

Section 319

Grants Guidance Document For Project Sponsors

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INTRODUCTION

This document was produced to help Section 319 grant recipients better understand the guidelines and requirements of the Section 319 Nonpoint Source Grant program.

Section 319 grants are federal funds aimed at reducing nonpoint source water pollution. The US Congress appropriates the funds annually and the funds are distributed by EPA Region 3 to Pennsylvania.

For Pennsylvania, Section 319 funds are administered through the PA Department of Environmental Protection's (DEP) Office of Water Resources Planning, Watershed Support Section. Grant projects are executed through **Grant Agreements**. Guidelines for the program originate from three sources: Section 319 of the Federal Clean Water Act, EPA guidance documents and Commonwealth of Pennsylvania-specific requirements. Brief descriptions and web links to the federal regulations and policies are included in this document. It is valuable information and may be a helpful reference.

The Watershed Support Section staff hopes this document will assist you in managing your grant funds, and look forward to working with you towards completing a successful grant project.

- ***Clean Water Act Section 319.*** The Federal Water Pollution Control Act, as amended in 1972 and 1987, is collectively known as the Clean Water Act (CWA). The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters and, where attainable, to achieve a level of water quality that provides for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water. In 1987 Congress amended the act and added Section 319 for the purpose of addressing nonpoint source pollution. CWA Section 319 established baseline requirements for state and territorial nonpoint source management programs and authorized national funding to support implementation of approved management programs. CWA Section 319(h) is the principal authority for EPA funding dedicated to nonpoint source pollution control. EPA provides states with specific grant guidance to administer these grants.

This document is formatted to provide guidance in two phases:

- (1) Award
- (2) Project Closeout

PHASE 1 – AWARD

Requirements for Section 319(h) Grants to Project Sponsors

State nonpoint source agencies frequently use 319(h) grants to fund local implementation projects as sub-awards. Recipients (“Project Sponsors”) of these sub-awards are required to meet certain federal requirements because these are federal funds initially awarded by EPA. In addition to federal requirements, states often require that Project Sponsors meet certain state-specific requirements that either comply with state requirements or are needed for the state to comply with the federal requirements. All these items are addressed in your specific Grant Agreement. Please refer to your copy of your fully executed Grant Agreement with DEP to see what applies.

Following are highlights of specific financial, reporting, and other requirements that apply to you (Project Sponsor) for Section 319 funds.

Projects that are receiving grant funds to do water quality sampling

The Project Sponsor must submit a Quality Assurance Project Plan (QAPP) to your **Project Advisor** for EPA approval. The QAPP must be submitted at least 30 days prior to the initiation of the activity. No monitoring can be started without EPA approval. Laboratory procedures must be completed by certified labs. Contact your **Project Advisory** for EPA Guidelines or visit the EPA website at:

<https://www.epa.gov/quality>

- **Quality Assurance.** When environmental data are being collected during the course of a section 319 project, a Quality Assurance Project Plan (QAPP) must be followed in accordance with specific EPA guidelines (40 CFR 31.45 and 30.54). QAPPs outline the methods and procedures that a monitoring project will use to make sure that samples are collected and analyzed and data are stored and reviewed to ensure quality high enough to meet the needs of the project. **Project Sponsors** should discuss QAPP requirements with the DEP Project Advisor as early in the grant process as possible. Specific guidelines on writing a QAPP are provided at:

<https://www.epa.gov/quality/guidance-quality-assurance-project-plans-epa-qag-5>

Request for Working Capital

In addition to reimbursements, the **Project Sponsor** may submit a working capital payment request to the **Project Advisor** upon execution of this **Grant Agreement**. The **Project Sponsor** must submit an electronic request to the Department explaining why the working capital is needed, the dollar amount needed (including budget categories) and the time frame the funds are needed. If the Department determines that the request represents payment needed to cover cash expenditures during a specified quarter, the Department will submit this request to EPA for approval. Upon receiving EPA approval, the Department agrees to make payment to the **Project Sponsor**.

Upon receipt of a working capital payment from the Department, the funds must be promptly deposited by the **Project Sponsor** in a separate non-interest bearing account in a bank or other financial

institution insured by the FDIC or FSLIC. At the end of each quarter, the **Project Sponsor** will submit documentation of actual expenses on the Department's Application for Reimbursement form for reimbursement. The final reimbursement request must include documentation of working capital. If, at the project completion date, the total allowable expenditures are less than all payments including the working capital payment, the unused funds must be returned to the Department.

