Near-term Actions to Support Environmental Justice in the Nonpoint Source Program: U.S. Environmental Protection Agency Memorandum

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The United States Environmental Protection Agency ("EPA") issued a September 27th memorandum titled:

Near-term Actions to Support Environmental Justice in the Nonpoint Source Program ("Memorandum")

The *Memorandum* was transmitted from Lynda Hall, Chief, Nonpoint Source Management Branch, Office of Wetlands, Oceans and Watersheds to the State and Territorial Section 319 Nonpoint Source Program Managers and Staff.

In the context of the Clean Water Act, Nonpoint Source ("NPS") pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Unlike discharges from industrial and sewage treatment plants, NPS can originate from many diffuse sources. Examples might include the following sources picked up by rainfall or snowmelt:

- Excess fertilizers
- Herbicides and insecticides
- Oil, grease, and chemicals from urban runoff
- Sediment from improperly managed construction sites, crop and forest lands, and eroding streambanks
- Salt from irrigation practices
- Bacteria and nutrients from livestock, pet waste and faulty septic systems
- Atmospheric deposition and hydro modification

Stated another way, a nonpoint source can include any source of pollution that does not fall within the scope of the definition of "point source" in Section 502(14) of the Clean Water Act. The inapplicability of the term point source eliminates Clean Water Act National Pollution Discharge Elimination System permitting jurisdiction. Instead, EPA attempts to address to some extent NPS through Section 319 of the Clean Water Act (i.e., a non-regulatory program).

The September 27th *Memorandum* initially notes it is a priority of the agency to:

. . .integrate environmental justice considerations into EPA programs, plans, and actions and to ensure equitable and fair access to the benefits from environmental programs for all individuals.

The purpose of the *Memorandum* is stated to include communicating a commitment and encourage action in FY22 by state NPS programs, and commit to actions by the national NPS program in FY22 to address environmental justice goals in the context of the Section 319 program to disadvantaged communities. For example, the *Memorandum* suggests that watershed planning and NPS project implementations provide opportunities to expand management and investment in disadvantaged communities.

Additional actions the *Memorandum* suggests states can undertake in the context of the Section 319 funding programs include:

- Prioritize projects that benefit disadvantaged communities by awarding more points in subaward proposal scoring or other means.
- Conduct capacity building in disadvantaged communities to enhance their ability to engage in NPS projects and grants (e.g., funding a local community "ambassador" to coordinate community engagement in watershed efforts).
- Provide a full or partial waiver of non-federal match requirements for projects in disadvantaged communities.
- Include Tribes as eligible entities in §319-funded watershed project solicitations to expand the communities that may benefit from these projects.
- Undertake an analysis of NPS projects in the state relative to EJSCREEN or state data layers on income, linguistic isolation, or other factors. Use this analysis to determine the current allocation of funds to disadvantaged communities, and then develop program plans to increase funding to these communities.
- Develop and implement targeted outreach to disadvantaged communities when updating 5-year NPS Management Plans that describe state NPS priorities and priority watersheds.

The *Memorandum* also lists a number of actions that EPA will take in this context in the national NPS program.

A copy of the *Memorandum* can be downloaded here.