



**Statement by the Association of Clean Water Administrators Before the Senate
Environment and Public Works Committee Hearing on The Nonpoint Source Management
Program Under the Clean Water Act: Perspectives from the States**

January 9, 2020

This statement is submitted for the hearing record on behalf of the membership of the Association of Clean Water Administrators (ACWA). ACWA is the national, non-partisan professional organization representing the State, Interstate, and Territorial water quality control officials responsible for the implementation of surface water protection programs throughout the nation. ACWA members are on the front lines of Clean Water Act (CWA) monitoring, permitting, inspection, compliance, and enforcement across the country and are dedicated to restoring and maintaining the chemical, biological, and physical integrity of our nation's waters. As the primary entities responsible for carrying out the CWA, States are uniquely positioned to provide input on how the proposed rule will impact their current activities under the various CWA programs

In response to the hearing held on January 8th, entitled *The Nonpoint Source Management Program Under the Clean Water Act: Perspectives from States*, ACWA members provided input on the program as it stands now, and ways in which it could be improved.

Program Improvements

The states appreciate the opportunity to provide input on potential 319 program improvements. We strongly urge you to extensively consult with the states as you consider changes to this important program. While working with our members, ACWA received feedback on desired program improvements, which covered a wide variety of topics, from many states with extensive experience managing the program. These recommendations include greater funding flexibility, changes to match requirements, and incentivizing partnerships between organizations.

Program Flexibility

Greater program flexibility is needed to help to states achieve success in reducing non-point source pollution. Many states would like to see greater flexibility in how these funds are used. Current EPA guidance requires that states utilize 50% of grant funds for implementation of watershed-based plans. However, since sources and conditions for the use of matching state and local funds differ from state to state, some believe this is an unnecessary restriction that creates needless difficulty for states in coordinating 319 dollars with other sources of federal, state, and

local funding. Greater flexibility would also lead to potential cooperation between state and local groups, which share the same goals.

The states encourage Congress to recognize the complexity of water quality impairments that may be related to a multitude of NPS causes and/or sources, as well as point sources, and direct EPA to adjust the program to eliminate this artificial divide. Several states believe that by splitting program categories as non-regulatory (e.g. - NPS) versus regulatory (e.g. - point source) for reporting purposes inadvertently creates an unnecessary and ineffective divide. This is especially true in more urbanized areas where water quality issues must be addressed from many different angles. Finally, some states recommend that the program be amended to allow section 319 funding be used to implement MS4 stormwater projects.

In order to continue making progress in controlling non-point source pollution, states need these additional program flexibilities. Moreover, providing states with the ability to leverage other federal dollars, along with state funding, will help states to expand their efforts in controlling non-point source pollution.

Improvements to Reporting Requirements

Many states believe there is a significant need to improve the current reporting requirements and that unnecessary and duplicative reporting requirements limit the effectiveness of the overall program. The states also encourage Congress to direct EPA to update and streamline final reporting requirements. There are many reporting requirements that some states feel are redundant and/or duplicated and, as such, encourage Congress to direct EPA to conduct an audit of the final reporting requirements to ensure that the information is necessary and useful. As it stands, some states have made strides to streamline this process on their end, while others believe the program would benefit from these changes coming at a national level. Over the years, reporting requirements continue to expand and the time necessary to comply is taking staff away from project implementation and making progress on improving water quality. A simplified and streamlined reporting system would enable agency staff and grantees to focus on implementation rather than on administrative tasks.

There is some interest in seeing a focus on protection-oriented measures of success given that protecting high quality waters is more cost effective than restoration of impaired waters. In some states, stakeholders have expressed frustration with the focus on restoration projects over protecting high-quality waters. Some states, however, believe the emphasis should be on restoration, which again leads us to urge that as you consider changes to the program you consult extensively with the states.

EPA's review of the 9 Key Elements Plans for watershed projects should honor complementary local and state water planning where it exists because it is redundant and an inefficient use of public planning resources to require 9 Key Elements Plans in those situations. EPA should work with states to demonstrate that existing local water plans satisfy federal and state needs and represent a reasonable and efficient use of public resources.

