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### The 1987 Nonpoint Source Pollution Amendments and State Progress Under the New Program

John H. Davidson

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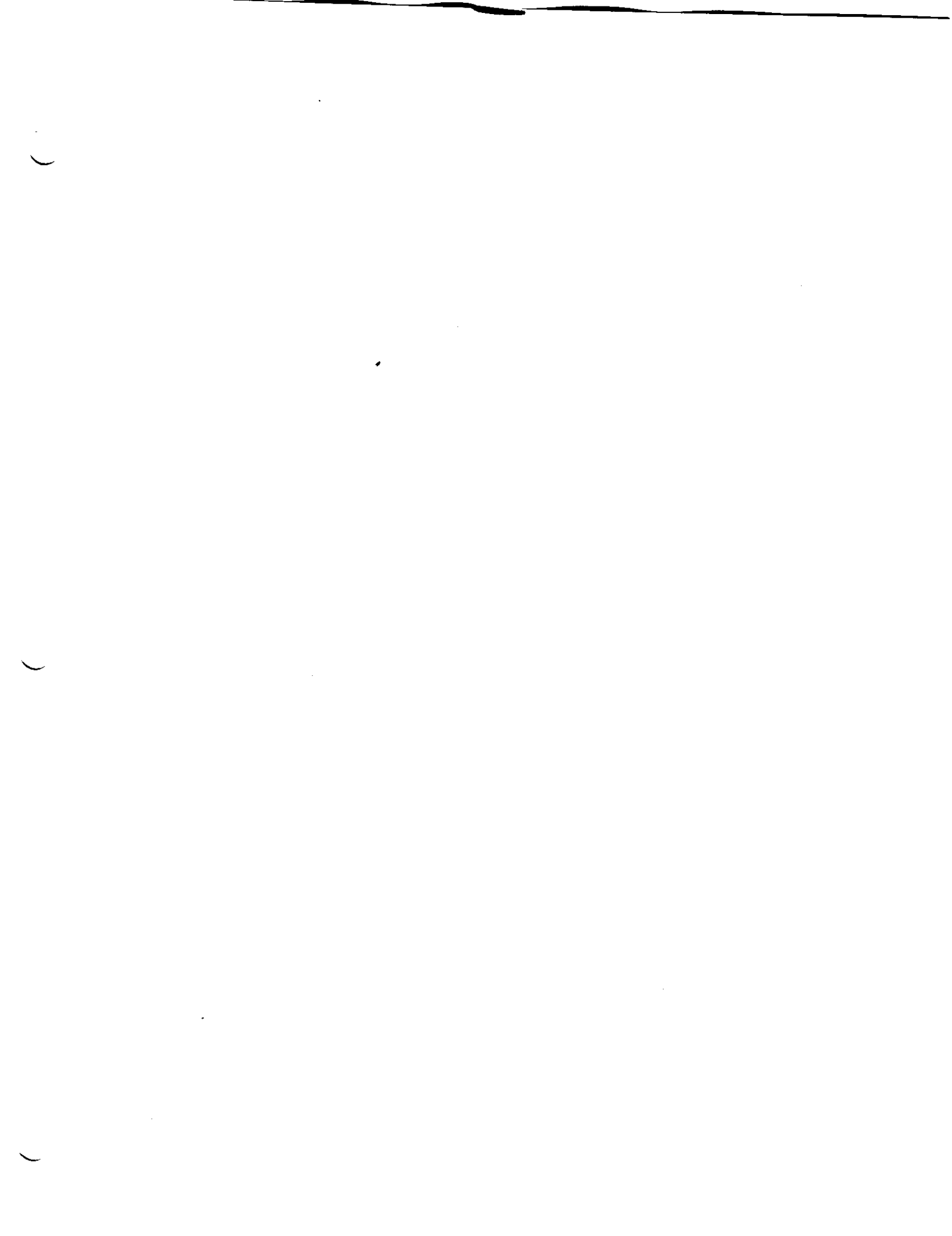
THE 1987 NONPOINT SOURCE POLLUTION AMENDMENTS AND  
STATE PROGRESS UNDER THE NEW PROGRAM

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WATER QUALITY CONTROL: INTEGRATING BENEFICIAL USE AND  
ENVIRONMENTAL PROTECTION

A Short Course Sponsored By The  
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THE 1987 NONPOINT SOURCE POLLUTION AMENDMENTS AND  
STATE PROGRESS UNDER THE NEW PROGRAM

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I. Introduction

A. Summary

In the Water Quality Act of 1987 Congress has again attempted to nudge states in the direction of direct controls over nonpoint sources of pollution. This paper assesses the nonpoint program in light of this new law, and takes a look at some state programs

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## II. Some General Observations

- A. There are two worlds of environmental regulation. One is in Washington and is made up of specific regulations, central plans, papers, policies and enforcement strategies. It is the world of BPTs, BATs and BPCTs. The other world is "on the ground" in American's forestry, agricultural, mineral, recreational and related land-intensive industries. This is a geographically immense and functionally practical world, most of it far from the sight and experience of regulators. The economy in this second world is dispersed, typified by small production units with small operating margins. It is a world where "getting the job done" is most respected and where any useful tool, be it a chemical or a flowing stream, is viewed as just that. In attempting to deal with nonpoint sources, Washington and its satellites in the state capitols will encounter this second world. It is not only a new ball game, but an entirely different ball game.

Until now water pollution regulation has

focused on the imposition of technology-based effluent limitations through NPDES permits. Enforcement has been in the federal courts and agencies -- relatively safe and familiar venues for the regulators in central government. There is, after all, seldom doubt about the compliance of unsuccessful defendants in such jurisdictions. Turning the regulatory gun on nonpoint sources changes the nature of the hunt.

- B. One theme of the recently amended and revised water quality legislation may be a realization on the part of Congress that the solution to water pollution will require standards that go well beyond the technology-based effluent limitations which now provide the baseline for most NPDES permits. In addition, permit holders must now concern themselves with toxic "hotspots," total maximum daily loads, individual control strategies for toxics, as well as state programs to protect estuaries, lakes, and groundwater. Water pollution control regulation appears ready to reach for a new level of complexity.
- C. Many states have enacted, or are in the process of enacting, groundwater protection legislation. Additionally, Congress will soon consider a groundwater protection bill. E.P.A. has recently published a proposed strategy for protecting groundwater from pollution by agricultural

chemicals. The Water Quality Act of 1987 includes at Sections 319(h) and (i) [33 U.S.C.A. Secs. 1329 (h) and (i)] provisions for grants to states to carry-out groundwater protection activities. It is no accident that these provisions are included in the sections which create the new nonpoint source management programs. Most programs that deal effectively with threats of groundwater pollution also will significantly reduce the threat of nonpoint source pollution of surface waters, and vice versa. Both forms of pollution are the result of man's activity on the land, and are probably part of the same whole; perhaps it would be better to follow the several European nations which group nonpoint and groundwater pollution concerns under the heading of "soil pollution."

It is reasonable to expect groundwater and nonpoint source programs to converge.

### III. Background - Nonpoint Source Regulation Prior to 1987.

- A. Prior to the 1987 amendments, the CWA addressed nonpoint source control in only one provision, 33 USC Sec. 1314(f) which reads:

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year

after October 18, 1972 (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from --

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;  
(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

See 40 C.F.R. Sec. 130.6(1987). "Section 208" planning was the major provision for dealing with nonpoint sources, and it is clear from those provisions that

Congress intended that any nonpoint regulatory programs are to be initiated by the states.

- B. Because water quality planning continues to play a formal role in nonpoint source programs, it merits a brief review. The drafters of the 1972 legislation recognized that regulation of point source discharges would be insufficient to reach legislation objectives. Planning was intended to be fully integrated into the CWA's water pollution control strategy. The idea was that before permits would issue or federal construction grants made there would be a systematic plan that would, among other things, allow decision-makers to address the more difficult pollution problems first, and to proceed with a full awareness of the extent of pollution in a region or water system. In practice this was turned around; standards were established and implemented through permit programs before the planning provisions were given serious emphasis.

The Act's planning provisions appear in different parts of the statute and sometimes overlap. EPA is authorized to make grants to states for pollution control programs. One of the conditions of all such grants is that an annual plan "for the prevention, reduction and elimination of pollution in accordance with" the CWA be in place. 33 U.S.C. Sec. 1256(f)(3). Thus planning is required of all states. The planning provisions are broken down into (1) the "continuing planning process,"

(2) areawide waste treatment management planning, and (3) basin planning.

The "continuing planning process" is a firm prerequisite to the approval by EPA of a state PEDES permit program 33 U.S.C. Sec. 1313(3). The plan must cover all navigable waters within the state. The Act lists the minimum elements of a plan; These include ELs and WQSS, incorporation of all other plans, imposition of total maximum daily loads, adequate authority for intergovernmental cooperation, adequate implementation of WQSSs, control over all "residual waste" (i.e., sewage sludge), and a list of priorities for construction of waste treatment facilities. 33 U.S.C. Sec. 1313(e)(3)(A)-(H).

The "areawide waste treatment management plan," also referred to as the "Section 208" plan, is a specific response to the realization that point source permits, ELs and WQSSs, are not by themselves enough to eliminate water pollution. 33 U.S.C. Sec. 1288. Significant pollution may originate from "nonpoint" sources or from complex pollution problems that are not responsive to the approach of standards and permits. These include, for example, run-off from construction sites, urban (paved) land, agricultural land and from forestry sites.

The Section 208 process first requires that the governor of each state designate each area within the state which has substantial water quality problems. The governor then designates an agency to develop the "areawide waste

treatment management plan" for the area. If pollution over an interstate region is involved, the respective governors are to consult to find a single representative organization capable of developing a plan.

The state itself is required to act as the planning agency for any portion of the state which is not designated as part of a planning region. Details of the plan are set out in the CWA, and include: (1) the identification of the treatment works necessary to meet municipal and industrial waste treatment needs for twenty years; (2) identification of the means necessary to implement the plan; (3) a process to identify all nonpoint source problems; (4) procedures and methods "including land use requirements" to control nonpoint sources; and development of procedure to control the disposal of sewage sludge. 33 U.S.C. Secs.

1288(b)(2)(A)-(K).

Once the plan is developed the governor is to designate "waste treatment management agencies" to implement the plans. These may be existing or newly created local, regional or state agencies or political subdivisions, so long as they have adequate continuing regulatory authority to implement the plan.

After approval of a Section 208 plan and during the implementation of the plan, no grant for the construction of a waste treatment facility may be made except in conformity with the plan, nor may an NPDES permit issue.

Federal funds covering up to seventy-five percent of the cost of planning and operating a facility are available. In summary, the Section 208 planning process is intended to generate at least three programs. First is a regulatory program to control urban growth and industrial facility siting based upon potential for water pollution. The language of the CWA is that the plan "shall include . . . the establishment of a regulatory program. 33 U.S.C. Sec. 1288(b)(2)(c). Second, a coordinated program is to be developed for the planning and construction of waste treatment facilities. Third, nonpoint sources including at least agriculture, forestry, mining and construction, are to be controlled. The strong suggestion of Section 208 is that the states need to develop regulatory programs reflecting unique local conditions and pollution problems as a supplement to national uniform ELs. Although this result has been achieved only in isolated cases, it may be that as the enforcement concern of EPA gradually broadens to encompass nonpoint sources of pollution Section 208 planning will also grow in importance.

A third required type of planning--River Basin Planning--is less likely to play a significant role in the evolution of water pollution control law. The Water Resources Council is required to prepare a "level B" plan "for all basins in the United States. 33 U.S.C. Sec. 1289. The Water Resources Council was created by the Water Resources Planning Act of 1965 42 U.S.C. Secs.



1962-1962(d)-3 to facilitate planning for the development of water resources and is comprised of cabinet-level officials. Level B plans assume that an entire river basin is the planning unit, and are to resolve complex long-range problems associated with water resources development. Although basin planning is a sensible approach to water resources decision-making, the primary reason for the existence of the Water Resources Council is to facilitate water development projects, especially traditional federal investment. Such planning is in basic conflict with planning for pollution control. Section 208 planning has gone forward, however slowly and cautiously. Professor Beck has made a review of several hundred of these plans in the context of agricultural nonpoint runoff, and he offers the following summary:

"That review showed a prevailing choice of soil conservation districts as implementing agencies of agricultural nonpoint source management. These plans with only a few exceptions generally do not call for the creation of regulatory control programs but rather for the expansion of current voluntary type efforts, particularly those relating to erosion, and sedimentation control. This review showed also that best management practices (BMPs) for erosion and sediment control would have to be determined on a site specific basis and thus the furthest that any regulation at the state level would go would be to insist on the development of a BMP for each farm. It is expected that many states will review progress at the end of five years and will at that time reevaluate the need for regulatory control. However, the same review

noted that several states have imposed regulatory controls on selected nonpoint sources, particular construction sites, and the inclusion of such controls in the plans made it easier for the EPA to approve the plans without agricultural run-off controls. Finally, some states have imposed controls on agricultural runoff.

R. Beck, "Water Pollution and Water quality: Legal Controls" in 3 Waters and Water Rights 202-203 (2d Ed. 1984).

Simply, although Section 208 required them, few control measures have been initiated by the states. See 33 U.S.C. Secs. 1288(b)(2)(C) and (F).

C. In 1977 Congress amended Section 208 to include a specific provision for federal cost-sharing to help solve agriculturally caused nonpoint water pollution problems. 33 USC Sec 1288(j). The program is to be administered through the U.S.D.A.'s Soil Conservation Service. It would allow the SCS to enter into 5-10 year contracts with the "owners and operators of rural land" for sharing the costs of installing and maintaining BMPs in areas that have approved 208 plans. By 1984 some 21 programs had been commenced. Beck, "Agricultural Water Pollution Control Law" in 2 Agricultural Law 8.27 (Supp. 1987). The Water Quality Act of 1987 authorized substantial new sums for this program.

#### IV. Point - Nonpoint Source

- A. As a practical matter, sources of pollution which escape categorization as point sources escape regulation under the federal clean water laws. Thus, as might be expected, considerable litigation has resulted from efforts by defendants to escape the point source designation. The definitive analysis of the resulting decisions is by Professor Rodgers in 2 Environmental Law: Air and Water Secs. 4.9, 4.10 (1986).
- B. Nonpoint source is not defined in the statute, although 33 U.S.C. Sec. 1314(f), set out above, provides a statutory reference.
- C. One court says that the definition of point source "does not include unchanneled and uncollected surface waters." Appalachian Power Co. v. Train, 545 F.2d 1351, 1373 (4th Cir. 1976). The issue changes sharply when systems are engineered to cause water to be gathered, guided or controlled. Professor Beck concluded a "man-induced gathering mechanism plainly is the essential characteristic of a point source." Beck and Goplerud, "Water Pollution and Water Quality Legal Controls," in 3 Waters and Water Rights 89, (R. Clark, 2d, ed 1985). Professor Rodgers, at p. 146 states that: "A nonpoint source, undefined but often used in the Act, should be understood as any source of water pollution or pollutants not associated with a discrete conveyance." But, even at that, irrigation

return flows from a discrete pipe and gathered by a most carefully engineered drainage system, are specified as nonpoint sources by the Congress.

1. United States v. Earth Sciences, Inc., 599 F.2d 368, 373 (10th Cir. 1979). The Court found in the legislative history a showing that Congress "was classifying nonpoint source pollution as disparate runoff caused primarily by rainfall around activities that employ or cause pollutants."
2. In Sierra Club v. Abston Construction Co., Inc., 620 F.2d 41, 44-45 (5th Cir. 1980), the court recognized that some mining operators were non-point sources while others were point sources: "[S]urface runoff collected or channeled by the operator constitutes a point source discharge. Simple erosion over the material surface, resulting in the discharge of water and other materials into navigable waters does not constitute a point source discharge, absent some effort to change the surface, to direct the waterflow, or otherwise impede its progress."
3. In United States v. Oxford Royal Mushroom Products, Inc., 487 F.Supp. 852, 854 (E.D. Pa. 1980), the defendant had a spray irrigation system designed to spray waste water onto fields in quantities small enough to be

absorbed. It was not intended that the waste water run into surface water, although that was the result. No court held that the discharges were point sources, noting "uncollected surface runoff may, but does not necessarily, constitute discharge from a point source."

4. In O'Leary v. Moyer's Landfill Inc., 523 F.Supp. 642 (E.D. Pa. 1981) a landfill was located about 300 to 1,300 feet from a stream. It was designed so that leachate from the dump would be collected in a trench then pumped to a tank. Liquids regularly escaped into the stream. The Court held:  
"Notwithstanding that it may result from such natural phenomena as rainfall and gravity, the surface run-off of contaminated waters, once channeled or collected, constitutes discharge by a point source."
5. Quivira Mining Co. v. U.S. E.P.A., 765 F.2d 126 (10th Cir. 1985), cert. denied, 106 S.Ct. 791 (1986) involved the deposit of pollutants into gullies. Although the gullies led ultimately to navigable waterways, the flows of polluted discharges were insufficient to carry them that far. Instead the flows seeped into the ground where they traveled to navigable streams by way of underground

aquifers. The court upheld EPA's determination that the pollution was from a point source.

6. Fishel v. Westinghouse Elec. Corp., 640 F. Supp. 442 (M.D. Pa. 1986) held a hazardous waste site to be a point source where it contained a lagoon from which there were discharges of unchanneled and uncollected surface water into a stream.
7. Two decisions involved assertions that large hydroelectric dams contribute to river pollution by lowering the levels of dissolved oxygen in the water and creating increased mineralization of the water. Both cases uphold the position that the dams serve merely to pass pollutants, which were already in the water, on down the stream, and are not inconsistent with federal water pollution policy. National Wildlife Federation v. Gorsuch, 692 F.2d 156 (D.C. Cir. 1982); and, United States ex rel. T.V.A. v. Tennessee Water Quality Board, 717 F.2d 992, cert. denied, 466 U.S. 937 (1984).

V. The 1987 Amendments to the Nonpoint Source Program

- A. "Although many states have taken small steps to tackle the nonpoint pollution problem under grants provided by the Clean Water Act, nonpoint pollution continues to be a major environmental problem in the

United States; 35 states report significant water quality problems as a result of nonpoint sources of pollution. It is estimated that one-half of the pollutants now reaching surface waters in the United States come from nonpoint sources. And it is clear that in many watersheds the goals of the Clean Water Act-- fishable, swimmable waters -- will never be met unless we can significantly reduce farm and urban runoff and other nonpoint problems." Senator D. Durenberger, 133 Cong. Rec. S1015, Jan 21, 1987.

The preceding quote is a fair summary of a good part of the testimony which led to enactment of a new Nonpoint Source Management Program as part of the Water Quality Act of 1987, Pub.L. 100-4, 101 Stat. 7, Sec. 319. The new program is Section 319 in the official bill, and is codified at 33 U.S.C. Sec. 1329.

- B. The WQA 1987 amends the legislative policy statement to add ". . . 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." 33 U.S.C.A. Sec. 1251(a)(7)(Supp. 1987).
- C. Nonpoint Source Management Programs -- State Assessment Reports. Each State is to submit a report to EPA which ". . . identifies those navigable

waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act." According to the legislative history, "reasonably expected" is intended to mean that "all waters for which nonpoint controls would be an appropriate and effective means to achieving water quality standards will be identified in the State's report."

The report is also to include the process, including intergovernmental coordination and public participation, for identifying BMPs, and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources, and, "to the maximum extent practicable," reduce the level of pollution for each category.

The report is to include State and local programs for controlling pollution from nonpoint sources. 33 U.S.C.A. Sec. 1329(a) (Supp. 1987).

D. State Management Programs. Within 18 months from enactment, the State must submit a management program.

Generally, the management program is what the State proposes to implement in the first four fiscal years beginning with the date of submission of the program.

Specifically, the management program "shall



include" the following:

(A) "An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings, resulting from each category, subcategory, or particular nonpoint source . . . , taking into account the impact of the practice on groundwater quality."

(B) "An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistances, financial assistance, education, training, technology transfer, and demonstration projects."

(C) A schedule for implementing the program. "Such schedule shall provide for utilization of the best management practices at the earliest practicable date."

(D) A certification by state's A.G. that state has adequate legal authority to carry out its program.

(E) Sources of Federal and other money that will be used.

In its nonpoint program the State shall, "to the maximum extent practicable," involve local, public and private agencies and organizations which have expertise in control of nonpoint sources of pollution."

The management program shall, "to the maximum

extent practicable," be developed and implemented on a watershed-by-watershed basis." 33 U.S.C.A. Sec. 1329(b) (Supp. 1987).

- E. Each state report and management program "shall" be submitted to EPA during the 18 month period beginning with the date of enactment. [Feb. 4, 1987]. 33 U.S.C.A. Sec. 1329(c) (Supp. 1987).
- F. EPA Approval/Disapproval of Reports. EPA must approve or disapprove the submissions within 180 days or they are deemed approved. EPA may disapprove a program or portion of it upon determination, among other things, that it is not likely to satisfy the goals and requirements of the Act, or that the practices and measures proposed in the plan are not adequate to reduce nonpoint source pollution and to improve water quality. The state shall have three months to revise its plan and EPA shall approve or disapprove the revised program within three months. If a state fails to submit the report, or if it is not approved, a local public agency or organization with expertise in and authority to control nonpoint sources may, with the approval of the State, develop and implement a program for its area. 33 U.S.C.A. Sec. 1329(d) (Supp. 1987)
- G. Interstate Management Conference. Where waters in a state with an approved management program are not meeting applicable W.Q.S. or the goals and

requirements of the Act because of upstream nonpoint pollution the state may petition EPA to convene a conference the purpose of which is to develop an agreement among such States to reduce the level of nonpoint source pollution.

"Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws."

"This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act.

Citizen's Suits. The requirement that EPA convene an interstate management conference is not subject to the citizen's suit provisions.

To the extent that states reach agreement through the conference, their management programs will be revised to "reflect" agreements reached at the interstate conference. The committee report on this states: "It is intended that the agreements will be incorporated in revised State programs and will be carried out." 33 U.S.C.A. Sec.

