



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
OFFICE OF WATER

SUBJECT: Continued Actions in FY23 to Increase Equity and Environmental Justice in the Nonpoint Source Program

FROM: Brian Frazer, Acting Director, Office of Wetlands, Oceans, and Watersheds

TO: State, Tribal, and Territorial Clean Water Act Section 319 Nonpoint Source Program Managers and Staff

In September 2021, the national Nonpoint Source (NPS) program issued a [memo](#) recognizing the importance of integrating environmental justice (EJ) considerations into the Clean Water Act (CWA) §319 grant program; ensuring that the benefits of cleaner water reach disadvantaged communities (DACs).^{1,2} This EJ call for action led to an enthusiastic response from the CWA §319 community. Many states have committed to actions that address barriers and increase equity, including waiving non-federal match for sub-recipients, revising sub-award application criteria to prioritize projects in DACs, and supporting communities as they begin to implement watershed plans. EPA applauds this work and continues to encourage state actions to focus on delivering NPS program benefits to DACs. This memo aims to highlight program activities from the last year and outline a set of new actions in support of national NPS program equity goals.

Since fall 2021, CWA §319 grantees (states, Tribes³, and territories) as well as local community and watershed organizations have shared their grounded perspectives and practical experience to identify opportunities to address barriers experienced by DACs in the CWA §319 grant program. Significant challenges that emerged from these discussions included: meeting CWA §319 match requirements; technical capacity for watershed planning; complexity across the grant administration process; and the need for increased support for Tribal NPS programs. Existing grantee efforts and best practices on these topics have been compiled in [Appendix A](#).⁴

Concurrent with these stakeholder engagements, EPA's national NPS program has taken steps to set a strong programmatic foundation for future equity efforts. The Federal Fiscal Year (FY) 2022 Tribal CWA

¹ The Office of Management and Budget (OMB) Justice40 [interim guidance](#) includes a definition of disadvantaged communities; CWA §319 is considered a covered program under [Justice40](#).

² Executive Order 14008 uses the phrase "disadvantaged communities," and this term has been used in existing Federal and state programs to prioritize funding for environmental justice. Some community members and advocates prefer alternative terminology, specifically the use of "overburdened and underserved communities." Until subsequent guidance can address the question of the most appropriate terminology, this memorandum relies on the language used in Executive Order 14008.

³ For the purposes of this memorandum, Tribe is used as a collective term encompassing Tribes, Nations, Pueblos, and other entities.

⁴ Recordings of quarterly meetings, consolidated notes, and workgroup reports can be found [here](#).

§319 set-aside was increased by \$1 million, to a total of \$9.9 million or 5.5 percent of the CWA §319 appropriation, to help Tribal partners invest in additional activities that support their NPS program goals. For FY23, the Agency has proposed to increase CWA §319 program funding by \$11 million, which will further support these efforts. Additionally, EPA initiated a national geospatial baseline screening analysis (Action One) of historical CWA §319 funding relative to social indicators available through the Watershed Index Online ([WSIO](#)). Action One of this analysis indicates that nationally, approximately 29 percent of project funds from 2011-2021 were in watersheds that met Action One criteria (see [Appendix B](#) for more information on the baseline analysis).

Over the past year, feedback from CWA §319 grantees and the NPS community has informed the actions and programmatic changes outlined below. Recognizing that these actions are occurring simultaneously with many other new and exciting federal initiatives and that demands on the state and Tribal water program staff are high, the actions and program enhancements will be implemented incrementally over the next two years (October 2022 – October 2024).

Following the release of this memo, EPA will also begin a comprehensive effort to revise the 2013 *NPS Program and Grants Guidelines for States and Territories* (2013 CWA §319 guidelines) to better integrate equity and climate resilience within the NPS program. EPA will begin engaging with grantees and the Association of Clean Water Administrators in the first quarter of FY23, with the revised guidelines expected to be finalized in FY24. In the interim, as the directives in this memo differ from the 2013 CWA §319 guidelines, they amend those requirements and expectations.

