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**ENVIRONMENTAL PROTECTION AGENCY OFFICE OF
WATER**

State Project/Program:

**SECTION 319 GRANTNONPOINT SOURCE
IMPLEMENTATION GRANTS**

United States Environmental Protection Agency

Federal Authorization: Clean Water Act, Title III, Section 319 (h), 40 CFR PTS 31, 35 Subpart A
**North Carolina Department of Environmental Quality
Division of Water Resources**

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The auditor should not consider the Supplement to be “safe harbor” for identifying audit procedures to apply in a particular engagement, but the auditor should be prepared to justify departures from the suggested procedures. The auditor can consider the supplement a “safe harbor” for identification of compliance requirements to be tested if the auditor performs reasonable procedures to ensure that the requirements in the Supplement are current.

The grantor agency may elect to review audit working papers to determine that audit tests are adequate.

Auditors may request documentation of monitoring visits by the State Agencies.

This compliance supplement should be used in conjunction with the OMB 2019 Compliance Supplement which will be issued in the summer. This includes “Part 3 - Compliance Requirements,” for the types that apply, “Part 6 - Internal Control,” and “Part 4 - Agency Program” requirements if the Agency issued guidance for a specific program. The OMB Compliance Supplement is Section A of the State Compliance Supplement.

I. PROGRAM OBJECTIVES

Background

In 1987, in view of the progress achieved in controlling point sources and the growing national awareness of the increasingly dominant influence of nonpoint source pollution on water quality, Congress amended the Clean Water Act to focus greater national efforts on nonpoint sources. In the Water Quality Act of 1987, Congress amended section 101, "Declaration of Goals and Policy," to add the following fundamental principle:

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.

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To further this objective, Congress enacted Section 319 in the Water Quality Act of 1987, which established a national program to control nonpoint sources of water pollution. Under Section 319, States must assess nonpoint source pollution problems and causes within the State, and adopt and implement management programs to control the nonpoint source pollution. Section 319 authorizes EPA to issue grants to States to assist them in implementing those management programs or portions of management programs which have been approved by EPA. Congress appropriates funds annually for states to implement the Programs, with the focus on establishing Best Management Practice (BMP) demonstration projects.

Goals/Objectives

In general, the goals of the North Carolina Nonpoint Source Management Program include the following:

1. Continue to build and improve existing programs,
2. Develop new programs that control nonpoint sources of pollution not addressed by existing programs,
3. Continue to target geographic areas and water bodies for protection,
4. Integrate the Nonpoint Source (NPS) Program with other state programs and management studies (e.g. Albemarle-Pamlico Estuarine Study), and,
5. Monitor the effectiveness of BMPs and management strategies, both for surface and groundwater quality.

II. PROGRAM PROCEDURES

The Governor has designated certain management agencies to be responsible for NPS controls for a variety of sources. Representatives from these agencies, identified below, sit on the Nonpoint Source (NPS) Workgroup. In April 1995, the Division of Water Resources (DWR) established a Nonpoint Source (NPS) Workgroup consisting of representatives from both State and Federal lead NPS agencies. Since these agencies oversee the various programs and activities dealing with all categories of nonpoint source pollution, DWR is seeking to coordinate the efforts of these agencies to prioritize NPS pollution control activities across the state.

LEAD NONPOINT SOURCE AGENCIES BY CATEGORY

Agriculture	NCDA, NCDA-DSWC, NCSU-CES, USDA-NRCS
Construction / Mining	DEQ-DEMLR
On-site Wastewater Disposal	DHHS-OSWP
Solid Waste Disposal	DEQ-DWM
Forestry	NCDA-NCFS
Wetlands, Groundwater, Urban Storm water	DEQ-DWR, <u>DEQ-DEMLR</u>
General Surface Water	DEQ (DCM, DWR), NC WRC, DOI-USGS, USFWS