1329(g) (Supp. 1987)

H. Grant Program For Implementation of Management Programs. [nonpoint Sources]. States may apply for grants to support implementation of approved management programs.

The application must, among other things

describe the BMPs and measures which the State proposes to "assist", encourage, or require" in such year with the federal grant.

Federal share shall not exceed 60 percent of the cost "incurred by the State in implementing such management program."

Priority For Effective Mechanisms For Controlling Non-Point Sources. EPA "may" give priority in making grants and "shall" give consideration in determining the Federal share of any such grant to States ". . . which have implemented or are proposing to implement management programs which will --" "control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities."

"Implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administration deems appropriate;"

"Control interstate nonpoint source problems; "Carry out groundwater quality protection activities which the Administration determines are part of a comprehensive nonpoint source pollution control program, including research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education, and training to

protect groundwater quality from nonpoint sources of pollution.

Grant funds may not be given to individuals except as part of a demonstration program.

"No grant may be made" unless EPA determines that the State used the grant funds for the preceding year to "make satisfactory progress" on the schedule in its management program as required in Sec. 319(b)(2). [33 U.S.C.A. Sec. 1329(b)(2)(Supp. 1987)].

States must make annual reports. 33 U.S.C.A. 1329(h)(Supp. 1987)

- I. Grants for Protecting Groundwater Quality. States may apply for grants to assist in ". . . carrying out groundwater quality protection activities which [EPA] determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution."

Federal share is 50 percent 33 U.S.C.A. Sec. 1329(i)(Supp. 1987)

- J. Revision of Section 208 planning requirements.

Before E.P.A. can approve any waste treatment works it must determine that the Section 208 areawide waste treatment management plan ". . . is being implemented for such area, or . . . is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment work will be included in such plan." Effective Feb. 4, 1989. A similar conformity is required of Sec. 303(e). [33 U.S.C.A. Sec. 1313(e)] and Sec. 305(b) [33 U.S.C.A. 1315(b)] plans.

VI. Other Provisions In the 1987 Act Which Are Related to Nonpoint Source Pollution.

- A. Allows the issuance of permit modifying effluent limitations with respect to the ph level of preexisting discharges of iron and manganese from the remined area of a coal mining operation. The applicant must demonstrate that the coal remining will result in the potential for improved water quality from the remining operation. Such modified requirements shall apply the BAT economically achievable on a case-by-case basis, using best professional judgment. 33 U.S.C.A. Sec. 1311(p) (Supp. 1987).
- B. Office of Chesapeake Bay Programs established in EPA. To gather information and coordinate federal and state efforts to improve the water quality of

the Bay. Also, "to determine the impact of sediment deposition of the Bay and identify the sources."

EPA can provide up to 50 percent funding to states in order to implement a comprehensive proposal which includes "management mechanisms. 33 U.S.C.A. Sec. 1267(Supp. 1987)

- C. Great Lakes. U.S. should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978.

Great Lakes National Program Office established in EPA. 33 U.S.C.A. Sec. 1268 (Supp. 1987).

- D. States must undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support and protect public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water. For each segment of the waters on the list the State is to determine the specific point sources discharging toxic pollutants which are believed to be preventing or impairing such water quality, and the amount of each toxic pollutant discharged by each source.

The State submission is to also include an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by

the State, through the establishment of ELs and WQSS containing numerical criteria.

The State's proposed reduction in toxic discharges in combination with other controls on point and nonpoint sources, must achieve the applicable W.Q.S. as soon as possible, but not later than three years after the date of the establishment of the strategy.

Judicial Review: Allows interested persons to bring a legal action for review of E.P.A.'s promulgation of individual control strategies for toxic pollutants.

EPA to develop information on methods for establishing and measuring water quality criteria for toxic pollutants. 33 U.S.C.A. Sec. 1314(e) (Supp. 1987).

- E. Clean Lakes. States are to submit biennial reports on lake quality. Reports are to provide a list and description of the quality of lakes and a description of methods and procedures to control sources of pollution to lakes including methods and procedures to mitigate the harmful effects of high acidity. EPA is to report to Congress after receiving state reports. Creates a lake water quality demonstration program with authorized funding. 33 U.S.C.A. Sec. 1324 (Supp. 1987).

E.P.A.'s Clean Lakes Program Guidance is appended to this outline.



F. National Estuary Program. National policy to maintain and enhance water quality in estuaries. Proposes to identify "nationally significant" estuaries and encourage comprehensive planning for their conservation and management.

National Estuary Program -- Management

Conference. The Governor of any State may nominate to EPA an estuary lying in whole or in part within the States as an estuary of national significance and request a management conference to develop a comprehensive management plan for it.

EPA must make a determination as to whether an estuary can be included in this program based on ecological significance, biological productivity, contribution to fish and wildlife resources of commercial and recreational significance, and a list of other factors.

Purposes of estuary conferences are listed. Information gathering and comprehensive planning are key.

Conferences not to exceed five years.

Conservation and Management Plan. EPA shall approve plans if they comply with terms of Sec. 320 and if all governors approve.

Plans may be implemented with Sec. 319 [33 U.S.C.A. Sec. 1329] nonpoint grant money.

Grant moneys are authorized. 33 U.S.C.A. Sec. 1330 (Supp. 1987).

G. The prior Sec. 402(1) [33 U.S.C.A. Sec. 1342(e) (Supp. 1986) reads as follows:

"(1) Irrigation Return Flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator, directly or indirectly, require any State to require such a permit."

As amended by the WQA of 1987 the provision now reads as follows:

"(1) Agricultural return flows.

The Administrator shall not require a permit under this section for discharge composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly indirectly, require any State to require such a permit"

The basic definition of a "point source" is later amended by adding the following sentence: "This term does not include agricultural stormwater discharge and return flows from irrigated agriculture." 33 U.S.C.A. Sec. 1362(14) (Supp. 1987)

H. Stormwater Runoff From Oil, Gas and Mining Operations. Permits are not required where stormwater runoff is diverted around mining or oil and gas operations and does not come in contact with

overburden, raw material, product, or process wastes.

In addition, when stormwater runoff is not contaminated by contact with such material, as determined by EPA, permits are also not required. 33 U.S.C.A. Sec. 1343(1)(2).

I. Municipal and Industrial Stormwater Discharges.

Prior to Oct. 1, 1992, no permit will be required for discharges composed entirely of stormwater, other than a discharge with respect to which a permit has been issued under this section prior to enactment, a discharge associated with industrial activity, discharges from separate municipal storm sewers serving 100,000 or more, or, a discharge for which EPA or State determines that the stormwater discharge contributes to a violation of a W.Q.S. or is a significant contributor of pollutants to the waters of the United States.

This is to provide a sufficient period of time to develop and implement methods for managing and controlling discharges from municipal storm sewers. After Oct. 1, 1992, all municipal separate storm sewer systems will have to have permits.

This relief applies only to discharges composed entirely of storm water. Storm sewers that discharge any other type of effluent or into which pollutants are introduced by means other than

incidental to stormwater runoff are required to obtain a permit.

Establishes a schedule for developing necessary regulations and issuing permits for municipal separate storm sewers. 33 U.S.C.A. Sec. 1342(p) (Supp. 1987)

- J. Sewage Sludge -- Identification and Regulation Of Toxic Pollutants. EPA must identify toxic pollutants present in sewage sludge that may adversely affect public health or the environment. EPA must propose regs that specify "acceptable management practices" for sludge containing toxic pollutants, and establish numerical limitations for each pollutant.

Final regs must be out before June 15, 1988.  
33 U.S.C.A. Sec. 1345(Supp. 1987)

- K. More re-defining of point sources. Section 507 of the Water Quality Act of 1987 states: "For purposes of the Federal Water Pollution Control Act, the term "point source" includes a landfill leachate collection system." This statement will not, apparently be codified, and will disappear into the annotations beneath 33 U.S.C.A. Sec. 1362.

- L. Indian Tribes. E.P.A. is to treat Indian tribes as States for purposes of CWA regulation when tribal government meet certain criteria. Grants for nonpoint source management programs under 33 U.S.C.A. Sec. 1329 may be made to tribes on the same

basis as if they were states 33 U.S.C.A. Sec. 1377  
(Supp. 1987).

VII. Best Management Practices

- A. Despite continuing calls for direct federal regulation of nonpoint sources, it is apparent for now that Congress will not heed. Clearly, the present goal is to have the states adopt their own systems -- regulatory or otherwise -- for controlling nonpoint sources. It is also clear that Congress intends that these systems should be built around "Best Management Practices," or "BMPs." This phrase has crept slowly and undefined into federal water quality law.
- B. BMPs are specified as among the standards that may be imposed in an NPDES permit to supplement effluent limitations when needed to control toxic and hazardous substances. They may also be used when numeric effluent limitations are unfeasible, or when needed to achieve effluent limitations. 33 U.S.C.A. Sec. 1314(e) (Supp. 1987); 40 C.F.R. Sec. 122.44(k), 122.45 (1987).

For this purpose BMPs are defined in the regulations at 40 C.F.R. 122.2 (1987):

". . . schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States.' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or

waste disposal, or drainage from raw material storage."

BMPs are also to be part of the Total Maximum Daily Load regulations, 33 U.S.C.A. Sec. 1313(d)(1)(A)(Supp. 1987) as well as individual water quality based effluent limitations. 33 U.S.C.A. Sec. 1312(a)(Supp. 1987). 40 C.F.R. Sec. 130.7(1987).

C. BMPs are also to play a basic role in water quality planning. [See 33 U.S.C.A. Sec. 1314(f)(Supp. 1987) quoted at III, A, above.] The Section 303(e) [33 U.S.C.A. Sec. 1313(3)] plan is to include a component for nonpoint source management and control. This includes BMPs for residual waste, land disposal, agricultural and forestry activities, mining, construction, saltwater intrusion, and urban stormwater. 40 C.F.R. Sec. 130.6(c)(iii)(1987). For purposes of this section, BMPs are defined in this way:

"Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters."

40 C.F.R. Sec. 130.2(1)(1987). Later, the

regulations appear to supplement this definition by stating: "Economic, institutional and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals" 40 C.F.R. Sec. 130.6(4)(i)(1987).

- D. The Rural Clean Water Program, which finances demonstration projects for nonpoint source control, clearly contemplates the promotion of BMPs. 33 U.S.C.A. Sec. 1288(j)(Supp. 1987). The U.S.D.A.'s Soil Conservation Service, which administers the Program, defines BMPs simply and vaguely:

"A single practice or a system of practices included in the Rural Clean Water Program application that reduces or prevents agricultural nonpoint source pollution to improve water quality."

7 C.F.R. Sec. 634.5(i)(1987). The regulations define the purpose of the cost-sharing assistance as being ". . . to install [BMPs] in project areas which have critical water quality problems resulting from agricultural activities." 7 C.F.R. Sec. 634.1(b)(1987).

- E. It is clear that the Nonpoint Source Management Program enacted as part of the WQA of 1987 intends to foster BMPs. The State Assessment Report is among other things, to identify BMPs to control each category of nonpoint source pollution. 33 U.S.C.A. Sec. 1329(a)(1)(c)(Supp. 1987). In order to gain

approval by E.P.A. State Management Programs must identify BMPs that "will be undertaken" to reduce nonpoint source pollution, and identify programs that will achieve implementation of BMPs. 33 U.S.C.A. 1329(b)(2)(A)&(B)(Supp. 1987). EPA's "Nonpoint Source Guidance," which is appended to this outline, clearly reflects this approach.

- F. Having made these observations, the only thing that is clear is that BMPs evade specific description, which may explain their attraction. At this point, see W. Rodgers, 2 Environmental Law: Air and Water, Secs. 4.21-4.22, (1985).

BMPs are the correct way of doing things on a particular piece of ground. It suggests concepts of reasonableness and balancing more familiar to the common law.

#### VIII. Anti-Degradation Policy

- A. The purpose of the CWA is to "restore and maintain" the nations waters. 33 U.S.C.A. Sec. 1251(a)(Supp. 1987). As one way to achieve this and other goals of the Act, Section 1313 requires that states adopt and submit water quality standards to E.P.A. Such standards are to address both point and nonpoint sources. 40 C.F.R. Secs. 130.(d) and 130.3(1987).
- B. E.P.A. has included an antidegradation policy in its water quality regulations at 40 C.F.R. Secs. 131.12(1987):



(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(3) Where high quality waters constitute an outstanding National resources, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

\* \* \*

C. In the 1987 Act Congress appears to acknowledge the validity of E.P.A.'s anti-degradation regulation. In a provision dealing with the revision of discharge permit limitations is a reference to "the antidegradation policy established under this

section." 33 U.S.C.A. Sec. 1313(d)(4)(B) (Supp. 1987).

D. The 1987 Nonpoint Source Management Program seeks to identify waters where additional controls will be necessary to "attain or maintain applicable water quality standards or the goals and requirements of this chapter." 33 U.S.C.A. Sec. 1329(a)(1)(A) (Supp. 1987).

E. Who will decide, and how will they decide, that "lower water quality is necessary to accommodate important economic or social development in the area?" 40 C.F.R. Sec. 131.12(2) (1987)

F. In areas where there is a rapidly accelerating pattern of land drainage, for example, antidegradation issues will be presented directly.

G. See discussion of antidegradation policy in W. Rodgers, 2 Environmental Law: Air and Water Sec. 4.17, 262-267 (1986)

IX. Soil Conservation Planning/Soil Conservation Districts

A. Beck reports, after reviewing some 136 Section 208 plans, that wherever agricultural water pollution control is an issue the prevailing choice of implementing agency is the soil conservation district, and that with only a few exceptions they do not call for the creation of regulatory control programs but, rather, for the expansion of current voluntary type efforts, particularly those relating to erosion and sedimentation control. Beck also

points out that these plans prefer adoption of BMPs on a site specific, case-by-case basis. Examples of preferred BMPs in the agricultural category include such things as minimum tillage, contour farming, critical area planting, crop rotation, terracing, grass waterways, pasture planting, and strip cropping. These newly-discovered "BMPs," of course, have been around since the 1930's as have Soil Conservation Districts, but a review of their history may carry some lessons.

- B. Soil and Water Conservation Districts do seem to bear a close tie to nonpoint source controls, as they are the only type of special district whose primary responsibility is to control soil erosion and related runoff.
- C. The CWA represents this nation's second major effort at dealing with the problem of nonpoint source pollution. A direct assault on the soil erosion problem -- defined quite broadly -- was initiated in the Soil Conservation Act of 1935, Act of April 27, 1935, ch. 35, secs 1-5, 49 Stat. 163 (1935), currently codified at 16 U.S.C. Secs. 590a - 590e (1976), which created the Soil Conservation Service and authorized the U.S.D.A. to provide federal financial assistance for erosion control on nonfederal land.
- D. Section 3 of the 1935 legislation contains the

following provisions, now codified at 16 U.S.C. Sec. 590 c (Supp. 1987):

As a condition to the extending of any benefits under this chapter to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of this chapter, require --

(1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion,

(2) Agreements or covenants as to the permanent use of such lands; and

(3) Contributions in money, services, materials, or otherwise, to any operations conferring such benefits.

- E. An early stage of the S.C.S. program was the establishment of demonstration projects, so that farmers and ranchers could visit projects and observe soil erosion control in operation.
- F. S.C.S. adopted the soil conservation district model in order to foster a local approach to the soil erosion problem. This idea called for S.C.S. to provide technical advice and cost-sharing money. In exchange each state was expected to enact enabling legislation. U.S.D.A. published a Standard State Soil Conservation District Law. Such districts would be created by majority of the land owners and renters in the proposed district. Districts were authorized to, among other things, carry out erosion

control operations and enact and enforce land use regulations. States did pass the laws, under some coercion.

- G. The original concept for soil conservation districts was that their boundaries would conform to those of local watersheds or other areas logical for the purpose of erosion control, and that the districts would be authorized to enact and enforce land use regulations. Those two concepts were rejected by a majority of the enacting states. Districts were organized along county lines and without police power authority.
- H. Even in states which did authorize districts to enact land use regulations, such regulations were not adopted.
- I. Thus, the S.C.S. program in the United States was a purely voluntary one, depending upon landowners to become "cooperators."
- J. Williams, "Soil Conservation Water Pollution Control: The Muddy Record of the United States Department of Agriculture." 7 B.C. Env'tl Aff.L. Rev., 365 (1979)
- K. As much as 40 billion federal dollars may have been spent to control soil erosion in the U.S. Currently, within the U.S.D.A., 27 separate conservation programs are administered by eight separate agencies. For the most part, this bewildering array of federal programs has been

limited to conservation incentives in the form of technical assistance and cost sharing.

L. The history of the S.C.S. program can be interpreted to suggest that an erosion (nonpoint) control program based upon free technical advice, demonstration projects, and voluntary compliance by private landowners will work only so long as the federal government picks up the tab. When cost-sharing dries-up, as it has with many of the S.C.S. programs, or when the cost-sharing cannot be used for production-enhancing practices (e.g., tile drainage) landowners are quick to abandon both the practices and the programs.

M. The preference shown for soil conservation districts in Section 208 plans continues the defects inherent in the creation of these districts. First, districts are not organized along watershed lines, but, instead, along county lines. Second, districts do not exercise police power controls. There is nothing in our experience of government to suggest that the problem of erosion/nonpoint pollution can be solved by asking landowners to regulate themselves.

X. Drainage Districts

A. Of the existing forms of special districts, drainage districts would seem to be somewhat better suited to the task of nonpoint control than are soil and water conservation districts. Such districts are the

earliest form of natural resources district and, although their goal is the enhancement of production through cooperative drainage of private lands, they are organized along small watersheds -- the logical organization form for nonpoint source control.

While they lack direct land use control authority, they are enabled to allocate costs and benefits when improvements are made.

B. Land drainage is a major area of concern in any system that is serious about controlling nonpoint sources.

C. Symposium, "Drainage Law," 1960 U. Ill. L. Forum 189.

XI. Direct Federal Regulation of Some Forms of Nonpoint Source Pollution.

A. Shanty Town Associates Ltd Ptsp v. Environmental Protection Agency, \_\_\_ F.2d \_\_\_ (4th Cir., April 4, 1988). A local sanitary commission applied for federal CWA (Title II) funds to construct a sewage collection system that would help alleviate pollution from failing septic systems. In an EIS the agency concluded that the proposed system would result in considerable new development in a floodplain, and result in increased runoff of pollutants into adjoining bays. Nonetheless, it recommended that the system be built, with restrictions, as a means of dealing with the existing serious septic pollution problem. As a

condition of receiving CWA sewer construction funds EPA required the local sanitary commission to enter into a consent order with the state enforcement agency to limit the use of federally-funded construction to serve existing households, i.e., the system could serve no new construction. This restriction was challenged by a developer who contended that EPA lacked authority under the CWA to limit access to sewage facilities. The court upheld EPA's position that Title I of the Act, which gives it authority to make grants to state and local government for the construction of publicly-owned wastewater treatment facilities, also gives it the incidental authority to restrict the use of those facilities where necessary to further the Act's water quality goals. In this case the concern was that the system would lead to an increase in nonpoint source pollution, and thereby have a detrimental effect on the water quality of adjoining bays. The Court observed:

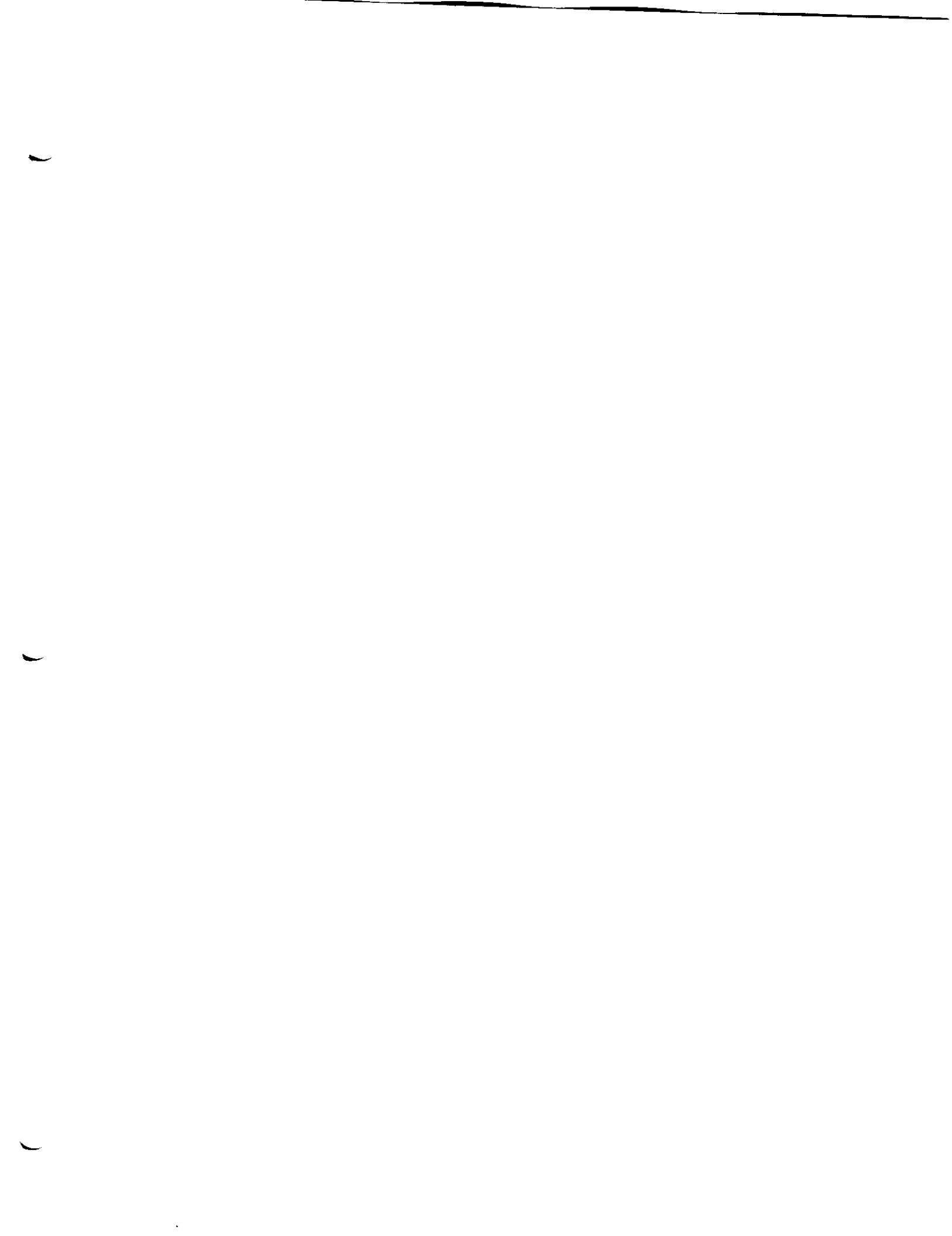
It is true that the FWCPA contains no mechanism for direct federal regulation of nonpoint source pollution. But the Act's legislative history makes clear that this omission was due not to Congress' concern for state autonomy, but simply to its recognition that the control of nonpoint source pollution was so dependent on such site-specific factors as topography, soil structure, rainfall, vegetation, and land use that uniform federal regulation was virtually impossible. \* \* \* Nor do we find anything in the language or legislative history of the FWPCA that indicates a congressional intent specifically to



preclude EPA from imposing conditions on Title II construction grants that are designed to reduce the amount of nonpoint source pollution generated, either directly or indirectly, by the facilities those grants fund."

