

COPY of Original Email Sent to NEP Directors and EPA Staff from February 19, 2015 12:42 PM

Subject: Frequently Asked Questions on National Estuary Program Governance

Hello National Estuary Program Directors,

I am pleased to share the final *Frequently Asked Questions on NEP Governance* that was heavily vetted by NEP Directors, EPA HQ & Regions, including EPA senior management review. As you requested, this document brings together in one place key NEP information and guidance. It is designed to help the NEP community understand EPA's expectations and how the NEP generally operates. This living document does not create new policy, rather it helps to clarify existing policies and operating principles.

EPA will be posting this document on our newly established SharePoint. See Nancy Laurson's February 4, 2015 email that provides instructions on how to access SharePoint. You may contact her at Laurson.nancy@epa.gov if you did not receive her email.

I look forward to seeing you next week at the NEP Workshop!

Safe travels,

Bernice

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Frequently Asked Questions on National Estuary Program (NEP) Governance

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Summary

This document brings together in one place key NEP information and guidance and is designed to help the NEP community (i.e., EPA HQ, Regional Offices, NEPs and their Management Conferences) understand EPA's expectations and how the NEP generally operates. Please note that this document does not create new policy, rather it helps to clarify existing policies and operating principles. Since each NEP is uniquely structured, organized, and governed by its partners, the information below is provided as general guidance and is not intended to be prescriptive.

Questions

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1. What is the role of the NEP Management Conference (MC) and who are its members?

The MC is the local stakeholder-driven partnership that develops, updates, and implements an NEP Comprehensive Conservation Management Plan (CCMP) as authorized by Clean Water Act (CWA) §320. The partnership is a forum for open discussion, cooperation, consensus building, and collaborative decision making. The CCMP reflects a scientific characterization of, and stakeholder concerns about, the NEP study area, including water quality, habitat, and living resource challenges.

The MC typically establishes several core committees to carry out implementation of the CCMP. The roles of the various committees should be explicitly identified and documented by the MC. Although not standardized across all NEPs, in general, MCs usually include a policy committee that sets the overall direction for the NEP, a management committee that informs and approves projects and activities to implement the CCMP, and advisory committees that provide technical and citizen input.

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Membership of the MC generally includes EPA Regional representatives, state and local government representatives, and other diverse stakeholders such as: (1) elected and appointed policymaking officials from all governmental levels; (2) environmental managers from federal, state, regional, and local agencies; (3) local scientific and academic communities; (4) private citizens; and (5) representatives from public and user interest groups—business, industry, community, and environmental.

2. What is the role of the NEP Director and staff?

The NEP Director and staff serve many functions, including day-to-day management of NEP activities, providing administrative and technical support to NEP committees, conducting public outreach and education activities, coordinating and integrating NEP activities with existing water quality and natural resource protection and restoration efforts in the watershed, and identifying partners that will advance CCMP implementation. In addition, the Director solicits local support for the program, identifies additional sources of funding, and facilitates partner actions to help ensure there is no duplication of effort among partners. Finally, the Director reports NEP results to EPA (see #8 below).

The Director is hired by and is an employee of the host or independent entity. The MC, Policy Committee, or Board of Directors (if the NEP is a nonprofit organization) generally selects or concurs on the selection of the Director. The Director also supports and works to bring stakeholders to the table and to identify CCMP implementation partners. Since a Director is pivotal in bringing stakeholders to the table and in identifying CCMP implementation partners, the Director neither represents, nor should be perceived as representing, any particular entity, interest, or stakeholder, including the host entity.

The NEP staff is usually hired by the NEP Director in accordance with the host/independent entity's personnel policies and generally includes a Science or Technical Coordinator and, depending on an individual NEP's priority issues, may also include individuals with communications/outreach, administrative/financial, and technical expertise in water quality and habitat restoration.

3. What is the role of the NEP host entity?

An NEP host entity, such as a state agency, university, or nonprofit organization administers the EPA assistance agreement that supports the activities and projects of the NEP. Most NEPs have a host entity, but there are some that are structured as independent agencies or organizations (see #5 below). The host entity generally: (1) provides a physical location in the NEP study area for the Director and staff; (2) oversees compliance with terms and conditions of the assistance agreement made with EPA; (3) maintains financial records; (4) submits progress reports and other required paperwork; and (5) adheres to eligible cost requirements, which include a non-Federal 50 percent match.

