonable for state programs to provide different interpretations (i.e., NPS vs. SRF program)? Or is EPA looking for one definition? Identify and communicate expectations/ways to measure success.
- It is important to consider the words we choose and how we choose to designate EJ area. Communities have personal interpretation depending on who you engage with. Some communities accept and embrace the recognition of EJ while others feel like it has a bad connotation. It's important to recognize some communities are sensitive to being labeled.

Urban/MS4

- Allow 319 funds in MS4 communities for EJ areas (✓).
- We partner with local jurisdictions to participate in the 319 program to get stream restoration done but then they back out because they can't get MS4 credits because permits are written in percentage-based format. Additionally, we started to pursue more rural areas and older

communities that needed attention. For example, car recycling centers located adjacent to a residential area with flooding issues.

- Set aside funds to partner with Urban Waters to focus directly on underserved communities and help them to expand.

Watershed Plans

- 9 elements take a long time to develop and implement to see success. The challenge is to keep momentum going in these efforts while waiting for measures of success.
- Since the 319 Grant depends upon a watershed-based plan, it seems that would be the best place to start. Perhaps add a tenth mandated element that requires the writers of watershed-based plans to include stakeholders from EJ communities and to identify water quality problems in those communities along with ways to correct them.
- Set aside a percentage of NPS project funding to allow for EJ projects in areas that do not yet have WBPs, or that could include the development of WBP in EJ area that would then lead to implementation (like old WBP % allowance pre-2014) (✓). Maybe implement a simpler “acceptable alternative plan” (✓).
- Flexibility with 319 funds in New Hampshire to be allocated outside of WBP areas to address failing/failed septic systems within 500 feet of surface waters.
- Flexibility to assist EJ community within MS4 area without a WBP.
- Align TMDL and 319 “9 key element” watershed plan requirements (better coordination w/in EPA) (✓).
- Allow project-level determination of the 9 elements so it is more of a “straight to implementation” project.
- Simplified WBP approach for emergency response (i.e., fire emergencies). It would be important to include training to understand technical needs for emergency watershed plans.
- EPA coordination and assistance.
- Flexibility on watershed-based plan development – in some cases, a community may not be able to do a plan that is as detailed or comprehensive as US EPA would like.
- Sometimes just getting a community to participate is the best we can do; asking for a WBP, reporting, is too much.

Match

- Allow non-EPA federal funds to be used as match to 319 funds.
- Lower the match requirement in EJ and Disadvantaged communities without raising match in other areas (✓).
- Allowing states to offer a sliding scale match for disadvantaged communities. Our state does not have the funds to make up the difference if we offer a lower match, so we would need to be able to do an 80/20 or even 90/10 [percent split] depending on the need, to replace the 60/40 when necessary.
- Using SRF recycled funds to support as a means to waive match (✓).

Maintenance

- I would like to see 319 funding to be available for maintenance costs for storm drains and oil/grit separators. Find a way to allow a limited portion of funding to be used for project maintenance.
- Contemplate long-term maintenance of projects.

Training and Technical Support

- More funding for staff resources to do outreach and education to underserved communities.
- Provide tools to help states identify disadvantaged communities.
- Collection of case studies or recommendations for how to connect NPS projects to communities (location of work versus downstream impacts, etc).
- Provide resources for NPS project management training.
- Technical support for calculating load reductions. For example, STEPL load reduction reporting is hard for people to use so some people avoid.
- Allow “straight to implementation” in lieu of WBP for projects with disadvantaged communities.
- Technical support for BMPs and water quality for sub-awardees.
- Is the EPA or States partnering with NRCS priority to support underserved farmers.
- It is important for EPA 319 project officers to visit grantees in person, see projects, meet with staff, and understand issues on the ground. Many aspects of 319 cannot be done virtually.

Coordination

- 319 EJ efforts could align better with other Clean Water Act programs (e.g., CWA 106 grant) to expand water quality monitoring and assessment in underserved communities. Safe drinking water was also suggested. Nevada is trying to address surface water and drinking water.