B. Section 404 Permits for Dredged or Fill Material.

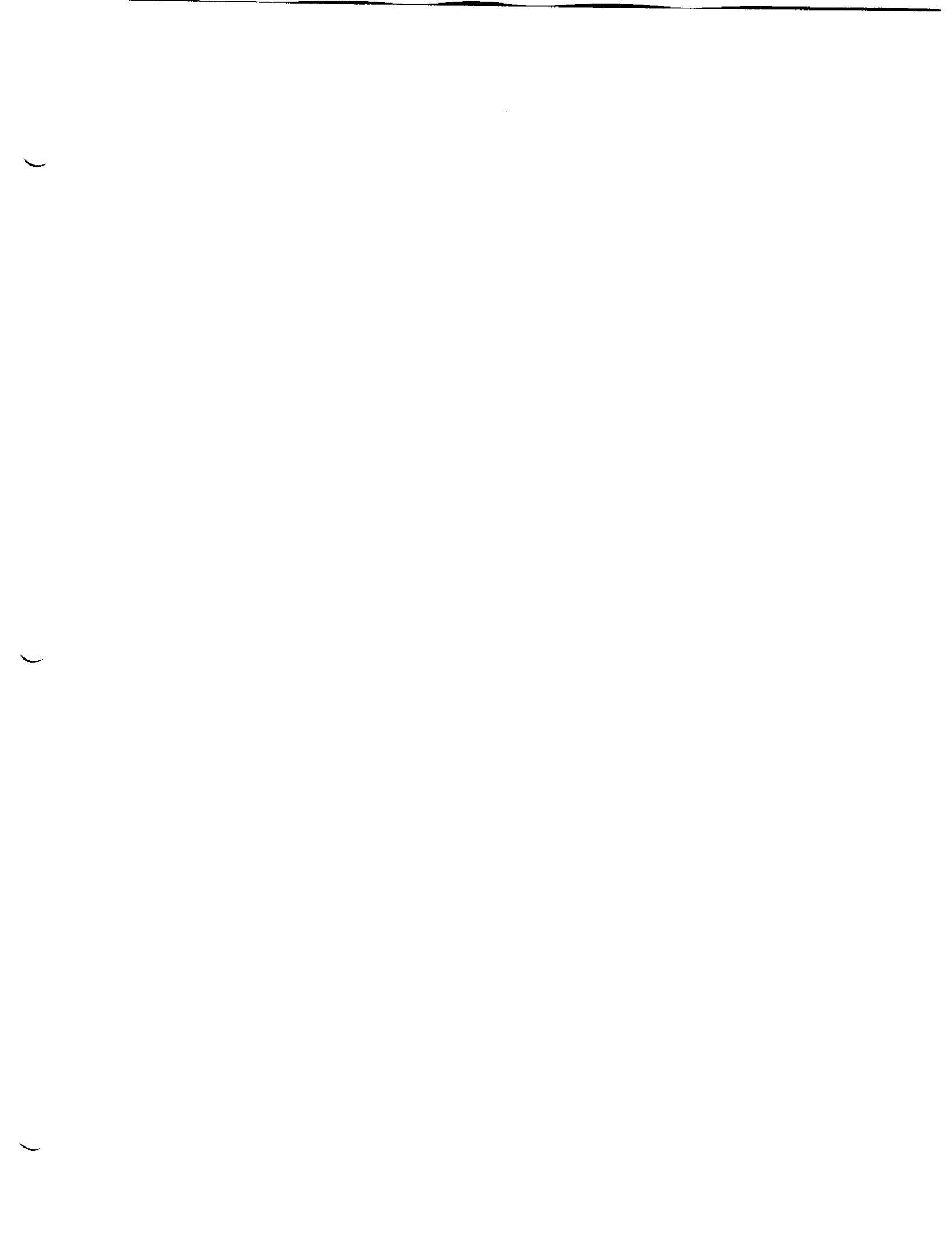
33 U.S.C.A. Sec. 1344 (Supp. 1987). The Corps' "public interest review" regulations guide the decision whether to grant a permit. 33 C.F.R. Sec. 320.4 (1987). These call for a "careful weighing" of costs and benefit. Among listed concerns are wetlands, floodplain values, land use, shore erosion, and water quality. The regs specifically require concern over cumulative effects. Presumably, avoidance or control of nonpoint source pollution is a legitimate factor for consideration in section 404 proceedings.



**NONPOINT SOURCE GUIDANCE**

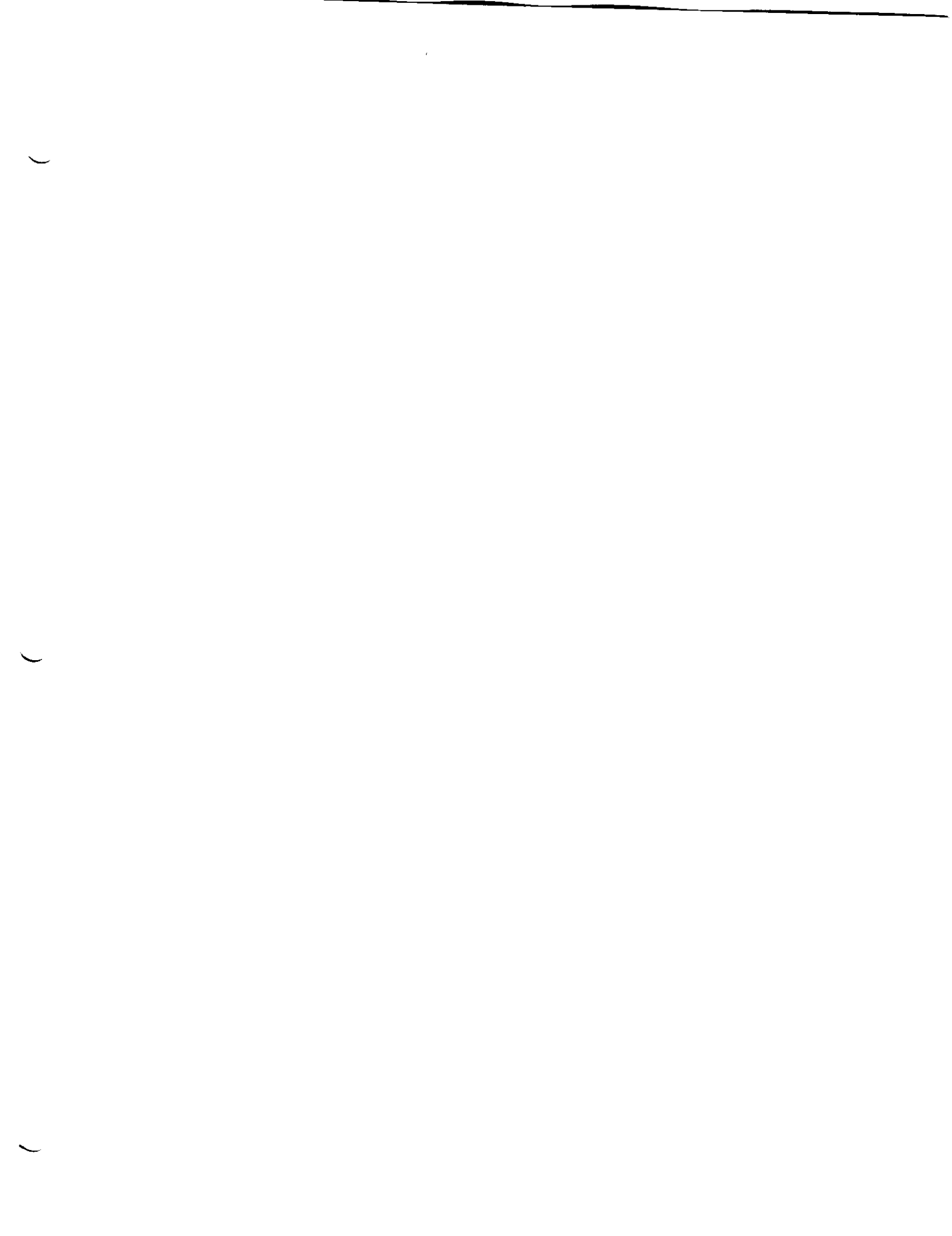
**DECEMBER 1987**

**U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF WATER  
OFFICE OF WATER REGULATIONS AND STANDARDS  
WASHINGTON, D.C.**



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# NONPOINT SOURCE GUIDANCE

## I. INTRODUCTION

### A. Goals

The Water Quality Act of 1987 (WQA) states:

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.

This goal focuses on the importance of controlling nonpoint sources of water pollution. With the enactment of section 319 of the WQA, new direction and significant Federal financial assistance for the implementation of State\* nonpoint source (NPS) programs has been authorized. The WQA requires two major reports to be completed by August 4, 1988: a State Assessment Report describing the State's NPS problems and a State Management Program explaining what the State plans to do in the next four fiscal years to address their NPS problems. The WQA authorizes financial assistance for developing these reports and for implementing the State's NPS Management Program.

### B. The State Clean Water Strategy

The 1987 legislation mandates a similar approach in information collection, assessment, and the subsequent development and implementation of pollution control mechanisms for targeted areas in the new Surface Water Toxics Control, Nonpoint Source, Estuary, Clean Lakes, and Great Lakes program areas. These activities, although conducted under separate program activities, may lead to identifying the same water resources as being in need of pollution control measures. EPA is encouraging States to develop State Clean Water Strategies\*\* as a

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\* *In accordance with section 518(e) of the WQA, the Administrator is authorized to treat Indian tribes as States for the purposes of section 319. Therefore, throughout this guidance the term State shall refer to States, Territories, and those Indian tribes designated by the Agency under section 518(e).*

\*\* *State Clean Water Strategies are in essence a vehicle to better integrate and coordinate State water programs, and to improve effectiveness by targeting activities to high priority geographic areas. For more details on State Clean Water Strategies, see in particular: US EPA, Office of Water. State Clean Water Strategies: Meeting the Challenges of the Future, December 1987 and US EPA, Office of Water. Surface Water and Wetlands Protection Program Operating Guidance FY 1988, April 1987.*

means of addressing in a strategic way the variety of water pollution sources, their inter-relationships and the many water resources that are threatened.

C. Nonpoint Source Management in the State Clean Water Strategy

States have the opportunity to design and implement NPS programs as part of an overall State Clean Water Strategy (SCWS) which unifies and integrates the States' entire approach to water quality protection and clean-up. Building on existing State water pollution control programs and activities, SCWS's may be developed in a three step process: completing a comprehensive assessment of impaired or threatened waters; targeting or identifying the sequence for protecting water resources; and developing strategic management plans. In the area of assessments, the SCWS encourages States to consider combining the similar assessment requirements mandated under the Clean Water Act (CWA) for nonpoint sources (section 319), lakes (section 314), estuaries (section 320), and surface water toxics (section 304(1)). The advantages of combining these assessment are to: help States identify geographical problems and crossmedia "hot spots"; make data gaps more apparent; encourage non-traditional, multi-agency coordination and cooperation; and form the basis for comprehensive pollution control efforts.

Both the SCWS process and the NPS Guidance call for identifying the sequence for protecting water resources. Neither the SCWS nor the NPS Guidance provide a prescriptive ranking and targeting procedure that States must follow. Rather they provide a general framework and a set of targeting criteria that States should consider during the targeting stage of the process. As a practical matter, especially in the NPS area, States will probably find it both useful and necessary to carve out a subset of work for concerted action within the multi-year timeframe of the SCWS. The guiding principle for this step is to maximize environmental benefit by devoting resources and efforts to water resources in a priority order that recognizes the values of the waterbody in question, the benefits to be realized from various control actions and the controllability of the problem(s).

Again, both the SCWS and the NPS Guidance call for the development of multi-year strategic plans. Such multi-year strategic plans provide the connection between the strategic direction and the State's annual work plans for carrying out the work over a multi-year period. The scope of a management plan depends upon whether the State elects to use a comprehensive, integrated approach or a more traditional programmatic approach. So long as the CWA requirements for specific management plans (nonpoint source, Clean Lakes, estuaries) are met, the State may submit either one comprehensive management plan or multiple plans covering each of its program areas.



#### D. Definition of Nonpoint Source Pollution

For the purpose of implementing the NPS provisions in the CWA, NPS pollution is defined as follows:

Nonpoint Source (NPS) Pollution: NPS pollution is caused by diffuse sources that are not regulated as point sources and normally is associated with agricultural, silvicultural and urban runoff, runoff from construction activities, etc. Such pollution results in the human-made or human-induced alteration of the chemical, physical, biological, and radiological integrity of water. In practical terms, nonpoint source pollution does not result from a discharge at a specific, single location (such as a single pipe) but generally results from land runoff, precipitation, atmospheric deposition, or percolation. It must be kept in mind that this definition is necessarily general; legal and regulatory decisions have sometimes resulted in certain sources being assigned to either the point or nonpoint source categories because of considerations other than their manner of discharge. For example, irrigation return flows are designated as "nonpoint sources" by section 402(1) of the Clean Water Act, even though the discharge is through a discrete conveyance.

#### E. Program Inter-relationships

With the WQA, States now have additional support and direction for comprehensive implementation of NPS controls. EPA will encourage States to develop NPS programs which build upon related programs such as Clean Lakes, Estuaries, Stormwater Permits, Ground Water, Toxics Controls, State Revolving Funds, and Wetlands; and complement and increase the effectiveness of State and local NPS programs already underway. In addition, EPA will encourage States to coordinate their NPS programs with other Federal agencies. For example, USDA's Conservation Reserve and Conservation Compliance Programs play an important role in the implementation of best management practices to reduce agricultural NPS pollution.

## II. IMPLEMENTATION APPROACH

This section addresses the basic NPS requirements from section 319 of the Clean Water Act as amended by the Water Quality Act of 1987. States are encouraged to integrate these section 319 items through their State Clean Water Strategies into their existing processes and resultant documents (specifically sections 303(e), 106, 305(b), and water quality management plans).

### A. Development of State Assessment Reports

#### 1. Introduction

State Assessment Reports must describe the nature, extent and effect of NPS water pollution, the causes of such pollution, and programs and methods used for controlling this pollution.

In order to avoid duplication and to conserve resources, States should use their 1988 State 305(b) Reports to meet the requirements of State Assessment Reports. At a minimum, States should use their 1988 State 305(b) Reports which are due by April 1, 1988 as the formal mechanism for reporting the list of waters impacted by NPS pollution and the NPS categories or sources contributing to these impacts (items 2(A) and 2(B) below). This list of impacted waters may be updated at any time and should be updated for subsequent State 305(b) Reports. Other assessment items required by section 319 (items 2(C) and 2(D) below) may be included in State 305(b) Reports as well but must be submitted no later than August 4, 1988.

EPA guidance for preparing 1988 State 305(b) Reports identifies the NPS information to be included in the 305(b) Reports for State Assessment Reports (See US EPA, Office of Water Regulations and Standards. Guidelines for the Preparation of the 1988 State Water Quality Assessment 305(b) Report, April 1, 1987). This section 319 guidance provides a more detailed discussion of the requirements for State Assessment Reports including EPA approval criteria.

#### 2. State Assessment Report Requirements

State Assessment Reports shall include the following four categories of information:

- (A) identification of navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the Act;
- (B) identification of categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

- (C) description of the process, including intergovernmental coordination and public participation, for (i) identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and (ii) for reducing, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
- (D) description of State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which will receive Federal assistance under subsection (h) and (i).

### 3. Explanation

Sequence - The Assessment Report should be submitted before or concurrently with the State Management Program.

Use Available Information - The Act specifically encourages the use of existing reports and information for State Assessment Reports in recognition of the timing required by the Act. Assessment data, however, should be reviewed, updated and refined, as appropriate. The State Assessment Report should clearly identify navigable waters where available information does not support reliable assessment, and provide a strategy and timetable for completing the assessment of these navigable waters.

Process - An open assessment process is to be used to identify NPS water quality problem areas. All those with an interest in water quality should be involved in developing the Statewide list of NPS problem areas. Groups and agencies with interests in fish and wildlife, recreation, natural resources, agriculture, forestry, drinking water, etc. should be consulted in the process of identifying such areas. Representatives of environmental groups, industry, regional planning organizations, local governments and the public should also participate. This process will help assure that all available data from diverse agencies and organizations is included, and that gaps in the data are identified and can be remedied for future decisions and actions.

What Constitutes NPS-Impacted Waters? - Consistent with the 305(b) reporting requirements, States should report on assessed waters for which the State is able to make a judgment about the degree to which the designated use is supported. The 1988 305(b) Guidelines establish two levels of assessment, one reflecting conclusions based on ambient monitoring data and the other based on other information. The first level is "monitored" waters in which the assessment is based on current site-specific ambient data i.e., the ambient monitoring data are less than five years old. The second level is "evaluated" waters in which the assessment is based on information other than current site-specific ambient data, such as data on sources of pollution, predictive modeling, fishery surveys, citi-

zen complaints and ambient data which are older than five years. In the NPS area, best professional judgment and various evaluation techniques will play an important role. When using more subjective evaluation methods, EPA expects that borderline cases will be included in the list of waters impacted by NPS pollution.

The Assessment Report should include all navigable waters within the State which exhibit water-quality-limiting NPS problems (see Appendix A for definition of navigable waters and waters of the U.S.). The Assessment should also indicate the total sizes of waters in the State by waterbody type (i.e., miles of rivers and acres of lakes, estuaries and wetlands) that fully support their designated uses and the total sizes of State waters not assessed. (This information should be available from State 305(b) Reports.)

High quality waters [as defined in section 131.12 (a)(2) of the Water Quality Standards Regulation] in the State where potential degradation from nonpoint sources due to proposed or actual changes in cultural activities is a threat, should also be identified.

States should develop their assessments on a watershed-by-watershed basis. States should not focus only on waters immediately adjacent to NPS problems, but should also consider downstream segments, lakes and estuaries where NPS pollutants may accumulate and cause water degradation.

Section 305(b) Waterbody System (WBS) - A new data management system, the WBS, is being developed to manage much of the waterbody-specific, quantitative information concerning surface water quality and sources of pollution reported by States in their 305(b) submissions. States should submit the waterbody-specific information required in the State NPS Assessment (i.e., the list of waters impacted by NPS pollution and the categories of sources of NPS pollution for each of these waterbodies) in a written form in a format consistent with the WBS (preferably using WBS input forms). EPA will work through contractors to get the data into the WBS during the summer of 1988. Use of the actual WBS computer system by the States is optional in FY 1988. States should consult the Guidelines for the Preparation of the 1988 305(b) Report and the WBS Users Manual for guidance in developing and formatting their information.

Wetlands - States should include any information on known wetlands impacted by nonpoint sources in their NPS Assessment Report.

Ground Water - States should include information on any known or suspected ground-water problems caused by nonpoint sources in their NPS Assessment Report. Any ground-water information included in a State's Assessment Report should be consistent with the State's ground-water protection strategies. States are encouraged to refer to EPA's Office of Ground-Water Protection's guidance on the Wellhead Protection Program which contains a section on "source identification" (US EPA, Office of Ground-Water Protection. Guidance for Applicants for State Wellhead Protection Program Assistance Funds Under the Safe Drinking Water Act, June 1987, p. 21).

Landownership - States should identify water quality problems due to NPS pollution from all lands regardless of landownership (Federal/State/local/private).

Categories and Subcategories - The categories, subcategories or sources of NPS pollution which add pollution to the NPS-impacted waters included in the Assessment should be identified. Categories should be identified for each listed waterbody. Particular nonpoint sources or specific sources which add pollution to an identified waterbody should also be identified and reported where known. States should use the computer codes established for the major NPS pollution categories and subcategories listed in Appendix B for reporting in their State Assessment Reports. For a State's own implementation purposes, it may need to further subdivide the major categories and subcategories of NPS pollution, or may want to define its nonpoint sources differently. If a State identifies an entirely new category of nonpoint sources, it should contact EPA (Monitoring and Data Support Division, WH-553, Office of Water Regulations and Standards, Office of Water, Washington, DC 20460) to have a new computer code assigned to the source.

Process for Defining BMPs - The Assessment Report must describe the process, including intergovernmental coordination and public participation, used for identifying best management practices. This coordination/public participation requirement recognizes that NPS management often requires the coordination of numerous agencies and organizations which may be affected by NPS management decisions.

States are required to describe the process for identifying BMPs in their Assessment Reports. In the Management Program, States must include more details on BMPs including lists of BMPs which are generally considered appropriate for the various categories and subcategories of NPS pollution.