The states also believe that improvements to the Grants Reporting and Tracking System (GRTS) reporting methods for the annual load reduction parameters are necessary and needed. The metrics being reported to Congress annually are load reductions for nitrogen, phosphorus, and sediments, which highlight agricultural states in contrast to more urbanized states. As it stands now, states that are more urbanized are still tackling a significant amount of nonpoint source issues, and the collective accomplishments of all states nationally are far greater than the current GRTS reporting system seems to recognize. As a way to more correctly reflect the accomplishments of all states in the 319 program, the states would suggest that the following additional reporting parameters be considered:

- Load reductions for other pollutants/pollutant indicators such as bacteria, salt, other chemicals, etc.
- Number of new watershed based plans completed
- Number of dams removed and/or miles of river habitat restored
- Number of BMP measures completed (e.g. – number of rain gardens or swales installed, miles of riparian buffer restored, etc.)

The states also believe it is necessary to improve leveraging and coordination between federal agencies and state agencies working on 319 programs. For example, Natural Resources Conservation Service (NRCS) is unable to share certain pertinent information, such as farm pollutant load reductions, due to farmer privacy concerns. For some states, this limitation impedes their ability to monitor progress, while some have managed to work successfully within these constraints. By improving cooperation and coordination between agencies, the states would be able to fulfil their reporting requirements in a more timely manner and with less strain on state resources.

Finally, the states are concerned that a national GRTS workshop has not been held for several years. This forum was very useful to the states and we would encourage Congress to direct EPA to provide funding for a national workshop in the near future and to plan on conducting such workshops every other year.

Match Requirements

Some states recommend lowering the match requirements for the 319 program. In some states, the state and local match for projects is overly burdensome and hinders program participation. The current requirements of a 40% match are too high for some states and their partners to meet. Some states also suggest that the program be modified to allow states to use other federal program dollars to meet the match requirements in the 319 program.

For instance, New Hampshire is often faced with issues where potential section 319 Watershed Assistance Grant recipients cannot participate in the program because they cannot come up with the required non-federal match amounts. If non-federal match amounts and eligible categories of match are adjusted, this would allow for proper project budgets to be realized and get critical NPS work completed sooner rather than in several phases over many years. Another way to quicken the pace at which NPS work is completed would be to allow federal program dollars to be eligible as match. This, however, is not an issue faced by all states and as such, so we again

urge you to consult with states as you consider program changes so you can understand the nuances of program implementation across the nation.

Allocation Formula

Several state comments focused on the outdated nature of the allocation formula for funding under the 319 program. However, other states are comfortable with the formula as is. The funding formula has not been updated since the inception of the program. For instance, some of ACWA's members in the arid and semi-arid west are finding that their needs are not adequately considered in the formula when it comes to major nonpoint source issues like abandoned mines, wildfire impacts, population growth and use related low stream flows. We would suggest that Congress direct EPA, in coordination with the states, to explore updates to the allocation formula and report back to Congress on those results with suggestions for expanding the criteria used to establish the formula. The states would encourage EPA to investigate changes to the criteria, such as adding criteria that weigh production agriculture, population growth, septic system density and stormwater or tie funding to the miles/area of impaired streams/ lakes in each state. The formula could also take into consideration the added value of protecting the headwaters of major rivers.

Funding

The states appreciate congressional support for the 319 program and the funding provided. However, unsurprisingly, a greater level of support would be a great help to the states. More support would allow for a larger number of completed projects, expanded partnerships, and an overall more efficient program.

Conclusion

With any considered improvements or changes to the 319 program, it is essential to consult and work with all of the states throughout the process, as each state has their own concerns and needs. We remain ready to answer any questions or concerns the Committee may have in response to our written testimony, and ACWA would be pleased to facilitate further dialogue with our state member agencies. Please contact Julia Anastasio, Executive Director & General Counsel, at janastasio@acwa-us.org or 202.756.0600, with any questions about this statement.