

**PROGRAMMATIC SPECIAL TERMS AND CONDITIONS
FOR §319H GRANT CONTRACTS**

1. **Reporting Requirements:** The sub-recipient (Grantee) agrees to comply with all reporting requirements required by EPA regulation (40 CFR part 35), §§319(h)(10) and (11) of the Clean Water Act, and by the *Nonpoint Source Program and Grant Guidelines for States and Territories (2013)* [and enumerated in this contract]. Failure to comply with the above referenced reporting requirements may result in a disruption of grantee funding and/or early termination of the grant agreement in accordance with 2 CFR part 200. This includes progress reports, quarterly reports, data submissions, etc. The sub-recipient (Grantee) agrees to submit reports for all projects identified in the approved scope of work, including those performed by the sub-recipient (Grantee), sub-grantees, contractors, and through interagency agreements. Reports shall include a comparison of actual accomplishments to the outputs/outcomes established in this contract for that period, the reasons for slippage if those outputs/outcomes could not be met, and any other pertinent information such as cost overruns. In accordance with 2 CFR § 200.328(d), the sub-recipient (Grantee) agrees to inform DEQ as soon as problems, delays, or adverse conditions arise which will materially impair the ability to meet the outputs/outcomes specified in the work plan. The final project report is due to DEQ within 30 business days after the end of the subaward agreement. The final report shall describe project activities and identify and discuss the extent to which project goals have been achieved, and the amount of funds spent on the project. The report shall emphasize successes, failures, lessons learned, BMP data (for load reduction calculations), and shall include any available water quality and habitat data demonstrating project results. The final project report shall be provided in an electronic format as an attachment to the DEQ Project Manager for final review and approval.

2. **FEDERAL EMPLOYEE COSTS:** Funds for this project may not be used to pay for the travel of federal employees, or for other costs associated with federal participation in this project unless the federal agency is performing special technical assistance to the sub-recipient (Grantee) as allowed under the provisions of the Intergovernmental Cooperation Act.

3. **ACKNOWLEDGEMENTS AND DISCLAIMER:** The role of Virginia Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA) must be clearly stated in all press releases, signage, news articles, requests for proposals, bid solicitations, and other documents describing this project, whether funded in whole or in part. Acknowledgment of financial assistance, with logos, must be printed on the cover of all reports, studies, web sites, map products or other products supported by this award or any sub-award. The sub-recipient (Grantee) is responsible for contacting DEQ staff in adequate time to obtain the logo in camera-ready or digital form. This includes receiving permission from EPA for logo use. Prior to production, DEQ project management staff must approve the final draft. Example acknowledgement is: *“This project has been funded wholly or in part by the United States Environmental Protection Agency (EPA) and the Virginia Department of Environmental Quality (DEQ) under a §319 grant agreement (number) to (recipient).”* **DISCLAIMER:** For reports or papers for public distribution, the following sentence must be added to the of the above acknowledgement: *“The contents of this document do not necessarily reflect the views and policies of the EPA or DEQ, nor does the EPA or DEQ endorse trade names or recommend the use of commercial products mentioned in this document.”*

Additional EPA Requirements for Public Awareness (refer to the public awareness terms and conditions at: https://www.epa.gov/sites/production/files/2015-01/documents/cwa_319_public_awareness_tc_10_1_2014.pdf):

- a. **Outreach Signage Requirements:** If the §319 award includes an outreach component, the sub-recipient (Grantee) agrees to provide signage that informs the public that the project is funded by DEQ/EPA.
 - **Use of Logos:** The signage shall contain the DEQ/EPA logo and the EPA logo shall be displayed meeting the specifications provided by EPA (<https://www.epa.gov/stylebook/using-epa-seal-and-logo>). If the physical design of the sign allows, it shall also include the following text: "This project has been funded by

the United States Environmental Protection Agency" or "This cooperative project has been funded in part by the United States Environmental Protection Agency" Exceptions to including the EPA logo may be made by the Regional 319 Coordinator on recommendation by the State.

- If the EPA logo is appearing along with logos from other participating entities it must not be prominently displayed to imply that any of the recipient or subrecipient's activities are being conducted by EPA. Instead, the EPA logo shall be accompanied with a statement indicating that the sub-recipient (Grantee) received financial support from EPA. (For more information, refer to: <https://www.epa.gov/stylebook/using-epa-seal-and-logo#policy>)

- b. Announcements: The sub-recipient (Grantee) agrees that announcements through the web or print materials for workshop, conference, demonstration days or other events as part of a project funded by a 319 assistance agreement shall contain a statement that the materials or conference has been funded by the United States Environmental Protection Agency through a grant from the VA Department of Environmental Quality.

- c. Public or Media Events: The sub-recipient (Grantee) agrees to notify the DEQ Project Manager listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and provide the opportunity for attendance and participation by state and federal representatives with at least ten (10) business days' notice.