Identification of NPS Programs - The Assessment Report must describe State and local programs to be used in the implementation of State NPS management programs [including programs for which the State intends to seek funding under sections 319(h) and (i)]. This will serve as a cataloging of existing tools and will help identify the need to develop new and additional tools and approaches to NPS control as part of State NPS Management Programs. Section 319 requires States to describe their NPS programs in both their Assessment Report and State Management Program. This is duplicative, but EPA will expect greater detail to be provided in the Management Program.

Over the years, many States have developed highly successful and innovative NPS control programs including low-interest loans to farmers, assistance to landowners or landusers in targeted watersheds, statewide regulation of erosion from construction sites and urban stormwater runoff, forest practice requirements and others.

New programs are expected to go well beyond existing programs and should build on and strengthen the solid successes developed by the States over the years.

Public Notice and Opportunity for Public Comment - The State must provide public notice of the availability of the State's Assessment Report for public review and provide an opportunity for public comment prior to submittal to EPA.

Transmittal of Reports - States are encouraged to submit drafts of their Assessment Reports to Regional NPS Coordinators prior to formal submission. Copies of final Assessment Reports submitted as a part of State 305(b) Reports should be submitted to Regional 305(b) Coordinators. Three copies should be submitted to NPS Coordinators.

If Assessment Reports are completed prior to submission of 1988 305(b) Reports, three copies of the Assessment Report should be submitted to Regional NPS Coordinators. States should incorporate their NPS Assessment information in their 1988 305(b) Reports which are due by April 1, 1988.

At a minimum, States should use their 1988 State 305(b) Reports to identify the list of waters impacted by NPS pollution and the NPS categories or sources contributing to this impact. The other two Assessment items required by section 319 (process for identifying BMPs and description of State/local NPS programs) may be included in State 305(b) Reports as well but must be submitted no later than August 4, 1988.

#### 4. Criteria for Approval of State Assessment Reports

Following are the criteria that EPA will use in evaluating a State's Assessment Report:

- (A) Navigable waters impacted by nonpoint sources  
[section 319(a)(1)(A)]
- o Has available Statewide information regarding the State's NPS problems been analyzed and summarized in the Assessment Report including any available information developed pursuant to sections 208, 303(e), 304(f), 305(b), 314, and 320, and NPS information prepared for America's Clean Waters, The States' Nonpoint Source Assessment 1985, Association of State and Interstate Water Pollution Control Administrators?
  - o Has the list of waters impacted or threatened by NPS pollution and the pollution categories or sources contributing to this impact been integrated with the State's 305(b) Report consistent with the EPA Guidelines?
  - o Has the assessment basis (i.e., monitored or evaluated) for reported waters been identified?

- o Have the specific waterbodies impacted or threatened by NPS pollution and the NPS pollution categories or sources contributing to this impact been identified and have such data been provided in a compatible format for inclusion in the 305(b) Waterbody System data base (use of the actual Waterbody computer system will be optional in FY 1988)?
  - o Has the list of waters impacted or threatened by NPS pollution been reported on a watershed-by-watershed basis?
  - o Have interstate/international waters been considered?
  - o If all navigable waters have not been completely assessed, does the State have a strategy and expeditious timetable for improving the quality of its assessment?
- (B) Categories of nonpoint sources impacting State waters [section 319(a)(1)(B)]
- o Has the State specifically identified the categories and subcategories or sources of NPS pollution for each of the impacted or threatened navigable waters identified above?
- (C) Intergovernmental coordination and public participation for identifying BMPs [section 319(a)(1)(C)]
- o Were groups and agencies with water quality and resource interests provided an opportunity to review proposed best management practices for the categories and subcategories of nonpoint sources?
- (D) Identification of existing State and local NPS control programs [section 319(a)(1)(D)]
- o Has the State provided a comprehensive summary of all existing State and local NPS control programs and explained how the new assistance provided by section 319(h) and (i) will help support its NPS programs?
  - o Has there been adequate consideration of the development of the listings of programs with local, State and Federal agencies?
- (E) Public notice and opportunity for public comment [section 319(a)(1)]
- o Have other groups with water quality and resource interests been actively involved in the process of defining the NPS water quality problem areas, identifying the sources impacting or threatening these waters, and identifying BMPs e.g., have fish and wildlife, recreational, agricultural, forestry, drinking water, and wetland protection agencies etc., participated in developing the Assessment?
  - o Has the State issued a public notice on the availability of the State Assessment Report for public review and provided an

opportunity for public comment prior to submitting the Report to EPA?

- o Does the review process generally conform to 40 CFR 25 for public participation? States have the flexibility to design whatever type of public participation strategy they wish including workshops, advisory groups and public hearings, but the administration of the chosen activities should be in accordance with the procedures outlined in 40 CFR 25.



## B. Development of State Management Programs

### 1. Introduction

State Management Programs should provide an overview of a State's NPS programs as well as a summary of what the State intends to accomplish in the next four fiscal years beginning after the date of program submission. EPA trusts that development of State Management Programs will help States move toward viable, long-range NPS management programs.

State Management Programs should be submitted by the Governor of each State, for that State or in combination with adjacent States, after notice and opportunity for public comment. State Management Programs should be submitted to the appropriate Regional NPS Coordinator by August 4, 1988.

While the Assessment Report identifies the overall dimensions of the State's NPS water quality problems, a State will probably find it both useful and necessary to carve out a subset of these waters in its State Management Program for concerted action on a watershed-by-watershed basis over the next four years. Such targeting will provide the greatest opportunity for achieving visible water quality improvements in the short run. In addition, States should develop Statewide program approaches to address NPS problems such as construction erosion, urban stormwater runoff from developing areas, forestry practices, or other types of NPS problems.

States are encouraged to target or identify the sequence for protecting their water resources based on a comparative evaluation of the State's waters. The guiding principles in evaluating a State's waters are to maximize environmental benefit by devoting resources and efforts to water resources in a priority order that recognizes the values of the waterbody in question, the benefits to be realized from various control actions (including evidence of local public interest and support), and the controllability of the problem(s).

States should consider the following factors in targeting NPS problem areas:

- o What waterbodies are most valuable from various perspectives-- aquatic habitat, recreation, and water supply for example?
- o What waterbodies are subject to adverse effects from both pollution and aquatic habitat destruction (wetlands), and can be impacted by water programs?
- o What tools are available to address the waterbodies identified?
- o What areas are most likely to be improved through governmental action?
- o Which problems are most amenable to the available tools and controls?

- o What is the degree of public support (local or statewide) to protect a particular aquatic resource?
- o How willing are other governmental agencies to take steps to use their tools and resources to help address the problem?
- o Where would "combined actions" offer the greatest benefit relative to the value of the aquatic resource?

States are encouraged to refer to an EPA Office of Water Regulations and Standards' technical publication called Setting Priorities: The Key to Nonpoint Source Pollution Control for more details on effective NPS targeting approaches (US EPA. Office of Water Regulations and Standards, Setting Priorities: The Key to Nonpoint Source Pollution Control, July 1987). The NPS targeting strategy, as presented in this document, complements the targeting concept in the State Clean Water Strategy Guidance; more specifically, it is intended to present successful State approaches to targeting NPS water pollution control problems.

States should, where appropriate, supplement the funding of existing NPS projects in order to demonstrate the benefits of NPS projects within the four year program.

The State Management Program needs to be balanced between the priority problems the State identifies and implementation of Statewide NPS programs. Examples of Statewide NPS programs include Statewide regulations for forestry, grazing, or construction erosion control, or Statewide educational programs aimed at protecting water resources from NPS impacts. Targeted water quality projects and Statewide programs should be directed at either improving degraded water quality or preventing NPS impacts in high quality waters.

## **2. State Management Program Requirements**

State Management Programs shall include the following six categories of information:

- (A) best management practices and measures which will be used to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated in the State's Assessment Report, taking into account the impact of the practice on ground-water quality.
- (B) programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices designated under subparagraph (A).
- (C) a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the the best management practices identified in subparagraph (A) by the categories,

subcategories, or particular nonpoint sources designated in the State's Assessment Report. Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

- (D) a certification by the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not adequate authority, a list of such additional authorities as will be necessary to implement such management program and a schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.
- (E) sources of Federal and other assistance and funding [other than assistance provided under subsections (h) and (i)] which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.
- (F) the Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

### 3. Explanation

As required by the Act, States should develop Management Programs to the maximum extent practicable on a watershed-by-watershed basis. State NPS Management Programs should focus geographically on NPS priority areas identified through a comparative evaluation of the State's waters. Management strategies should comprehensively address the NPS problems in the watersheds targeted for implementation, regardless of landownership (Federal/State/local/private). In addition, States should develop Statewide program approaches to address various types of nonpoint sources.

The Act requires six principal categories of information to be included in State NPS Management Programs and each category as well as other items are discussed below:

Best Management Practices (BMPs) - State programs must identify the BMPs which will be used to reduce pollution from each of the categories or subcategories of NPS pollution, taking into account the

impact of the proposed practices on ground-water quality.

States are required to consider the impact of best management practices on ground water. This is due to the intimate hydrologic relationship that often exists between surface and ground water, and the possibility that measures taken to reduce contaminants in surface water runoff may increase transport of these contaminants to ground water.

The range of detail regarding BMPs in State submittals may vary from lists of BMPs which are generally considered appropriate for the various categories and subcategories of NPS pollution to detailed watershed plans. However, grant applications which seek support for specific demonstration watershed projects under sections 319 or 205(j)(5) should contain more specific information on the types and amount of BMPs needed for particular projects (see section on Demonstration Projects under Grant Application Requirements).

NPS Programs - States must identify the nonregulatory and regulatory programs including enforcement, technical assistance, financial assistance, education, training, technology transfer, demonstration projects and monitoring/evaluation to assist in the development and implementation of BMPs. The lead and cooperating agencies for carrying out these programs should be identified and their responsibilities clearly identified.

Section 319(h)(7) states that Federal funds from this section may be used for financial assistance to individuals only to the extent that such assistance is related to the costs of "demonstration projects." The Conference Report accompanying the Act (Report 99-1004) explains the limitations regarding "demonstration projects:"

States may use Federal funds authorized by the bill for financial assistance to individuals only insofar as the assistance is related to costs of implementing demonstration projects. Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it chooses. The term "demonstration projects" includes projects designed to educate individuals as to the use of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the cost effectiveness of particular BMPs.

Schedule - State programs will include a schedule containing annual milestones for the four year program. Milestones built into the four year program will provide an opportunity to gauge effectiveness of programs and to make needed mid-course corrections. Annual work programs included in grant applications must include commitments to meet the four year Management Program. Examples of milestones include: anticipated improvements in water quality, water use or achievement of water quality standards; numbers and types of BMPs implemented;

reports completed; NPS-related laws passed; and NPS programs established.

Certification of Adequacy of State Laws - The State must certify that existing State laws are adequate to carry out the proposed program or the Management Program must contain a stated intent to seek additional needed authority. If additional legal authority is needed, the schedule for seeking such authority should be adequately expeditious to allow implementation within the four-year Management Program.

Funding Sources - The Management Program should identify sources of Federal and other assistance and funding other than that provided by sections 319(h) and (i) which will be used to carry out the State's NPS Management Program in each of the four fiscal years.

Federal Consistency - State Management Programs should identify any individual Federal financial assistance programs or Federal development projects to be reviewed by the State for their consistency with its proposed State NPS Management Program. According to the Congressional Record on January 14, 1987, this requirement is based on Executive Order 12372, as in effect on September 17, 1983\*, which

... replaces OMB Circular A-95 and establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the States to review any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This provision builds upon established procedures for State review of Federal activities. It will provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

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\* Executive Order 12372 titled "Intergovernmental Review of Federal Programs" was issued July 14, 1982. This Executive Order was subsequently amended on April 8, 1983 by Executive Order 12416 also titled "Intergovernmental Review of Federal Programs." Thus, the reference to the "Executive Order 12372, as in effect on September 17, 1983," includes the amendments added by Executive Order 12416.

The Administrator is required to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the procedures set forth in Executive Order 12372, as in effect on September 17, 1983. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. In addition, the appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of the Executive Order, concerns the State may express about consistency of such applications or projects with the State's NPS Management Program.

(Note: More detailed information on how to carry out the Federal consistency provisions is currently being developed.)

Public Notice and Opportunity for Public Comment - States should actively involve other groups with water quality and resource interests in the development of State Management Programs. In addition, the State shall provide a public notice on the availability of the State's Management Program for public review and must provide an opportunity for public comment prior to submittal to EPA. Also, within ten days of receipt of a specific Management Program, the appropriate EPA Regional Office will provide public notice that they have received such Management Program.

#### 4. Criteria for Approval of State Management Programs

Following are the criteria that EPA will use in evaluating a State's Management Program:

- (A) Identification of BMPs [section 319(b)(2)(A)]
  - o Are appropriate NPS BMPs identified for each of the categories and subcategories of nonpoint sources identified in the State's Assessment Report?
  - o Has the impact of these BMPs on ground-water quality been considered?
- (B) Identification of needed implementation programs [section 319(b)(2)(B)]
  - o Are the implementation programs (i.e., education, technical/financial assistance, enforcement, etc.) to be used identified?
  - o Are the lead and cooperating agencies responsible for the State's NPS programs identified and are their responsibilities clearly identified?
  - o Are implementation programs developed on a watershed-by-watershed basis, to the extent practicable (there is

recognition that Statewide program approaches are needed to address certain NPS problems)?

- o If the NPS programs include financial assistance to individuals (cost-sharing), are the Federal 319(h) costs related only to supporting the costs of demonstration projects, as required by section 319(h)(7)?
- (C) Implementation milestones [section 319(b)(2)(C)]
- o Have milestones been scheduled during the four year program to allow for implementation, evaluation of program effectiveness and any necessary mid-course corrections? For example, have goals been established for individual watersheds regarding how many BMPs will be implemented by what date or what water quality improvements are expected, or has a schedule been established for the development of certain NPS regulations?
- (D) Certification of the attorney general of adequate State authority [section 319(b)(2)(D)]
- o If a State's authorities are not adequate, is there a schedule for obtaining adequate authority to support needed implementation within the timeframe of the four year section 319 program?
- (E) Sources of Federal and other assistance and funding [section 319(b)(2)(E)]
- o Does the Management Program explain how State and local funds, other related EPA programs [other than 319(h) and (i)], and other Federal programs affecting NPS control will be integrated and utilized as part of an overall State NPS Management Program e.g., other EPA programs such as 314, 320, 117, etc. and other Federal agency programs such as USDA's Conservation Reserve Program?
- (F) Consistency of Federal programs with State NPS requirements [section 319(b)(2)(F)]
- o Is the State's identification of Federal financial assistance programs and Federal development projects to be reviewed specific enough to allow EPA to identify the programs/projects clearly to the appropriate Federal agency?
- (G) Public notice and opportunity for public comment [section 319(b)(1)]
- o Have other groups with water quality and resource interests been actively involved in the process of developing the State Management Program e.g., have fish and wildlife, recreational, agricultural, forestry, drinking water and wetlands protection agencies, etc., participated in developing the Management Program?

- o Has the State issued a public notice on the availability of the State Management Program for public review and provided an opportunity for public comment prior to submitting the Report to EPA?



## C. Administrative and Other Provisions

### 1. Deadline for Approval/Partial Approval

The NPS Assessment Report and Management Program should be submitted to the appropriate EPA Regional Office no later than August 4, 1988. The Regional Administrator must either approve or disapprove a State's Assessment Report or Management Program not later than 180 days after the date of submittal. The Regional Administrator must approve the Assessment Report in its entirety but may approve a portion of a Management Program. These items may be approved separately or concurrently.

If the Regional Administrator does not disapprove an Assessment Report, Management Program, or portion of a Management Program in such 180 day period, such Assessment Report, Management Program or portion of a Management Program shall be deemed approved for the purposes of section 319.

### 2. Procedure for Disapproval

The Act provides that, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Regional Administrator may disapprove a State's Assessment Report and/or Management Program. Criteria for disapproval include:

- (A) the proposed Assessment Report and Management Program or any portion thereof does not meet the requirements of subsections (a)(1) and (b)(2) of section 319, respectively, or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;
- (B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion;
- (C) the schedule for implementing such program or portion is not sufficiently expeditious; or
- (D) the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State.

If any such determinations are made, the Regional Administrator shall then, within 180 days of the receipt of the proposed Assessment or Program, notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised Assessment or Management Program and the Regional Administrator shall approve or disapprove such revised submittals within three months of receipt.

### **3. Which Agency is to Serve as the Lead for the 319 Program**

States should identify one State agency to serve as the lead agency for the section 319 program. Given the diversity of nonpoint pollution sources, EPA believes that State water quality agencies are generally in the best position to carry out the overall NPS assessment and program development requirements of section 319. However, a Governor, in consultation with the appropriate EPA Regional Administrator, may designate an agency other than the State water quality agency to serve as the lead in developing the State's NPS program. In such cases, the proposed agency must have the capability to develop both a comprehensive NPS water quality assessment and NPS management program. In any case, the Governor's designee will ultimately be the recipient of section 205(j)(5) or 319 NPS grants.

As a practical matter, once a State's overall NPS program is approved by the EPA Regional Administrator, numerous agencies will likely be involved in the actual implementation of specific NPS water pollution control programs. For example, State water quality, natural resources, soil conservation, drinking water and other agencies, as well as Federal, local and areawide agencies will be involved. We expect the lead NPS agency to submit consolidated section 205(j)(5) or 319 grants which the lead State NPS agency will then allocate as appropriate, probably through State memoranda of understanding, among its implementing agencies.

### **4. Water Quality Management Plan Updates**

States may incorporate their NPS Assessment and Management Programs into their water quality management (WQM) plan or areawide waste treatment management plan developed and updated in accordance with the provisions of section 205(j), 208, and 303 of the Act, 40 CFR Part 130 (the Water Quality Planning and Management regulation), and State requirements. The NPS Assessment and Management Program may be included in the State's WQM Plan or referenced as part of the WQM plan if contained in separate documents.

### **5. States Electing Not to Submit Assessment Reports**

If a Governor of a State elects not to submit an Assessment Report by the August 4, 1988 deadline, the Regional Administrator shall, within 30 months after the date of enactment of the amendments establishing section 319, prepare for such State a Report which makes the identifications that are required, by law and the guidance, for the State Assessment Report. Upon completion of this requirement and providing notice and opportunity to comment, EPA will report to Congress on this action.

## 6. Local Agency Submittal of Management Program

If a State elects not to submit a Management Program or if the Regional Administrator does not approve such a Management Program, a local public agency or organization which has expertise in, and authority to control, NPS pollution may, with State approval, submit a Management Program. Such agency or organization must be of "sufficient geographic size" as determined by the Regional Administrator and may request technical assistance from EPA in the development of such Management Program.

After development of such Management Program, such agency or organization shall submit the Management Program through the State to the appropriate Regional Administrator. If the program is approved, such agency or organization shall be eligible to receive financial assistance under section 319(h) for implementation of the Management Program. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under section 319(h), including that both an Assessment Report and Management Program must be completed prior to award of a grant under section 319(h).

## 7. Annual Reports by States and Reports to Congress

(A) Annual State Reports Required - Starting November 1, 1987, and each September 1 thereafter, each State will report to its respective EPA Regional Office, concerning:

- (1) the amount, purpose and utilization of grants received by the State under subsections 319(h) and (i), 205(j)(5), and 201(g)(1); and funds used under 603(c)(2);
- (2) its progress in meeting milestones detailed in its Management Program; and
- (3) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those waters reported in the State's Assessment Report.

The Annual Reports will be consolidated by the Regions and forwarded to EPA Headquarters no later than November 20 in 1987 and in the following years by September 20.

The first Annual Report due November 1, 1987 should consist of a letter from the State regarding the status of its NPS program. For example, the letter should note when and if the State expects to submit an Assessment Report and Management Program, and the status of NPS activities supported with 205(j)(5) funds.

- (B) EPA Annual Report Required - The Administrator will consolidate, edit and add to State and Regional reports and submit to Congress his report by January 1, 1988, and each January 1 thereafter, on the activities and programs implemented under section 319 and the progress made in reducing NPS water pollution and improving the quality of affected waters.
- (C) Final Report - The Administrator's report of January 1, 1990 is referred to in the Act as the "Final Report." In this report the Congress is asking for an evaluation of the activities carried out to that date under section 319. [The filing of the 1989-90 "Final Report" does not change the requirement for subsequent annual reports in the manner and fashion of the '87-'88 reports called for by paragraphs (A) and (B), above.]

Specifically, States will report the following information in the September 1, 1989 submittal, in addition to that information asked for under subparagraph (A) above:

- (1) the management programs implemented by the State by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;
- (2) the experiences of the State in adhering to schedules and implementing best management practices;
- (3) what further actions need to be taken to attain and maintain in NPS targeted waters (i) applicable water quality standards, and (ii) the goals and requirements of the Act;
- (4) recommendations concerning needed future programs (including enforcement programs) for controlling pollution from nonpoint sources; and
- (5) programs and activities of departments, agencies and instrumentalities of the United States which are inconsistent with the State's Management Program and recommended modifications so that such activities and programs would become consistent with and assist the States in implementation of their Management Program.

[Note: Separate technical information is being developed to provide a format for preparation of the State Annual Reports and the Final Report. This format would allow for reporting of progress in specific NPS projects and reductions in NPS loadings and related water quality improvements.]

## 8. Cooperation Requirement

States should seek the cooperative involvement of regional planning agencies, local governments, and other public and private agencies and organizations in the development of their Assessment Report and Management Program. Section 319(c)(1) specifically requires the Assessment Report and Management Program

...be developed in cooperation with local, substate, regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

In addition, section 319(b)(3) requires States to the maximum extent practicable to involve local public and private agencies and organizations which have expertise in control of NPS pollution in the development and implementation of State Management Programs.

## 9. Interstate Management Conference

If waters in a State are impaired by NPS pollution from another State, the State may petition the Regional Administrator to convene, and he shall convene, a conference of the affected States. If the Regional Administrator finds that waters in a State are not meeting standards because of NPS pollution originating in another State, EPA shall notify such State(s). The Regional Administrator may, whether or not petitioned to do so, convene a management conference between such States not later than 180 days after giving notification. The purpose of such conference shall be to develop an agreement to control such interstate NPS pollution.