NCDA, North Carolina Department of Agriculture and Consumer Services; **DSWC**, Division of Soil and Water Conservation; **NCSU**, North Carolina State University; **CES**, Cooperative Extension Service; **NRCS**, Natural Resources Conservation Service; **USDA**, US Dept. of Agric; **DEMLR**, **Div. of Energy, Mine and Land Resources**; **DHHS**, Onsite Water Protection Program; **NCFS**, North Carolina Forest Service; **DWR**, Div. of Water Resources; **DCM**, Div. of Coastal Management; **DWM**, Div. of Waste Mgmt; **WRC**, Wildlife Resource Commission; **DOI-USGS**, Dept of the Interior-US Geological Survey; **USFWS**, US Fish and Wildlife Service.

Responsibilities of the NPS Workgroup members include:

- Serving as a point of contact and clearinghouse agent with appropriate clientele,
- Develop Section 319 project proposals, and

- Evaluate Section 319 project proposals.

Each of the agencies have their own program for addressing NPS issues, but DWR is facilitating the coordination of overall 319 programs and working with them to increase their emphasis on water quality issues.

The purpose of the competitive portion of the 319 grant is to provide funding to implement watershed based plans. The Division in partnership NPS Workgroup reviews all submitted proposals, from that the Division ranks and selects proposals which have been determined appropriate to prevent and control NPS pollution. This is to ensure that all responsible agencies are involved in the 319 grant process. The NPS Workgroup is comprised of all agencies listed in the table outlined above.

Closeout procedures

Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. EPA may approve extensions when requested by the recipient. Unless EPA authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

III. COMPLIANCE REQUIREMENTS

A. Activities Allowed or Un-allowed

Compliance Requirements

Section 319(h) of the Clean Water Act (CWA) provides that Section 319(h) grants are to be made "for the purpose of assisting the State in implementing such management program." The grant work program must therefore "implement" the approved nonpoint source management program; each funded program activity or project will in fact lead to accomplishment of identified management program objectives. Grant work plans should link the funded activities or projects to the relevant element or elements of the States nonpoint source management program. (Specific groundwater protection activities that are not described in the nonpoint source management program are eligible if the activities are included in a State's Groundwater Protection Strategy or Comprehensive Program, and the State's nonpoint source management program makes reference to these documents or programs.) Work plans should also indicate which Federal, State and local agencies are responsible for implementing each project or activity.

Allowed activities include:

- Technical assistance to State and local nonpoint source pollution reduction programs;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- Best management practices for pollution prevention and runoff control (except for BMPs required by a draft or final National Pollutant Discharge Elimination System (NPDES) permit);
- Information and education programs;
- Technology transfer and training; and
- Development and implementation of regulations, policies, and local ordinances to address nonpoint source pollution. (These may apply to areas covered by NPDES permits, provided that the regulations, policies and ordinances apply to non-permitted areas as well.)
- Remediation of water pollution from abandoned mines that have not yet been issued a draft or final permit;

- Remediation of water pollution from portions of abandoned mine sites that are not covered by a draft or final permit;
- Mapping and planning remediation at abandoned mine land sites;
- Monitoring needed to design and evaluate the effectiveness of implementation strategies;
- Technical assistance to State and local abandoned mine land programs;
- Development and implementation of policies to address abandoned mine lands.

Lake protection and restoration activities are also eligible for funding under Section 319(h) to the same extent, and subject to the same criteria, as activities to protect and restore other types of waterbodies from nonpoint source pollution. States are encouraged to use Section 319 funding for eligible activities that might have been funded in previous years under Section 314 of the Clean Water Act. However, Section 319 funds should not be used for in-lake work, such as aquatic macrophyte harvesting or dredging, unless the sources of pollution have been addressed sufficiently to assure that the pollution being remediated will not recur.