New state and territorial⁵ NPS program flexibilities and expected actions:

- The NPS program will strive to increase CWA §319 investments that benefit DACs to 40 percent nationally. To support this goal, EPA encourages states to build on their success by prioritizing new projects that invest in or benefit DACs as part of grant workplan development in the coming year. Projects can include preliminary assessments, watershed planning and demonstration projects, capacity building, technical support, and innovative finance partnerships to address match. EPA will assess national-level progress toward this goal through project data identified in the CWA §319 Grants Reporting & Tracking System (GRTS).
- The 2013 CWA §319 guidelines require an accepted nine-element watershed-based plan (WBP) or EPA-approved alternative watershed plan to begin implementation work supported by CWA §319 watershed project funds. This requirement was identified as a significant barrier to DACs. To help address this concern, EPA is providing an exception to this requirement to allow states to direct CWA §319 watershed project funds to support watershed plan development and capacity building in DACs. These projects may also include implementation of community demonstration projects to address known sources of NPS impairment.⁶ EPA encourages grantees to invest in projects that build

⁵ Hereinafter “state” refers to state and territories.

⁶ EPA is encouraging states to utilize this flexibility to support NPS projects in DACs with CWA §319 watershed project funds awarded to states in FY23 and FY24, after which it will be evaluated for effectiveness in addressing this barrier. Consistent with the 2013 CWA §319 guidelines, EPA regional program staff will evaluate proposed projects to ensure technical merit and eligibility as a part of their CWA §319 state workplan review and approval.

community capacity for NPS work, for example, by supporting local watershed coordinators and leveraging community resources such as local minority serving institutions, community organizations, and local businesses.

- Beginning in FY23, states are also granted an exception to the 2013 CWA §319 guidelines and may award CWA §319 watershed project funds to CWA §319-eligible Tribes to implement project(s) consistent with an up-to-date, EPA-approved Tribal NPS management program plan, which EPA will now consider as an acceptable alternative to a nine-element WBP.⁷
- As a part of the NPS program annual reports due each year to EPA, beginning in FY23 grantees are now expected to include a discussion on efforts, including recently completed, ongoing, and planned activities, and anticipated results, to advance environmental justice in their CWA §319 programs.⁸ EPA will collect and compile these efforts to facilitate peer-to-peer information exchange.

EPA actions to better support Tribal NPS programs:

- Contingent on a final appropriation from Congress, in FY23 EPA intends to implement the President’s Budget proposal to commit an additional \$7 million to the Tribal CWA §319 set-aside, to make the total approximately \$17 million (9 percent of the proposed CWA §319 appropriations). This will be an essential step towards reaching EPA’s goal of increasing the Tribal CWA §319 funding set-aside to 12 percent of the annual CWA §319 appropriation to meet Tribal NPS program staffing needs more fully in the future.⁹
- As described in state actions above, beginning in FY23, states will be permitted to award CWA §319 watershed project funds to CWA §319-eligible Tribes to implement project(s) consistent with an up-to-date, EPA-approved Tribal NPS management program plan.
- EPA will make the following changes to the FY23 Tribal CWA §319 competitive grants program to better support Tribal NPS project work: (1) the competitive grant project cap will increase from \$100,000 to \$125,000 to better align with current project costs; and (2) EPA will set aside a portion of the available funds for Tribal applicants that have not received a Tribal CWA §319 competitive grant in the past five years.
- Consistent with EPA [Office of Water’s Tribal Water Action Plan](#), EPA’s NPS program will explore opportunities to increase coordination with key federal partners at the national and regional scale to better deliver technical and financial assistance to support Tribal NPS work.
- In addition to the actions listed above, in FY23, EPA will continue to engage the Tribal NPS community to address other key challenges facing Tribal NPS programs highlighted during this year’s equity engagements.

⁷ This change is only applicable to Tribal NPS management program plans. A list of CWA §319-eligible Tribes (i.e., Tribes that have received *treatment in a similar manner as a state* (TAS) approval from EPA under the CWA to receive CWA §319 grants) can be found [here](#). States should consult their EPA Tribal Regional NPS Coordinator with questions about the status of a Tribe’s NPS management program plan.

⁸ States may include as part of typical annual report format [CWA §319 (h)(10) and (11)].

⁹ The [President’s FY23 Budget](#) (Page 761) requested \$11 million in new funding for the CWA §319 program, explicitly directing \$7 million for Tribal programs and \$4 million for state and territorial programs. This increase would be an important step towards reaching a 12 percent funding target for the Tribal CWA §319 funding set-aside, equivalent to approximately \$23 million of the President’s FY23 Budget proposal of \$189 million CWA §319 appropriation. A 12 percent target would bring the Tribal CWA §319 program into alignment with the Tribal set-asides of other Clean Water Act grant programs (§106, Wetland Program Development Grants).