Specific Agricultural Requirements

Any grant funds associated with providing funding for technical assistance or best management practice implementation for an agricultural operation shall be used in accordance with either USDA Natural Resources Conservation Service (NRCS) Nutrient Management Standard Code 590 as adopted at the state level and at such time when NRCS adopts guidelines at the state level for "Comprehensive Nutrient Management Plans (CNMP)", all funding for such purposes will have to adhere to Nutrient Management Standard 590 and CNMP guidelines **or** state program requirements and technical standards which are functionally equivalent to those identified in the final USDA NRCS "Comprehensive Nutrient Management Guidance".

Any changes in landowners or best management practices other than those identified in the Scope of Work (Attachment D), will require prior approval by the DEP project advisor. Failure to do so could result in no reimbursement for those BMPs.

Reporting Requirements

The basic reporting requirements specified include **Project Sponsor** work progress reports and reimbursement request forms.

- **Reporting Specifications.** All section 319(h) grants are subject to EPA's general grant regulations at 40 CFR parts 31 and 35, subpart A, which specify various basic grant reporting requirements. Section 319(h) contains additional provisions.

Reporting requirements for the **Project Sponsors** are identified in your **Grant Agreement** with DEP. **Project Sponsors** are also required to submit electronically draft and final reports, and other information necessary for project tracking and closeout.

It is stressed that the **Project Sponsor** should take before, during and after practice implementation pictures. These pictures should be included in the final report for the project to help tell the story of the work done under the project.

Project Status Reports

Project status reports are normally submitted on a quarterly basis, unless other arrangements are made. The project status report should be submitted on the 15th of the month following the end of the report period. Normally, this would be: April 15, July 15, October 15 and January 15. The completed **Nonpoint Source 319 Project Status Report** should be sent electronically to the **Project Advisor**, even if there were no activities during the time period—in this case, a statement of “No activities during the quarter” would be sufficient.

A project status report should not be long and involved but include the following important information. The report should relate directly to your list of *major tasks* as described in your grant award *Scope of Work (Attachment D)* including; what activities have taken place on the tasks, status of the project and identification of any problems. Also include in the Project Status Report the BMP(s) completed by providing the BMP Name, Units of Measure, and Number of Units Installed; Pollutant load reductions for BMPs(s) completed; the Method Used to Estimate Pollutant Load Reductions; and the Watershed or Sub-watershed (from the Watershed Implementation Plan (WIP)) where the reported BMPs have been installed. This information is important for Pa’s NPS Program tracking database.

Application for Reimbursement

This program provides funds on a reimbursement basis for actual costs incurred within the *Scope of Work*. Reimbursement requests are normally submitted on a quarterly basis, unless other arrangements are made. Reimbursement requests are submitted on the **319 NPS Application For Reimbursement** provided by the Department. A copy of the **319 NPS Application For Reimbursement** and guidance on how to complete it are contained in Appendix B. The form can also be downloaded at: <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-12803>

Expenditure categories on the **319 NPS Application For Reimbursement** are the same categories as contained in the **Grant Agreement Simplified Budget**. Please refer to and maintain this budget as you are completing the **319 NPS Application For Reimbursement**. Reimbursements for lodging, meals and mileage are limited to applicable state rates, which can be obtained at <http://www.gsa.gov/portal/content/100715>

A **319 NPS Application For Reimbursement** form should be submitted even if there were no costs during the quarter (just put a “0” after “Amount of Reimbursement”).

REIMBURSEMENT REQUESTS WILL NOT BE PROCESSED FOR PAYMENT WITHOUT A PROJECT STATUS REPORT FOR THE INVOICE PERIOD.

Once you have completed the **319 NPS Application For Reimbursement**, please check the math and make sure the form is signed and dated verifying the expenditures and submit it according to the following schedule:

Who to send to	What to send	How to send
Project Advisor (Regional Office)	<ul style="list-style-type: none"> • Application for Reimbursement • Supplemental Sheet • Project Status Report 	Email
Project Advisor (Central Office)	<ul style="list-style-type: none"> • Application for Reimbursement • Supplemental Sheet • Project Status Report • Supporting documents 	Email or Mail to: PADEP Office of Water Resources Planning Water Support Section PO Box 8555 Harrisburg, PA 17105

It takes approximately 6-8 weeks to process a correctly completed claims form before the sponsor can expect to receive payment. An amount up to 10% of the total payment may be retained for the final payment until all the items (deliverables) in the *Scope of Work*, including the final report, are submitted to DEP and determined to meet program requirements.

