

11/4/05 Inside the EPA (Pg. Unavail. Online)
2005 WLNR 17764568

Inside the EPA
Copyright 2005 Inside Washington Publishers

November 4, 2005

Section: 44

EPA BACKS POTW, ACTIVISTS' COMPROMISE WASTEWATER BLENDING POLICY

EPA is backing a compromise water "blending" policy drafted by environmentalists and the wastewater treatment industry that allows the blending of treated and partially treated wastewater during wet weather events, and will publish and take comment on the draft in the near future, top EPA water officials say.

EPA water chief Ben Grumbles said Nov. 1 that while the agency is still analyzing a draft blending guidance the Natural Resources Defense Council (NRDC) and the National Association of Clean Water Agencies (NACWA) floated Oct. 27, the proposal appears to be in line with Grumbles' priorities on the issue. NACWA and NRDC developed the proposal as a replacement after congressional opposition prompted EPA to withdraw a draft blending policy earlier this year that would have allowed the controversial practice under some circumstances.

"I encouraged them to work together, and I'm encouraged by their results and product. It is something that EPA is going to take a very serious look at," Grumbles told attendees at the Water Environment Federation's annual conference. "When organizations that have very different views on important issues come together to propose something, it's going to get my attention."

The proposal is "consistent with my principles, my statements that blending is not a long-term solution," Grumbles said. "It may be the only practical solution in some circumstances," but those circumstances need to be carefully spelled out, he said.

The NRDC and NACWA draft generally narrows the circumstances under which publicly owned treatment works (POTWs) can blend by requiring them to complete a more comprehensive analysis of why blending is needed than EPA's abandoned draft. The policy is available on InsideEPA.com.

The policy also requires POTWs to show progress toward decreasing blending, such as infrastructure upgrades or new management practices, in order to continue using the practice. NRDC and NACWA released the policy at the American Bar Association-American Law Institute's annual clean water law conference last week.

"We're supportive of the principles the two groups have laid out in the document," EPA wastewater chief Jim Hanlon told Inside EPA last week. He added that the agency had no "major" concerns about the draft, and would publish a blending document in the Federal Register and take comment on it.

Hanlon declined to say whether the agency would publish the groups' draft as presented, or if EPA would make changes. However, he said any document the agency publishes would address the main issues of importance to both stakeholder groups.

Blending occurs when treatment plants mix fully and partially treated wastewater during heavy rains to prevent overflows that spill raw sewage into nearby waterways. Environmentalists generally have opposed the practice, arguing that it is barred by the Clean Water Act under some circumstances and could release harmful bacteria into

waters. However, wastewater treatment industry officials have long said blending is necessary to meet discharge permit limits during heavy rains. Officials in EPA regional offices also have been divided over the issue, with regions III, IV and VI refusing to approve discharge permits that authorize blending.

Earlier this year, EPA had planned to finalize a 2003 draft blending policy that allows blending, but withdrew the document May 19 after House lawmakers unanimously approved an amendment to the agency's appropriations bill that barred EPA from spending resources to implement or finalize the document. The policy would have allowed blending under specific scenarios, including when the blended discharge meets permit limits based on secondary technology limits, or when the operating permit application for facilities specifies the treatment scenario that would be used for peak flow management.

The new draft sets up a process through which POTWs that seek to blend during heavy rains must undergo a rigorous review of their treatment capabilities, known as a "feasibility analysis," before receiving approval from their permitting authorities to engage in the practice. The analysis must explain why the POTWs need to blend, why there are no other alternatives at the current time and how they plan to improve their operations in the future to reduce the occurrences of blending.

"Let's talk about what 'no feasible alternative' is . . . so we're incorporating economic considerations and technical practicability and affordability," Grumbles said, adding that he wants overflow issues in general to be "dealt with in the permitting process" rather than through "end-of-the-day enforcement."

The analysis under the proposal will be subject to public notice and comment, and the facilities' blending plan will be subject to review by their permitting authorities every five years when their discharge permits are up for review. The authorities have the discretion to revoke POTWs' ability to blend if they do not show progress toward implementing practices that decrease the frequency of blending events.

The document also classifies blending as a bypass of secondary treatment requirements, which is illegal under the Clean Water Act, unless it is conducted according to the narrowly proscribed conditions in the policy. Grumbles said this week that blending looks a lot like a bypass, but it needs to be viewed as a special type of bypass.

Environmentalists and the wastewater treatment industry, along with some EPA officials, have long debated whether blending was a bypass that violated the water law. Environmentalists and the agency's enforcement office have said in the past that blending was an illegal bypass, but the wastewater treatment industry and the agency's Office of General Counsel argued that the practice is permissible as long as facilities show there is no feasible alternative, and facilities' permits specify different operating conditions associated with normal versus peak flows.

A wastewater treatment industry source says it was difficult for POTWs to show that blending was the only feasible alternative after a federal district court in Ohio ruled in 1999 in *United States of America, et al. v. the City of Toledo* that as long as infrastructure upgrades were possible, facilities needed to conduct them in order to avoid blending. The case did not consider cost or other factors that could make such construction infeasible for POTWs, the source says, making it nearly impossible for POTWs to prove there was no alternative to blending.

The NRDC and NACWA policy addresses this issue by laying out steps POTWs must take to prove there is no feasible alternative to blending, thereby removing the hurdle to using the practice created by the Toledo case. For example, POTWs must submit documents to their permitting authorities that describe the treatment plant capacity for all units; the frequency, duration and volume of wet weather diversions; and the capacity for additional on-site storage or treatment, among other criteria.

The draft also includes numerous provisions absent from the dropped EPA policy that are important to environmentalists, such as requiring permits that authorize

blending to be subject to public notice and comment. The policy also requires POTWs to show they are trying to eliminate or reduce blending through infrastructure upgrades or by providing additional treatment, in order to gain authorization to continue the practice when their discharge permits come up for review.

In addition, the policy addresses EPA concerns that blending not occur in the long term. EPA water chief Ben Grumbles has said on numerous occasions, including after EPA dropped its 2003 blending policy, that "blending is not a long-term solution" to meeting water quality goals. The policy includes a "presumption against long-term use," NRDC's Nancy Stoner said, because it requires facilities' blending practices to be reviewed, and requires them to demonstrate improvement.

NACWA's General Counsel Alex Dunn said in a separate interview that the policy is a "win-win" for everyone because "it does not say whether someone can or cannot blend," but rather lays out a process where systems must conduct a site-specific analysis before making their case to permitting authorities.

NACWA and NRDC also suggested the compromise could help them make the case for increased wastewater infrastructure funding, which is one of the key reasons why facilities must blend.

"The problem is that sewage systems suffer from inadequate investment," Stoner, the director of NRDC's Clean Water Project, said at the American Bar Association event. "This has been a way of putting focus on that issue."

"Our answer is to fix the leaky sewer systems," Stoner continued. "That's the core of the policy we put together."