

GUIDANCE ON SECTION 319(H) GRANT FUNDING ELIGIBILITY FOR PROJECTS WITHIN DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEMS(MS4)



The Indiana Department of Environmental Management (IDEM) has developed this guidance document, comprised of frequently asked questions, on Section 319 Nonpoint Source grant eligibility for projects within designated Municipal Separate Storm Sewer Systems (MS4). Section 319 grant funds cannot be used to fund compliance with permits or permit requirements, but these funds can be used to provide water quality benefits within urban areas, provided certain conditions are met. Those conditions will be outlined here, but this guidance is not meant to be inclusive of all situations – IDEM advises all grant applicants and current grant recipients to contact your Section 319 project manager with all project-specific questions.

Frequently Asked Questions regarding Section 319 grants and MS4

1. What is an MS4?

A municipal separate storm sewer system (MS4) is a conveyance or system of conveyances (sewers, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains) that is:

- Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage districts, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;
- Designed or used for collecting or conveying storm water;
- Which is not a combined sewer; and
- Which is not part of a publicly owned treatment works.

The designated entity within the MS4 area must develop and implement a storm water quality management plan (SWQMP) to reduce the discharge of pollutants from their storm water conveyance system. The SWQMP lays out the methods by which the MS4 area will manage and treat their storm water.

The complete MS4 rule can be found at Title 327, Article 15, Rule 13 of the Indiana Administrative Code and can be viewed directly at: http://www.in.gov/legislative/iac/iac_title?iact=327

Scroll down to Article 15 and then scroll down to Rule 13.

2. How is the Section 319 grant program related to the MS4 permit program?

The Section 319 program and the MS4 program are both aimed at reducing pollutant loadings to water resources. However, there are some key distinctions:

	MS4 Program	319 Program
Purpose of Program	Regulatory - Discharges from storm water conveyance systems are "point sources" and are covered under a general or individual permit.	Assistance - The 319 program supports watershed planning and implementation of nonpoint source control measures through grants.
Scope of Program	Effective in urban and suburban areas (designated areas, usually with populations > 7,000).	Carried out in urban, suburban, rural and agricultural areas.

While both programs are aimed at reducing pollutant loadings from runoff, 319 grant funds cannot be used to pay for the storm water pollution controls required by the MS4 area’s Storm Water Quality Management Plan (SWQMP); 319 funds cannot be used to meet federal permit requirements.

3. How do I know if my project is within an MS4 area?

MS4 areas are based on urban population and the permits were issued in two phases. Phase 1 was for urban areas with more than 100,000 people. The only Indiana community that was permitted as part of Phase 1 was the City of Indianapolis. Phase 2 generally covers areas with populations of 7,000 or more. Other factors, such as population density and growth were also criteria used by IDEM to designate MS4 entities. There are exceptions that can include universities, colleges, correctional facilities, hospitals, conservancy districts, homeowner's associations, transportation networks, and military bases. If you are not sure if you’re in an MS4 area and don’t know who to contact locally to find out, you can look on IDEM’s website for a complete [list of MS4 operators](#) and their contact information.

4. What is the difference between the MS4 rule and Rule 5?

Rule 5 is a performance-based regulation designed to reduce pollutants that are associated with construction and/or land disturbing activities that disturb one acre or more. It overlaps with the MS4 rule in that, the MS4 rule requires MS4 entities to develop ordinances for the Construction and Post-Construction MCMs, and those ordinances must meet the minimum requirements of 327 IAC 15-5 (Rule 5). Rule 5 applies statewide, but the ordinances developed by the MS4s are specific to each MS4 jurisdictional area. Just like the MS4 rule, Section 319 funds cannot be spent on Rule 5 requirements unless the proposed project is above and beyond the rule's requirements.