- **Financial Specifications.** Financial requirements for **Project Sponsors** of Section 319(h) grant funds include:

Allowable costs. All costs charged to EPA grants must be eligible, necessary, and reasonable for performing the tasks outlined in the approved Scope of Work. The costs, including match, must be incurred during the period of performance (contract period) of the project. The costs also must be allowable, meaning that the costs must conform to specific federal requirements (40 CFR parts SELECT PROPER ONE; OMB Circulars SELECT PROPER DOCUMENTS). In addition, costs must be well documented.

Financial management. 40 CFR 31.20 requires that the **Project Sponsor** meet specific standards regarding financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management.

Matching funds. Matching funds are the portion of the allowable project costs that the **Project Sponsor** (or third party) contributes to a grant or cooperative agreement. If a **Project Sponsor** is providing any matching funds in the project as listed on the budget, all matching funds must conform to the same laws, regulations, and grant conditions as the federal funds in the grant (CWA section 319(h)(3), 40 CFR 35.265).

Maximum Rate. EPA's participation in the salary rate (excluding overhead) paid to individual consultants retained by project sponsor contractors is limited. Maximum daily rates may change annually or more often. As of January 1, 2013 the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs, in accordance with normal travel reimbursement practices. Project sponsors may pay consultants more than this amount, but the excess amount may not be paid with federal grant funds.

Documents Produced under this Agreement

Documents developed under this project by the Project Sponsor, such as brochures, pamphlets, fact sheets, manuals, and final reports for the purpose of printing, distribution shall be provided to the Department in electronic format as described in Attachment E ILC of your **Grant Agreement**. Your *project advisor* must see a copy of a DRAFT of the document and provide approval before the document is finalized. Failure to do so could result in non-reimbursement for that document.

- ***Copyrights.*** 40 CFR 31.34 grants EPA a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for federal government purposes, (1) the copyright in any work developed under a subgrant, or contract under a grant or subgrant, and (2) any rights of copyright to which a **Project Sponsor** or a contractor purchases ownership with grant support.

Grant Sponsor Recognition

Any document resulting from this project shall contain a statement indicating that the project was funded in part by EPA and the Department. An example would be "Funding was provided by the PA Department of Environmental Protection through Section 319 of the Federal Clean Water Act administered by the US Environmental Protection Agency".

For projects involving implementation of BMPs where the Project Sponsor erects a sign, the Project Sponsor shall identify PA DEP and US EPA Section 319 as funding partners in the project.

Operation and Maintenance

- ***Operation and Maintenance.*** **Project Sponsors** shall insure the continued proper operation and maintenance of all management practices that have been implemented with funding under this grant. Such practices shall be operated and maintained in accordance with commonly accepted standards.

Operation and maintenance is needed to keep the completed best management practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

This is a responsibility of the **Project Sponsor** or the recipient of the grant funds. The DEP and EPA have the right to periodically inspect the project and if determined that operation and maintenance are not taking place in an appropriate manner, can request a refund of all or a portion of the grant funds provided for that practice. Should a transfer of ownership take place and the new owner refuses to assume responsibility of the practice, a refund of all or a prorated amount of the grant funds for the practice may be required.

Procurement (Bidding/Contracting) Process

Project Sponsors are required to comply with their own contracting requirements which reflect applicable state and local laws and regulations. No employee, officer or agent of the **Project Sponsor** shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Project Sponsor will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration should be given to such matters as contractor integrity, compliance with public policy, ability to meet the grant time schedule, record of past performance and financial and technical resources.

- **Competition.** 40 CFR 31.36 requires that all procurement transactions be conducted in a manner to provide, to the maximum extent practical, open and free competition. Purchases for projects must be made on a competitive basis to ensure that fair and reasonable prices are obtained for goods and services. Federal regulations require documentation of cost or price analysis in connection with every procurement action regardless of amount.
- **Conflict of Interest.** 40 CFR 31.36 requires standards of conduct to avoid conflict of interest. Recipients of federal funds may not participate in the selection, award, or administration of a contract if real or apparent conflict of interest would result.
- **Procurement Methods.** **Project Sponsors** may use their own procurement procedures provided that the procedures conform to applicable federal laws and standards as described in 40 CFR 31.36. Sub-awards may not be made to any party that has been debarred or suspended or is considered ineligible for participation in federal assistance programs.

If the **Project Sponsor** does not have established contracting requirements, we offer the following guidance. This guidance is in no way all-inclusive, and is being provided as “guidance”.

Project Sponsor should maintain records sufficient to detail the history of a procurement including: (1) reason for method of procurement; (2) selection of contract type; (3) contractor selection or rejection, and the basis for the contract price. Any and all bids can be rejected if there is a sound documented reason. All procurement transactions will be conducted in a manner providing full and open competition.