To the extent that States reach agreement through such a conference, the Management Programs of the States that are parties to the agreement and contribute the NPS pollution will be revised to reflect such agreement.

## 10. Indian Tribes

Section 518(f) establishes that not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants to Indian tribes. Indian tribes must meet the requirements of section 319(h) as well as meet the three criteria in section 518(e) of the Act in order to receive such grants.

## 11. Technical Assistance

Upon request of a State or a local public agency or organization, EPA may provide technical assistance in carrying out the provisions of section 319. This technical assistance will be provided (to the extent resources are available) by EPA Regional NPS staff in most instances with backup assistance from EPA Headquarters' NPS staff.

Pursuant to section 319(e), EPA will collect and make available through publications and other means information regarding management practices and implementation methods. For example, information will be developed on the costs and relative efficiencies of best management practices for reducing NPS pollution, and available data concerning the impact of best management practices on water quality.

Major technical assistance activities planned for FY 1988 include: providing assistance to the States in the development of Assessment Reports and Management Programs; issuing a NPS monitoring and evaluation guide; providing information on the effectiveness and costs of best management practices; completing a stream methodology started under the Nationwide Urban Runoff Program for analyzing water quality effects of urban runoff; and developing a methodology for incorporating nonpoint sources into wasteload allocations.

### III. GRANT APPLICATION REQUIREMENTS

Federal financial support is authorized from six new sections established by the WQA to support activities related to NPS control. While each of these funding sources is discussed separately below, and will generally require a separate grant application, States are encouraged to develop coordinated work programs using these various funding sources. Grant funding under each of these sections is subject to the availability of appropriations.

#### A. Section 205(J)(5)

This section of the Act provides a set-aside of up to 1% of each State's construction grant allotment or a minimum of \$100,000 to be used for developing a State's NPS Assessment Report and Management Program (program development) and for implementing an approved Management Program (implementation).

Grant Application Requirements - To use these funds, States need to prepare a grant application which includes:

1. an EPA Form 5700-33 properly completed;
2. an EPA Form 5700-48 properly completed;
3. a certification on the grant application that the requirements of E.O. 12372 have been met;
4. a brief narrative statement explaining how the funds will be used and how use of these funds will be coordinated with other funds devoted to NPS activities;
5. a section-by-section description of each task, including outputs, to be funded;
6. one table for evaluation and other purposes, listing:
  - (a) each of the tasks,
  - (b) the outputs to be accomplished, by each task,
  - (c) funding for each task,
  - (d) the number of person-years devoted to each task, and
  - (e) a schedule of when outputs are to be completed; and
7. if needed, a statement assuring that the State will maintain during the grant period its average annual level of expenditures for NPS activities for FY 1985 and FY 1986 and establishing such an expenditure level (see separate discussion of maintenance of effort).

These requirements are in accordance with the Administrator's Policy on Performance Based Assistance dated May 31, 1985.

The grant application/work program must be adequately integrated and coordinated with other water quality management activities

supported under CWA sections 106, 117, 201(g)(1), non-CMAG 205(g), 205(j)(1), 314, 319(h) and (i), 320, 603(c)(2), 604(b), and with State matching or maintenance-of-effort funds all of which may be contributing input to the NPS Assessment and Management Program. In addition, grant applications must also be integrated and coordinated with ground-water and wetlands activities.

Match - 205(j)(5) funds are reserved "for the purpose of carrying out section 319," i.e., to develop a State's NPS Assessment Report and Management Program and to implement an approved Management Program. The Senate Report 99-50 issued on May 14, 1985, states that section 205(j)(5) grants must meet the Federal/non-Federal share requirements. Section 319(h)(3) indicates that the Federal share "of the cost incurred by the State in implementing such management program" (emphasis added) shall be matched. Therefore, no match is required for 205(j)(5) funds which are used to develop a State's NPS Assessment and Management Program. However, 205(j)(5) grant funds used for implementation of NPS activities identified in the State's approved NPS Management Program must be matched. The Federal share for such implementation activities shall not exceed 60%.

Use of 205(j)(5) Funds and Award Mechanisms - Section 205(j)(5) funds may not be awarded for NPS implementation activities until a State's NPS Assessment Report and Management Program are approved. After such approval, section 205(j)(5) funds may be used for implementing approved State NPS Management Programs.

Section 205(j)(5) funds used for program development (developing Assessment Reports and Management Programs) are to be awarded under 205(j)(5). Section 205(j)(5) funds used for implementing Management Programs will be awarded under 319(h). Given these different award mechanisms, EPA Regions will award separate grants for 205(j)(5) funds used for either of these two purposes i.e., States must submit two separate grant applications. Section 205(j)(5) funds used for implementation activities must also meet other requirements (i.e., match, maintenance of effort, etc.) which are discussed below in the section on "Other Restrictions and Requirements."

Implementation Activities - In addressing the subject of implementation, the Act calls for:

...an identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of best management practices...

Such activities, when included in a State's Management Program, shall be considered eligible implementation activities for funding under sections 205(j)(5) and 319(h). In addition, design of specific best management practices (BMPs) and the provision of financial assistance to individuals for the physical installation of BMPs is eligible in the case of "demonstrations." Also, financial



assistance provided to municipalities and other public entities is an eligible implementation activity.

Other Restrictions and Requirements - Generally, the restrictions and requirements of 319(h) in addition to match (e.g., the priority considerations, maintenance of effort, restrictions on financial assistance to individuals, availability for obligation, requirement for annual reports, limitation on administrative costs and satisfactory progress) apply to section 205(j)(5) funds used to support implementation activities. When section 205(j)(5) grant funds are used for program development, the restrictions and requirements of section 319(h) do not apply. For a more detailed discussion of these restrictions and requirements, please see the following section B of this guidance.

Obligation of 205(j)(5) Funds - Section 205(j)(5) funds used for program development may be obligated in the year in which they are appropriated as well as in the following year, pursuant to section 205(d). The availability for obligation provision of section 319(h)(6) applies to section 319(h) as well as section 205(j)(5) funds used for implementation, and therefore, such funds must be obligated in the year in which they are appropriated. EPA may reallocate to other States any funds not so obligated or may renegotiate with the State a schedule for use of the funds.

Demonstration Projects - When section 205(j)(5) [or 319(h)] funds are used for implementation of demonstration projects for specific watersheds or geographic areas, implementation plans must be included in the work program/grant application. Implementation plans should, at a minimum, include:

1. a description of the institutional responsibilities and roles of all participating agencies, and an identification of the lead agency responsible for administering the project;
2. an explanation of the purpose or objectives of the project such as evaluating the effectiveness of a particular best management practice or achieving a particular water quality goal in a watershed;
3. a watershed profile including an inventory of point and nonpoint sources, as appropriate; and
4. the estimated cost of the project including the type, number and cost of best management practices to be implemented in the project area.

As a practical matter, States may not be able to provide a complete implementation plan with their grant application. In such cases, the grant application could be approved with a grant condition that such an implementation plan be developed within a certain timeframe.

State Not Using 205(j)(5) Funds for NPS Control - States do not have to use the 205(j)(5) reserve for their NPS programs, although we encourage them to do so. If a State chooses not to use a minimum of \$100,000 of its reserve for NPS purposes, the difference between what is actually used for NPS purposes and \$100,000 will be reallocated to other States as construction grant funds, pursuant to 40 CFR 35.155. Reserves beyond the first \$100,000 may be used for "other purposes under Title II of the Act" i.e., for construction of treatment works, for water quality management planning activities, etc. In summary, it would be in the interest of most States to use a minimum of \$100,000 of their 205(j)(5) reserve for developing and/or implementing their NPS Program.

#### B. Section 319(h)

Grants under section 319(h) are to be used to implement State NPS Management Programs. A discussion of eligible implementation activities is provided under the previous section of the guidance addressing 205(j)(5) grants.

Section 319(h)(2) provides that grant applications for section 319(h) funds should include:

... an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant. (emphasis added)

Authorizations - Congress has authorized \$70 million for FY 1988, \$100 million each for FY 1989 and FY 1990, and \$130 million for FY 1991 for section 319(h); except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out section 319(i). No one State is to receive more than 15% of the funds appropriated under section 319(h) in any given year or more than \$150,000 under section 319(i). These funds will not be available until Congress appropriates them.

Allocation of Funds - Funds appropriated for 319(h) would be awarded to those States which have approved NPS Assessments and Management Programs and have submitted specific grant applications.

-NOTE-

Following is our basic concept for allocating available 319(h) funds. Further guidance on the allocation will be developed once appropriated funding levels are known.

Allocation Concept - EPA's concept for establishing guidance for allocating such funds is to balance basic State NPS program needs with award of priority grants for the NPS activities listed below. Completion and approval of a State Clean Water Strategy is a primary consideration in awarding funds for priority NPS activities.

Preference in the award of grant funds for priority NPS activities will be given to programs which:

1. control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;
2. implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory (e.g., enforcement) programs where the Administrator deems appropriate;
3. control interstate nonpoint source pollution problems;
4. carry out ground-water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground-water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water from nonpoint sources of pollution;
5. address nationally significant, high-risk NPS problems;
6. address surface/ground-water (cross-media) issues;
7. integrate Federal, State and local programs;
8. provide for monitoring/evaluation of program effectiveness;
9. comprehensively integrate CWA requirements; or
10. demonstrate a long-term commitment to the building of institutions necessary for effective NPS management and the continuation of such institutions beyond the authorization period.

Maintenance of Effort - A grantee who applies for a 319(h) grant (and/or a 205(j)(5) grant to support implementation activities) must meet the maintenance-of-effort (MOE) requirement of 319(h)(9) by establishing and maintaining its aggregate annual level of State NPS pollution control expenditures for improving water quality at the average level of such expenditures in FY 1985 and 1986. States should establish their FY 1985 and 1986 level and annual levels based on expenditures by the primary State agency (or agencies) responsible for the State's NPS pollution control activities.

This means that:

- o A State must maintain an annual level of expenditures on NPS activities equal to the average of its FY 1985 and 1986 NPS expenditures i.e., its MOE base level.
- o The State's MOE base level should include expenditures only from non-Federal sources; Federal funds should not be included in calculating the MOE base level.

- o Calculation of expenditures is based on activities of the primary State NPS agency (or agencies) responsible for the State's NPS pollution control activities, not on what might be termed related activities of other State agencies with primary missions other than NPS control. For example, if the State water quality agency and agricultural agency both have specific NPS water quality control programs, these should be counted in the MOE. State soil conservation programs having water quality improvement or maintenance as a primary objective will be included in a State's MOE.
- o The MOE base level or annual level cannot include the MOE or matching expenditures for other Federal programs and in particular sections 106, 319, 205(j)(5), 314, and 117.
- o Determination of whether the State expenditures meet the MOE level for purposes of awarding a section 319(h) grant will be based on the grantee expenditures projected in the grant application. (The State will report whether it has met its MOE requirements in its final Financial Status Report at the end of the budget year.)

Grant Application Requirements - Once the NPS Assessment and Management Program have been approved, States may develop grant applications/work programs for 319(h), pending appropriation of such funds. States should prepare 319(h) grant applications based on the funding targets negotiated with the appropriate Region and in accordance with the requirements for section 205(j)(5) grant applications listed above.

Demonstration Projects - See discussion under section A above for implementation plan requirements in the work program/grant application for demonstration projects.

Match - Section 319(h) grants are for the purpose of assisting the State to implement its approved NPS Management Program and require a non-Federal match. Section 205(j)(5) funds used for implementing a State's approved NPS Management Program are awarded under section 319(h) and also require a non-Federal match. The Federal share of such grants shall not exceed 60%.

The non-Federal share of 319(h) as well as 205(j)(5) grants must be provided from non-Federal sources. The Act lists a number of activities which may be conducted in the implementation of the State's NPS Management Program:

...including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects...

Generally, non-Federal funds used to support any of the above activities may be used as non-Federal match under section 319. However, NPS funds that are used to match or to satisfy MOE requirements for 106, 117, or other Federal grant programs may not be used to match 319(h) or 205(j)(5) grants (i.e., double counting is not allowed). None of the funds counted as non-Federal match may be used for administrative

purposes under section 319(h)(12) if 10% of the grant amount is used for those purposes, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

State and local funds used for cost sharing and the portion of such programs paid by the landowner/land manager may be used as match only to the extent such cost sharing is used for demonstration projects as provided in section 319(h)(7). This is because cost sharing except in the case of demonstration projects is an ineligible activity under section 319 and States may not use expenditures for ineligible activities to match grant funds. This restriction also applies to section 205(j)(5) funds used to implement NPS Management Programs. Thus, State and local cost sharing funds are considered acceptable match for section 319 and 205(j)(5) only where such assistance is related to the costs of NPS demonstration projects. We anticipate that many States will be conducting NPS demonstration projects where they would use their State cost share funds as match.

Availability for Obligation - Section 319(h) funds and section 205(j)(5) funds used for implementation granted to a State in any fiscal year will remain available for obligation by the State for that fiscal year (the year in which appropriated). If the State does not use its grant funds in that year, the Regional Administrator may deobligate the remaining funds and use them for grants to other States in the next fiscal year or may renegotiate with the State the use and/or schedule for use of the awarded funds. Section 205(j)(5) funds used for program development may be obligated in the following year.

Satisfactory Progress - No subsequent 319(h) grant [or 205(j)(5) funds used for implementation] shall be awarded unless the State has demonstrated satisfactory progress in meeting the schedule set out in the approved NPS Management Program. Legitimate delays may result from such factors as the time required to locate and hire the needed mix of experienced and trained personnel for the NPS program. Given the evolving nature of our understanding of NPS problems and appropriate management approaches, EPA Regions will need to exercise discretion in evaluating satisfactory progress and may address other concerns than just whether the schedule for the NPS Management Program has been met.

Administrative Costs - Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against activities and programs carried out under the grant shall not exceed 10% of the amount of the grant in each year. The costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

**C. Section 319(i)**

Grants under section 319(i) are for the purposes of carrying out ground-water quality protection activities which EPA determines will advance the State toward implementation of a comprehensive NPS pollution control program. Such activities may include, but need not be limited to, research, planning, ground-water assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of ground water and to prevent contamination of ground water from nonpoint sources of pollution. Administration of section 319(i) grants will be carried out by EPA's Office of Ground-Water Protection under guidance to be provided.

**D. Section 201(g)(1)**

This section, as amended, allows NPS control efforts to be financed through the Governor's 20% discretionary set-aside of construction grants funds. These are Title II funds that may be made available for any purpose for which a grant may be made under sections 319(h) and (i). NPS activities funded under this section must meet the requirements for section 319, particularly 319(h) and (i).

(Note: EPA will develop additional information on the use of the Governor's 20% discretionary set-aside for NPS implementation.)

**E. Section 603(c)(2)**

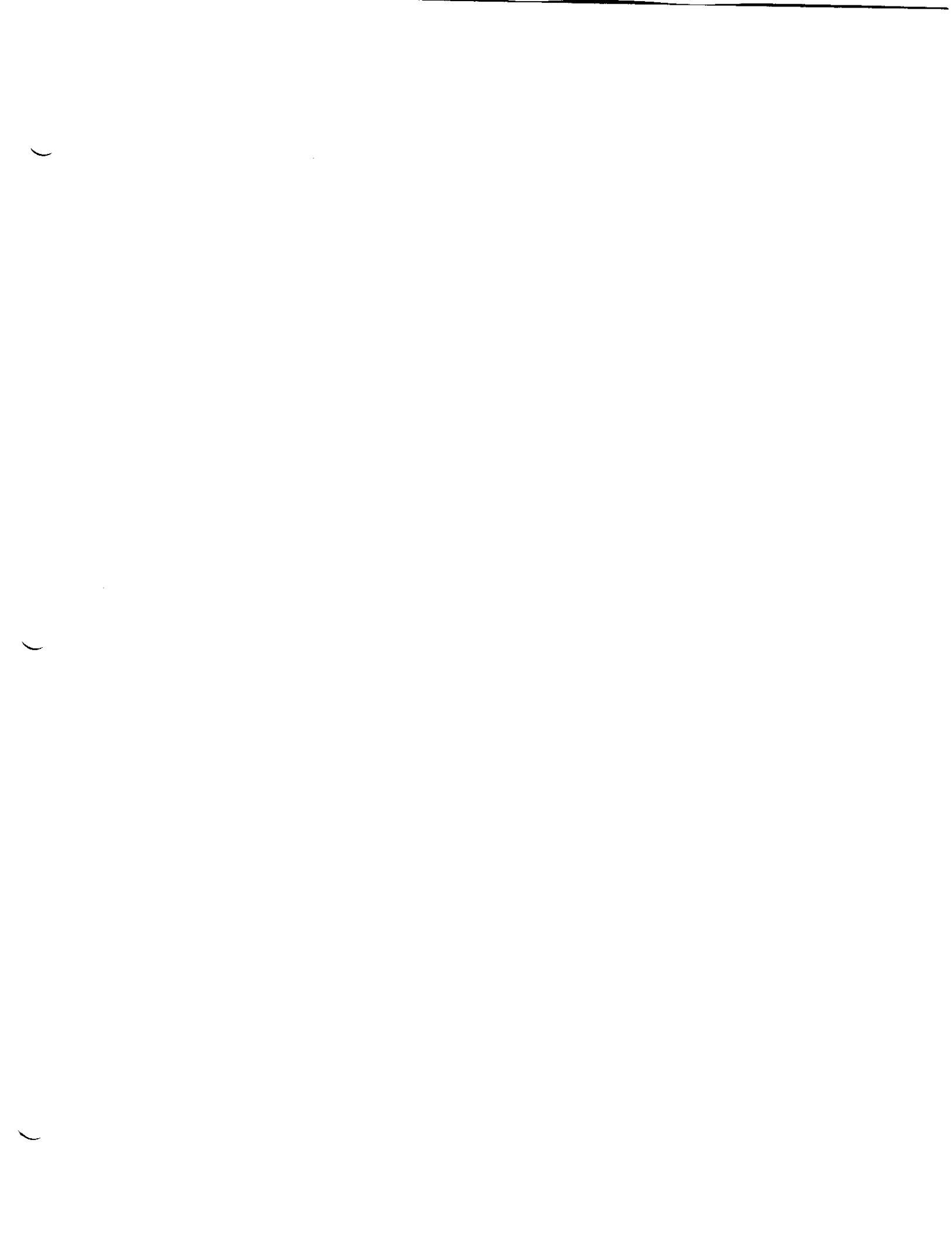
The WQA adds a new Title VI providing for Federal capitalization grants to States for State revolving funds to be used for loans, primarily for municipal waste treatment. However, these loans may also be made for the implementation of a NPS Management Program established under section 319 and development and implementation of a conservation and management plan (for bays or estuaries) under section 320, if certain requirements are met under section 603 and Office of Municipal Pollution Control guidance.

State revolving fund loans may provide a source for funding of programs or projects to control NPS pollution. Projects must be in accordance with a State's approved NPS Management Program. Favorable repayment schedules and interest rates are to be set by the State to ensure the accomplishment of the public purposes involved while protecting the integrity of the State's loan fund. Use of these funds is at the discretion of the State once the program satisfies section 602 and Office of Municipal Pollution Control guidance.

(Note: EPA will develop additional information on the use of the State Revolving Fund for NPS implementation.)

**F. Section 604(b)**

Beginning in FY 1989, States must reserve each year 1% of their Title VI allotments or \$100,000, whichever is greater, to carry out planning under 205(j) and 303(e). Since NPS planning activities are eligible for funding under 205(j), the 604(b) reserve is an additional source of funding for NPS activity.





## APPENDIX A

### Definition of Navigable Waters and Waters of the U.S.\*

#### Navigable Waters

... The term "navigable waters" means the waters of the United States, including the territorial seas.

Source: Federal Water Pollution Control Act as Amended by the Water Quality Act of 1987

#### Waters of the U.S.

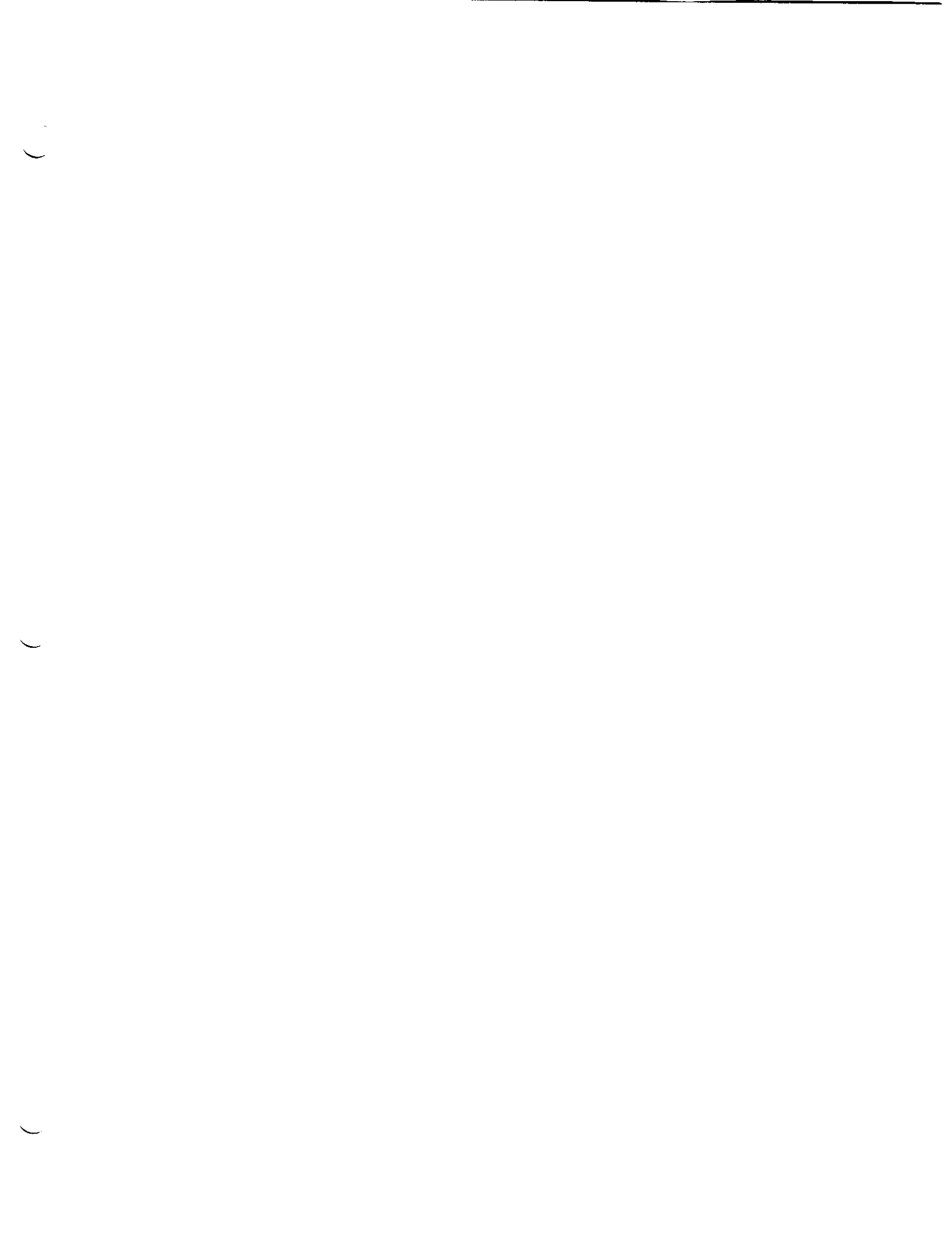
Waters of the United States or waters of the U.S. means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition...