- d. Limited English Proficiency Communities: To increase public awareness of projects serving communities where English is not the predominant language, sub-recipients (Grantees) are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable and are included in the work plan.

4. **COMPETENCY OF ORGANIZATIONS GENERATING ENVIRONMENTAL DATA:** In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, the sub-recipient (Grantee) agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the recipient agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. Sub-recipient (Grantee) shall maintain competency for the duration of the contract (project) period of this agreement. A copy of the Policy is available online at <http://www.epa.gov/fem/pdfs/competency-policy-aaia-new.pdf> or a copy may also be requested by contacting the DEQ project manager for this award. According to FEM-2012-02, demonstration of competency may include (but not be limited to):

- a. Current participation in accreditation or certification programs that are applicable to the environmental data generated under assistance agreement;

- b. Ongoing participation by the organization in proficiency testing (PT), training or round robin programs conducted by external organizations;

- c. Ongoing DEQ accepted demonstrations and audits/assessments of proficiency; or

- d. Other pertinent documentation that demonstrates competency (e.g., past performance to similar statement of work [SOW]).

5. **QUALITY CONTROL/QUALITY ASSURANCEPROJECT PLANS:** In accordance with 2 CFR §1500.11, sub-recipient (Grantee), or any recipient delegated the responsibility for environmental data collection or data compilation activities, must develop and implement quality assurance and quality control procedures, specifications and documentation that are sufficient to produce data of adequate quality to meet project objectives. Sub-recipients (Grantees) implementing environmental projects that include: (a) direct measurement, sampling or observation activities, (b) environmental modeling, (c) use of existing data, (d) use of survey results, or (e) calculation of environmental outcomes, shall prepare and implement a Quality Assurance Project Plan (QAPP). The QAPP is the document that provides comprehensive details about the quality assurance/quality control requirements and technical activities that must be implemented to ensure that project objectives are met. The QAPP shall be prepared in accordance with EPA QA/R-5: EPA

Requirements for Quality Assurance Project Plans (<https://www.epa.gov/quality/epa-qar-5-epa-requirements-quality-assurance-project-plans>). For environmental projects, other than those collecting water quality data (that need to meet E PA QA/R-5), DEQ/EPA recognizes that a “one size fits all” approach to quality specifications will not work. The level of detail in the QAPP shall be based on a graded approach. That is the level of detail varies according to the nature of the work being performed and the intended use of the data. DEQ/EPA will review the QAPP to ensure that it meets programmatic needs, is consistent with the approved scope of work and executed agreement and includes all of the required QAPP elements. The QAPP must be submitted to the DEQ QA/ QC Project Officer and the DEQ Project Manager at least 60 business days prior to the initiation of data collection, data compilation. No water quality monitoring activities, data generation activities or data collection/use activities, including supply purchases, may occur nor will be reimbursed until the QAPP has been reviewed and approved by DEQ/EPA. The sub-recipient (Grantee) shall implement the approved QAPP in performing all covered activities. Modifications of the approved QAPP must be approved by DEQ in writing. DEQ will not reimburse for any activities that do not have the required DEQ approved QAPP or that do not conform to the approved QAPP. (For more information, refer to: <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>).

6. **USE AND SUBMISSION OF WATER QUALITY MONITORING DATA**: The sub-recipient (Grantee) agrees to provide DEQ with any data collected from water quality monitoring activities associated with the funded agreement (including match). The sub-recipient (Grantee) agrees that any data generated from the associated agreement and submitted to DEQ may be utilized by DEQ for the purposes of analyzing water quality conditions and documenting improvements related to implementation activities (among other uses).
7. **STORET DATA REPORTING**: The sub-recipient (Grantee) agrees to enter water quality monitoring data, for data collected in a waterbody pursuant to the implementation of a §319 project, into EPA’s “storage and retrieval” (STORET) data system. All water quality data generated with §319 funding, either directly or by sub-award, are required to be transmitted into the STORET data warehouse using either the Water Quality Exchange (WQX) or the WQXweb. When uploading data through WQX or WQXweb, data shall be identified as §319 grant related by providing project ID CWQ319 in the data submission. If the sub-recipient (Grantee) has an existing project ID, then include this in addition to the data collected using §319 funds.

Note: Grantees within the Chesapeake Bay drainage may be able to meet their reporting requirements by reporting their data through the Chesapeake Monitoring Cooperative’s Chesapeake Bay Data Explorer (<https://www.chesapeakemonitoringcoop.org/services/chesapeake-data-explorer/>). The Grantee must provide documentation that demonstrates that the data was submitted.