If a **Project Sponsor** uses a prequalified list of persons or firms which is used in acquiring services, the list should be current and included enough qualified sources to ensure maximum open and free competition. Also, the project sponsor should not preclude potential bidder from qualifying during the solicitation period.

Methods of Procurement

- ***Procurement by small purchase procedures.*** A small purchase procedure is a simple and informed procurement method for securing services or supplies that do not cost more than \$100,000. If this procedure is used, price or rate quotations should be obtained from an adequate number of qualified sources.
- ***Procurement by sealed bids.*** The sealed bid method is the preferred method for procuring construction when the following conditions exist:
 - (1) A complete, adequate and realistic specification description is available.
 - (2) Two or more responsible bidders are willing and able to compete effectively for the business.
 - (3) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If you decide that the sealed bid method is the way to go, use the following:

- (1) The invitation for bids would be publicly advertised and bids solicited from an adequate number of contractors, providing them sufficient time prior to the date set to open the bids.
 - (2) The bid documents would define the item to be bid and any specifications and pertinent attachments in order for the bidder to properly respond.
 - (3) All bids would be publicly opened at the time and place prescribed in the invitation for bids.
 - (4) A fixed-price contract award would be made in writing to the lowest responsible bidder.
- ***Procurement by competitive proposals.*** This method is generally used when conditions are not appropriate for the use of sealed bids. This method may best be used to secure engineering/consultant services where competitors are evaluated and selected based on the most qualified competitors subject to negotiation of fair and reasonable compensation. If you decide to use the competitive procurement method, the following procedures should be followed:
 - (1) Requests for proposals would be publicized and identify all evaluation factors and their relative importance.
 - (2) Proposals would be solicited from an adequate number of sources.
 - (3) The project sponsor would have a method for conducting technical evaluations of the proposals received for selecting awardee.
 - (4) Award would be made to the responsible firm whose proposal would be the most advantageous to the project sponsor, with price and other factors considered.

- ***Procurement by noncompetitive proposals.*** This method is used to solicit a proposal from only one source. It is used when one of the following circumstances applies:
 - (1) The item is only available from a single source.
 - (2) An emergency exists and time does not permit a delay to conduct competitive solicitation.
 - (3) After solicitation of a number of sources competition is determined inadequate.

We recommend that language be incorporated with the procurement as well as the awarding contract documents identifying the need for compliance with appropriate state and federal laws and regulations, including, but not limited to: Equal Employment Opportunity (construction contracts in excess of \$10K); Copeland Anti-Kickback Act (construction contracts); Davis Bacon Act (construction contracts for constructing treatment works in excess of \$2K only if the **Project Sponsor** believes the wage rules set forth in the Davis-Bacon Act apply to the construction project - i.e. meets the definition of a “treatment works”).

Subagreements

No subcontract (subagreement) or service purchase agreement may be entered into for execution of the project activities or provision of services to a project (other than purchase of supplies or standard commercial or maintenance services) by the **Project Sponsor** which is not incorporated in the approved *Scope of Work*. A request in writing to the DEP *Project Advisor* for approval in advance of selecting the contractor is required. Failure to receive approval by the DEP *Project Advisor* in advance may result in non- reimbursement of costs incurred by the contractor.

Permits

- ***Encroachment Permits.*** Permits (105, 102, etc.) may be required for certain activities, particularly when working in streams or around wetlands. The **Project Sponsor** (you) will be required to obtain any permits required to complete the project. If you are unclear of what permits you need, contact the DEP Regional Office or the County Conservation District for assistance. Because of the sometimes lengthy approval process, it is advisable that you make that contact as early in your project process as possible. See Appendix 3 for general guidance.
- ***NPDES Permits.*** No 319 funds may be used to fund any activities specifically required by a draft or final National Pollutant Discharge Elimination System (NPDES) permit. Such examples of activities requiring NPDES permits include those for storm water activities (Phase II) and CAFO/AFO agricultural activities. For more information on NPDES permits and CAFOs, see <http://www.dep.state.pa.us> then type in NPDES Permits in the “DEP Keyword”.