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas...

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\* Source: 40 CFR 122.2



## APPENDIX B

### Major Nonpoint Source (NPS) Pollution Categories and Subcategories\*

- 1 NONPOINT SOURCES
- 10 Agriculture
  - 11: Non-irrigated crop production
  - 12: Irrigated crop production
  - 13: Specialty crop production (e.g., truck farming and orchards)
  - 14: Pasture land
  - 15: Range land
  - 16: Feedlots - all types
  - 17: Aquaculture
  - 18: Animal holding/management areas
- 20 Silviculture
  - 21: Harvesting, reforestation, residue management
  - 22: Forest management
  - 23: Road construction/maintenance
- 30 Construction
  - 31: Highway/road/bridge
  - 32: Land development
- 40 Urban Runoff
  - 41: Storm sewers (source control)
  - 42: Combined sewers (source control)
  - 43: Surface runoff
- 50 Resource Extraction/Exploration/Development
  - 51: Surface mining
  - 52: Subsurface mining
  - 53: Placer mining
  - 54: Dredge mining
  - 55: Petroleum activities
  - 56: Mill tailings
  - 57: Mine tailings
- 60 Land Disposal (Runoff/Leachate From Permitted Areas)
  - 61: Sludge
  - 62: Wastewater
  - 63: Landfills
  - 64: Industrial land treatment
  - 65: On-site wastewater systems (septic tanks, etc.)
  - 66: Hazardous waste
- 70 Hydrologic/Habitat Modification
  - 71: Channelization
  - 72: Dredging
  - 73: Dam construction
  - 74: Flow regulation/modification
  - 75: Bridge construction
  - 76: Removal of riparian vegetation
  - 77: Streambank modification/destabilization
- 80 Other
  - 81: Atmospheric deposition
  - 82: Waste storage/storage tank leaks
  - 83: Highway maintenance and runoff
  - 84: Spills
  - 85: In-place contaminants
  - 86: Natural
- 90 Source unknown

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\* Source: US EPA: Guidelines for the Preparation of the 1988 State Water Quality Assessment (305(b) Report), April 1, 1987, p. 19.



Appendix C

NPS Provisions in the Water Quality Act of 1967

Subject

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Section 319

Creates new  
§ 319 on  
NPS Manage-  
ment Programs

SEC. 319. MANAGEMENT OF NONPOINT SOURCES OF POLLUTION.

(a) IN GENERAL.—Title III is amended by adding at the end the following new section:

“SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

Contents  
of State  
Assessment  
Reports

“(a) STATE ASSESSMENT REPORTS.—

“(1) CONTENTS.—The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

“(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

“(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

“(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

“(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i).

Information  
used to  
prepare  
State  
Assessment  
Report

“(2) INFORMATION USED IN PREPARATION.—In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

Subject

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Contents  
of State  
Management  
Programs

"b) STATE MANAGEMENT PROGRAMS.—

"(1) IN GENERAL.—The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

"(2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection shall include each of the following:

"(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

"(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

"(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

"(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

"(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

Subject

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Contents  
of State  
Management  
Programs  
(continued)

"(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

Other require-  
ments for State  
Assessment/Man-  
agement Programs

Use of  
local and  
private  
experts

"(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

Emphasis on  
watershed-  
by-watershed  
basis

"(4) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

Cooperation  
Requirement

"(C) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any management program and report required by subsection (b) shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

Time frame for  
State submittal  
of Report/  
Management  
Program

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND MANAGEMENT PROGRAMS.—Each report and management program shall be submitted to the Administrator during the 18-month period beginning on the date of the enactment of this section.

Subject

Time frame  
for EPA  
approval of  
State Reports/  
Management  
Programs

**"(d) APPROVAL OR DISAPPROVAL OF REPORTS AND MANAGEMENT PROGRAMS.—**

**"(1) DEADLINE.—**Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k)), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

Procedure for  
EPA disapproval  
and criteria  
for disapproval

**"(2) PROCEDURE FOR DISAPPROVAL.—**If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

**"(A)** the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;

**"(B)** adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

**"(C)** the schedule for implementing such program or portion is not sufficiently expeditious; or

**"(D)** the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

What if  
State fails  
to submit  
an Assessment  
Report?

**"(3) FAILURE OF STATE TO SUBMIT REPORT.—**If a Governor of a State does not submit the report required by subsection (a) within the period specified by subsection (c)(2), the Administrator shall, within 30 months after the date of the enactment of this section, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a). Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section



Subject

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What if  
State fails  
to submit a  
Management  
Program?

"(e) LOCAL MANAGEMENT PROGRAMS; TECHNICAL ASSISTANCE.—If a State fails to submit a management program under subsection (b) or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) and can be approved pursuant to subsection (d). After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h).

EPA Technical  
Assistance

"(f) TECHNICAL ASSISTANCE FOR STATES.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) for those portions of the navigable waters requested by such State.

Interstate  
Management  
Conference

"(g) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 505 of this Act.

Subject

Interstate  
Management  
Conference  
(continued)

"(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this Act will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

Requirements  
for grants  
under § 319 (h)

Assessment/  
Management  
Program must be  
approved

"(h) GRANT PROGRAM.—

"(1) GRANTS FOR IMPLEMENTATION OF MANAGEMENT PROGRAMS.—Upon application of a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 205(j)(5) of this Act may be used to develop and implement such management program.

Use of 205 (j)(5)  
funds

"(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

Federal share  
not to exceed  
60%

"(3) FEDERAL SHARE.—The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

No more than 15%  
of the authorization  
for this subsection  
may go to one State

"(4) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

Priority  
considerations for  
§ 319 (h) grants

"(5) PRIORITY FOR EFFECTIVE MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

"(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;

Subject

Requirements for grants under  
§ 319 (h) (continued)

Priority considerations for § 319 (h) grants

"(C) control interstate nonpoint source pollution problems; or

"(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.

Availability for obligation

"(6) AVAILABILITY FOR OBLIGATION.—The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.

Financial assistance to individuals only for costs related to demonstration projects

"(7) LIMITATION ON USE OF FUNDS.—States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

Satisfactory progress

"(8) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2).

Maintenance of effort

"(9) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection

Request for information

"(10) REQUEST FOR INFORMATION.—The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

Annual State reports required

"(11) REPORTING AND OTHER REQUIREMENTS.—Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

Limitation on administrative costs (shall not exceed 10%)

"(12) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

Subject

Requirements for grants under § 319 (i)  
for protecting groundwater quality

Eligible applicants  
and activities

**(i) GRANTS FOR PROTECTING GROUNDWATER QUALITY.—**

"(1) **ELIGIBLE APPLICANTS AND ACTIVITIES**—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

"(2) **APPLICATIONS**—An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

Federal share  
not to exceed 50%

"(3) **FEDERAL SHARE; MAXIMUM AMOUNT**—The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed \$150,000.

"(4) **REPORT**—The Administrator shall include in each report transmitted under subsection (m) a report on the activities and programs implemented under this subsection during the preceding fiscal year.

Authorizations for  
§ 319 (h) and (i)

"(j) **AUTHORIZATION OF APPROPRIATIONS**—There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed \$70,000,000 for fiscal year 1988, \$100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and \$130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out subsection (i). Sums appropriated pursuant to this subsection shall remain available until expended.

EPA required to  
compile information  
regarding Federal  
programs/projects

"(k) **CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS**—The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

Subject

EPA required  
to compile  
information  
on BMPs

"(l) **COLLECTION OF INFORMATION** — The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.

EPA annual  
reports  
required

"(m) **REPORTS OF ADMINISTRATOR.** —

"(1) **ANNUAL REPORTS.** — Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

EPA final  
report  
required

"(2) **FINAL REPORT.** — Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall—

"(A) describe the management programs being implemented by the States by type and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describe the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;

"(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

"(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this Act;

"(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

"(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

EPA staffing  
levels

"(n) **SET ASIDE FOR ADMINISTRATIVE PERSONNEL.** — Not less than 5 percent of the funds appropriated pursuant to subsection (j) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

Subject

Policy for control of NPS pollution

(b) **POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.**—Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) 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."

Construction grant set-asides

Governor's discretionary set-aside - § 201(g)(1)

(c) **ELIGIBILITY OF NONPOINT SOURCES.**—The last sentence of section 201(g)(1) is amended by—

(1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences";

(2) inserting "(A)" after "October 1, 1984, for"; and

(3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made under sections 319 (h) and (i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution)".

§ 205(j)(5)

(d) **RESERVATION OF FUNDS.**—Section 205(j) is amended by adding at the end the following new paragraph:

"(5) **NONPOINT SOURCE RESERVATION.**—In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 percent of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or \$100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed \$100,000, may be used by such State for other purposes under this title."

Conforming amendments

(e) **CONFORMING AMENDMENT.**—Section 204(k)(1) is amended by inserting "and nonpoint source pollution management programs approved under section 319 of this Act" after "208 of this Act".

State Revolving Funds

State Revolving Funds may be used to implement NPS programs established under § 319

"(c) **PROJECTS ELIGIBLE FOR ASSISTANCE.**—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.

Subject

Intended Use  
Plans required  
for State  
Revolving  
Funds

"(c) **INTENDED USE PLAN.**—After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to—

"(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;

"(2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

"(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

"(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

"(5) the criteria and method established for the distribution of funds.

Consistency  
requirement for  
State Revolving  
Funds

"(f) **CONSISTENCY WITH PLANNING REQUIREMENTS.**—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 208(j), 208, 302(e), 319, and 320 of this Act.

Other Miscellaneous NPS Provisions

Rural Clean  
Water Pro-  
gram (RWCP)

(e) **RURAL CLEAN WATER.**—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "and such sums as may be necessary for fiscal years 1983 through 1990."

Agricultural  
stormwater  
discharges  
no longer  
defined as  
point sources

**SEC. 502. AGRICULTURAL STORMWATER DISCHARGES.**

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and".

Indian Tribes

**SEC. 504. INDIAN TRIBES.**

"(d) **COOPERATIVE AGREEMENTS.**—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

Subject

Indian Tribes

"(e) TREATMENT AS STATES.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 306, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of this Act.

"(f) GRANTS FOR NONPOINT SOURCE PROGRAMS.—The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.



**CLEAN LAKES PROGRAM GUIDANCE**

**DECEMBER 1987**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**OFFICE OF WATER**

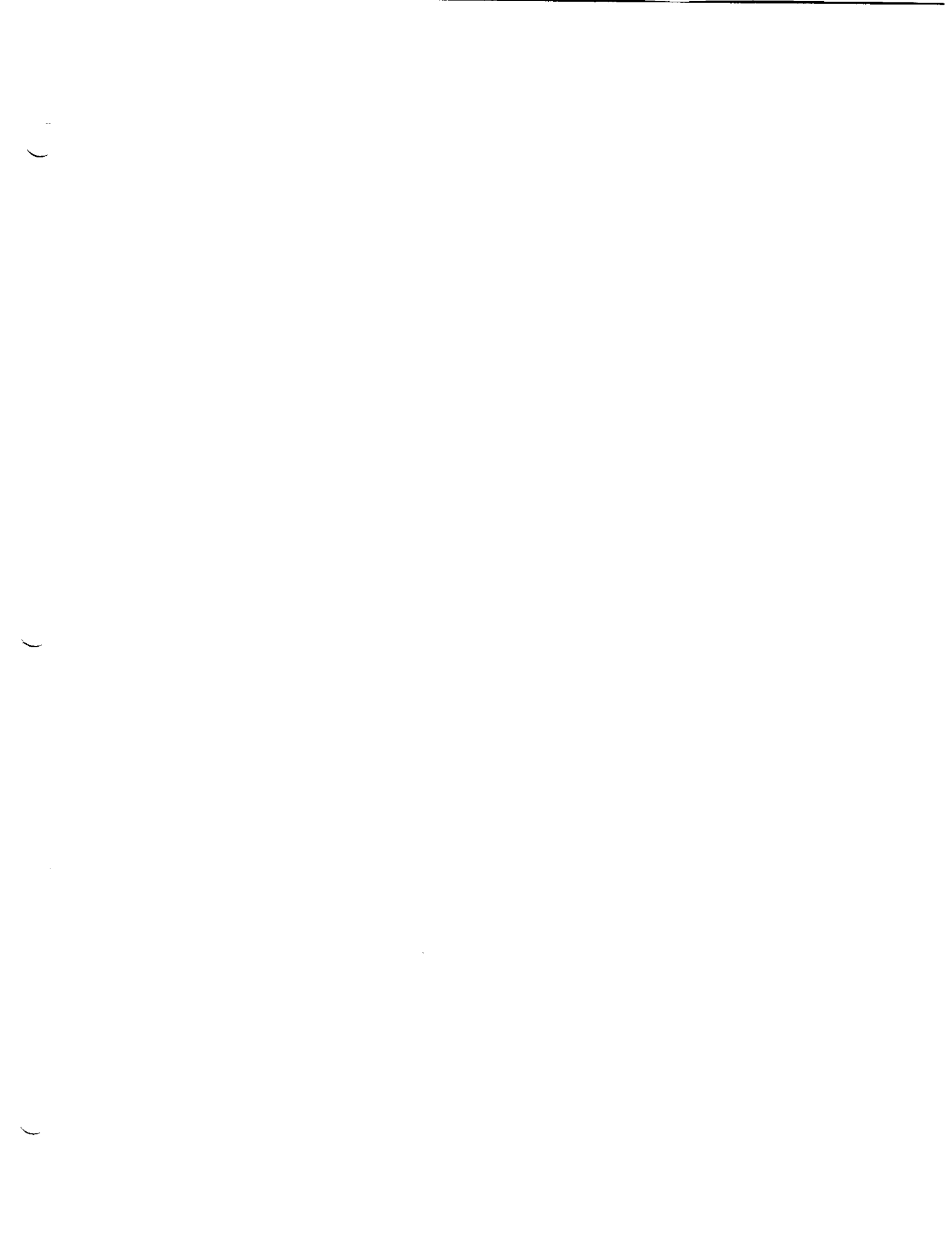
**OFFICE OF WATER REGULATIONS AND STANDARDS**

**WASHINGTON, DC**



## CLEAN LAKES PROGRAM GUIDANCE

- I. Introduction
  - A. Background
  - B. New Requirements
  - C. Integration With Other Programs
  
- II. Implementation Approach
  - A. Development of Lake Water Quality Assessment Report
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  - C. Lake Restoration Guidance Manual
  
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# THE CLEAN LAKES PROGRAM GUIDANCE

## I. INTRODUCTION

### A. Background

The Clean Lakes program was started in 1976 to provide financial assistance to the States for the restoration and protection of our nation's lakes. Early grants were research oriented and issued under the authority of Section 104(h) of the Clean Water Act (CWA) and Research and Development Regulations.

The Clean Lakes program regulations were published in 1980 and have formed the basis for defining goals, priorities and relationships with other State and Federal Programs. EPA began a comprehensive financial assistance program through awards of grants to assist States in preparing classification reports to identify and classify lakes according to trophic conditions. Using this report to establish priorities, diagnostic/feasibility studies (Phase I grants) were financed to determine the causes of eutrophic conditions and alternative techniques for restoration and/or protection of the lake. EPA could then provide additional financial assistance (Phase II grants) to implement the selected alternative restoration and/or protection plan proposed, using the information provided in the Phase I grant.

For additional information on the history of the Clean Lakes program references should be made to EPA document 440/5-85-033, Clean Lakes Program a review of the first decade.

### B. New Requirements/Direction

The State<sup>\*</sup> has the lead responsibility for administering its own Clean Lakes program. Its desire to receive financial assistance for the restoration and protection of its publicly owned lakes is directly related to its efforts in meeting the requirements of the Water Quality Act of 1987 (WQA). Reauthorization of the program has added several important requirements including a Lake Water Quality Assessment, which includes a revised Lake Classification report, a list of lakes which are known not to meet water quality standards or require controls to maintain standards, and an assessment of the status and trend of lake water quality. In order for the States to participate in the Clean Lakes program they must provide EPA with their lake water quality assessment report including their list of threatened and impaired lakes by April 1, 1988, as part of the 305(b) report. This

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<sup>\*</sup> *Note: In accordance with section 518(e) of the WQA of 1987 the Administrator is authorized to treat certain Indian tribes as States. Therefore, throughout this guidance the term State shall refer to States, Territories and those Indian tribes designated by the Agency under section 518(e).*

reporting requirement under 305(b) is being linked to other assessments (nonpoint source, toxics) in order to facilitate development of integrated State Clean Water Strategies.

In addition to continuation of the Clean Lakes program, EPA is directed to establish a demonstration program and a toxics control/acid mitigation program designed to increase our base of scientific knowledge in the causes of lake degradation (including acidification) and alternative techniques for restoration of our nation's lakes. We intend to incorporate the new initiatives within the framework of the existing program guidance and regulations.

### C. Integration With Other Programs

When each State develops its State Clean Water Strategy<sup>\*</sup>, it has the opportunity to integrate its Clean Lakes program into its overall water quality management efforts. The Clean Lakes program is particularly conducive to a highly integrated and unified approach to water restoration and protection by the States. The natural linkages between Clean Lakes management activities and other environmental programs (those addressed by the WQA, CWA and others operating under Agency authorities), the flexibility afforded both EPA and the States by section 314 and cross-program and cross-agency relationships established in the recent past all combine to encourage an integrated Clean Water Strategy approach.

Clean Lakes projects need to be developed and implemented on a watershed basis. This geographical approach to water quality management has been identified as a key element to success in nonpoint source control, ground-water protection, water quality based permitting, stormwater permitting, estuarine protection and cleanup, and wetlands protection. Furthermore, such a geographical approach to lakes management closely parallels the general approaches taken by other natural resource management agencies such as the Soil Conservation Service, Forest Service, Bureau of Land Management, Fish and Wildlife Service, Corps of Engineers, and Geological Survey and their State counterpart agencies. This watershed approach should greatly facilitate the leveraging of their informational/data, technical, financial and programmatic resources for water quality purposes.

Effective and efficient lakes management requires a comprehensive resource approach because many point sources and nonpoint sources (NPS) impact lakes. Lakes act as sinks for pollutants generated by NPS activi-

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<sup>\*</sup> *State Clean Water strategies are in essence a vehicle to better integrate and coordinate State water programs, and to improve effectiveness by targeting activities to high priority geographic areas. For more details on State Clean Water Strategies, see in particular: US EPA, Office of Water. State Clean Water Strategies: Meeting the Challenges of the Future, December 1987 and US EPA, Office of Water. Surface Water and Wetlands Protection Program Operating Guidance FY 1988, April 1987.*

ty as well as point sources. For this reason, specific lake projects may call for NPS control activities. The Clean Lakes program has been used by many States as their principal NPS management tool since 1981 and is expected under the WQA to be integrated with State programs for control of nonpoint sources.

Lakes management involves other activities under the WQA. The discharge of point source pollution into lakes, for example, may be addressed by surface water toxics control strategies developed under section 308. The control of NPS pollution from agricultural, silvicultural and urban runoff can be assisted by the judicious use and protection of wetlands to buffer and filter NPS pollutants entering lakes. Because hydrologic research has now clearly established the fact that in many areas ground water and surface water are interconnected parts of a single water system, lakes management will be considered in the development of ground-water protection projects.

## II. IMPLEMENTATION APPROACH

To implement the WQA, States should review their existing Clean Lakes Programs and better integrate them into their overall State water quality protection efforts i.e., estuaries, wetlands, and ground water. If a State has not previously participated in the Clean Lakes Program or developed a State program, it needs to take advantage of this opportunity. Existing water quality data [305(b)] may be used along with existing Clean Lakes studies.

Each State has the lead responsibility and flexibility in designing and implementing its Clean Lakes Program. The program can be integrated with its other ongoing activities i.e., monitoring, recreation, natural resources, etc. States need to work toward compliance of their lakes program with other State and Federal programs. Clean Lakes projects will be encouraged that have been identified in the State's comprehensive Clean Water Strategy and contain innovative or cross-media approaches.

EPA will support the States' Clean Lakes efforts including technical assistance (as resources allow), ensure that related EPA programs are coordinated and work toward compliance of other Federal programs/agencies with State lakes programs. Information from the States will enable EPA to represent to Congress a national program perspective and to exercise good stewardship of Federal funds. Information requirements will be minimal and designed to present a national summary.

