



U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Washington, DC 20235



U.S. Environmental Protection Agency
Office of Water
Washington, DC 20460

October 16, 1998

State Coastal Zone Management Program Managers
State Water Quality Program Directors
Water Management Division Directors, U.S. EPA Regions I-VI, IX-X

Dear Colleague:

On March 12, 1998, NOAA and EPA published a Federal Register notice of availability for "Proposed Administrative Changes to Coastal Nonpoint Pollution Control Program Guidance" and provided 60 days for public comment. The proposed changes resulted from a cooperative effort with the states to resolve remaining issues for the coastal nonpoint program, including targeting, enforceable policies and mechanisms, timeframes and resources. We received over 200 comments on the proposed changes and have drafted responses to those comments. Also in response to comments, we made several revisions to the proposed administrative changes.

This letter transmits the Final Administrative Changes to Coastal Nonpoint Pollution Control Program Guidance. These changes provide substantial flexibility for coastal states, commonwealths and territories to complete development and successfully implement their coastal nonpoint programs, while maintaining the core principles of the program. We look forward to working with you to apply these final administrative changes to previously issued findings on state coastal nonpoint programs, including, where appropriate, the removal of conditions placed on program approval.

We view these proposed administrative changes as supporting the goals of the President's Clean Water Action Plan to reduce polluted runoff in coastal areas. We are particularly pleased to have completed one of the Plan's key actions: that NOAA and EPA work with coastal states to ensure that they have developed programs to reduce polluted runoff in coastal areas and that these programs are at least conditionally approved by June 1998. We are also encouraged by progress we have made with you to identify new resources for state coastal nonpoint programs through increased funding of section 309 of the Coastal Zone Management Act, section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) and section 319 of the Clean Water Act.

As states proceed to finalize their coastal nonpoint programs, we would like to take this opportunity to reaffirm and emphasize CZARA's requirement that there be "opportunities for public participation in all aspects of the program." The Clean Water Action Plan further supports this need with the principle that agencies will ensure participation of community groups and the public to the maximum extent practicable, including community and public access to information on water quality issues. We encourage states to include many opportunities for public participation as you work with us to remove conditions on your program. In particular,

states should seek public input on coastal nonpoint program implementation plans and the evaluation of those plans.

If you have any questions on the enclosed final administrative changes, please have your staff contact Peyton Robertson (301-713-3098, x137) or Dov Weitman (202-260-7088).

Sincerely,

Jeffrey R. Benoit, Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration

Robert W. Wayland, III, Director
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency

Enclosures: Final Administrative Changes for the Coastal Nonpoint Program Guidance

**Final Administrative Changes to the
Coastal Nonpoint Pollution Control Program Guidance for
Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)**

PREAMBLE

Subsequent to enactment of CZARA in 1990, in January 1993, EPA and NOAA published two guidances to guide the development of States' (and Territories') coastal nonpoint pollution control programs: Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters and Program Development and Approval Guidance. These provided both technical and programmatic guidance on program development. Subsequently, EPA and NOAA provided further program clarification in a January 6, 1995 letter and a March 16, 1995 document entitled *Flexibility for State Coastal Nonpoint Programs*. These actions provided greater flexibility to States in prioritizing their activities; extended the implementation period for 6217(g) management measures from three years to eight years; and clarified the range of enforceable policies and mechanisms that could be used by States to implement their programs. The letters also established the principle that, in recognition of the complexity of the program, States could be granted conditional approval for programs that are not yet fully approvable, thereby affording more time for States to fully develop their programs.

In April 1997, NOAA, EPA, the States and other interested parties began discussions regarding the progress made to date in developing and implementing state coastal nonpoint programs and the significant impediments to further progress. Both the States and Federal agencies recognized that while the goals of CZARA remain valid, the program and schedules originally conceived by NOAA and EPA were extremely ambitious, and additional flexibility would be needed to enable the States to successfully implement their programs. Based on this understanding, the parties proceeded to discuss in detail the specific aspects of the program that would require modification while maintaining the overall objective that States implement management measures needed to protect coastal waters.