5. What opportunities exist for 319 groups and the local MS4 to cooperate and work together?

Since the 319 and MS4 programs have the same overall goal—to improve water quality--there are several opportunities for partnership. 319 groups are encouraged to work with local municipalities and MS4 entities to find retrofit opportunities. In some circumstances, the conveyance system can be retrofitted and 319's ability to potentially install BMPs before and after the conveyance system provides water quality benefit to the system and the watershed as a whole. Finding ways to go above and beyond the SWQMP and monitoring water quality at points that benefit the MS4 entity are two more possible partnerships. Finally, keep in mind that work done by a 319 group inside an MS4 gets to be reported by the entity in its Annual Report and that an MS4's work may often advance the goals of the 319 group.

6. How do I know what makes up the MS4 conveyance system?

For the purpose of 319 policy, US EPA and IDEM have defined 'conveyance' as a constructed pipe, ditch, pond, or similar structure that was never a water of the state and was designed and built to move storm water (or wastewater) between two points. Water of the state is defined in the Indiana Code at IC 13-11-2-265:

"Waters"

Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

(1) the accumulations of water, surface and underground, natural and artificial, public and private; or

(2) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana.

(b) The term "waters" does not include:

(1) an exempt isolated wetland;

(2) a private pond; or

(3) an off-stream pond, reservoir, wetland, or other facility built for reduction or control of pollution or cooling of water before discharge.

(c) The term includes all waters of the United States, as defined in Section 502(7) of the federal Clean Water Act (33 U.S.C. 1362(7)), that are located in Indiana.

Under no circumstances can 319 pay for a BMP to be placed directly at the end of a conveyance system, as this would constitute a “point source control”. However, 319 funds can be spent on the conveyance system if the project will improve water quality; but only the part of the project that improves water quality is eligible. Below are some common examples of potentially eligible 319 projects within a conveyance system:

- Retrofitting a storm water pond into a constructed wetland. All storm water ponds are part of the conveyance system;
- Reengineering a ditch into a 2-stage ditch. Drainage ditches are part of the conveyance system if they were never a water of the state and were designed and built to move storm water; and,
- Adding infiltration capacity to a swale. Swales are part of the conveyance system if they were never a water of the state and were designed and built to move storm water.

7. Where do I find out what storm water pollution controls are required under the applicable SWQMP?

The control measures required are listed in the MS4 Rule (327 IAC 15-13) and the SWQMP that has been developed by the local MS4. The Rule specifies six (6) "Minimum Control Measures" (MCM). Each MCM outlines components of the MS4 entity's storm water control program. The MCMs are:

1. Public education and outreach;
2. Public participation/involvement;
3. Illicit discharge, detection and elimination;
4. Construction site runoff control;
5. Post-construction site runoff control; and
6. Pollution prevention/good housekeeping.

For each individual SWQMP, the MCMs contain a list of activities and/or Best Management Practices (BMPs) that the MS4 entity is required to implement to control their storm water. For the most part, Section 319 funds cannot be used to construct BMPs or carry out activities required as

part of one of the MCMs unless those BMPs or activities are above and beyond the requirements of the MS4 permit (see question # 9).

The 5th MCM, Post-construction site runoff control, deals with storm water management measures that will be in place at sites after construction projects are completed. In some cases, rather than listing post-construction BMPs, MCM 5 cites manuals that contain appropriate BMPs. In those circumstances, you will have to track down the appropriate manual to determine what BMPs are included in MCM 5.

8. Under what circumstances should I worry about overlapping with the SWQMP requirements?

Anytime a group using 319 funds implements an activity or BMP that satisfies the SWQMP requirement, 319 funds are being used inappropriately. This occurs most often when 319 groups want to:

- Hold an educational activity or program required in MCM 1 or 2, and
- Install, on new construction or a redevelopment project, a BMP required in MCM 5.

Activities and BMPs listed in the SWQMP can potentially be 319 eligible if they are above and beyond the permit requirements.