PHASE 2 – CLOSING OUT THE PROJECT

The **Project Sponsors** must close out its nonpoint source project grant with DEP by completing several steps (40 CFR 31.50). Requirements are:

- **Complete All Project Tasks.** The **Project Sponsors** should make sure that all tasks identified in the project *Scope of Work* have been completed.
- **Submit Final Project Report.** The **Project Sponsors** must complete a final project report, in which the **Project Sponsors** presents a summary of the project. Format and content requirements are provided in the **Grant Agreement** with DEP.
- **Request Final Payment.** Within 30 days after the grant's expiration, the **Project Sponsor** should request final payment. Failure to do so could result in a reduction in reimbursement for actual expenditures incurred. Also, it could affect the Department's determination of the Project Sponsor's responsibilities to receive future Department grants (see "Final Report" below).
- **Additional Responsibilities.** The **Project Sponsor** is responsible for responding to any inquiries from the DEP **Project Advisor**. All remaining grant funds or outstanding grant funds must be reconciled. Property purchased under the grant should be addressed as per the DEP **Grant Agreement**. All records must be retained for 3 years (40 CFR 31.50) after the end date of the **Grant Agreement**.
- **Record-Keeping Specifications.** Section 319 grant recipients are required to retain all records pertaining to federally sponsored activities or projects for 3 years after the date of submission of the final financial status report or final date of reconciliation of outstanding issues (40 CFR 31.42). The records must be available and accessible to the state or EPA, as requested, for review or audit.
- **Property Management.** Technical equipment and nonexpendable supplies purchased by the **Project Sponsor** with 319 funds shall be the property of the **Project Sponsor** provided that such equipment or supplies are utilized by the **Project Sponsor** to benefit the purposes of the project.

Final Report

Each **Project Sponsor** will be required to submit a final report. Content of the final report can vary depending on the project. The final report should summarize the project from start to finish. Include spreadsheets, maps, database, load reductions, before-and-after pictures, etc. if appropriate. For projects where the final work product is the report, it will serve as the final report. Final reports shall be provided by the Grantee to the Department in an electronic format. Specifically, the document must be received as either a Microsoft Word or Adobe Acrobat PDF document. The electronic file should be submitted either as a compact disc or submitted as an attachment to an electronic mail message. The file must be in a format readable by a Personal Computer based on Microsoft's Windows operating system. Large files may be compressed using the ".zip" compression scheme.

NOTE: Final reimbursements will not be made until the final report is received and to DEP's satisfaction. DEP can retain up to 10% of the grant amount until all work products are completed to the satisfaction of the Department.

The final report and final Application for Reimbursement documenting costs incurred must be submitted to the Department within 30 days of the project completion date. If the Grantee submits to the Department within 30 days after the Project completion date, an acceptable final report and Application for Reimbursement in accordance with this Agreement as determined by the Department, the Grantee will receive reimbursement of actual expenses incurred for the 10% held. If the Grantee submits an acceptable final report and Application for Reimbursement:

- a. Thirty-one to 60 days after the Project completion date, the Grantee will receive reimbursement of actual expenses incurred up to 95% of the maximum grant amount.
- b. Sixty-one to 90 days after the Project completion date, the Grantee will receive reimbursement of actual expenses incurred up to 90% of the maximum grant amount.
- c. More than 90 days after the Project completion date, the Department may decline to pay the final 10% held/or may not have the ability to pay the final Application for Reimbursement due to grant or appropriation lapse dates.

In addition, such lack of performance as identified in subparagraphs a., b. and c. above may adversely affect the Department's determination of the Grantee's responsibility to receive future Department grants.

The **Project Sponsor**, for projects involving implementation of Best Management projects or AMD treatment systems, shall document in its final report all measurable environmental results achieved as a result of the project. The final report shall include: the number of measured BMP units implemented; where possible, the estimated annual load reductions of nitrogen, phosphorus and sediment for Ag or storm water projects, or aluminum, manganese, acidity, and iron for AMD projects; and methodology used to arrive at those numbers.

QUESTIONS AND ANSWERS

Can I Make Changes to My Grant Agreement?

Minor changes or additions to the *Scope of Work* (variations in tasks or project deliverables, budget changes within budget categories, or time extensions) can be made upon approval of the DEP *Project Advisor*. A request in writing needs to be made to the *Project Advisor* explaining the justification for the change BEFORE making the change.

Major changes or additions to the *Scope of Work* (additional tasks or project deliverables, budget increases) require a **Grant Agreement** amendment. **Grant Agreement** amendments go through the same entire signature process as an original **Grant Agreement**. A request for a major change must be submitted in writing to the DEP *Project Advisor*. DEP will review the request. The requested changes cannot take place until the Department agrees to the changes and the **Grant Agreement** amendment is fully executed.