Other EPA actions planned for FY23:

- In response to grantees and DACs expressing difficulties in the application and grant management process, EPA HQ will expand technical support and grant administrative resources. Examples of topics in this effort include training and support for developing WBPs and alternative watershed plans; a searchable database of Tribal NPS best management practices; and NPS program factsheets and FAQ documents covering program topics such as match, eligibility, and community outreach strategies to support CWA §319 investments in DACs.
- EPA will initiate Action Two of the baseline analysis with interested states to include more complex, state-specific NPS water quality, public health, and demographic variables (see [Appendix B](#) for more information).
- For states that have communicated an inability to waive the 40 percent statutory match requirement in DACs, EPA will continue to encourage use of innovative solutions, including alternative financing, to remove this barrier. Specifically, EPA will support states' efforts to invest recycled CWSRF funds for projects under the CWSRF's CWA §319-eligibility criterion to help meet the 40 percent match requirements at the state level.

Over the past 12 months, EPA's engagement with the NPS community, including CWA §319 grantees and stakeholders, has helped to identify this initial set of tangible actions to advance equity and environmental justice in the national NPS program. We sincerely thank those programs and individuals that have been active in this process thus far and have already committed to these equity goals. EPA is committed to supporting your efforts as we continue to explore the program's role in expanding investments in pollution reduction projects that benefit DACs. Additionally, we will continue engaging the CWA §319 community as new information, data, and approaches for addressing inequities and barriers are developed.

As always, please reach out to Mike Scozzafava, Chief of the Nonpoint Source Management Branch (Scozzafava.MichealE@epa.gov), Cyd Curtis (Curtis.cynthia@epa.gov), or Steve Epting (Epting.steve@epa.gov) for any questions. Additional resources about the national NPS program's equity efforts can be found here: <https://www.epa.gov/nps/equity-resources>.

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Appendices

[A – Technical Workgroup Identified Best Practices](#)

[B – Baseline Analysis supporting materials](#)

Appendix A. Technical Workgroup Identified Best Practices

Table A.1. Education and Outreach Best Practices

Approach	Community/State	Description	Reference/Contact
Bilingual engagement	Nampa, Idaho	Implemented activities through the Hispanic Public Outreach Initiative, which is an effort to educate Nampa’s Hispanic community about how to reduce stormwater pollution and encourage participation in stormwater-related events. Permanent bilingual stormwater interpretative signs were installed along the Wilson Creek Pathway.	Ramrakha.Jayshika@epa.gov
Bilingual engagement	Michigan	Some Michigan grantees create material in multiple languages which can help with engagement.	clarkl13@michigan.gov
Watershed management authorities	Iowa	Watershed management authorities communicated the advantages of the flood mitigation projects. Low elevation areas tend to experience more flooding and these areas also tend to include low-income communities.	stephen.hopkins@dnr.iowa.gov
Water Youth Educational Program	Iowa	Water Rocks! It’s an active youth water quality education program that involves videos, songs, skits, etc., which can help educate all youth, regardless of their income or background. Reaching youth is one important way to reach the adults in their lives.	WaterRocks!
State Interactive Mapper	New York	NY’s Climate Justice Working Group developed a draft development criteria to identify DACs (purple in map) and ensure they benefit from greener energy, reduced pollution, cleaner air, and economic opportunities.	NY Disadvantage Community Map
State Interactive Mapper	Michigan	MiEJScreen uses percentile scoring based on environmental, health, and socio-economic indicators to measure environmental risk in communities.	MiEJScreen DRAFT
State Interactive Mapper	Massachusetts	The map identifies block groups based on % minority population, income, language isolation, and any combination of those three criteria	Environmental Justice Populations in Massachusetts

Approach	Community/State	Description	Reference/Contact
Social Indicator Surveys	Michigan	The Plaster Creek Stewards curb-cut rain garden program is using SIDMA for social surveys (post-surveys and writeups are pending). Other examples include Rain Garden U.	SIDMA
Social Indicator Surveys	Indian	Indiana used social indicators to determine the impact of outreach and education and have observed statistical increments in awareness for water quality issues.	NA