Based on these discussions, EPA and NOAA drafted a set of proposed administrative changes the agencies would use to guide future implementation of the CZARA program and made them available for a 60 day public comment period beginning March 11, 1998. Having reviewed and responded to public comments on the proposed changes, NOAA and EPA are now issuing final administrative changes to the program guidance, reflecting the comments received. In some cases, the administrative changes may impact previous findings and conditions on State coastal nonpoint programs. In such cases, EPA and NOAA will review those findings and conditions and make any necessary adjustments (including, where appropriate, elimination of conditions).

On October 18, 1997, the 25th anniversary of the Clean Water Act, Vice President Gore directed the Environmental Protection Agency (EPA) and Department of Agriculture (USDA) to work with other Federal agencies (including NOAA) to develop a Clean Water Action Plan

within 120 days. In a memorandum for Heads of Departments and Agencies, the Vice President specifically requested Federal agencies to “develop a comprehensive Action Plan that builds on the...clean water successes over the past five years and addresses three major goals: enhanced protection from public health threats posed by water pollution; more effective control of polluted runoff; and promotion of water quality protection on a watershed basis.” On February 19, 1998, President Clinton announced the Clean Water Action Plan to restore and protect America’s waters. Specifically, the Clean Water Action Plan includes the following Key Action for the CZARA:

KEY ACTION: NOAA and EPA will work with coastal states and territories to ensure that they have developed programs to reduce polluted runoff in coastal areas and that these programs are at least conditionally approved by June 1998 and that all programs are fully approved by December 1999, with appropriate state-enforceable policies and mechanisms.

NOAA and EPA view these final administrative changes as supporting the goals of the Clean Water Action Plan to reduce polluted runoff in coastal areas.

These Administrative Changes provide guidance to the States on how NOAA and EPA intend to exercise their discretion in implementing the Coastal Nonpoint Pollution Control Program. As such, these Administrative Changes, as well as the previously issued guidance they modify, are not regulations.

ADMINISTRATIVE CHANGES TO THE COASTAL NONPOINT PROGRAM

Targeting

- NOAA and EPA agree that states may focus resources on preventing and controlling significant impacts of nonpoint source pollution on living coastal resources and human health.
- Coordination and integration of coastal nonpoint programs with other programs and water quality initiatives, e.g., state §319 nonpoint source programs, the development of Total Maximum Daily Loads (TMDL) under section 303(d) of the Clean Water Act, the Environmental Quality Incentives Program under the 1996 Farm Bill, National Estuary Programs, and State Watershed Plans, should be considered in establishing priorities and developing strategies to meet §6217 CZARA program requirements.
- In establishing priorities, states will address both pollution prevention and water quality improvement goals, including the protection of pristine areas and coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources. Targeting program implementation will involve a balance between the need to implement nonpoint source controls broadly and the need to address specific water quality problems for particular watersheds.
- NOAA and EPA do not expect states to implement management measures for nonpoint sources that do not, individually or cumulatively, have a significant impact on coastal waters. Subsequent to program approval, including conditional approval, NOAA and EPA will allow states to further exclude sources either by category, subcategory or management measure or on a geographic basis (e.g., a 6217 management area, watershed, county) where states can provide either existing or newly developed information (e.g., monitoring data) to demonstrate that a source is not, and is not reasonably expected to, become significant, either individually or cumulatively.
- After NOAA and EPA, working with states, have applied the administrative changes to the program Findings that have been issued, states will determine program priorities, and communicate those priorities to NOAA and EPA by submitting a 15-year program strategy that briefly describes the State's overall approach and schedule to ensure implementation of the 6217(g) management measures and improve water quality within 15 years of the date of conditional approval. This means that all applicable 6217(g) management measures to protect and restore coastal waters will be implemented, though NOAA and EPA recognize that all water quality problems attributable to nonpoint sources, e.g., nitrate contamination of groundwater, may not be resolved within 15 years.