### A. Development of Lake Water Quality Assessment Report

In prior years, States completed a classification report before projects were considered for funding. Under the WQA, beginning April 1, 1988, States must submit a Lake Water Quality Assessment as part of their biennial 305(b) report. Their assessment will include a classification study, a list of impaired and threatened lakes, and a report on the status and trends of lake water quality, as well as other elements defined in section 314(a) of the WQA. This assessment will form the basis for determination of priority projects and the direction of program implementation. The State Assessment Report should

clearly identify publicly owned lakes for which available information does not support a reliable assessment, and provide a strategy and timetable for completing the assessment of these publicly owned lakes. It is our intent, to the extent funds are appropriated, to provide limited financial assistance in FY 1988 and 1989 for the development of Lake Water Quality Assessment Reports.

The biennial Lake Water Quality Assessment Report is to be based on available information and must include the following:

(1) *Lake identification and classification survey*

Each State must submit a list of all significant publicly owned lakes within the State using the official name and location, including the latitude and longitude in degrees and minutes of the approximate center of the lake. Each State should provide EPA its definition of significant lakes, which should include substantial public interest and use. The trophic condition of each lake must also be indicated. A State may update and submit the existing material from its previously prepared classification survey report.

(2) *Lake pollution control procedures*

A general discussion of the States' approach (including procedures, processes, and methods) for controlling pollution to their publicly owned lakes. This includes the technical aspects of the States Clean Lakes program such as their permitting systems and water quality standards development and enforcement, lake monitoring and other applicable programs.

(3) *Lake restoration plan*

A general discussion of the States' plans to restore and/or protect the quality of degraded lakes. This is the State's management plan for its Clean Lakes program and should focus on the cooperative working relationships among Federal, State, Tribal, and local agencies concerned with lake restoration.

(4) *Toxic substance control/acid mitigation activities*

A list of those lakes with high acidity ( $\text{pH} < 4.5$ ) and a general discussion of the States' plans to mitigate the effects of high acidity in their lakes and remove or control toxics mobilized by high acidity. Cost estimates for mitigation should be included with enough specific information to support the estimated costs.

(5) *Identification of impaired and threatened lakes*

On the classification list indicate all significant lakes which do not meet water quality standards, have impaired uses, or are threatened i.e., they may not fully support uses in the future because of anticipated sources of adverse trends of pollution. If water quality standards have not been established for lakes, the standards used



to determine impairment or threatened status should be identified. Those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition, should be specifically noted on the classification list.

To the extent data is available for each impaired or threatened lake:

- Summarize the available chemical and biological data demonstrating the current water quality;
- Note what recreational values or other uses are currently impaired or threatened and the reasons;
- Generally describe the characteristics of the lake e.g., maximum depth, mean depth, surface area, volume, presence or absence of stratified conditions, major inflows and outflows;
- Generally describe the lake watershed in terms of area, land use (estimated percentage of each type), topography, and major soil types;
- Identify major point sources of pollution and any controls which may be in place; and
- Identify major nonpoint pollution sources and any controls in place. Indicate whether the watershed is included as part of the State's nonpoint source program.

#### **(6) Water Quality Trend Assessment**

A summary discussion of lake water quality trends incorporating the information outlined in items 1 through 5 and including the status of lakes which presently meet water quality standards or support designated uses.

#### **B. Lake Restoration and Protection**

The regulations (Section 40 CFR Part 35 Subpart H) under which the Clean Lakes program has been conducted since 1980, coupled with the General Grant regulation (40 CFR Part 30) and this guidance document reflecting requirements of the WQA of 1987, form the basis for implementation of section 314 of the WQA.

The Lake Water Quality Demonstration Program and a Toxics Control/Acid Mitigation Program will also be administered under the existing Clean Lakes Program regulations and guidance.

Projects will be considered for funding according to State priorities consistent with EPA guidance and regulations. The States should determine their highest priority projects as reflected by their list of impaired and threatened lakes submitted in their Water Quality Assessment [305(b) report] April 1, 1988 and their clean water strategy. Project selection should be consistent with existing application review criteria in the regulations and Regional guidance, including technical feasibility, positive overall lake ecosystem changes, fish and wildlife habitat

improvement, public benefits, environmental impacts, State priority ranking, and the operation and maintenance program (CFR 35.1640-1).

State priorities for the Clean Lakes program should reflect identified environmental concerns associated with lake water quality. Management of Clean Lakes projects within a State should be a part of its overall water quality protection program. Each State has the lead responsibility for administering its own Clean Lakes Program. Coordination with other State agencies or local organizations, including development of inter-agency agreements, is a State responsibility. The Clean Lakes Program will encourage coordination among Federal, State, Tribal and local programs by targeting funding to areas that are applying an integrated program approach. A portion of the Phase I study will determine the relationship of the proposed project to other WQA programs, other EPA programs and other Federal agencies' programs such as those of the Department of Housing and Urban Development, Department of Interior, Corps of Engineers and others.

The WQA authorizes a national Lake Water Quality Demonstration Program. Ten lakes are identified in the WQA as priority lakes to be considered for funding. In addition, funding is authorized for highly acidic lakes or lakes with toxic substances mobilized by high acidity due to acid deposition or acid mine drainage. It is our intent to administer these projects under the existing Clean Lakes program regulations, policy, and guidance as a comprehensive Clean Lakes program. If there is a separate appropriation for the Demonstration Program or the Toxic Substance Control/Acid Mitigation Program, the Agency will re-evaluate this aspect of implementation.

EPA will coordinate with the U.S. Army Corp of Engineers and any other Federal agencies involved in lake restoration or the Demonstration Program to ensure lack of duplication while maintaining high quality projects.

In accordance with the WQA, the Toxics Control/Acid Mitigation Projects should address the risks associated with toxic metals and other toxic substances mobilized by high acidity.

The WQA directs EPA to prepare an annual report to Congress on the status of the Demonstration Program and a final report upon its completion. Project progress reports and the final reports will be used to prepare the report to Congress on the Demonstration Program.

### C. Lake Restoration Guidance Manual

The WQA directs EPA to publish and disseminate a lake restoration guidance manual by February 1988 and update it biennially.

EPA's Office of Research and Development (ORD) is presently preparing an initial lake restoration guidance manual.

EPA's Office of Water (OW) will be responsible for the biennial update of the manual.

### III. GRANT APPLICATION REQUIREMENTS

#### A. Eligibility

States are the only eligible applicants for Clean Lakes financial assistance. They may make funds available to subordinate agencies through interagency agreements. After April 1, 1988, they must have submitted their Lake Water Quality Assessment Report to be eligible for Clean Lakes financial assistance. For a project to be eligible, the lake can be either natural or manmade. It may be an inland pond, reservoir, impoundment or other similar body of water but it must have recreational value, be accessible to the public by way of publicly owned land and exhibit no oceanic and tidal influences. It must also be identified in the list of impaired and threatened lakes.

#### B. Types of Financial Assistance

All cooperative agreements to be funded under section 314 will be subject to the Clean Lakes regulations (40 CFR Part 35 Subpart H), the general grant regulations (40 CFR Part 30) and the procurement regulations (40 CFR Part 33). All authorized funding is subject to the availability of appropriations.

##### (1) Lake Water Quality Assessment

In FY 88 and 89, financial assistance is authorized for States to conduct Lake Water Quality Assessments as required under section 314(a)(1), including: classification of lakes, description of methods to control pollution and restore the quality of lakes, methods to mitigate effects of high acidity and remove/control toxics mobilized by high acidity, a list of threatened and impaired lakes, and an assessment of the status and trends of lake water quality. Financial assistance is authorized with a maximum of \$100,000 per State and will be issued with a minimum non-federal match of 50%.

The intent of this financial assistance is to provide the States with supplemental resources to conduct a comprehensive Lake Water Quality Assessment for the 1990 305(b) Report and subsequent Reports to Congress on the status and trends of lake water quality.

Since there is no provision in the Clean Lakes regulation specifically for a Lake Water Quality Assessment Grant, such grants will be issued under General Grant regulation 40 CFR Part 30 and this guidance document.

**(2) Phase I - Diagnostic/Feasibility Study**

The Clean Lakes program will financially assist a State in conducting a diagnostic/feasibility study to investigate the existing or potential causes of decline in the quality of a publicly owned lake, evaluate possible solutions to existing or anticipated pollution problems, and recommend the most feasible alternative to restore or preserve the quality of the lake. Funding assistance up to 70 percent of the cost is authorized, with a maximum of \$100,000 per study.

**(3) Phase II - Implementation**

A Phase II cooperative agreement is to be used for implementing recommended methods and procedures for controlling pollution entering the lake, and for restoring or protecting the lake. Phase II awards require a 50 percent nonfederal match and do not have an upper limit. Costs for final engineering design as well as actual implementation of pollution control and/or in-lake restoration measures are eligible. Phase II agreements require monitoring for a minimum of one year after construction or pollution control practices are completed (35.1650-3(c)(1)(ii)). We encourage monitoring for a minimum of 2-3 years.

Phase II agreements follow Phase I studies or equivalent investigations. A section 314 funded Phase I study is not required for consideration of a Phase II application. Nor does funding of a Phase II project automatically follow a completed section 314 funded Phase I. Each phase must be applied for separately, and each application is considered on its own merits. Phase II projects which request Federal funds in excess of one million dollars will require additional peer reviews to assure the selected alternative is the most cost effective and scientifically valid procedure.

**(4) Phase III - Post-restoration Monitoring**

A Phase III cooperative agreement is to be used to advance the science of lake restoration. Selected projects, based on criteria to be developed, will be offered the opportunity to conduct long term post-restoration monitoring studies to verify the longevity and effectiveness of various restoration techniques. Funding assistance up to \$125,000 will be available and will require at least a 30 percent non-federal match. Total annual awards will not exceed 10 percent of the total annual appropriation of the Clean Lakes Program. Since there is no provision in the Clean Lakes regulations specifically for a Phase III grant, such grants will be issued as modified Phase I grants. The Appendix A requirements will need to be modified or increased to accurately define the scope of work to validate the restoration technique(s) employed.

Phase III - Post-restoration Monitoring grants will be issued under General Grant regulation 40 CFR Part 30 and this guidance document.

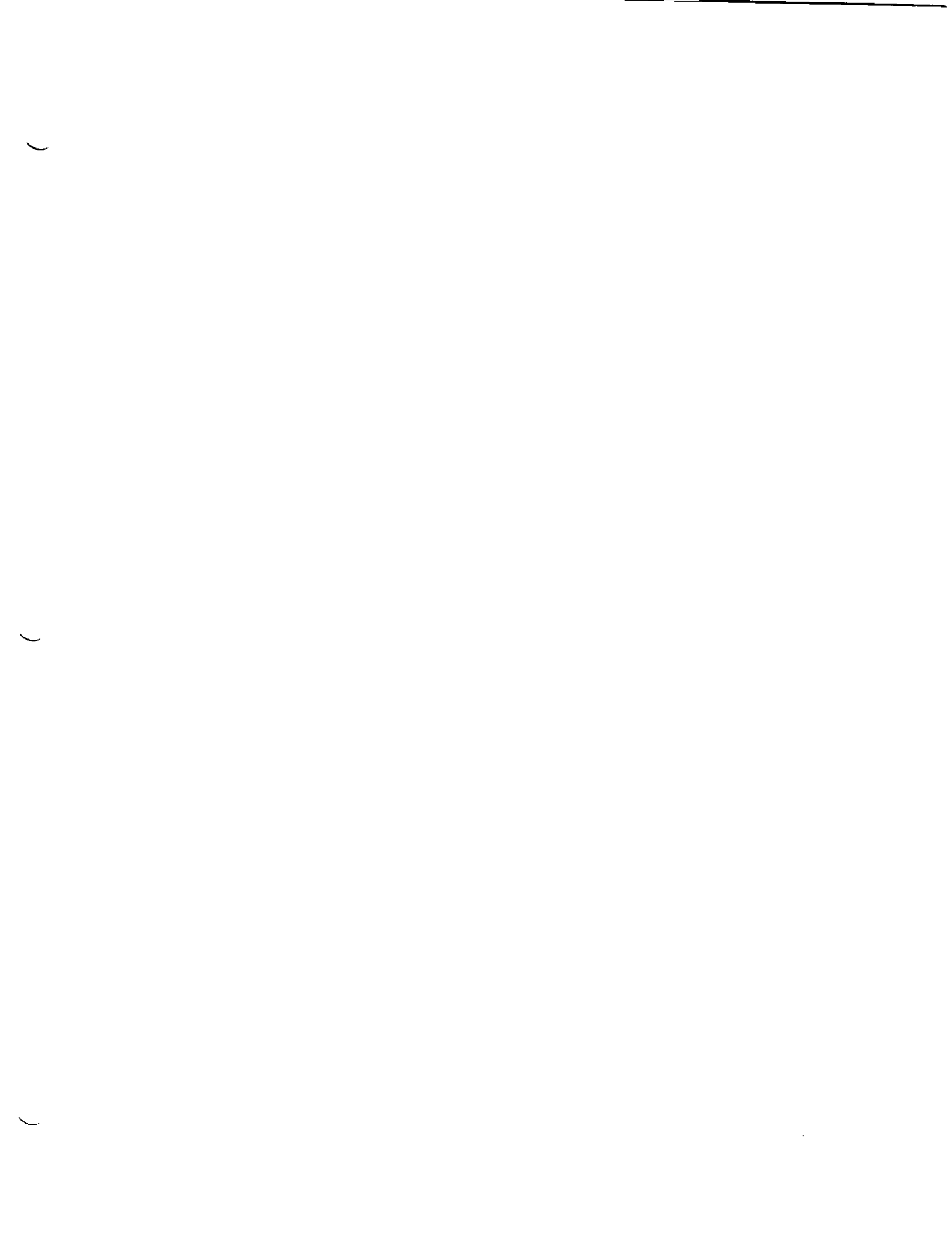
**C. Application Procedures**

For all cooperative agreements, a State applies to the EPA Regional Office using Standard Form 5700-33. The Clean Lakes regulations specify the required application contents (section 35.1620-2).

The application and associated work plans are to be developed in accordance with the Administrator's Policy on Performance Based Assistance dated May 31, 1985.

The EPA Regional Office makes a technical evaluation and determines funding priorities for the Region. Applications are also reviewed at EPA Headquarters and, if necessary, sent out for peer review. EPA Headquarters then sends its recommendation and a commitment notice to the Region. The Region makes the award to the State and administers the cooperative agreement.

The application review criteria used by EPA are specified in 40 CFR 35.1640-1. In addition, the project must be compatible with program policy, objectives, guidance, General Grant Regulation (40 CFR Part 30) and the procurement regulations (40 CFR Part 33).



**F. Section 604(b)**

Beginning in FY 1989, States must reserve each year 1% of their Title VI allotments or \$100,000, whichever is greater, to carry out planning under 205(j) and 303(e). Since NPS planning activities are eligible for funding under 205(j), the 604(b) reserve is an additional source of funding for NPS activity.

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## APPENDIX A

### Definition of Navigable Waters and Waters of the U.S.\*

#### Navigable Waters

... The term "navigable waters" means the waters of the United States, including the territorial seas.

Source: Federal Water Pollution Control Act as Amended by the Water Quality Act of 1987

#### Waters of the U.S.

Waters of the United States or waters of the U.S. means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition...

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas...

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\*Source: 40 CFR 122.2

## APPENDIX B

### Major Nonpoint Source (NPS) Pollution Categories and Subcategories\*

#### 1 NONPOINT SOURCES

- 10 Agriculture
  - 11: Non-irrigated crop production
  - 12: Irrigated crop production
  - 13: Specialty crop production (e.g., truck farming and orchards)
  - 14: Pasture land
  - 15: Range land
  - 16: Feedlots - all types
  - 17: Aquaculture
  - 18: Animal holding/management areas
- 20 Silviculture
  - 21: Harvesting, reforestation, residue management
  - 22: Forest management
  - 23: Road construction/maintenance
- 30 Construction
  - 31: Highway/road/bridge
  - 32: Land development
- 40 Urban Runoff
  - 41: Storm sewers (source control)
  - 42: Combined sewers (source control)
  - 43: Surface runoff
- 50 Resource Extraction/Exploration/Development
  - 51: Surface mining
  - 52: Subsurface mining
  - 53: Placer mining
  - 54: Dredge mining
  - 55: Petroleum activities
  - 56: Mill tailings
  - 57: Mine tailings
- 60 Land Disposal (Runoff/Leachate From Permitted Areas)
  - 61: Sludge
  - 62: Wastewater
  - 63: Landfills
  - 64: Industrial land treatment
  - 65: On-site wastewater systems (septic tanks, etc.)
  - 66: Hazardous waste
- 70 Hydrologic/Habitat Modification
  - 71: Channelization
  - 72: Dredging
  - 73: Dam construction
  - 74: Flow regulation/modification
  - 75: Bridge construction
  - 76: Removal of riparian vegetation
  - 77: Streambank modification/destabilization
- 80 Other
  - 81: Atmospheric deposition
  - 82: Waste storage/storage tank leaks
  - 83: Highway maintenance and runoff
  - 84: Spills
  - 85: In-place contaminants
  - 86: Natural
- 90 Source unknown

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\* Source: US EPA. Guidelines for the Preparation of the 1988 State Water Quality Assessment (305(b) Report), April 1, 1987, p. 19.

Appendix C

NPS Provisions in the Water Quality Act of 1987

Subject

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Section 319

Creates new  
§ 319 on  
NPS Manage-  
ment Programs

**SEC. 319. MANAGEMENT OF NONPOINT SOURCES OF POLLUTION.**

(a) **IN GENERAL.**—Title III is amended by adding at the end the following new section:

**"SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.**

Contents  
of State  
Assessment  
Reports

**(a) STATE ASSESSMENT REPORTS.—**

**"(1) CONTENTS.**—The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which—

**"(A)** identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

**"(B)** identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

**"(C)** describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

**"(D)** identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i).

Information  
used to  
prepare  
State  
Assessment  
Report

**"(2) INFORMATION USED IN PREPARATION.**—In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

Subject

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Contents  
of State  
Management  
Programs

b) STATE MANAGEMENT PROGRAMS —

"1) IN GENERAL.—The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

"2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection shall include each of the following:

"A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

"B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

"C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

"D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

"E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

Subject

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Contents  
of State  
Management  
Programs  
(continued)

"(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

Other require-  
ments for State  
Assessment/Man-  
agement Programs

Use of  
local and  
private  
experts

"(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

Emphasis on  
watershed-  
by-watershed  
basis

"(4) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

Cooperation  
Requirement

"(C) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (a) and any management program and report required by subsection (b) shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

Time frame for  
State submittal  
of Report/  
Management  
Program

"(2) TIME PERIOD FOR SUBMISSION OF REPORTS AND MANAGEMENT PROGRAMS.—Each report and management program shall be submitted to the Administrator during the 18-month period beginning on the date of the enactment of this section.

Subject

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Time frame  
for EPA  
approval of  
State Reports/  
Management  
Programs

**"(d) APPROVAL OR DISAPPROVAL OF REPORTS AND MANAGEMENT PROGRAMS.—**

**"(1) DEADLINE—**Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k)), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

Procedure for  
EPA disapproval  
and criteria  
for disapproval

**"(2) PROCEDURE FOR DISAPPROVAL—**If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

**"(A)** the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;

**"(B)** adequate authority does not exist, or adequate resources are not available, to implement such program or portion;

**"(C)** the schedule for implementing such program or portion is not sufficiently expeditious; or

**"(D)** the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

What if  
State fails  
to submit  
an Assessment  
Report?

**"(3) FAILURE OF STATE TO SUBMIT REPORT.—**If a Governor of a State does not submit the report required by subsection (a) within the period specified by subsection (c)(2), the Administrator shall, within 30 months after the date of the enactment of this section, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a). Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.

Subject

What if  
State fails  
to submit a  
Management  
Program?

"(e) LOCAL MANAGEMENT PROGRAMS; TECHNICAL ASSISTANCE.—If a State fails to submit a management program under subsection (b) or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) and can be approved pursuant to subsection (d). After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h).

EPA Technical  
Assistance

"(f) TECHNICAL ASSISTANCE FOR STATES.—Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) for those portions of the navigable waters requested by such State.

Interstate  
Management  
Conference

"(g) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such State. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 505 of this Act.

Subject

Interstate  
Management  
Conference  
(continued)

"(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this Act will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

Requirements  
for grants  
under § 319 (h)

Assessment/  
Management  
Program must be  
approved

"(h) GRANT PROGRAM.—

"(1) GRANTS FOR IMPLEMENTATION OF MANAGEMENT PROGRAMS.—Upon application of a State for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 205(j)(5) of this Act may be used to develop and implement such management program.

Use of 205 (j)(5)  
funds

"(2) APPLICATIONS.—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

Federal share  
not to exceed  
60%

"(3) FEDERAL SHARE.—The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

No more than 15%  
of the authorization  
for this subsection  
may go to one State

"(4) LIMITATION ON GRANT AMOUNTS.—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

Priority  
considerations for  
§ 319 (h) grants

"(5) PRIORITY FOR EFFECTIVE MECHANISMS.—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

"(A) control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(B) implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;



Subject

Requirements for grants under  
§ 319 (h) (continued)

Priority considerations for § 319 (h) grants

"(C) control interstate nonpoint source pollution problems; or  
"(D) carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.

Availability for obligation

"(6) AVAILABILITY FOR OBLIGATION.—The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.

Financial assistance to individuals only for costs related to demonstration projects

"(7) LIMITATION ON USE OF FUNDS.—States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

Satisfactory progress

"(8) SATISFACTORY PROGRESS.—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2).

Maintenance of effort

"(9) MAINTENANCE OF EFFORT.—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

Request for information

"(10) REQUEST FOR INFORMATION.—The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section.

Annual State reports required

"(11) REPORTING AND OTHER REQUIREMENTS.—Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.

Limitation on administrative costs (shall not exceed 10%)

"(12) LIMITATION ON ADMINISTRATIVE COSTS.—For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

Subject

Requirements for grants under § 319 (j)  
for protecting groundwater quality

Eligible applicants  
and activities

**GRANTS FOR PROTECTING GROUNDWATER QUALITY —**

**(1) ELIGIBLE APPLICANTS AND ACTIVITIES —** Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

**(2) APPLICATIONS —** An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.

Federal share  
not to exceed 50%

**(3) FEDERAL SHARE; MAXIMUM AMOUNT —** The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed \$150,000.

**(4) REPORT —** The Administrator shall include in each report transmitted under subsection (m) a report on the activities and programs implemented under this subsection during the preceding fiscal year.