NA = not applicable

Table A.2. Watershed-based Planning Best Practices

Approach	Community/State	Description	Reference/Contact
Watershed Council Support RFP	Department of Environment, Great Lakes, and Energy (EGLE)	Grants to watershed councils and other organizations for up to \$40,000 over one year for capacity building. The scope is not limited to NPS pollutant issues, but NPS has been the focus. Examples include developing WBPs, creating a full-time position, or providing groups with more money to do equity related work.	Watershed Council Support Program
Environmental Justice Grant Program	New York	NPS planning educational grants that provide funding to students, low-income, and minority communities to support water quality monitoring efforts and increase awareness.	Environmental Justice Grant Programs
Tiered Approach to Watershed Based Planning	New Hampshire	Watershed Assistance Grants competitive process which now includes a Pre-proposal stage to ease applicants into the process. Only a budget range is selected during the Pre-proposal stage and a full budget is developed at the Full Proposal stage. New Hampshire requires a mandatory call early on with staff NPS Project Managers to discuss project concepts and perform a reality check with potential grantees.	Pre-proposal application form

Approach	Community/State	Description	Reference/Contact
Tiered Approach to Watershed Based Planning	Kansas	State applies a tiered approach where communities become eligible for a tier of funding as they move through each phase building toward an implementable WBP. The phases include Development (1 year), Assessment (1 year), Planning (1 year), and Implementation.	reed.amanda@epa.gov
Watershed Plan Tool	Massachusetts	Tool provides step by step guidance to develop a WBP. The primarily goal was to assist Section 319 grantees lacking technical capacity with the development of nine-element WBP to later conduct implementation projects. Outreach may be important to expand use beyond consultants.	Watershed Plan Tool
Focus on small scale efforts	Iowa	Iowa implemented a statewide beach bacteria total maximum daily load (TMDL). Currently Iowa is working with DNR Parks to develop the first beachshed plan. Beachshed plans focus on a smaller area, as opposed to a watershed, which is relevant to equity because beach use is free.	Beach Bacteria TMDLs
Partnerships with Watershed Management Authorities	Meskwaki Nation	The Iowa River goes through the Meskwaki Nation which is impacted by nutrients and bacteria pollution coming from agriculture and riverbank erosion. As a strategy to deal with upstream sources, Meskwaki Nation helped organize and facilitate watershed planning discussion with a Watershed Management Authority. The river was broken into segments to bring together groups with some limited control.	stephen.hopkins@dnr.iowa.gov
Inter-Tribal Council of Arizona	Tribes in Arizona	Council includes a Tribal Leaders Water Policy Council which is intended to expand Tribal participation in water policy and foster engagement with states and federal bodies. Additionally, the council aims to build capacity by improving accessibility to water management information.	Tribal Leaders Water Quality Council

Approach	Community/State	Description	Reference/Contact
Developing a Mapper that overlays DACs and Areas Missing WBPs	North Carolina	NC overlaid approved WBPs with approved underserved communities. Next step is to include GIS layers with monitoring and TMDL data to determine how to best support those watersheds and local folks develop WBPs.	doyle.vivian@epa.gov
Building Partnerships with Local Knowledge and Expertise	Global	Building partnerships with a local university or larger watershed group helps disseminate knowledge and expand the reach of efforts.	NA
319 Small Watersheds Focus Program	Minnesota Pollution Control Agency	The small watersheds focus program teams five small watershed to develop a long-term roadmap for implementation efforts. Selected partners receive four, four-year grant awards that provides a steady funding source and maintains implementation momentum for measurable water quality improvements.	319 Small Watersheds Focus Program

NA = not applicable

Table A.3. Technical Assistance and Training Best Practices

Approach	Community/State	Description	Reference/Contact
Local and university partnerships for BMP design and installation.	Iowa Americorp	Utilizes local resources and partners for BMP design, installation, and monitoring.	https://blackhawkswcd.org/dry-run-creek/
Support from colleges and universities.	College/Underserved Community Partnership Program (CUPP) Region 4	DACs can receive technical assistance from enlisted colleges and universities. Technical support has been provided via student internships, practicums, and capstone projects. Specific examples for 319 include grant writing training and watershed modeling.	CUPP

Approach	Community/State	Description	Reference/Contact
TMDL Mapping Tool	EPA Region 10	EPA, DEQ, and contractors developed tools accessible to users without an engineering background which included a temperature mapping tool, TMDL low impact development (LID) Implementation Tool, and a total organic carbon sources assessment and spreadsheet tool.	Coquille River Watershed TMDL Mapping Tool
Clean Water Toolkit	Massachusetts	Offers information on a suite of BMPs for a wide variety of NPS scenarios such as agricultural, urban stormwater, and forestry.	Clean Water Toolkit
Alternative TMDL Workgroup	Pechanga Band of Luiseño Indians	The workgroup was a part of the local watershed group that created an alternative TMDL. The relationship connected Pechanga Band of Luiseño Indians with other agencies adjacent to the reservation and brought in funding from the states for modeling.	Santa Margaritas nutrient alternative TMDL
Technical Assistance Staff	Michigan	Technical assistance staff are involved with outreach, support, site visits, and development of ideas for competitive proposals. Example of other support activities include collecting and analyzing soil borings.	Michigan NPS staff
Regional NPS coordinators	Massachusetts	Regional NPS coordinators (through 319) work within their areas to identify projects, write proposals, and manage grants. They partner with local communities to conduct planning and implementation projects and provide technical expertise that many small towns lack.	judith.rondeau@state.ma.us