9. What does it mean to be above and beyond the requirements of the SWQMP?

When a grantee proposes an educational activity or a BMP on new construction or a redevelopment project, IDEM makes an above and beyond determination to decide 319 eligibility. In these circumstances, there are three ways to ensure that a proposed BMP or activity is above and beyond the permit:

- a. Extend the educational activity beyond the MS4 boundary so it focuses on the entire watershed (see question # 10).
- b. If you want to install a BMP listed in the SWQMP, install one that reduces NPS pollution at a greater rate than the permit calls for (see question # 11).
- c. Install a BMP that is not listed in the SWQMP.

10. Can I use Section 319 grant funds to pay for education based programs like storm drain stenciling, brochures, and educational workshops/seminars?

If the educational activity is listed in the SWQMP you cannot use 319 grant funds to implement it unless you go above and beyond the permit requirements. For educational activities, above and beyond can usually be established by focusing on the entire watershed and not just the MS4 area.

Above and beyond determinations need to be made on a case-by-case basis, but there are two broad examples worth mentioning:

- MCM 1 might call for an education event focusing on storm water prevention, and your 319 group wants to do something similar. By focusing your event on the entire watershed, and not just the MS4 area, as well as touching on other watershed issues beyond storm water prevention, you have gone above and beyond the MCM and the activity become 319 eligible.
- MCM 2 might call for storm drain stenciling, which is a good community outreach event your 319 group also wants to focus on. The stenciling is above and beyond the MCM, and 319 eligible, if you implement it beyond the MS4 area and across the entire watershed at the same scale or greater than the MS4 entity implemented it. For example, if the MS4 has to stencil 100% of their storm drains, a 319 group would have to stencil 100% of the watershed's storm drains to be above and beyond.

In both of these examples, above and beyond cannot be met if the MS4 area covers the entire watershed.

11. I want to install BMPs that are listed in the SWQMP, and I want to install them within the MS4 area. Can I use 319 funds to pay for the BMPs?

The answer depends on where you want to install the BMPs. The SWQMP does not apply to existing development (where there is no construction). So, on existing development, as long as 319 funds are spent in accordance with IDEM policies, BMPs can be installed even if they are listed in the SWQMP. On the other hand, the SWQMP does apply to new construction and redevelopment projects, so BMPs in the MCM for post-construction storm water management (MCM 5) are not eligible on those sites unless above and beyond can be met.

For example, if you want to install rain gardens on new construction and/or redevelopment, and rain gardens are listed in the SWQMP as a post-construction control measure, you will have to show that your rain garden design is above and beyond the design specifications listed in the MS4 requirements and can remove pollutants at a greater efficiency. Much like educational programs, these determinations need to be made on a case-by-case basis.

An additional caveat to remember in all circumstances is if you are working in a wellhead protection area to check if the local wellhead authority has restrictions on which BMPs can be installed.

12. What is the difference between retrofits, redevelopment, and new construction?

Retrofits are opportunities to add a water quality benefit to an existing site, structure, or BMP. Examples of retrofits include adding a rain garden to a property, installing rain barrels at a house, or turning a dry pond into a constructed wetland. Redevelopments are alterations of a property that change a site or building in such a way that there is disturbance resulting in one (1) acre or more of bare land. New construction is similar to redevelopment except that the property lacks any buildings or infrastructure when the alterations begin.

Redevelopments and new constructions are subject to the SWQMP and are only 319 eligible if the proposed BMP goes above and beyond the permit. Retrofits are exempt from the SWQMP and are potentially 319 eligible.

13. What if I want to retrofit an existing BMP? Is that considered 'new construction'?

Retrofits of existing BMPs are not considered new construction unless one (1) acre or more of land was disturbed. However, in order to be eligible for 319 funds, the retrofit needs to include features that improve water quality more than the original feature.

14. If I build a water quality feature on agricultural land, is that considered new construction?

Yes, but only if one (1) acre or more of land was disturbed.