- In order to provide for further targeting of individual management measures, NOAA and EPA will re-examine state programs to determine where existing state thresholds for application of the management measures may be sufficient to protect and restore coastal waters.

Enforceable Policies and Mechanisms

- NOAA and EPA will approve those program elements for which states have proposed voluntary or incentive-based programs, backed by existing state enforcement authorities, if the following is provided:
 1. a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary;
 2. a description of the voluntary or incentive-based programs, including the methods for tracking and evaluating those programs, the states will use to encourage implementation of the management measures; and
 3. a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing enforcement authorities where necessary.
- NOAA and EPA will approve those program elements for which states have proposed the use of §401 Clean Water Act (CWA) certifications and Coastal Zone Management Act (CZMA) consistency certifications to meet program requirements where states can demonstrate the following:
 1. the certifications, either alone or in concert with other programs, are sufficient to address the full range of applicable activities and sources of nonpoint pollution (e.g., marinas, hydromodification and wetlands) and geographic areas for which they are proposed;
 2. there is a back-up authority (e.g., water quality authority) that can be used, as described above, by the state to enforce conditions or revoke certification; and
 3. the state has a monitoring system or other tracking methods by which to assess whether permit conditions have been met.

Timeframes

- Timeframes for conditional approval will remain the same as those specified in the March 16, 1995, Flexibility Guidance, e.g., up to five years after conditional approval to meet conditions, with an evaluation of progress after three years.
- Rather than the existing program schedule that calls for implementation of (g) management measures, monitoring, and implementation of additional management measures in succession, NOAA and EPA will support the establishment of an iterative process for implementing (g) management measures, assessing their effectiveness in achieving water quality goals and determining the need for additional management measures. NOAA and EPA will continue to expect that management measures for new sources (e.g., new development) will be implemented as the new sources come online. NOAA and EPA expect that all individually and cumulatively significant nonpoint source categories and all watersheds within the §6217 management area will be addressed within 15 years.

Program Implementation/Evaluation

- Each state will develop a 5-year implementation plan describing when, where and how program implementation will occur, including mechanisms for tracking and monitoring implementation. The plan will contain interim milestones and benchmarks, including a time frame, and be updated as necessary, but at least every five years. Achieving the milestones and benchmarks of these plans will serve as a basis for evaluating progress in achieving program implementation goals. The 5-year implementation plan will be more specific than and nested within the longer term 15-year program strategy for achieving full implementation of the 6217(g) management measures. The 5-year implementation plan will be designed to ensure adequate progress in achieving the 15-year program strategy and should be integrated and consolidated with other federal and state water quality programs.
- The 15-year program strategy should include: a description of the means that the state will use to demonstrate progress in implementing the management measures; a basis for determining whether its program will succeed in ensuring implementation within the 15 year implementation period (e.g., implementation rates); and, a process whereby the state will determine the need to use a backup authority and/or adopt additional enforceable policies and mechanisms to ensure implementation of the management measures within 15 years.
- At least every five years, NOAA and EPA will evaluate progress in achieving goals established through the 5-year implementation plans and the 15-year program strategies,

including the success of existing authorities, coupled with voluntary or incentive-based programs, in achieving management measure implementation.

- Where levels of implementation are less than needed to ensure implementation within 15 years of the date of conditional approval, the 5-year implementation plan will outline steps the state will take to improve progress, including application of existing authorities or the development of new enforceable policies and mechanisms to achieve full implementation of the 6217(g) management measures. NOAA and EPA will work with the states to develop guidance for the evaluation process which clarifies the roles of the federal agencies and seeks, to the maximum extent possible, to avoid duplication and ensure coordination with other program implementation and review processes.
- For program implementation activities associated with §319 CWA or §306 and §309 CZMA grants, NOAA and EPA will evaluate progress through performance reports submitted for their respective grant activities.

Resources

- Working with the coastal states, the environmental community, affected interests, and others, NOAA and EPA are committed to finding sources of funding for continued development and implementation of the Coastal Nonpoint Program, providing technical support and ensuring federal agency coordination.
- The availability of resources will necessitate the implementation of management measures incrementally.