Minor changes to the *Budget*. **Project Sponsors** can make minor changes to their budget. These changes are limited to movement of funds among budget categories. It is not for an increase in the grant amount (that would require a **Grant Agreement** amendment). A budget change request should be made to the DEP project advisor BEFORE doing anything affected by the change to be assured of reimbursement. The budget change request should specify:

- (1) The amount of change.
- (2) Which budget category money is being moved out of.
- (3) Which budget category money is being moved into.
- (4) Reason for the change.

Can I request a time extension?

Sometimes a project sponsor cannot complete the project by the contract end date. Extension of the end date is possible (unless the 319 grant between EPA and DEP end date is the same as your contract end date). It is considered a minor change. The process is initiated by the **Project Sponsor** submitting a letter of request or email to your DEP Project Advisors. It is accomplished by written approval of the DEP Project Advisor, subject to the approval of DEP's Comptroller.

To be successful, it is most important that the Project Sponsor make written request to the DEP Project Advisor PRIOR to the contract end date.

When do the wage rules set forth in the Davis-Bacon Act apply to Section 319 funds?

The Davis-Bacon Act is applicable only to 319 grants that fund construction of "treatment works". CWA Section 212 defines "treatment works" for grants under Title II. Under the terms of the statutory language, the Davis-Bacon wage rates apply only to Clean Water Act Title II construction grant projects

for the construction of sewage treatment works. If other Clean Water Act sections authorize grants for the construction of “treatment works”, as defined by the Statute, then those projects would be subject to Davis Bacon. Any other projects funded under the Clean Water Act that do not involve the construction of “treatment works” are NOT subject to Davis-Bacon wage rates.

For grant program purposes, Davis-Bacon is one of those statutes that only applies when Congress makes it specifically applicable. You will not find any language in the Clean Water Act which states that Davis-Bacon is not applicable to certain funding programs. For Section 319 construction projects, unless those projects involve the construction of “treatment works”, Davis-Bacon wage rates are not required by statute.

For such projects, the Davis-Bacon Act (40 U.S.C §§ 176a–276a-7) requires that wages for laborers and mechanics working on specific, federally funded projects be set at the current wage rate for that region. Specifically, the act requires that each contract over \$2,000 for the construction, alteration, or repair of public buildings or public works follow the minimum wages to be paid to various classes of laborers and mechanics employed under the contract.

If unsure about how the Davis-Bacon Act applies to your project, please seek advice from your legal counsel.

Are the requirements in the National Environmental Policy Act applicable to Section 319 funds?

No. CWA Section 511(c)(1) states that the only EPA actions under the CWA subject to the NEPA requirements for “major federal action significantly affecting the quality of the human environment” are new source permits and grants for the construction of publicly owned treatment works. Section 319 grants do not fit within either category and are therefore not subject to NEPA requirements

Is the state allowed to spend 319 funds on any of the following items: food; award programs; giveaways like t-shirts, pencils, and Frisbees; graduate school tuition; land purchase; vehicle purchase; teacher training; meeting with other federal programs (e.g., Underground Injection Control); other agency staff time (e.g., NRCS, USFS)?

Project Sponsors should refer to OMB Circular A-87 (C). It provides basic guidelines on allowable expenses to help determine allowable costs. Some items are clearly prohibited (e.g., promotional items and entertainment). The authority to pay for other items is not as clear and should be discussed with the **DEP Project Advisor**.

When the Project Sponsor produces a report with Section 319(h) funds, does it become federal government property?

40 CFR 31.34 states that EPA has the authority to reproduce, publish, or otherwise use, and to authorize others to use for federal government purposes, the materials produced with section 319(h) funds.

Federal Requirements (Documents)

To facilitate compliance, a list of federal requirements that apply to you as a **Project Sponsor** of section 319(h) grants is provided here. A brief description of each document is provided. Also, a web address is provided for you to view the entire document. *It is highly recommended that you view these documents*

- ***Title 40 (Protection of the Environment) of the Code of Federal Regulations.*** Title 40 of the CFR, including parts 1 through 790, is published in October or November of each year. Only parts 1 through 51 apply to grants. The CFR codifies changes to EPA grant regulations that have been published in the Federal Register in the previous year (July 1 to June 30). 40 CFR parts 7, 29, 30, 31, 32, 34, and 35A pertain to section 319(h) grant recipients and subawardees.
- ***Office of Management and Budget Circulars.*** The Office of Management and Budget (OMB) issues government-wide circulars for managing grants that apply to all federal executive agencies. When these agencies are required to apply the directives, the effect on grantees is often the same as regulation. OMB circulars are expected to have a continuing effect for 2 years or more. Among the circulars relevant to grant administration are those related to administrative requirements, cost principles, and audits. Several such circulars directly apply to section 319(h) grants.

