

NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS

December 14, 2012

Administrator Lisa Jackson
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Section § 319 Nonpoint Source Program and Grant Guidelines for States and Territories

Dear Administrator Jackson:

It is the policy of the National Association of Conservation Districts (“NACD”) that the federal role in water resources management be one of cooperation, allowing the states and citizens input early and throughout the planning and implementation process. For that reason, NACD thanks the Environmental Protection Agency (“EPA”) for allowing public comment on its most recent draft to states and territories for awarding § 319 grants under the Clean Water Act (“CWA”) for implementing Nonpoint Source (“NPS”) management programs. We also appreciate your June 2012 national meeting titled “Shaping the Future of the Clean Water Act § 319 Program” and your renewed commitment to updating NPS management programs.

NACD represents America’s 3,000 conservation districts that work with millions of cooperating landowners and operators to help them manage and protect land and water resources on private and public lands in the United States. Established under state law, conservation districts share a single mission: to work cooperatively with federal, state, and other local resource management agencies, as well as private sector interests to provide technical, financial, and other assistance to help landowners, operators, and communities apply conservation to the landscape.

For example, we use the § 319 NPS Program to increase the utilization of agricultural best management practices (“BMPs”) such as buffer strips, conservation tillage, and nutrient management, as well as to implement low impact development and stormwater management practices to protect urban water quality. We note that while the § 319 NPS Program works well for rural areas, it also works well where rural and urban areas meet. BMPs are also encouraged in rural watersheds upstream from urban communities. It is our philosophy that every acre counts.

We understand that a request for an extension for filing comments has been submitted, and we reserve the right to amend our comments and further comment on information invited in the extension request.

Coordination with NRCS and Farm Bill Programs

In this draft guidance, NACD particularly endorses the increased focus on coordination with the United States Department of Agriculture (“USDA”), especially the Natural Resources Conservation Service (“NRCS”) concerning greater cooperation and coordination with farm bill conservation programs. NACD also believes EPA is on the right track with the National Water Quality Initiative (“NWQI”) by targeting highest priority areas and by nurturing community-based actions on

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watershed scales. Very similarly, we see the future of conservation programs evolving in the next farm bill in a similar fashion where watershed-based planning will become increasingly important. We appreciate EPA's coordination with state technical committees and their local work groups (chaired by conservation districts) along with state water quality agencies including those state agencies designated to assist on nonpoint sources when deciding how to work with farm bill programs that provide technical and financial assistance in priority watersheds through NWQI.

NACD believes that the best way to promote conservation is through locally-led efforts, and many states leverage non-federal money, along with farm bill conservation program funding and § 319 grant funding to achieve water resource goals. Programs EPA references in its draft guidance, including the Environmental Quality Incentives Program ("EQIP"), Conservation Reserve Program ("CRP"), Conservation Stewardship Program ("CSP"), Wetlands Reserve Program ("WRP"), and non-industrial private forest management are valuable in reducing NPS pollution. Districts work in tandem with EPA's state and locally-led programs. In areas such as the Chesapeake Bay, Great Lakes Region, and Sacramento River, just to name a few, state conservation agencies and conservation districts are significant partners with state water quality agencies and achieve impressive on-the-ground results. Encouraging collaboration with the agriculture community will increase the success of the § 319 NPS program.

We reiterate the importance of the activities funded by § 319 grant money that are cited in your draft guidance because our membership finds these activities highly valuable. They include: "(1) monitoring in-stream water quality to assess project effectiveness and track water quality improvements; (2) developing WBPs ("Watershed Based Plans") in watersheds with impaired waters and other high priority watersheds to identify critical areas and needed pollutant load reductions; (3) funding watershed coordinators and technical assistance providers to work with local communities to promote adoption of conservation practices." We also note that § 319 funding could also be used to correct problems in a preventative manner so as to promote safe drinking water supplies in watersheds not yet on the impaired list. This is important for rural communities that often have waters that are not on the impaired list but that are vulnerable for example because of urban sprawl. As urban areas continue to grow, the outer limits of these areas increasingly incorporate rural areas as well.

