

under the specific circumstances recognized in the permit.

5. The permit must require monitoring, including type, interval and frequency sufficient to yield data which are representative of the final blended discharge to ensure compliance with applicable water quality-based effluent limitations. See 40 CFR 122.48(b). The permit should require reporting of the date and volume of blended discharges along with appropriate pollutant parameter concentrations. In addition, the permit should ensure that permittees develop additional information to support the development of water quality-based effluent limitations in subsequent permits, including information to: (a) Assess potential water quality impacts associated with blended effluent; (b) evaluate the effectiveness of the treatment of key parameters, such as pathogens, resulting from alternative flow routing scenarios; and (c) characterize ambient levels of such pollutant parameters.

6. The permit must require, at a minimum, that the permittee properly operate and maintain all parts of the collection system over which the permittee has operational control in a manner consistent with 40 CFR 122.41(e). For POTWs served by combined sewers, any permit issued after December 15, 2000, shall conform to the provisions of the 1994 CSO Control Policy, including the development and implementation of a long-term control plan (LTCP), and appropriate requirements for the collection system. As applied to POTWs serving separate sanitary sewers, EPA would interpret "proper operation and maintenance" to include appropriate removal of infiltration and inflow from parts of the collection system over which the permittee has operational control as well as measures to evaluate the structural integrity of the system. Such a demonstration may be made with a program self-evaluation report, appropriate to the size of the system, which includes an identification of program deficiencies and steps to respond to them.

In situations where one or more of the above principles would not be met, EPA would continue to interpret the "intentional diversion of waste streams from any portion of a treatment facility" at a POTW treatment plant to be a bypass subject to the restrictions of the bypass provision as reflected in the permit. The proposed policy upon which EPA invites comment today is not intended to modify the provision for approval of anticipated bypasses at 40

CFR 122.41(m)(4)(ii). See 59 FR 18693, column 3.

The principles described above for characterizing the "treatment facility" at a POTW plant (as it relates to the bypass provision) are not intended to address or apply to NPDES permit requirements for treatment of flows at a POTW during dry weather conditions or to discharges from facilities other than POTW plants, including industrial facilities where storm water is treated with non-storm water wastewater. The matters addressed in today's action focus on situations with elevated I/I levels in municipal collection system resulting from wet weather conditions. EPA has not evaluated and does not propose to interpret its regulations to apply to other circumstances.

EPA requests comment on the use of the six principles listed above to define the conditions under which the blending of effluent routed around the biological treatment unit with effluent from the biological treatment unit, prior to discharge would not be a prohibited bypass and could be authorized in an NPDES permit. EPA specifically requests comment on the following issues:

(1) Is the current interpretation of "excessive I/I" under 40 CFR 133.103(d) adequate? What challenges, if any, would facilities face in meeting the percent removal requirements or obtaining an adjustment to percent removal requirements under § 133.103(d), including the excessive I/I provisions, as a pre-condition for authorization of blending in an NPDES permit?

(2) In principle 4, which would require that flow only be routed around the biological or advanced treatment unit when the capacity of treatment and storage units is being fully utilized, should EPA define the term "fully utilized"? Are there situations where system operators might need to keep some treatment or storage capacity in reserve, for example, to help prevent overflows or address other peak flow concerns where exceedences of treatment capacity is likely but has not yet occurred? If so, the commenter should describe the situations.

(3) Principle 5 of this draft policy is designed to ensure compliance with applicable water quality-based effluent limitations, including those based on water quality criteria for bacteria. Would this principle be sufficient to protect against discharges of pathogenic organisms or should principle 5 of this draft policy include an explicit requirement for disinfection of blended effluent prior to discharge, where appropriate?

(4) In developing principle 6, what factors should be considered when evaluating if a permittee is properly operating and maintaining their collection system in a manner consistent with 40 CFR 122.41(e)?

Additional considerations for permit writers addressing POTW plants that use peak flow treatment scenarios that consist of effluent routed around biological or other advanced treatment units blended together with the effluent from the biological units prior to discharge should include:

A. To the extent practicable, NPDES permit requirements for discharges of peak wet weather flows at the POTW should be developed in a manner that encourages the permittee to consider the relationship between the performance of the collection system and the performance of treatment plants serving the system.

B. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standard applies may, at its discretion and subject to the conditions of 40 CFR 403.7, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standard. The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. The permit writer should ensure that the POTW's determination of the consistent removal rate adequately reflects the frequency of use of and treatment effectiveness of the peak flow treatment scenarios in a manner that is consistent with 40 CFR 403.7(b). In a similar manner, the permit writer should ensure that the POTW adequately reflects the frequency of use of and treatment effectiveness of the peak flow treatment scenarios in developing local limits for industrial users.

C. NPDES Permit Conditions That Are Clear and Enforceable.

Under the interpretation proposed today, NPDES authorities would be able to characterize the term "treatment facility" in a specific permit for a POTW treatment plant to account for peak flow treatment scenarios that are consistent with generally accepted good engineering practices and criteria for long-term design in a manner consistent with the principles previously identified. Where all of the identified principles are followed, flows through a treatment system that is operated as designed and according to the permit would not be considered a bypass, and the permittee would not be required to make each of the demonstrations otherwise required under the bypass provision at 40 CFR 122.41(m)(4)(i),