The host entity is usually a member of the MC. Each NEP is governed by its MC rather than solely by its host entity, or in the case of a nonprofit organization or independent agency by its Board. Any §320 funding awarded to the host entity (or the NEP if it is an independent entity) is required by the CWA to be used for the purposes and activities developed and approved by the MC and consistent with an NEP's CCMP.

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4. *Who has the authority to recommend a new host entity?*

The MC has the ability to decide that it wants the NEP to move to a new host entity to ensure effective implementation of its CCMP. For example, a MC could determine that the current host lacks the capacity to support the NEP's administrative and/or financial needs.

5. *How is the NEP host entity selected?*

While there is no specified process for selecting a host entity, the host entity must be independent of the interests of any particular group or agency. The process is usually guided by the MC, EPA HQ, and the Regional Office to ensure that the NEP maintains its credibility as a largely autonomous entity independent of any particular agency, stakeholder, or interest group.¹ In selecting a new host entity, MCs have either issued a public call for Statements of Interest from interested parties or certain members of the MC have expressed interest in taking on the role of host entity.

6. *Do all NEPs have host entities? If not, how are they structured?*

No. Several NEPs are independent organizations that do not have a host entity and therefore directly administer the federal assistance agreements. An independent NEP can be structured as a Not for Profit organization, an independent agency within a state or local government, or other organizational structure.

7. *Where should the NEP Office be located?*

Since the NEP office typically serves as the focal point of planning and coordination among the government agencies with jurisdiction over the study area, the location of the office can impact the overall visibility of the NEP. Therefore, EPA prefers that the program office be located in the study area for greater visibility and awareness.

8. *What is the role of the EPA Regional Office in the NEP?*

Regional Offices have substantial responsibility for both the award of an annual assistance agreement between EPA and an NEP and for the administration of those agreements, including the oversight of an NEP's performance of tasks included in annual assistance agreement work plans. The Regional Office reviews and approves each NEP work plan, provides day-to-day assistance to each NEP, and is a member of the MC. The Regional Office also connects the NEP to EPA programs that are relevant to the NEP's efforts, provides advice on reporting and status updates as needed to EPA HQ contacts, and helps an NEP prepare for its upcoming PE review.

The Regional Office thus ensures that NEP activities are carried out in a manner consistent with CWA §320, EPA assistance agreement authorities, and the NEP's CCMP. (See the June 16, 2011, HQ and Regional Coordinator Roles and Responsibilities for more information.)

¹ While the host entity is accountable for the NEP personnel and administers the §320 assistance agreement, the MC provides the overall policy direction for the NEP.

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9. What is the role of EPA Headquarters in the NEP?

EPA HQ is the National Program Manager for the NEP and has broad responsibility for overall policy and management of the NEP, including fiduciary oversight of the Program. As the National Program Manager, EPA HQ complements the Regions' oversight of assistance agreements and raises the visibility of NEPs within the Office of Water, across EPA, with other federal agencies, and with Congressional staff. EPA HQ also collects and reports NEP environmental results and leveraging data and leads the NEP PEs.

In addition, when Regional Offices raise an NEP-specific issue with national implications to EPA HQ (e.g., a policy, programmatic, or fiduciary issue), EPA HQ works with the relevant Regional Office to address the issue and subsequently provides information about the issue to those the Regional Offices that have NEP oversight responsibility. EPA HQ provides timely advice and support to the Regional Offices on assistance agreement issues as needed. (See the June 16, 2011, HQ and Regional Coordinator Roles and Responsibilities for more information.)

10. What is the purpose of the annual EPA assistance agreement?

The EPA annual assistance agreement is a legally-binding agreement between an EPA Regional Office and an NEP host or independent entity. The assistance agreement lays out how an NEP will use its §320 funds in addition to the required non-Federal 50 percent match and includes the NEP annual work plan that describes actions the NEP will take to implement its CCMP. Note that §320 funds can be used for NEP administrative and financial management activities. The Regional Office is responsible for overseeing the NEPs' fulfillment of the requirements of the assistance agreement.