8. **RESTRICTION OF THE USE OF §319 FUNDS FOR NPDES/VPDES ACTIVITIES**: Acceptance of this award and submission of reimbursement for grant associated expenses certifies that the sub-recipient (Grantee) is aware that no federal §319h funds, or funds associated with this grant award as match can be utilized for activities, BMPs, or practices that are related to developing, implementing or meeting requirements of a National/Virginia Pollution Discharge Elimination System (NPDES/VPDES) permit (by the sub-recipient (Grantee) or its partners receiving grant funds).

In the event that it is determined that the sub-recipient (Grantee) or its partners have utilized grant funds to complete activities, projects, or BMPs to meet VPDES/NPDES permit requirements (or related to developments or issuance of a permit), the sub-recipient (Grantee) and participating landowner may be liable for reimbursement of all funds associated with the installed practice(s). DEQ shall retain the right to cancel all grant projects and request reimbursement of federal §319h grant funds. §319 funding may also not be used in relation to mitigation banking or nutrient trading.

9. **GEOSPACIAL DATA STANDARDS**: If this Agreement includes the creation or generation of geospatial data then that data must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.
10. **LAWS, REGULATIONS AND PERMITS**: The sub-recipient (Grantee) agrees to ensure that all necessary permits (such as Clean Water Act §404) are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state or local laws. The sub-recipient (Grantee) agrees to follow all appropriate local, regional, state or federal laws or regulations that may be required during the execution of the Agreement. This includes ensuring that the acquisitions of all necessary permits are obtained prior to the implementation of any grant funded activity. The sub-recipient (Grantee) must be able to provide any documentation, upon request regarding necessary permits, this includes keeping copies of documentation in the project file. The approval of this work plan or the execution of this contract does not imply nor does it guarantee that a federal, state or local permit will be issued for a particular activity.
11. **WATERSHED-BASED PLANS**: Under the §319 guidelines, use of §319 "watershed project" funds (used to fund this agreement) requires that a watershed-based plan (also known as a "TMDL Implementation Plan) which includes all of the information in elements (a)--(i) as described in the §319 grant guidelines, or an acceptable alternative plan be completed (and approved by DEQ and U.S. Environmental Protection Agency) prior to implementation of on-the-ground projects. The sub-recipient (Grantee) shall ensure a watershed-based plan or acceptable alternative plan is completed and approved prior to beginning to implement any on-the-ground project with §319 watershed project funds.
12. **BEST MANAGEMENT PRACTICE (BMP) OPERATION AND MAINTENANCE**: The sub-recipient (Grantee) shall ensure the continued proper operation and maintenance of all nonpoint source (NPS) best management practices (BMPs) that have been funded under this agreement through the establishment of operation and maintenance plans and agreements with landowners and participants. BMPs shall be operated and maintained for the expected lifespan and in accordance with applicable standards and specifications as defined in DCR's "Agricultural BMP Cost-Share Manual" (Manual) or DEQ's "Nonpoint Source Best Management Practice (BMP) Guidelines" (Guidelines), or other DEQ-approved document. The expected lifespan for each BMP is defined in both DCR's Manual and DEQ's Guidelines and begins on January 1 of the calendar year following the year of certification of completion. Sub-recipients (Grantees) shall include a provision in every applicable sub-agreement (grant or contract) awarded under this agreement requiring that BMPs funded under the agreement are properly operated and maintained for the lifespan of the practice. Likewise, the sub-agreement shall assure that similar provisions are included in any sub-agreements that are awarded by the sub recipient.

An Operation and Maintenance Plan for Best Management Practice and the associated Landowner Agreement for each BMP are due to DEQ for review and approval before any work can be started and any funds reimbursed. Operation and Maintenance Plans and Landowner Agreements shall be submitted to DEQ within 60 business days of the start of the grant agreement, or within 15 business days of completion of the subject BMP designs. Utilization of the "Nonpoint Source Cost-share Programs Contract" or DEQ approved equivalent (Contract) and adherence to either DCR's Manual or DEQ's Guidelines is considered an adequate operation and maintenance plan and landowner agreement for agricultural and residential septic BMPs. Additional landowner agreements or contracts shall be submitted on a quarterly basis throughout the grant period.

DEQ (and its agency partners) and EPA respectively reserve the right to periodically inspect a practice during the lifespan identified in the Operation and Maintenance Plan, Contract, or other DEQ-approved mechanism to ensure that operation and maintenance are occurring during the practice lifespan. Please note that the enforceable length for this term and condition coincides with the length of period identified in the operation and maintenance plan or Contract (e.g. 10 years). The sub-recipient (Grantee) shall refund, to DEQ, all or

part of the cost-share financial received if BMPs are found not to meet applicable standards and specifications at the time of installation/payment or if the practices are removed or not properly maintained during the lifespan of the practice(s). The sale, lease or changed use of the property shall not exempt the sub-recipient (Grantee) from fulfilling these requirement(s). The sub-recipient (Grantee) shall include a provision in every applicable sub-agreement (grant or contract) awarded under this agreement requiring that the landowner or participant completes an "Agreement Transferring Responsibility for Best Management Practice" form and submit that to the sub-recipient (Grantee) in the event of the property changing ownership during the lifespan of the practice(s). DEQ may require the sub-recipient (Grantee) to refund all or a portion of grant funds if the owner of the property hosting the BMP sells or loses control of the land under which a grant funded project is associated and does not reimburse the sub-recipient (Grantee).