Nonprofit Organizations/Institution of Higher Education

- ***40 CFR Part 7 (Nondiscrimination in Program Receiving Federal Assistance from the Environmental Protection Agency).*** 40 CFR part 7 prohibits discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, gender, or handicap. Part 7 outlines the following requirements:
 - (1) Submission of an assurance with a grant application that the grant applicant will comply with the requirements of part 7.
 - (2) Maintenance of compliance information during the life of the grant and for 3 years after completing the project.
 - (3) Public notification that the grantee does not discriminate on the basis of race, color, national origin, gender, or handicap.

Part 7 also describes EPA's compliance procedures. The full text of part 7 is provided at: <http://www.epa.gov/sites/production/files/2013-09/documents/40p0007.pdf>

- ***40 CFR Part 30 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations).*** 40 CFR part 30 establishes uniform administrative requirements for federal grants and agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations. Part 30 outlines pre-award policies, post-award requirements, and after-the-award requirements, which are very similar to those covered under 40 CFR part 31 (Uniform Administrative Requirements

for Grants and Cooperative Agreements to State and Local Governments), described below. Nonprofit organizations that implement federal programs for the states are also subject to state requirements. The full text of part 30 is provided at:

<https://www.gpo.gov/fdsys/granule/CFR-2000-title40-vol1/CFR-2000-title40-vol1-part30>

- **40 CFR Part 35A (Environmental Program Grants).** 40 CFR part 35, subpart A, applies to all environmental program grants including section 319(h). It establishes administrative grant requirements that supplement the requirements described under parts 30 and 31. Table A-2 outlines the requirements of part 35, subpart A. The full text of part 35, subpart A, is provided at: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr35_main_02.tpl
- **OMB Circular A-21 (Cost Principles for Educational Institutions).** Circular A-21 establishes the principles for determining costs applicable to grants with educational institutions. The full text of Circular A-21 is provided at: <https://www.federalregister.gov/documents/2000/08/08/00-19653/omb-circular-a-21-cost-principles-for-educational-institutions>
- **40 CFR Part 32 (Governmental Debarment and Suspension [Non-Procurement]).** 40 CFR part 32 states that anyone who has been debarred or suspended by a government agency must be excluded from all federal financial and nonfinancial assistance. By signing and submitting a section 319(h) proposal, grant applicants certify that they have not been debarred or suspended by a government agency. Part 32 also requires that as a condition of their grant, grantees must certify to EPA that they maintain a drug-free workplace. By signing and submitting the section 319(h) proposal, the grant applicant certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant. The full text of Part 32 is provided at: <https://www.gpo.gov/fdsys/pkg/CFR-2003-title40-vol1/pdf/CFR-2003-title40-vol1-part32.pdf>
- **OMB Circular A-110 “Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations”.** This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to states and to subawards made by states to institutions of higher education and other non-profit organizations. The full text of A – 110 is provided at: <https://www.federalregister.gov/documents/1998/08/10/98-21369/omb-circular-a-110-uniform-administrative-requirements-for-grants-and-agreements-with-institutions>
- **OMB Circular A-122 (Cost Principles for Non-Profit Organizations).** Circular A-122 establishes principles for determining costs of grants with nonprofit organizations. All subawards are subject to those federal cost principles applicable to the particular type of organization; that is, if a subaward is issued to a nonprofit organization, this circular applies, and if a subaward is issued to a local government, Circular A-87 applies. Circular A-122 provides the basic guidelines for allowable costs (e.g., must be reasonable, authorized, necessary and documented), as well as an explanation of direct and indirect costs. Allocation of indirect costs, determination of indirect cost rates, and negotiation and approval of indirect cost rates are described. Selected cost items are defined specifically as allowable (e.g., communication costs, professional services) or unallowable (e.g., alcoholic beverages, lobbying). The full text of Circular A-122 is provided at:

<https://www.nonprofitaccountingbasics.org/federal-awards/omb-circular-122>

- **OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).** Circular A-133 establishes standards for obtaining consistent and uniform audits of states, local governments, and nonprofit organizations expending federal awards regardless of whether they are recipients or subawardees. Audits must be conducted according to generally accepted government auditing standards. Entities that expend at least \$300,000 of total federal funds in a year must have an audit conducted for that year. EPA may request program-specific audits. The grant recipient has the following audit responsibilities:
 - (1) Identify all federal awards received and expended.
 - (2) Maintain awards in compliance with laws, regulations, and grant provisions.
 - (3) Prepare appropriate financial statements, including the schedule of expenditures.
 - (4) Ensure that audits are properly performed and submitted on time.
 - (5) Follow up and take corrective action on audit findings.