11. What is the purpose of the NEP Program Evaluation (PE)?

The purpose of the PE is to determine whether each NEP has made adequate progress implementing its CCMP since the previous PE and therefore merits continued funding under CWA §320. EPA HQ is responsible for leading the PE. Major benefits of conducting the PE include:

- Increasing transparency and mutual accountability on the part of EPA and the NEPs;
- Enhancing NEP governance, program operations, and management;
- Highlighting environmental results;
- Highlighting strengths and challenges in program management;
- Demonstrating continued stakeholder commitment, effective management, and environmental and programmatic results to EPA, OMB, and Congress;
- Transferring lessons learned within EPA, among the NEPs, and with other watershed programs;
- Assisting EPA in making resource allocation decisions to strengthen each NEP.

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12. *What is the relationship between annual assistance agreement requirements and PEs?*

The assistance agreement and PE process requirements are separate but related elements of EPA's NEP oversight responsibilities. The assistance agreement, which is managed by an EPA Regional Office, includes the NEP annual work plan that describes actions the NEP will take to implement its CCMP. The PE, which is led by EPA HQ, looks at the NEP's performance over the past five years in order to identify strengths, challenges, and recommendations for improvement.

If an EPA Regional Office finds that an NEP has not performed the tasks included in its mutually-agreed upon annual assistance agreement work plan, the Regional Office will take actions to address the NEP's performance issues, even if the NEP passed its last PE. The challenges and recommendations identified in a PE findings letter will be clearly and explicitly identified to the NEP Director and the MC. Follow-up communication between the Regional Offices, EPA HQ, and the NEP allows issues that have been raised in the PE to be addressed in a timely manner.

The Regional Office helps develop the challenges and recommendations included in a PE letter and works with an NEP to identify and implement actions to address them through subsequent annual work plan(s) as well as on-going communication with the NEP Director, MC, and EPA HQ. If an NEP has not addressed PE challenges within a mutually agreed-upon time frame, the Regional Office may add a special term and condition to the annual assistance agreement specifying actions that the NEP must take to address those challenges.

13. *What is the NEP Program Guidance?*

The EPA's Coastal Management Branch transmits Program Guidance to the NEP Directors and NEP Regional Coordinators on an annual or biennial basis. This document provides general guidance to the NEPs and Regions on §320 policies and requirements and addresses annual work plan content and submittal deadlines, required travel documentation, match requirements, and Government Performance and Results Act (GPRA) habitat and leveraging reporting requirements. EPA recognizes the need for NEPs to have flexibility in administering local programs and that each NEP is responding to unique, local environmental priorities as established in their CCMPs and the Program Guidance is intended to allow for such flexibility.

14. *What are the NEP reporting requirements?*

Every five years the NEPs prepare a Program Evaluation report, described at http://water.epa.gov/type/oceb/nep/upload/2011_final_pe_guidance.pdf, and submits it to EPA HQ and Regional Offices. In addition, all NEPs must track and report the annual number of acres of habitat protected or restored and number of dollars leveraged. NEPs must track and report on these measures to EPA HQ using the NEP Online Reporting Tool (NEPORT) which is located at: <https://yosemite.epa.gov/water/neport.nsf/frmMenuLev?ReadForm>). The NEP Program Guidance (see Question #12 above) outlines what and when the NEPs need to report on habitat and leveraging, as well QA/QC responsibilities of the Regional NEP Coordinators. The NEP Director and staff work with their NEP Regional Coordinators to ensure that the NEP habitat data commitments are made early in the fiscal year.

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The data collected for these measures must be entered into NEPORT at the end of the fiscal year in a timely manner so that EPA is able to enter the data into EPA's Annual Commitment System (ACS). Reporting on acreage protected and restored is a condition of the NEP's assistance agreement and requires each recipient to report on environmental results. NEP leveraging data are important because they depict the magnitude of local resources and support for CCMP implementation and the multiplier effect of federal investment in place-based estuarine protection and restoration. NEP data developed in response to Program Guidance requirements are also used by NEPs to communicate about their accomplishments to local stakeholders and the general public. Each NEP is also required to report on the deliverables, outputs, outcomes, and financials in response to NEP Program Guidance and Regional Office requirements.

References

- Clean Water Act, §320, as Amended.
- General Grant Regulations and Procedures (40 CFR 30 and 40 CFR 31).
- Technical Amendment Financial Assistance Requirements for the National Estuary Program (40 CFR, Part 35).
- EPA# 842B05003 Community-based Watershed Management: Lessons from the NEP
- EPA# 842B92002 National Estuary Program Guidance - Comprehensive Conservation and Management Plans: Content and Approval Requirements.
- EPA# 842B93001 National Estuary Program Guidance: Base Program Analysis.

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