Approach	Community/State	Description	Reference/Contact
Center of Excellence for Watershed Management (CEWM)	Alabama	Auburn University was designated as a Center of Excellence for Watershed Management in partnership with EPA Region 4 and Alabama Department of Environmental Management. The CEWM sought out stakeholders in need of scientific reporting, engineering support, watershed planning, and other needs. The CEWM worked with both priority watersheds and watersheds in their geographic area of influence.	Williams.Darryl@epa.gov

Appendix B: Baseline Resources and Reference Materials

The baseline analysis is divided into two parts:

Action One: EPA EJ and equity analysis of historical state CWA §319 Project Funds:

(February – August 2022): This initial action included a coarse-level, national-scale baseline analysis aimed at exploring the geospatial distribution of state CWA §319 watershed projects.

For this screening analysis, we used [Watershed Index Online](#) (WSIO), which aggregates U.S. Census data from the block group scale (used in EJScreen) to a HUC12 watershed scale. This step allows for a comparison to NPS program investments which are tracked at the HUC12 scale. Action One is a preliminary analysis and was conducted using a subset of WSIO social indicators to establish a baseline of understanding where program efforts have historically been located.

HUC12 watersheds were selected if they met or exceeded the 80th percentile (assessing nationally) of at least two of the WSIO Social Indicators that are bolded below (those not in bold were not included in Action One).

WSIO Social Indicators¹⁰:

- **Low income %**
- **Minority %**
- **Linguistically isolated %**
- Vulnerable population %
- Less than HS education %
- Count of mobile home parks per watershed

After identifying HUC 12 watersheds that met the Action One criteria, they were compared to historical CWA §319 state project funding data (2011-2021) to determine:

- Number and percent of HUC12 watersheds that met or exceeded the 80th percentile for selected WSIO Social Indicators and have received Section §319 funding, and
- Sum of funds and historical percentage of CWA §319 funds geospatially located in HUC12 watersheds that meet or exceed the 80th percentile for selected WSIO Social Indicators.

Results from this analysis indicate that approximately 29 percent of state CWA §319 watershed project funds (FY2011-2021) have supported NPS work in watersheds that met Action One criteria.

There are several caveats to be aware of in examining Action One results. These topics were discussed in with the baseline analysis workgroup: More information can be found in the [workgroup report](#).

¹⁰ Metadata can be found here: <https://www.epa.gov/wsio/wsio-indicator-data-library>

This analysis served as both a preliminary screening and point of reference for discussion with state NPS programs. Discussions with the Baseline Analysis Workgroup indicate the need for a fuller assessment of state-specific NPS and public health issues, which will be conducted under Action Two.

Action Two: State-level Screening Pilot Projects will include more complex state-specific water quality, public health, and demographic variables. Beginning in FY23, EPA will work with 5-10 interested states to use the Recovery Potential Screening (RPS) tool as well as state/local/Tribal water quality, public health, and demographic data. This methodology will sharpen the screening approach to capture watersheds that include DACs and identify nonpoint source and water quality-related public health concerns.

This information will be examined at a sub watershed scale to better understand where DACs are located within watersheds (potentially using the EJScreen Supplementary EJ Index and/or state/local/Tribal socioeconomic/demographic data). If a state has existing, or is developing, EJ criteria, that may also be included.

The results and lessons from the Action Two analysis will identify watersheds that include DACs while allowing for the consideration and exploration of both water quality and socioeconomic/demographic data.

Watersheds identified in Action Two can be used when tracking CWA §319 efforts related to equity and inclusion. Action Two data can also be examined at the state level to understand potential barriers to CWA §319 investment in DACs. EPA will work with state NPS programs to address barriers to program implementation.

States interested in participating in the Action Two analysis should contact Ellie Flaherty at Flaherty.Ellie@epa.gov