B. Allowable Costs/Cost Principles

Compliance Requirements

Grant funds may be used only for: (1) The allowable costs of the grantees, sub-grantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and (2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or sub-grantee. (b) *Applicable cost principles*. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles. For the costs of a— Use the principles in—State, local or Indian tribal government, 2 CFR 200.

Costs of grantee or subgrantee resulting from obligations incurred by the grantee or sub-grantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if: (1) The costs result from obligations which were properly incurred by the grantee or sub-grantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancelable, and, (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

C. Cash Management

Compliance Requirements

Sub-recipients are reimbursed on an invoice basis. There are no advance payments.

Grantees must establish reasonable procedures to ensure the receipt of reports on sub-grantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

D. Davis-Bacon Act

Compliance Requirements

Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) is required as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of **\$2,000** awarded by grantees and **sub-grantees** when required by Federal grant program legislation) Act (Pub. L. 94–163, 89 Stat. 871).

E. Eligibility

Compliance Requirements

These entities are eligible for grants: States, DC, American Samoa, Guam, Northern Marianas, Puerto Rico, Pacific Trust Territories, Virgin Islands, and Indian Tribes. Grants are awarded to a single agency in each State designated by the governor as the lead nonpoint source agency. The lead nonpoint source agency may distribute grant funds to other organizations in accordance with the organization’s work program, which is approved by EPA.

Eligibility includes all State and local governments, interstate and intrastate agencies, public and private nonprofit organizations and institutions. The lead nonpoint source agency may distribute grant funds to other organizations in accordance with a work program, which is approved by EPA. EPA has designated the Division of Water **Resources** as the lead nonpoint source agency within North Carolina.

F. Equipment and Real Property Management

Compliance Requirements

Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

Equipment

(“Equipment” refers to tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.)

The title to the equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section. The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment. The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of EPA.

When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority: Activities sponsored by EPA, then activities sponsored by other Federal awarding agencies. During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by EPA; second preference shall be given to projects or programs sponsored by other

Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by EPA. Usage charges from other activities shall be treated as program income. When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of EPA.

The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following. Equipment records shall be maintained accurately and shall include the following information.

- A description of the equipment.
- Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- Source of the equipment, including the award number.
- Whether title vests in the recipient or the Federal Government.
- Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.
- Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).
- Location and condition of the equipment and the date the information was reported.
- Unit acquisition cost.
- Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates EPA for its share.

Real property

("Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment).

EPA shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following. Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of EPA. The recipient shall obtain written approval by EPA for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by EPA. When the real property is no longer needed, the recipient shall request disposition instructions from EPA or its successor Federal awarding agency. EPA shall observe one or more of the following disposition instructions.

- (1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.
- (2) The recipient may be directed to sell the property under guidelines provided by EPA and pay the Federal Government for that percentage of the **current** fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

G. Matching

Compliance Requirements

Sub-recipients are required to provide a match of 40% of the total award (that is, two-thirds of the federal request).

Level of Effort

Compliance Requirements

No grant may be made to a state in any fiscal year unless the state enters into agreements required by EPA. The agreement should ensure that the state will maintain its aggregate expenditures from all other sources for programs for controlling nonpoint sources and improving the quality of the waters of the state at or above the average level that existed the two fiscal years preceding the 1987 Clean Water Act.

Earmarking – Not Applicable

H. Period of Availability of Federal Funds

Compliance Requirements

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by EPA.

Funds are available within the grant year specified by EPA. This is typically from the beginning of the federal fiscal year (October 1) to the end of the third following year. Section 319 grants can last as long as seven years.

I. Procurement and Suspension and Debarment

Compliance Requirements

Section 319 recipients shall comply with the **non-procurement** debarment and suspension regulations in 40 CFR part 32 implementing Executive Orders 12549 and 12689, “Debarment and Suspension”. 40 CFR part 32 restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

J. Program Income**Compliance Requirements**

Program income earned during the project period shall be retained by the recipient and, in accordance with EPA regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

- Added to funds committed to the project by EPA and recipient and used to further eligible project or program objectives.
- Used to finance the non-Federal share of the project or program.
- Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

When EPA authorizes the disposition of program income, program income in excess of any limits stipulated shall be used as described below. Unless EPA regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period. If authorized by EPA regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award. Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards. Unless EPA regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

K. Real Property Acquisition and Relocation Assistance**Compliance Requirements****Real Property Acquisition**

If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, and donated property is involved, then the total value of the donated property may be claimed as cost sharing or matching.