15. Can I get 319 funding to address the quality of storm water before it has entered the MS4 conveyance system?

Projects that treat or control storm water before it enters the MS4 storm water conveyance system can be eligible for 319 funding, and are viewed favorably by IDEM because they treat pollutants closer to their source. For example, a BMP located at the edge of a parking lot such that it intercepts and treats runoff from the parking lot before that water goes to the municipal system would potentially be eligible, even if the runoff flowed through a grate or catch basin; the BMP would be intercepting runoff from the parking lot before that water goes into the municipal sewer system. On the other hand, a practice placed directly at the end of the conveyance system, (end-of-pipe device) such as a detention facility to treat storm water from the municipal storm sewer system before it is discharged to a water body, would generally be considered a point source control and would not be eligible for Section 319 funding.

16. Can I get 319 funding to address the quality of water that has left the MS4 conveyance system?

As discussed in # 15, end-of-pipe devices which simply lengthen the conveyance system or treat storm water immediately after it leaves the system are not eligible for Section 319 funding. However, in some circumstances, storm water that has left the MS4 conveyance system is eligible for funding. For storm water leaving the MS4 conveyance system to be potentially eligible for 319 funds, the project must address a water quality problem created as the storm water flows from the system into a receiving water (stream, lake, wetland). To be eligible for 319 funds, the storm water must be collecting or causing additional pollutants (as it erodes a slope for example) separate from what it carried while inside the MS4 system. The storm water must also be flowing over existing development; projects focusing on storm water flowing over new construction are not eligible unless the above and beyond criteria is met.

Examples of unfundable projects include:

- A project to extend a conveyance system or move water discharged from an MS4 into a practice would generally not be eligible for 319 funds. For example, a project to construct a swale and direct storm water from a sewer to the swale, for subsequent release to a receiving water, would generally not be eligible for 319 funds. The swale, in effect, is an extension of the conveyance system.
- Use of 319 funds to dissipate the storm water's energy at an MS4 release point is inappropriate unless the project is on existing development and also has a feature to improve water quality. If you can show that energy from the MS4 release is contributing pollutant loads to the receiving water, and that the project will reduce pollutant loads, the project may be eligible for 319 funds.

As noted above, a project to treat or control storm water from a conveyance system would generally not be 319-eligible. However, projects that address pollutants the storm water picks up as it flows across existing development and towards a receiving waterbody may be eligible for 319 funds. For example, creating a wetland or creating, enhancing, or restoring a natural drainage area could be eligible for 319 funds. Note that there must be a link to water quality for a project to be eligible for 319 funds.

17. Would a project to "daylight" a stream section in an MS4 area be 319 eligible?

A project to "daylight" (unpipe a section of stream and restore the open channel) a stream section may be eligible for 319 funds. A daylighting project could potentially enhance the habitat of a water of the State (vs. being an improvement to a MS4 conveyance, which would not be 319-eligible). To be eligible the project applicant should demonstrate the link to water quality (e.g., the daylighting will help address impaired biological communities). If the daylighting is being done to avoid a

maintenance or replacement cost for the enclosed pipe, the portion of the project that would be 319 eligible would be the difference between the cost for repair/replacement of the pipe and the cost of the full daylighting project.

18. Would a regional BMP in an MS4 area be 319 eligible?

A regional BMP is a practice that is constructed and operated to treat a problem or address an issue from the surrounding watershed. They are typically designed to remove water from a stream, treat it, and then return it to the stream. Section 319 funds must be focused on keeping pollutants from reaching a stream, not removing those pollutants once they have entered the stream. Regional BMPs are not Section 319 eligible regardless of whether they are in or outside an MS4 area.

19. Would flow splitters in an MS4 area be 319 eligible?

Flow splitters are devices that divert storm water from its conveyance into a water quality BMP. Because they do not provide a direct water quality improvement, flow splitters are not Section 319 eligible if they are installed within an MS4 conveyance system.

20. Who can I talk to at IDEM about whether my specific project would be eligible for 319 funds in an MS4 area?

Questions about projects in MS4 areas should be brought to the attention of your [IDEM 319 Project Manager](#).