Circular A-133 describes the required contents of an audit reporting package, which must be submitted to a federal clearinghouse. Subawardees also must submit a copy of a reporting package to each pass-through entity (e.g., state nonpoint source agency). Additional subawardee responsibilities are outlined in Circular A-133; the full text of the circular is provided at: <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A133/a133.pdf>

State and Local Governments

- **Part 7 (Nondiscrimination in Program Receiving Federal Assistance from the Environmental Protection Agency).** 40 CFR part 7 prohibits discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, gender, or handicap. Part 7 outlines the following requirements:
 - (1) Submission of an assurance with a grant application that the grant applicant will comply with the requirements of part 7.
 - (2) Maintenance of compliance information during the life of the grant and for 3 years after completing the project. Public notification that the grantee does not discriminate on the basis of race, color, national origin, gender, or handicap.

Part 7 also describes EPA's compliance procedures. The full text of part 7 is provided at: <http://www.epa.gov/sites/production/files/2013-09/documents/40p0007.pdf>

- **40 CFR Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).** 40 CFR part 31 establishes uniform administrative requirements for federal grants to and agreements with state and local governments. Table A-1 outlines the requirements of part 31. The full text of part 31 is provided at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-applicable-40-cfr-part-30-and-31-recipients-effective-0>

- **40 CFR Part 32 (Governmental Debarment and Suspension [Non-Procurement]).** 40 CFR part 32 states that anyone who has been debarred or suspended by a government agency must be excluded from all federal financial and nonfinancial assistance. By signing and submitting a section 319(h) proposal, grant applicants certify that they have not been debarred or suspended by a government agency. Part 32 also requires that as a condition of their grant, grantees must certify to EPA that they maintain a drug-free workplace. By signing and submitting the section 319(h) proposal, the grant applicant certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant. The full text of Part 32 is provided at:
<https://www.gpo.gov/fdsys/pkg/CFR-2003-title40-vol1/pdf/CFR-2003-title40-vol1-part32.pdf>
- **40 CFR Part 35A (Environmental Program Grants).** 40 CFR part 35, subpart A, applies to all environmental program grants including section 319(h). It establishes administrative grant requirements that supplement the requirements described under parts 30 and 31. Table A-2 outlines the requirements of part 35, subpart A. The full text of part 35, subpart A, is provided at:
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr35_main_02.tpl
- **OMB Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).** Circular A-87 establishes the principles and standards for determining the allowable costs incurred by state, local, and federally recognized American Indian tribal governments under grants with the federal government. All subawards are also subject to these cost principles unless the subaward is to a college, university, hospital, or other nonprofit organization. (Such entities are covered under different OMB circulars.) Circular A-87 provides the basic guidelines for allowable costs (e.g., must be necessary, reasonable, authorized, and documented), as well as an explanation of direct and indirect costs. Selected cost items are defined specifically as allowable (e.g., accounting, materials, and supplies) or unallowable (e.g., alcoholic beverages, entertainment). The full text of Circular A-87 is provided at:
https://obamawhitehouse.archives.gov/omb/circulars_a087_2004/
- **OMB Circular A-102 (Grants and Cooperative Agreements with State and Local Governments).** Circular A-102 establishes guidelines for consistency and uniformity in federal agencies' management of grants with state, local, and federally recognized Indian tribal governments. The full text of Circular A-102 is provided at:
https://obamawhitehouse.archives.gov/omb/circulars_a087_2004/
- **OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).** Circular A-133 establishes standards for obtaining consistent and uniform audits of states, local governments, and nonprofit organizations expending federal awards regardless of whether they are recipients or subawardees. Audits must be conducted according to generally accepted government auditing standards. Entities that expend at least \$300,000 of total federal funds in a year must have an audit conducted for that year. EPA may request program-specific audits. The grant recipient has the following audit responsibilities:

 - (1) Identify all federal awards received and expended.
 - (2) Maintain awards in compliance with laws, regulations, and grant provisions.
 - (3) Prepare appropriate financial statements, including the schedule of expenditures.

- (4) Ensure that audits are properly performed and submitted on time.
- (5) Follow up and take corrective action on audit findings.

Circular A-133 describes the required contents of an audit reporting package, which must be submitted to a federal clearinghouse. Subawardees also must submit a copy of a reporting package to each pass-through entity (e.g., state nonpoint source agency). Additional subawardee responsibilities are outlined in Circular A-133; the full text of the circular is provided at: https://obamawhitehouse.archives.gov/omb/circulars/a133_compliance_supplement_2016