Authorizations for  
§ 319 (h) and (i)

**(j) AUTHORIZATION OF APPROPRIATIONS —** There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed \$70,000,000 for fiscal year 1988, \$100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and \$130,000,000 for fiscal year 1991, except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out subsection (i). Sums appropriated pursuant to this subsection shall remain available until expended.

EPA required to  
compile information  
regarding Federal  
programs/projects

**(k) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS —** The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.

Subject

EPA required  
to compile  
information  
on BMPs

"(l) **COLLECTION OF INFORMATION** —The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.

EPA annual  
reports  
required

"(m) **REPORTS OF ADMINISTRATOR.**—

"(1) **ANNUAL REPORTS.**—Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

EPA final  
report  
required

"(2) **FINAL REPORT.**—Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall—

"(A) describe the management programs being implemented by the States by type and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describe the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;

"(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

"(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this Act;

"(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

"(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

EPA staffing  
levels

"(n) **SET ASIDE FOR ADMINISTRATIVE PERSONNEL.**—Not less than 5 percent of the funds appropriated pursuant to subsection (j) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

Subject

Policy for control of NPS pollution

(b) **POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION.**—Section 101(a) is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof ", and", and by adding at the end thereof the following:

"(7) 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."

Construction grant set-asides

Governor's discretionary set-aside - § 201(g)(1)

(c) **ELIGIBILITY OF NONPOINT SOURCES.**—The last sentence of section 201(g)(1) is amended by—

- (1) striking out "sentence," the first place it appears and inserting in lieu thereof "sentences,";
- (2) inserting "(A)" after "October 1, 1984, for"; and
- (3) inserting before "except that" the following: "and (B) any purpose for which a grant may be made under sections 319 (h) and (i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution)."

§ 205(j)(5)

(d) **RESERVATION OF FUNDS.**—Section 206(j) is amended by adding at the end the following new paragraph:

"(5) **NONPOINT SOURCE RESERVATION.**—In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 percent of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1984, or \$100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed \$100,000, may be used by such State for other purposes under this title."

Conforming amendments

(e) **CONFORMING AMENDMENT.**—Section 304(k)(1) is amended by inserting "and nonpoint source pollution management programs approved under section 319 of this Act" after "206 of this Act"

State Revolving Funds

State Revolving Funds may be used to implement NPS programs established under § 319

"(c) **PROJECTS ELIGIBLE FOR ASSISTANCE.**—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance."

Subject

Intended Use  
Plans required  
for State  
Revolving  
Funds

"(c) INTENDED USE PLAN.—After providing for public comment and review, each State shall annually prepare a plan identifying the intended uses of the amounts available to its water pollution control revolving fund. Such intended use plan shall include, but not be limited to—

"(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 216 of this Act and a list of activities eligible for assistance under sections 319 and 320 of this Act;

"(2) a description of the short- and long-term goals and objectives of its water pollution control revolving fund;

"(3) information on the activities to be supported, including a description of project categories, discharge requirements under titles III and IV of this Act, terms of financial assistance, and communities served;

"(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 602(b) of this Act; and

"(5) the criteria and method established for the distribution of funds.

Consistency  
requirement for  
State Revolving  
Funds

"(f) CONSISTENCY WITH PLANNING REQUIREMENTS.—A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 205(j), 208, 302(e), 319, and 320 of this Act.

Other Miscellaneous NPS Provisions

Rural Clean  
Water Pro-  
gram (RWCP)

"(e) RURAL CLEAN WATER.—Section 208(j)(9) is amended by striking out "and" after "1981," and by inserting after "1982," the following: "and such sums as may be necessary for fiscal years 1983 through 1990."

Agricultural  
stormwater  
discharges  
no longer  
defined as  
point sources

**SEC. 502. AGRICULTURAL STORMWATER DISCHARGES.**

Section 502(14) (relating to the definition of point source) is amended by inserting after "does not include" the following: "agricultural stormwater discharges and"

Indian Tribes

**SEC. 508. INDIAN TRIBES.**

"(d) COOPERATIVE AGREEMENTS.—In order to ensure the consistent implementation of the requirements of this Act, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this Act.

Subject

Indian Tribes

"(e) TREATMENT AS STATES —The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 306, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives of this section, but only if—

"(1) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

"(2) the functions to be exercised by the Indian tribe pertain to the management and protection of water resources which are held by an Indian tribe, held by the United States in trust for Indians, held by a member of an Indian tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation; and

"(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this Act and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under title II of this Act in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after the date of the enactment of this section, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this Act. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of this Act.

"(f) GRANTS FOR NONPOINT SOURCE PROGRAMS —The Administrator shall make grants to an Indian tribe under section 319 of this Act as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 319 may be used to make grants under this subsection. In addition to the requirements of section 319, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d) of this section in order to receive such a grant.

**CLEAN LAKES PROGRAM GUIDANCE**

**DECEMBER 1987**

**U.S. ENVIRONMENTAL PROTECTION AGENCY**

**OFFICE OF WATER**

**OFFICE OF WATER REGULATIONS AND STANDARDS**

**WASHINGTON, DC**

## CLEAN LAKES PROGRAM GUIDANCE

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# THE CLEAN LAKES PROGRAM GUIDANCE

## I. INTRODUCTION

### A. Background

The Clean Lakes program was started in 1976 to provide financial assistance to the States for the restoration and protection of our nation's lakes. Early grants were research oriented and issued under the authority of Section 104(h) of the Clean Water Act (CWA) and Research and Development Regulations.

The Clean Lakes program regulations were published in 1980 and have formed the basis for defining goals, priorities and relationships with other State and Federal Programs. EPA began a comprehensive financial assistance program through awards of grants to assist States in preparing classification reports to identify and classify lakes according to trophic conditions. Using this report to establish priorities, diagnostic/feasibility studies (Phase I grants) were financed to determine the causes of eutrophic conditions and alternative techniques for restoration and/or protection of the lake. EPA could then provide additional financial assistance (Phase II grants) to implement the selected alternative restoration and/or protection plan proposed, using the information provided in the Phase I grant.

For additional information on the history of the Clean Lakes program references should be made to EPA document 440/5-85-033, Clean Lakes Program a review of the first decade.

### B. New Requirements/Direction

The State<sup>\*</sup> has the lead responsibility for administering its own Clean Lakes program. Its desire to receive financial assistance for the restoration and protection of its publicly owned lakes is directly related to its efforts in meeting the requirements of the Water Quality Act of 1987 (WQA). Reauthorization of the program has added several important requirements including a Lake Water Quality Assessment, which includes a revised Lake Classification report, a list of lakes which are known not to meet water quality standards or require controls to maintain standards, and an assessment of the status and trend of lake water quality. In order for the States to participate in the Clean Lakes program they must provide EPA with their lake water quality assessment report including their list of threatened and impaired lakes by April 1, 1988, as part of the 305(b) report. This

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<sup>\*</sup> *Note: In accordance with section 518(e) of the WQA of 1987 the Administrator is authorized to treat certain Indian tribes as States. Therefore, throughout this guidance the term State shall refer to States, Territories and those Indian tribes designated by the Agency under section 518(e).*

reporting requirement under 305(b) is being linked to other assessments (nonpoint source, toxics) in order to facilitate development of integrated State Clean Water Strategies.

In addition to continuation of the Clean Lakes program, EPA is directed to establish a demonstration program and a toxics control/acid mitigation program designed to increase our base of scientific knowledge in the causes of lake degradation (including acidification) and alternative techniques for restoration of our nation's lakes. We intend to incorporate the new initiatives within the framework of the existing program guidance and regulations.

### C. Integration With Other Programs

When each State develops its State Clean Water Strategy<sup>\*</sup>, it has the opportunity to integrate its Clean Lakes program into its overall water quality management efforts. The Clean Lakes program is particularly conducive to a highly integrated and unified approach to water restoration and protection by the States. The natural linkages between Clean Lakes management activities and other environmental programs (those addressed by the WQA, CWA and others operating under Agency authorities), the flexibility afforded both EPA and the States by section 314 and cross-program and cross-agency relationships established in the recent past all combine to encourage an integrated Clean Water Strategy approach.

Clean Lakes projects need to be developed and implemented on a watershed basis. This geographical approach to water quality management has been identified as a key element to success in nonpoint source control, groundwater protection, water quality based permitting, stormwater permitting, estuarine protection and cleanup, and wetlands protection. Furthermore, such a geographical approach to lakes management closely parallels the general approaches taken by other natural resource management agencies such as the Soil Conservation Service, Forest Service, Bureau of Land Management, Fish and Wildlife Service, Corps of Engineers, and Geological Survey and their State counterpart agencies. This watershed approach should greatly facilitate the leveraging of their informational/data, technical, financial and programmatic resources for water quality purposes.

Effective and efficient lakes management requires a comprehensive resource approach because many point sources and nonpoint sources (NPS) impact lakes. Lakes act as sinks for pollutants generated by NPS activi-

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<sup>\*</sup> State Clean Water strategies are in essence a vehicle to better integrate and coordinate State water programs, and to improve effectiveness by targeting activities to high priority geographic areas. For more details on State Clean Water Strategies, see in particular: US EPA, Office of Water. State Clean Water Strategies: Meeting the Challenges of the Future, December 1987 and US EPA, Office of Water. Surface Water and Wetlands Protection Program Operating Guidance FY 1988, April 1987.

ty as well as point sources. For this reason, specific lake projects may call for NPS control activities. The Clean Lakes program has been used by many States as their principal NPS management tool since 1981 and is expected under the WQA to be integrated with State programs for control of nonpoint sources.

Lakes management involves other activities under the WQA. The discharge of point source pollution into lakes, for example, may be addressed by surface water toxics control strategies developed under section 308. The control of NPS pollution from agricultural, silvicultural and urban runoff can be assisted by the judicious use and protection of wetlands to buffer and filter NPS pollutants entering lakes. Because hydrologic research has now clearly established the fact that in many areas ground water and surface water are interconnected parts of a single water system, lakes management will be considered in the development of ground-water protection projects.

## II. IMPLEMENTATION APPROACH

To implement the WQA, States should review their existing Clean Lakes Programs and better integrate them into their overall State water quality protection efforts i.e., estuaries, wetlands, and ground water. If a State has not previously participated in the Clean Lakes Program or developed a State program, it needs to take advantage of this opportunity. Existing water quality data [305(b)] may be used along with existing Clean Lakes studies.

Each State has the lead responsibility and flexibility in designing and implementing its Clean Lakes Program. The program can be integrated with its other ongoing activities i.e., monitoring, recreation, natural resources, etc. States need to work toward compliance of their lakes program with other State and Federal programs. Clean Lakes projects will be encouraged that have been identified in the State's comprehensive Clean Water Strategy and contain innovative or cross-media approaches.

EPA will support the States' Clean Lakes efforts including technical assistance (as resources allow), ensure that related EPA programs are coordinated and work toward compliance of other Federal programs/agencies with State lakes programs. Information from the States will enable EPA to represent to Congress a national program perspective and to exercise good stewardship of Federal funds. Information requirements will be minimal and designed to present a national summary.

### A. Development of Lake Water Quality Assessment Report

In prior years, States completed a classification report before projects were considered for funding. Under the WQA, beginning April 1, 1988, States must submit a Lake Water Quality Assessment as part of their biennial 305(b) report. Their assessment will include a classification study, a list of impaired and threatened lakes, and a report on the status and trends of lake water quality, as well as other elements defined in section 314(a) of the WQA. This assessment will form the basis for determination of priority projects and the direction of program implementation. The State Assessment Report should

clearly identify publicly owned lakes for which available information does not support a reliable assessment, and provide a strategy and timetable for completing the assessment of these publicly owned lakes. It is our intent, to the extent funds are appropriated, to provide limited financial assistance in FY 1988 and 1989 for the development of Lake Water Quality Assessment Reports.

The biennial Lake Water Quality Assessment Report is to be based on available information and must include the following:

**(1) Lake identification and classification survey**

Each State must submit a list of all significant publicly owned lakes within the State using the official name and location, including the latitude and longitude in degrees and minutes of the approximate center of the lake. Each State should provide EPA its definition of significant lakes, which should include substantial public interest and use. The trophic condition of each lake must also be indicated. A State may update and submit the existing material from its previously prepared classification survey report.

**(2) Lake pollution control procedures**

A general discussion of the States' approach (including procedures, processes, and methods) for controlling pollution to their publicly owned lakes. This includes the technical aspects of the States Clean Lakes program such as their permitting systems and water quality standards development and enforcement, lake monitoring and other applicable programs.

**(3) Lake restoration plan**

A general discussion of the States' plans to restore and/or protect the quality of degraded lakes. This is the State's management plan for its Clean Lakes program and should focus on the cooperative working relationships among Federal, State, Tribal, and local agencies concerned with lake restoration.

**(4) Toxic substance control/acid mitigation activities**

A list of those lakes with high acidity (ph<4.5) and a general discussion of the States' plans to mitigate the effects of high acidity in their lakes and remove or control toxics mobilized by high acidity. Cost estimates for mitigation should be included with enough specific information to support the estimated costs.

**(5) Identification of impaired and threatened lakes**

On the classification list indicate all significant lakes which do not meet water quality standards, have impaired uses, or are threatened i.e., they may not fully support uses in the future because of anticipated sources of adverse trends of pollution. If water quality standards have not been established for lakes, the standards used

to determine impairment or threatened status should be identified. Those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition, should be specifically noted on the classification list.

To the extent data is available for each impaired or threatened lake:

- Summarize the available chemical and biological data demonstrating the current water quality;
- Note what recreational values or other uses are currently impaired or threatened and the reasons;
- Generally describe the characteristics of the lake e.g., maximum depth, mean depth, surface area, volume, presence or absence of stratified conditions, major inflows and outflows;
- Generally describe the lake watershed in terms of area, land use (estimated percentage of each type), topography, and major soil types;
- Identify major point sources of pollution and any controls which may be in place; and
- Identify major nonpoint pollution sources and any controls in place. Indicate whether the watershed is included as part of the State's nonpoint source program.

#### **(6) Water Quality Trend Assessment**

A summary discussion of lake water quality trends incorporating the information outlined in items 1 through 5 and including the status of lakes which presently meet water quality standards or support designated uses.

#### **B. Lake Restoration and Protection**

The regulations (Section 40 CFR Part 35 Subpart H) under which the Clean Lakes program has been conducted since 1980, coupled with the General Grant regulation (40 CFR Part 30) and this guidance document reflecting requirements of the WQA of 1987, form the basis for implementation of section 314 of the WQA.

The Lake Water Quality Demonstration Program and a Toxics Control/Acid Mitigation Program will also be administered under the existing Clean Lakes Program regulations and guidance.

Projects will be considered for funding according to State priorities consistent with EPA guidance and regulations. The States should determine their highest priority projects as reflected by their list of impaired and threatened lakes submitted in their Water Quality Assessment [305(b) report] April 1, 1988 and their clean water strategy. Project selection should be consistent with existing application review criteria in the regulations and Regional guidance, including technical feasibility, positive overall lake ecosystem changes, fish and wildlife habitat

improvement, public benefits, environmental impacts, State priority ranking, and the operation and maintenance program (CFR 35.1640-1).

State priorities for the Clean Lakes program should reflect identified environmental concerns associated with lake water quality. Management of Clean Lakes projects within a State should be a part of its overall water quality protection program. Each State has the lead responsibility for administering its own Clean Lakes Program. Coordination with other State agencies or local organizations, including development of inter-agency agreements, is a State responsibility. The Clean Lakes Program will encourage coordination among Federal, State, Tribal and local programs by targeting funding to areas that are applying an integrated program approach. A portion of the Phase I study will determine the relationship of the proposed project to other WQA programs, other EPA programs and other Federal agencies' programs such as those of the Department of Housing and Urban Development, Department of Interior, Corps of Engineers and others.

The WQA authorizes a national Lake Water Quality Demonstration Program. Ten lakes are identified in the WQA as priority lakes to be considered for funding. In addition, funding is authorized for highly acidic lakes or lakes with toxic substances mobilized by high acidity due to acid deposition or acid mine drainage. It is our intent to administer these projects under the existing Clean Lakes program regulations, policy, and guidance as a comprehensive Clean Lakes program. If there is a separate appropriation for the Demonstration Program or the Toxic Substance Control/Acid Mitigation Program, the Agency will re-evaluate this aspect of implementation.

EPA will coordinate with the U.S. Army Corp of Engineers and any other Federal agencies involved in lake restoration or the Demonstration Program to ensure lack of duplication while maintaining high quality projects.

In accordance with the WQA, the Toxics Control/Acid Mitigation Projects should address the risks associated with toxic metals and other toxic substances mobilized by high acidity.

The WQA directs EPA to prepare an annual report to Congress on the status of the Demonstration Program and a final report upon its completion. Project progress reports and the final reports will be used to prepare the report to Congress on the Demonstration Program.

### C. Lake Restoration Guidance Manual

The WQA directs EPA to publish and disseminate a lake restoration guidance manual by February 1988 and update it biennially.

EPA's Office of Research and Development (ORD) is presently preparing an initial lake restoration guidance manual.

EPA's Office of Water (OW) will be responsible for the biennial update of the manual.

### III. GRANT APPLICATION REQUIREMENTS

#### A. Eligibility

States are the only eligible applicants for Clean Lakes financial assistance. They may make funds available to subordinate agencies through interagency agreements. After April 1, 1988, they must have submitted their Lake Water Quality Assessment Report to be eligible for Clean Lakes financial assistance. For a project to be eligible, the lake can be either natural or manmade. It may be an inland pond, reservoir, impoundment or other similar body of water but it must have recreational value, be accessible to the public by way of publicly owned land and exhibit no oceanic and tidal influences. It must also be identified in the list of impaired and threatened lakes.

#### B. Types of Financial Assistance

All cooperative agreements to be funded under section 314 will be subject to the Clean Lakes regulations (40 CFR Part 35 Subpart H), the general grant regulations (40 CFR Part 30) and the procurement regulations (40 CFR Part 33). All authorized funding is subject to the availability of appropriations.

##### (1) *Lake Water Quality Assessment*

In FY 88 and 89, financial assistance is authorized for States to conduct Lake Water Quality Assessments as required under section 314(a)(1), including: classification of lakes, description of methods to control pollution and restore the quality of lakes, methods to mitigate effects of high acidity and remove/control toxics mobilized by high acidity, a list of threatened and impaired lakes, and an assessment of the status and trends of lake water quality. Financial assistance is authorized with a maximum of \$100,000 per State and will be issued with a minimum non-federal match of 50%.

The intent of this financial assistance is to provide the States with supplemental resources to conduct a comprehensive Lake Water Quality Assessment for the 1990 305(b) Report and subsequent Reports to Congress on the status and trends of lake water quality.

Since there is no provision in the Clean Lakes regulation specifically for a Lake Water Quality Assessment Grant, such grants will be issued under General Grant regulation 40 CFR Part 30 and this guidance document.

**(2) Phase I - Diagnostic/Feasibility Study**

The Clean Lakes program will financially assist a State in conducting a diagnostic/feasibility study to investigate the existing or potential causes of decline in the quality of a publicly owned lake, evaluate possible solutions to existing or anticipated pollution problems, and recommend the most feasible alternative to restore or preserve the quality of the lake. Funding assistance up to 70 percent of the cost is authorized, with a maximum of \$100,000 per study.

**(3) Phase II - Implementation**

A Phase II cooperative agreement is to be used for implementing recommended methods and procedures for controlling pollution entering the lake, and for restoring or protecting the lake. Phase II awards require a 50 percent nonfederal match and do not have an upper limit. Costs for final engineering design as well as actual implementation of pollution control and/or in-lake restoration measures are eligible. Phase II agreements require monitoring for a minimum of one year after construction or pollution control practices are completed (35.1650-3(c)(1)(ii)). We encourage monitoring for a minimum of 2-3 years.

Phase II agreements follow Phase I studies or equivalent investigations. A section 314 funded Phase I study is not required for consideration of a Phase II application. Nor does funding of a Phase II project automatically follow a completed section 314 funded Phase I. Each phase must be applied for separately, and each application is considered on its own merits. Phase II projects which request Federal funds in excess of one million dollars will require additional peer reviews to assure the selected alternative is the most cost effective and scientifically valid procedure.

**(4) Phase III - Post-restoration Monitoring**

A Phase III cooperative agreement is to be used to advance the science of lake restoration. Selected projects, based on criteria to be developed, will be offered the opportunity to conduct long term post-restoration monitoring studies to verify the longevity and effectiveness of various restoration techniques. Funding assistance up to \$125,000 will be available and will require at least a 30 percent non-federal match. Total annual awards will not exceed 10 percent of the total annual appropriation of the Clean Lakes Program. Since there is no provision in the Clean Lakes regulations specifically for a Phase III grant, such grants will be issued as modified Phase I grants. The Appendix A requirements will need to be modified or increased to accurately define the scope of work to validate the restoration technique(s) employed.

Phase III - Post-restoration Monitoring grants will be issued under General Grant regulation 40 CFR Part 30 and this guidance document.



C. Application Procedures

For all cooperative agreements, a State applies to the EPA Regional Office using Standard Form 5700-33. The Clean Lakes regulations specify the required application contents (section 35.1620-2).

The application and associated work plans are to be developed in accordance with the Administrator's Policy on Performance Based Assistance dated May 31, 1985.

The EPA Regional Office makes a technical evaluation and determines funding priorities for the Region. Applications are also reviewed at EPA Headquarters and, if necessary, sent out for peer review. EPA Headquarters then sends its recommendation and a commitment notice to the Region. The Region makes the award to the State and administers the cooperative agreement.

The application review criteria used by EPA are specified in 40 CFR 35.1640-1. In addition, the project must be compatible with program policy, objectives, guidance, General Grant Regulation (40 CFR Part 30) and the procurement regulations (40 CFR Part 33).