

- *Alliance for a Living Ocean*
- *American Littoral Society*
- *Clean Ocean Action*
- *Coalition Against Toxics*
- *Coalition for Affordable Housing and the Environment*
- *Coastal Conservation Association of New York – Staten Island Chapter*
- *Hackensack Riverkeeper, Inc.*
- *Housing and Community Development Network of New Jersey*
- *Hudson River Fishermen’s Association – New Jersey Chapter*
- *Ironbound Community Corp.*
- *Isles*
- *Marine Trades Association of New Jersey*
- *Monmouth County Friends of Clearwater*

- *Natural Resources Protective Association*
- *New Jersey Audubon Society*
- *New Jersey Council of Dive Clubs*
- *New Jersey Environmental Federation*
- *New Jersey Environmental Lobby*
- *New Jersey Public Interest Research Group*
- *New Jersey State Federation of Sportsmen’s Clubs*
- *New York/New Jersey Baykeeper*
- *Paddleout.org*
- *Red Bank Environmental Commission*
- *Shark River Cleanup Coalition, Inc.*
- *Sierra Club – New Jersey Chapter*
- *Surfrider Foundation – Jersey Shore Chapter*
- *Upper Raritan Watershed Association*
- *Waterspirit*

Water Docket
 Environmental Protection Agency
 Mailcode 4101T
 1200 Pennsylvania Avenue., NW
 Washington, D.C. 20460

and

Administrator Michael Leavitt
 Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Ave., NW
 Washington, D.C., 20460

February 3, 2004

Re: Water Docket ID No. OW-2003-0025, National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Wastewater Treatment Discharges During Wet Weather Conditions

Dear Administrator Leavitt and staff,

On November 7, 2003, the Environmental Protection Agency (EPA) released a draft guidance that would allow the discharge of partially and inadequately treated sewage from wastewater dischargers into waterways including coastal waters during rain events. The proposed guidance applies to sanitary and combined sewers. This proposed change is unacceptable and irresponsible. New Jersey and New York has worked hard to improve marine water quality after suffering from poorly treated wastewater in the past, and this federal policy will put marine waters at risk. The adverse impacts from this proposed rule threaten the region’s public health, marine resources, and the economy.

These comments on this draft guidance are on behalf of Clean Ocean Action, a coalition of 160 groups, and specifically the following organizations: New Jersey Environmental Lobby, New Jersey Audubon Society, Shark River Cleanup Coalition, Alliance for a Living Ocean, Surfrider Foundation – Jersey Shore Chapter, NJ State Federation of Sportsmen’s Clubs, NY/NJ Baykeeper, Upper Raritan Watershed Association, Ironbound Community Corp., American Littoral Society, Sierra Club-NJ Chapter, Coalition Against Toxics, Natural Resources Protective Association, Housing and Community Development Network of New Jersey, Waterspirit, Monmouth County Friends of Clearwater, Coastal Conservation Association of New York – Staten Island Chapter, New Jersey Public Interest Research Group, Hackensack Riverkeeper, Inc., New Jersey Environmental Federation, Isles, New Jersey Council of Dive Clubs, Red Bank Environmental Commission, Hudson River Fishermen’s Association, Marine Trades Association of New Jersey, Coalition for Affordable Housing and the Environment, and Paddleout.org.

Please address any question and responses to Cindy Zipf, Clean Ocean Action, PO Box 505, Highlands, NJ, 07732, 732-872-0111.

Overview:

In New Jersey, over 170 million gallons of treated wastewater are discharged per day into the ocean by 17 secondary treatment publicly owned treatment works (POTWs). These coastal facilities face problems due to excessive inflow and infiltration, aging infrastructure, and increasing baseline flows due to increased population pressures. These problems, unaddressed over time, may result in plants being unable to adequately treat wastewater. Current state policy and law requires POTWs faced with these problems to implement a plan to fix these problems, ensuring best management practices and the protection of water quality for public health and the environment.

The proposed interpretation of the bypass provision (40 CFR 122.41(m)) and the draft implementation guidance would allow the circumvention of the real solutions to managing wastewater treatment challenges and allow a cheap and dirty “management option” that will threaten public health and the environment. In short, it would allow POTWs to pour inadequately and partially treated wastewater into waterways during wet weather as a management strategy. This proposal represents a giant step backward in the protection of our waters and responsible government practice. We urge EPA to immediately withdraw the proposed guidance and hold fast to and enforce existing rules that address the root cause of these problems.

Details of the Proposal for Publicly Owned Treatment Works (POTWs):

The proposal interprets a portion of 40 CFR 122.41(m), which states that two types of bypasses are currently allowed: (1) those that meet effluent limitations for essential maintenance to assure efficient operation,¹ and (2) those that are unavoidable to prevent loss of life, personal injury, or severe property damage when there is no feasible alternatives to the bypass (e.g., storage of untreated waste or installation of back-up equipment)². The proposed policy and guidance directly contradict this bypass rule. **EPA should inform POTWs that within-plant bypassing is authorized only under the specific criteria laid out in the existing bypass rule and withdraw the proposed guidance.**

¹ 40 CFR 122.41 (m)(2)

² 40 CFR 122.41 (m)(4)

As proposed, the guidance would allow POTWs to re-route sewage around secondary treatment units during wet weather after the primary filtering treatment step in the sewage treatment process. The untreated but filtered sewage would instead be “blended” with fully treated wastewater before discharge into a waterbody. Effectively, this guidance would authorize the routine elimination of an **essential** second step in the process of secondary wastewater treatment during wet weather.

