



TO: Benita Best-Wong, Deputy Assistant Administrator, U.S. Environmental Protection Agency (EPA)
FROM: Association of Clean Water Administrators (ACWA)
DATE: October 15, 2020
RE: FY 2022-2023 National Program Guidance

ACWA would like to express appreciation for the opportunity to provide early input on the Office of Water's upcoming fiscal year (FY) 2022-2023 National Program Guidance (NPG). As ACWA and states understand it, these NPGs are viewed by EPA as key planning documents used by the different program offices to set forth strategies and actions that will be undertaken to protect human health and the environment.

General Comments

Early engagement with state partners on the NPGs has become an important process step to ensure states are aware of how EPA intends to implement its strategic plan goals and collaborate with the states on implementing the Clean Water Act (CWA). This early engagement provides EPA and states the necessary time to further discuss implementation challenges, performance measures, and other related priorities that may need to be considered as part of the NPG. Successful early engagement requires planning and adequate time for the states to be briefed on EPA's plans and develop worthwhile comments. Where appropriate, we hope EPA will take this time to further discuss with states the observations, comments, and concerns noted below.

There was some confusion regarding the NPG and the current Strategic Plan End Year. Several states recommend the NPG align with the Strategic Plan to reduce confusion and provide greater flexibility to adapt when the new Strategic Plan is finalized. EPA should also communicate how the NPGs and results of these efforts help inform the next Strategic Plan. What does success and failure mean for the planning efforts? How can states help EPA with this future planning? States are interested in seeing a better alignment of the NPGs and state grant work planning that would lead to increased flexibilities offered through Performance Partnership Grants and/or Agreements.

Related to increased flexibilities, EPA, in conjunction with states, should develop a priority-setting process that recognizes the need to deemphasize/deprioritize certain program areas/initiatives where state/interstate resources are not sufficient to continue that work. It is challenging for states to continue to prioritize all federal strategic goals without increased program funding, especially as the program grows more complicated and confronts new challenges like per- and polyfluoroalkyl substances (PFAS) and harmful algal blooms (HABs).

In addition to these longstanding challenges, states are now also faced with reduced state funding due to the impacts of the COVID-19 crisis.

Additionally, the states are interested in guidance that explains how the narrowing of the definition of Waters of the United States (WOTUS) may impact state priorities or commitments, as well as impact metrics and measures, as these impacts may distort the progress that states have made. For example, a waterbody that was key to demonstrating the success of a state water quality program may no longer be counted in a state's progress towards meeting its program commitments as it is no longer jurisdictional under the CWA. Are there some metrics/measures that might benefit from a baseline reset due to a new jurisdictional interpretation? Our members also have questions on how the WOTUS definition will impact future WPC 106 grant funding as surface water area, water quality impairment, point source pollution, and nonpoint source pollution are part of the distribution formula.

EPA should continue to provide the full suite of support options available. While direct programmatic funding increases would provide states with the greatest flexibility, all forms of support are valued. Support can include workforce sharing, contractor deployment, FAQs, guidance document updates, virtual meetings, webinars, trainings, database enhancements, policy simplification, public statements, research, best practices, targeting tools, regulatory improvements, and more. In addition to traditional training opportunities for states and technical experts to assist in the enforcement and compliance monitoring of environmental laws, EPA should also invest in more technical, managerial, and financial (TMF) assistance and training for permittees.

States would also like to get additional guidance and resources for identifying and providing services to disadvantaged communities to address inequities in environmental and public health impacts. How can states take the goals from the strategic plan and integrate them into compliance activities? What other tools does EPA plan to develop to help with environmental justice (EJ) issues?

Additional support to modernize outdated infrastructure at domestic wastewater treatment plants nationwide through the Clean Water State Revolving Fund (CWSRF) and Water Infrastructure Finance and Innovation Act (WIFIA) programs would allow states to further finance clean water infrastructure investments that protect human health and the environment. States are also seeing first-hand the impacts of an aging population, limited training opportunities, low wages, and little incentive to attract young talent to the operator profession, especially in small/rural communities. This challenge will increase over time and deserves national attention.

