

including a demonstration that there were no feasible alternatives to the bypass.

Where a POTW treatment facility has multiple primary clarification units operating in parallel to provide excess primary treatment capacity for high flow conditions, removing one or more primary clarification units from operation during low flow conditions would not be considered a bypass provided the capacity of the primary clarification units remaining in operation is not exceeded. Similarly, where chemical addition is used to enhance wet weather treatment performance (*i.e.*, to enhance solids removal or disinfection), discontinuing chemical addition during low flow conditions would not be considered a bypass if the permit does not call for such chemical addition during low flow conditions.

The NPDES regulations require that NPDES permits must include water quality-based effluent limitations to control all pollutants or pollutant parameters which the Director of the NPDES program determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to non-attainment of any water quality standard (see 40 CFR 122.44(d)). The potential impact of either blended peak wet weather flows discharged from POTWs or peak wet weather flows that receive biological treatment may raise a number of site-specific water quality issues depending on the performance of treatment technologies under peak flow conditions, the volume of discharges, receiving water conditions, the uses of receiving waters and other factors. Ensuring appropriate characterization of potential human health and environmental risks associated with peak flows with enhanced effluent and ambient monitoring data describing peak flow conditions is important for discharges to receiving waters with designated uses for primary contact recreation and/or drinking water. Additional information may be needed to determine if POTW discharges that occur under peak wet weather flow conditions would cause, have a reasonable potential to cause, or contribute to non-attainment of a water quality standard. Modeling of the collection system, treatment facility and receiving water may be necessary to characterize the impact of peak wet weather flows on receiving water quality and to predict the improvements that would result from different treatment scenarios.

The NPDES regulations authorize permitting authorities to modify permits

for cause. See 40 CFR 122.62 and 124.5. In addition, permits often contain a reopener clause. Examples include general reopener clauses that mirror the causes for modification in the NPDES regulations. Permits also often contain specific reopener clauses for the purpose of modifying conditions based on results of specific pollutant monitoring required in the permit, such as for toxic pollutants. EPA requests comment on whether permits that authorize blending should contain a specific reopener clause. Such a reopener clause could address situations where additional controls are necessary to assure attainment of water quality standards or where new monitoring information justifies the application of different permit conditions.

One of EPA's highest priorities in developing control strategies for wet weather discharges is ensuring adequate control of such discharges to sensitive receiving waters. Sensitive receiving waters, as determined by the NPDES authority in coordination with State and Federal agencies, as appropriate, include: Designated Outstanding National Resource Waters; National Marine Sanctuaries; waters with threatened or endangered species (and associated habitat); waters with primary contact recreation (*e.g.*, beaches and other points of public access); public drinking water intakes or their designated protection areas; and shellfish beds. See the 1994 CSO Control Policy (59 FR 18688, April 19, 1994). Wherever physically possible and economically achievable, discharges of blended effluent to a sensitive area should not be authorized, except where prohibiting the discharge of blended effluent would provide less environmental protection than additional treatment. Where elimination of the discharge of blended effluent to a sensitive receiving water is not physically possible and economically achievable, the permitting authorities must ensure an adequate demonstration that the discharge will not cause or have reasonable potential to cause or contribute to non-attainment of applicable water quality standards. For such discharges, each subsequent permit term should require a reassessment based on new or improved techniques, or on changing circumstances that influence economic achievability.

EPA strongly encourages States that have not already done so to adopt the recommendations set forth in Ambient Water Quality Criteria for Bacteria—1986 or other protective water quality criteria for bacteria based on scientifically defensible methods as

their water quality standards to replace water quality standards based on total or fecal coliforms.

Today's proposed policy would provide guidance to EPA Regional and State permitting authorities as well as to municipal permittees and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions related to discharges from POTWs where peak wet weather flow is routed around biological treatment units and then blended with the effluent from the biological units prior to discharge and where the final discharge meets permit effluent limitations based on the secondary treatment regulation (40 CFR part 133) or any more stringent limitations necessary to attain water quality standards. The guidance is designed to implement national policy on these issues.

The statutory provisions and EPA regulations described in this document contain legally binding requirements. Today's document would not substitute for those provisions or regulations, nor is it intended to be a regulation itself. In fact, today's action invites public comment on a proposed interpretation of EPA regulations in a specific context and invites comment on guidance to implement such a proposed interpretation. Thus, this document would not impose legally binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers would retain the discretion to adopt approaches on a case-by-case basis that differ from this proposed policy where appropriate. Any decisions regarding a particular facility should be made based on the statute and regulations. Therefore, interested parties are free to raise questions and objections about the substance of this proposed policy and the appropriateness of the application of this proposed policy to a particular situation. EPA intends to and States should, consider whether or not the recommendations or interpretations in the proposed policy are appropriate in that situation. EPA may revise today's proposed policy after consideration of public comment, or at some other time in the future. EPA welcomes public comments on this document and will consider those comments in any future revision of today's proposed policy.

EPA's intention is to reduce confusion regarding appropriate consideration of blending at POTWs. Because of significant interest from various stakeholders, the Agency is inviting public comment on the proposed policy, including the proposed interpretation of