Secondary treatment is typically an oxidation process that removes pollutants from wastewater. It comes after the first step in treatment, which usually consists of a preliminary treatment or screening to remove large solids, and primary clarification to remove floating and settleable solids. The third step of treatment by facilities discharging to the Atlantic Ocean from New Jersey is disinfection by chlorination.

Under the proposed blending policy, routine re-routing of flows around secondary treatment during wet weather would be allowed in the permit when the capacity of the secondary treatment unit(s) is fully utilized. The proposal does not specify that the additional capacity of available storage/equalization units would have to be full before re-routing of flows. It also does not mandate disinfection for all blended sewage unless required by local water quality standards. If implemented, this proposed guidance opens the door for partial and inadequate treatment of sewage as a routine response by POTWs to wet weather flows.

As proposed, a permit for a POTW that performs blending would have two different treatment trains specified: (1) full secondary treatment during non-wet weather peak flows and (2) partial secondary treatment (i.e., blending) during wet weather peak flows. One of the many disturbing impacts of this proposed scheme is the fact that the re-routing of wastewater would no longer be a bypass as defined under 40 CFR 122.41(m) and therefore not subject to bypass notice or feasibility assessment determinations. In this way, the proposed blending policy severely weakens water quality protections.

Although EPA states that permit limits would have to be met by any “blended” sewage, **this does not provide** adequate protection of the aquatic system or human health. Permits for ocean dischargers in New Jersey include limits on percent removal, biological oxygen demand, total suspended solids, pH, temperature, acute toxicity, fecal coliforms, and in certain cases selected metals (i.e., some dischargers have water quality based effluent limits for a small number of metals). Permit limits do not yet exist for chlorination byproducts (i.e., chlorine-produced oxidants), the bacterial pathogen indicator enterococcus, nutrients such as ammonia, bioaccumulative pollutants, and other toxins. At the national level, only approximately 56% of major POTWs have limits on bacterial pathogens³.

The lack of limits on biological and chemical pollutants is especially concerning given the facts that “blended” sewage would require the addition of large quantities of chlorine for those facilities with pathogen limits, and not achieve the same pathogen removal effectiveness as full secondary treatment. The impact is two-fold: (1) Residual chlorine and chlorination byproducts would threaten aquatic life⁴; and (2) Even though facilities may meet fecal coliform standards, concentrations of the pathogen

³ Data provided to Natural Resources Defense Council by USEPA.

⁴ Residual chlorine and/or the chlorine-produced oxidants (CPO) may be toxic to marine organisms even at very low concentrations.

indicator enterococci could remain high⁵ and viruses and parasites would not be properly removed--threatening public safety and human health.

Current Rules are Clear:

The problem of excessive solids losses and disruption of the biological treatment stage during periods of wet weather, causing high flows into the collection system is well understood. As previously discussed current federal rules at 40 CFR 122.41(m) allow bypasses for essential maintenance or to prevent damage when there is no feasible alternative. These rules should be enforced, and EPA should inform POTWs that bypassing is authorized only under these specific criteria rather than adopting this non-protective proposed guidance.

Indeed, in its Federal Register notice and rules, EPA recognizes that alternatives exist for POTWs including measures to handle excess capacity. If this guidance is adopted as proposed, **it will no longer require alternatives to bypass to be employed even when they are feasible.** This will set back protections for water quality at a critical juncture as population pressures increase in coastal areas.

Proposal Discourages Pollution Prevention:

If this guidance proceeds, POTWs would be allowed a cheap and dirty alternative to real options to solve the problems associated with wet weather. It actually supports routine permitting of incomplete treatment, which is counter to Clean Water Act goals of full secondary treatment.

In coastal areas of New Jersey, facilities are reaching capacity and the proposal undermines state and local efforts to directly address the problems of increasing population such as the need for increased capacity at POTWs. One result of the policy would be the support of a POTW operating at near-capacity conditions with routine wet weather blending to avoid facility upsets during high flow. The result, a stage set for chronic water quality crises. This is an irresponsible regulatory response.

Proposal Further Undermines Current Laws on Combined Sewer Overflows:

Furthermore, the proposal is not consistent with and is weaker than bypass requirements in EPA's Combined Sewer Overflow (CSO) control policy⁶. The proposed blending policy applies to combined as well as separate sanitary sewers and contradicts the existing CSO policy, which has now been codified in Clean Water Act, Section 402(q), requiring application of bypass rules and feasibility analyses to CSO discharges. The proposed blending policy would therefore contradict existing policy and further endanger water quality in areas affected by CSO discharges.

⁵ Based on COA's review of data reported by POTWs, some ocean dischargers in New Jersey discharge excessively high levels of enterococci (e.g., consistently exceeding water quality standards) even though fecal coliform limits are met. Contact COA for more information.

⁶ EPA, Combined Sewer Overflow (CSO) Control Policy [FRL-4732-7] Federal Register, Tuesday April 19, 1994; pp. 18688-18698.

In conclusion, the existing bypass rule at 40 CFR 122.41 (m) is clear and allows for case-by-case authorization of bypasses to protect the operation of the POTW and water quality. The proposed blending policy and guidance undermine these existing rules. We strongly urge EPA to immediately withdraw this blending guidance and continue to uphold our nation's momentum toward improved protection of our waters by enforcing current law.

We look forward to your reply. Again, please address any questions and responses to Cindy Zipf or Dr. Kristen Milligan at Clean Ocean Action, PO Box 505, Highlands, NJ 07732, 732-872-0111, who will also contact the signatories.

Sincerely,

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