Relocation Assistance

No relocation assistance is allowed under Section 319 of the Clean Water Act.

L. Reporting**Compliance Requirements**

The **Division of Water Resources** is responsible for managing and monitoring each project, program, **sub-award**, function or activity supported by the award. Recipients shall monitor **sub-awards** to ensure sub-recipients have met the audit requirements. EPA shall prescribe the frequency with which the performance reports shall be submitted. Performance reports shall not be required more frequently than quarterly or, less frequently than annually. NPS Program Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. EPA may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

Recipients shall immediately notify EPA of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions, which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation. EPA may make site visits, as needed. EPA shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

EPA shall determine the frequency of the Financial Status Report (FSR) for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

EPA shall require recipients to relate financial data to performance data and develop unit cost information whenever practical. Recipients' financial management systems shall provide for accurate, current and complete disclosure of the financial results of each federally sponsored project or program in accordance with the reporting requirements. If EPA requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

M. Subrecipient Monitoring

Compliance Requirements

The **Division of Water Resources** is responsible for managing and monitoring each project, program, **sub-award**, function or activity supported by the award. Recipients shall monitor **sub-awards** to ensure sub-recipients have met the audit requirements. EPA shall prescribe the frequency with which the performance reports shall be submitted.

N. Special Tests and Provisions

Compliance Requirements

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to sub-contracts.

- Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- Except as otherwise required by statute, an award that requires the contracting (or **sub-contracting**) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or **sub-contract** exceeds \$100,000.
- For those contracts or sub-contracts exceeding \$100,000, EPA may accept the bonding policy and requirements of the recipient, provided EPA has made a determination that the Federal

Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

Enforcement:

*Remedies for **non-compliance**:* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, EPA may, in addition to imposing any of the special conditions, take one or more of the following actions, as appropriate in the circumstances.

- Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by EPA.
- Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- Wholly or partly suspend or terminate the current award.
- Withhold further awards for the project or program. Take other remedies that may be legally available.

Hearings and appeals: In taking an enforcement action, EPA shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved. EPA's Dispute Provisions found at 40 CFR part 31, subpart F, Disputes, are applicable to assistance awarded under the provisions of this part.

Effects of suspension and termination:

Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless EPA expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable.

Relationship to debarment and suspension:

The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under Executive Orders 12549 and 12689 and EPA's implementing regulations.

Audit Objectives

Ensure adequate measures have been taken to comply with contract provisions.

Suggested Audit Procedures

Review contracts and verify that appropriate remedies are spelled out in the contract to protect the Department of Environmental Quality from recourse in the event of noncompliance of a contractor.

Compliance Requirements

Scheduled milestones must be followed as listed in the grant award or sub-grant (contract) and quantifiable outputs must be properly documented.

Audit Objectives

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Determine whether the sub-recipient has properly documented quantifiable outputs and followed scheduled milestones as listed in the grant award or sub-grant (contract).

Suggested Audit Procedures

Check elements of the grant award or contract against records or evidence of actual performance.

Compliance Requirements

Funds must be requested in a timely manner and must be for activities prescribed in the grant or sub-grant (contract).

Audit Objectives

Determine if the sub-recipient is requesting funds in a timely manner and for prescribed activities.

Suggested Audit Procedures

Verify expenditures in the general ledger or accounting records to invoices paying particular attention to dates of service.

References:

The sources of much of information included above were 1) the Clean Water Act of 1987 and 2 CFR 200.