TMDL Program

When it comes to EPA's treatment of Total Maximum Daily Loads ("TMDLs") in this draft guidance, NACD believes that efforts addressing impairments should be locally-led. The goals of the program are best met when a voluntary, incentive-based approach is used. State conservation agencies and conservation districts, with assistance from initiatives such as the § 319 NPS program and NRCS's conservation technical assistance program, should have a lead role in establishing or addressing TMDLs, primarily through voluntary, incentive-based programs.

For example, the Central Big Sioux River Watershed Project (CBSRWP) has a 10 year TMDL implementation strategy that will be completed in multiple segments. Conservation districts have worked on the CBSRWP by using § 319 funding, USDA programs, local government, and landowner/producer funds. The project will restore and/or maintain the water quality of the Big Sioux River and its tributaries to meet the designated beneficial uses. This portion of the Big Sioux River Watershed is failing to meet its designated uses due to impairments from total suspended solids and dissolved oxygen and/or bacteria.

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The CBSRWP area in South Dakota is approximately 2,107,000 acres. The majority of the land use is in intensified agricultural production. It also has the highest urban population in the state with approximately 239,000 residents and has the City of Sioux Falls within its boundaries. The project area encompasses all or parts of six conservation districts in South Dakota.

The Moody County Conservation District is the prime sponsor for the project with the Brookings, Lake, Minnehaha, Lincoln, and Union Conservation Districts, the City of Sioux Falls and the East Dakota Water Development District as lead partners in implementing the project. Two full time coordinators provide the staffing for the project.

The watershed Project Implementation Plan (PIP) has goals to address animal waste management, riparian area protection, and cropland management BMPs; public information and education outreach; water quality monitoring and sampling; and a Master Plan and water quality trading pilot plan development element.

In September, they were awarded a \$403,000 federal Conservation Innovation Grant (CIG) to develop a water quality trading program. These funds were matched with an additional \$500,550 of state and local dollars bringing the CBSRWP total funding to \$6,031,637. This water quality trading program will be the first of its kind in the upper mid-west and will include an additional 937,000 acres of the watershed located in southwestern Minnesota.

In addition to this, a major tributary to the Big Sioux River in the project area has been identified by NRCS for the National Water Quality Initiative program and is receiving funding for needed BMPs.

This prime example shows how important watershed plans can be and how conservation districts have local roots: contacts and relationships with local landowners, businesses and interest groups. Conservation districts should work in partnership with federal, state, local and tribal agencies to establish and then achieve TMDL goals. Conservation districts serve as the local conduit for providing technical assistance; perform monitoring services or manage applied research projects including “on-site/on-farm” practices to determine efficiency and effectiveness, under contract to the project manager. Conservation districts may also act as the project manager and directly collaborate with stakeholders.

There are many other similar examples in the country where conservation districts are making significant contributions toward setting priorities and implementing actions to achieve water quality goals.

Monitoring

The 20% “base” funds cap on the use of § 319 funds for statewide NPS monitoring and assessment from the 2004 guidelines has been removed in recognition of the importance of these activities for measuring success and in targeting watershed restoration and protection efforts. This follows a pattern of eased requirements in this new set of guidelines, and clearly highlights the need for more resources to be dedicated to monitoring even as we have experienced an overall reduction in § 319 funds. NACD expects that the balance of allocating limited funds between monitoring and implementation will remain a key issue. Section § 319 BMPs address the same general problems, so focusing less on watershed management plans at the federal EPA level and more on the state and locally-driven planning and implementation level will be more productive including for conservation in smaller watersheds. State agencies and districts should be involved and part of the

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development of NPS state plans as they are the boots on the ground in terms of projects and planning. NACD firmly believes in allocating as many resources as possible to putting conservation practices (BMPs) on the ground while recognizing that our ability to measure and describe success will be critical to achieve greater funding levels in the future.

Funding for § 319 Nonpoint Source Programs

NACD agrees with the spirit of the § 319 NPS program and its grants that help us achieve water quality goals as part of a broad-based strategy for handling conservation across the landscape. NACD finds these grants essential to the work of EPA and the work of local conservation districts who most effectively help achieve non point water quality goals. However, we reiterate that the drastic reduction in grant appropriations for the NPS programs undermines the ability for local and state agencies to implement successful programs.