In the event that the sub-recipient (Grantee) fails to comply, DEQ shall give written notice specifying the failure to comply and shall give the sub-recipient (Grantee) the time to correct such failure as provided for herein with respect to a breach of this Agreement. For nonpoint source BMP installations funded through this Agreement, if the sub-recipient (Grantee) does not comply within ninety (90) business days of receipt of written demand from DEQ, the sub-recipient (Grantee) shall repay an amount, calculated on a straight line pro-rated basis, of the grant funds used for the installation.

13. **FUNDING CONSTRAINTS:** In accordance with §319(h)(12) of the Clean Water Act, administrative costs in the form of salaries, overhead, or indirect costs shall not exceed in any fiscal year 10 percent of the amount of the grant except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation. In accordance with §319(h)(6) of the Clean Water Act, the sub-recipient (Grantee) shall show commitment to expend the funds awarded in this grant and to complete the funded projects in accordance with DEQ's EPA approved Nonpoint Source Management Program and the approved work plan. The sub-recipient (Grantee) shall award all proposed contracts, sub-grants, and interagency agreements within one year after grant award.
14. **PROGRAM INCOME:** The sub-recipient (Grantee) agrees to not accumulate any program income. If any program income is generated, the sub-recipient (Grantee) must report said income to DEQ immediately and before they are authorized to use the income. The sub-recipient (Grantee) agrees, if approved by DEQ, to use any program income generated during the contract (project) period to further eligible project or program objectives. The sub-recipient (Grantee) shall have no obligation to DEQ regarding program income earned after the end of the contract (project) period.
15. **TATE GRANT CYBERSECURITY CONDITION:**
 - a. The sub-recipient (Grantee) agrees that when collecting and managing environmental data under this agreement, it shall protect the data by following all applicable State law cybersecurity requirements.
 - b. (1) EPA must ensure that any connections between the sub-recipient's (Grantee) network or information system and EPA networks used by the sub-recipient (Grantee) to transfer data under this agreement, are secure. For the purposes of this §, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the sub-recipient (Grantee) agrees to contact DEQ to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the sub-recipient (Grantee) into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.
16. **MATCHING FUNDS:** If this Agreement is contingent upon cash or in-kind contributions by the sub-recipient (Grantee) to the project, the required amount of matching funds shall be indicated on the Project

Financial Report Form, Attachment B, of these Agreement documents. Matching contributions, if applicable, must reflect expenses directly related to the implementation of this project and incurred only during the time of performance listed in this Agreement. The decision of DEQ with respect to approval of matching funds shall be final. Matching funds must be tracked and reported to DEQ in the quarterly and final reports the same as grant funds.

17. **NUTRIENT MANAGEMENT**: Funding and or technical assistance provided by or through the sub-recipient (Grantee) from this Agreement to any agricultural operation shall be utilized in accordance with either:
- United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) nutrient Management Standard Code 590 as adopted at the state level and at such a time when USDA NRCS adopts guidelines at the state level for “Comprehensive Nutrient Management Plans (CNMPs)”, all funding for such purposes shall have to adhere 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.”
18. **SUFFICIENT PROGRESS/ SATISFACTORY PROGRESS**: DEQ may terminate this award for failure of the sub-recipient (Grantee) to make sufficient progress so as to reasonably ensure completion of the project within the contract (project) period, including any extensions. DEQ will measure sufficient progress by examining the performance required under the sub-award (including the scope of work, milestone schedule, the time remaining for performance within the contract (project) period, and/or the availability of funds necessary to complete the contract (project)). In determining sufficient progress, DEQ may also consider the rate of expenditure of funds (unliquidated obligations), as well as the findings from the most recent performance and progress determination performed by DEQ staff.
19. **CONTINGENCY PLANS**: Abandoned Mine Drainage (AMD) projects that have high potential for sudden uncontrolled release of fluid or sediment are required to have a Contingency Plan in place. Specifically, the following activities including, but not limited to, shall be covered by a Contingency Plan: (a) in-stream digging or excavation of mine waste materials; (b) moving, relocating or disposing of mine waste rock or tailings adjacent to an adit or stream; (c) constructing fluid impoundments or retention basins for waste storage or treatment. Contingency plans shall be submitted to DEQ a minimum of 90 business days prior to construction. Contingency plans can be developed at the watershed plan or TMDL IP scale as long as they contain the required elements.