

21st Annual Nonpoint Source Conference Opening Remarks

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Clean Water Act Reauthorization and Nonpoint Source Pollution

The CWA's success with controlling point sources of pollution contrasts starkly with its failure to address nonpoint sources of pollution.

This is happening in spite of the fact NPS pollution has become the dominant cause of water pollution today, dwarfing all other sources by volume and in conventional pollutant terms by far the leading cause of nonattainment for rivers lakes and estuaries alike.

And it will continue to be so as long as nonpoint sources of pollution fall outside of the CWA's permit requirements and enforcement mechanisms. You see, it is a voluntary program absent mandatory compliance requirements, dependent on employment of BMP's to get the job done.

If we are to get serious about addressing the problem of nonpoint pollution reforming section 319 of CWA will be necessary.

Here is how we can do it:

FIRST, CONGRESS SHOULD AMEND §319 TO REQUIRE THAT STATES UPDATE THEIR LISTS OF NEW WATERS IMPAIRED BY NONPOINT SOURCE POLLUTION EVERY TWO YEARS. Prior to receiving federal assistance to implement their management programs under §319(a), states submit to EPA "state assessment reports" that identify waters that cannot reasonably be expected to attain water quality standards. Section §319, however, does not require states to update their assessments. Not only will such a requirement in §319 provide us with better and more up-to-date data, but it is also an important step if we are to begin to hold sources accountable for nonpoint source pollution.

SECOND, CONGRESS SHOULD AMEND §319 TO REQUIRE THAT STATES REVIEW AND SUBMIT, WHEN NECESSARY, REVISED MANAGEMENT PLANS, SUBJECT TO EPA REVIEW, EVERY TWO YEARS. In order to receive federal funding, after states identify which of their waters have not met water quality standards because of nonpoint source pollution,

they must submit a management program plan identifying best management practices to control nonpoint source pollution. There is no requirement, however, that these plans be re-evaluated by the states and revised. As of now, EPA has suggested, and only parenthetically, that a state review and evaluate its program every five years. This is not sufficient oversight. Just as states should be required, by statute, to update state assessment reports biennially, state management plans should be updated and reviewed every two years as well. Moreover, the plans should be subject to EPA review and approval.

THIRD, CONGRESS SHOULD AMEND §319 TO REQUIRE THE MANAGEMENT PLANS INCLUDE ENFORCEABLE CONDITIONS AND REQUIREMENTS. Put simply, §319 does not require states to implement their management plans. No enforcement mechanism exists. Although EPA has stated in its §319 funding guidelines that a “significant criteria” is that a state’s work plan “demonstrate that each funded element will be implemented,” EPA has no way to ensure that implementation actually occurs. In addition, EPA has no authority to require that specific conditions be included as part of a state’s management plan. As long as EPA’s role is one of “advice and encouragement” instead of active enforcement of specific criteria, our approach to nonpoint source pollution will remain unsuccessful.

FOURTH, CONGRESS SHOULD AMEND §319 TO GIVE EPA THE AUTHORITY TO PROMULGATE ALL OR A PORTION OF A STATE’S NONPOINT SOURCE MANAGEMENT PLAN IN THE EVENT EPA DISAPPROVES OF THE STATE’S PLAN, IN WHOLE OR IN PART, AND THE STATE FAILS TO REMEDY THE PROBLEM. As §319 is currently written, EPA has a choice: fund a state nonpoint source management program, no matter how inadequate, or deny funding, with the result being that a state is deprived of the very funds that might allow it to make some progress. There is no reason why §319 should not look like other CWA programs, which give EPA the authority to take actions when the states fail to do so. Section 319, therefore, should be amended to give EPA the authority it needs to ensure that effective nonpoint source controls are, in fact, established and implemented.

FIFTH, CONGRESS SHOULD AMEND §319 TO REQUIRE STATES TO FACTOR CLIMATE CHANGE IN THEIR MANAGEMENT PLANS. Climate Change and our efforts to adapt to climate change threaten to worsen nonpoint source pollution. States must plan for how climate change will affect their efforts to control nonpoint source pollution by taking into

account, for example, the way in which increased rainfall and extreme weather events will increase runoff and erosion. In addition, states must also account for the costs and benefits associated with undertaking potentially harmful activities such as increased ethanol production, and EPA should be instructed to disapprove of state plans that fail to address the problems caused by such activities.