States would also like to see clear guidance on determining jurisdictional waters. This will help with determining whether a facility is discharging to Waters Of The United States (WOTUS) without a permit and will highlight any changes made regarding how EPA and United States Army Corps of Engineers (USACE) enforce 404 permits based on preliminary jurisdictional determinations that may or may not be WOTUS.

Measures & Metrics

The metric “Watersheds with surface waters not meeting standards because of nutrients that now meet standards” is very specific. If it is determined that this metric has not adequately measured progress, states suggest revising the metric to focus on nutrient reduction efforts rather than attainment, specifically with nutrient standards. For example, “Watersheds with nutrient reduction efforts in place.”

The states would also like to better understand how the agency intends to measure and articulate success in several other CWA program areas including 319/non-point source, TMDLs, and assessment programs. Non-point source pollution remains the leading cause of water quality impairments for many states, but 319 funding remains stagnant or has seen decreases. How can states and EPA better tell the story regarding the value of the 319 program? Reporting on the number of TMDLs reviewed and issued does not actually demonstrate progress towards water quality improvement. Are there other metrics EPA is considering for the TMDL program? States would like to see a metric that demonstrates water quality improvements or progress, even if water quality standards are not being met. Demonstrating incremental improvements is an essential part of states telling their story of progress toward improving water quality in dynamic systems.

States would also like to understand how EPA plans to measure progress toward addressing new challenges like per- and polyfluoroalkyl substances (PFAS) and toxins associated with harmful algal blooms (HABs). States are expending tremendous resources – time and money – to address these contaminants of emerging concern and would like to understand how the agency will be reporting on their progress.

Because September 30, 2022, is a milestone for several long-term performance goals, states believe it would be helpful to know how much progress has been made toward achieving these goals. Better understanding this information may help identify if any new metrics are needed or should be adjusted. Moreover, states believe it is critical that EPA provide context when reporting on measures and progress toward meeting environmental goals and, above all, avoid making state to state comparisons. Merely reporting on metrics does not tell the full story of the progress state water quality programs have made in improving and protecting the waters in their states. For instance, simply reporting on a reduction in permit backlog does not demonstrate a corresponding improvement to water quality. Measures must be tied to real world outcomes that demonstrate how states are working to improve water quality.

In addition to providing greater context when reporting results, states have stressed that quality, easily accessible, and timely data is critical. States have consistently shared their concerns, including the reporting of inaccurate data and technical difficulties, with EPA data systems such as ECHO, ICIS, GRTS and ATTAINS. Because the agency relies heavily on these systems to report results, it is critical that QA/QC procedures be a high priority. Inaccurate or faulty data merely complicates the ability of EPA and the states to demonstrate the progress they have made in improving water quality. EPA should also take the necessary time to fully explain the methodology and share with states how data is being pulled from the systems so that the states understand how their progress is being measured and can help verify data quality.

Finally, ACWA encourages EPA to not establish metrics that lead to state-by-state comparisons or rankings. As intended by the CWA, each state comports its administration of the Act to fit within its unique geographic, demographic, legal, social, financial, and economic settings. That naturally leads to policy and priority divergence among the many programs operated by states under the CWA. Without a comprehensive discussion of that context, comparisons and rankings of states may effectively lead to external parties playing one state off another to further their interests. Any comparisons should be introspective within a state and register improvement over time. That analysis leads to proper adjustments and investments in state programs to further the goals of the CWA.

While ACWA's process to develop comments is comprehensive and intended to capture the diverse perspectives of the states that implement these programs, EPA should also seriously consider the recommendations that come directly from individual states, interstates, and territories. If you have any questions regarding ACWA's comments, please contact ACWA's Executive Director, Julia Anastasio, at janastasio@acwa-us.org or (202) 756-0600.