When it comes to water issues and broader conservation goals, NACD believes that federal financial participation in water-related programs is deemed an investment rather than a subsidy. According to this draft guidance, the § 319 grant appropriation has decreased from \$238.5 million in 2005 to \$165 million, an enormous decline in available funds. The funding has not kept pace with the rate of inflation nor the rate of need throughout this country, which is a severe problem that threatens to undermine the program. The proposed level of funding is insufficient to carry out the stated goals of the program - goals that are both achievable and necessary in order to fulfill EPA's legislatively directed mission to address NPS water quality concerns.

We believe that it is in the best interests of the nation, the Congress and of the EPA to restore adequate funding for this program. Under Section § 319 of the CWA, states are charged with the responsibility to develop and administer NPS management programs. Section § 319 has proven to be an excellent vehicle to carry out nonpoint source pollution programs and is oversubscribed as it is at the current funding levels - any reduction in funding will be immediately detrimental to the on-the-ground local efforts. The program is highly successful and yields impressive results, especially given its relatively modest budget. To reduce funding of such a cost-effective program to the point where it can no longer achieve its goals would be potentially disastrous to meeting water quality goals.

When society requests cleaner water, we have to be willing to invest in the programs that address concerns. Conservation districts are experienced in working with NPS programs and use § 319 funding as part of the effort to put conservation practices on the ground. As urban sprawl results in more rural areas being placed in NPDES permitting areas, fewer of these rural locations qualify for § 319 funding. This will be a problem, as § 319 programs are well-suited to these areas and districts are used to § 319 programs.

Grant Guidelines for § 319 Nonpoint Source Program

Because of reduced appropriations, the \$100 million "incremental" set aside from 2004 for WBPs disproportionately uses the total amount of available funding, therefore these new guidelines require a revised set-aside of at least 50% of a state's allocation for WBPs. This places great emphasis on watershed-scale projects but again, reemphasizes the lack of overall funding for § 319 grants. If 50% of funding goes to state agencies, then EPA should make sure that conservation districts, usually local entities of state governments, are eligible for part of this money, as they are

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well-suited to planning and implementing § 319 NPS programs. Should less money be available for grants because of this change, less conservation will get on the ground, which will not be good.

The balance of implementation of WBPs and other important planning, assessment, management and statewide NPS programs and projects will continue to work within a very tight budget. The 2004 guidelines allowed states to use a portion (up to 20%) of their incremental funds for the purposes of developing WBPs and TMDLs. In an effort to increase the focus of § 319 funding on watershed project implementation, these revised guidelines remove this allowance and require planning activities to be funded with NPS program funds outside of incremental funds, which highlights an emphasis on project implementation for WBPs.

To deal with the lack of funding, NACD understands and supports the changes to these guidelines to coordinate with farm bill programs and to leverage state, tribal, and private funding. We also believe it is most effective on a long-term basis to work in concert with land users. The draft grant guidelines remove procedural requirements in deference to locally-led conservation efforts and encourage local level innovation in order to meet the stated goals of the policy.

NACD recognizes the concerns with achieving benchmarks under § 319 programs. The easing of specific procedural requirements will allow local districts to exert more control over their own policies and implement the necessary conditions to achieve EPA's goals. Essentially, NACD views this draft as an assurance that along with an increased effort to achieve watershed scale solutions, TMDLs, and NPS goals, state flexibility will be encouraged and success will be measured by results rather than procedure.

Reporting Requirement

NACD opposes requiring any unnecessary reporting burdens but also emphasizes that these program funds need to be put to their intended use as highlighted in this draft guidance. Accountable reporting will help ensure that these limited funds are being used to address NPS concerns.

Conclusion

NACD finds that local districts achieve extremely high results by matching their efforts with this program, especially considering how low-cost it is to the agency. Section § 319, a very successful program now, has the potential for even greater success in the future - but this potential is challenged by funding cuts that could drastically reduce the program's overall effectiveness. Thank you very much for your time and attention to this comment letter.

Sincerely,



Gene Schmidt
President, NACD