

Reply to: Phil Bobel, Tri-TAC Chair  
Water Quality Control Plant  
2501 Embarcadero Way  
Palo Alto, CA 94303  
650/329-2285

June 13, 2001

Ms. Christine Todd Whitman  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

Subject: Comments on EPA's "Current [draft] Thinking on Peak Flows at POTWs

Dear Administrator Whitman:

I am writing on behalf of Tri-TAC, and CASA regarding EPA's draft thinking on Peak Flows at POTWs. Tri-TAC is a technical advisory committee composed of the California Water Environment Association; the California Association of Sanitation Agencies; and the California League of Cities. Together, these three organizations represent almost all publicly owned treatment facilities (POTWs) in the State of California.

As you know, wet weather collection and treatment is one of the most difficult issues facing POTWs in this country. Over the past three decades, wastewater treatment facilities across the nation have engaged in a practice referred to as "blending" in which primary treated wastewater is blended with secondary treated wastewater during wet weather events and subsequently discharged. This practice has been widely recognized in NPDES permits as an effective method of dealing with excessive flows and/or other unique situations which would otherwise cause significant damage, loss of life or great expense to a public agency. EPA, in fact, denied the funding of excess capacity for handling wet weather flows as part of the Clean Water Act Grant Program, recognizing that blending was a viable alternative to building large wet weather facilities.

Recently, there has been a focus placed on the practice of blending, questioning whether or not the practice was indeed allowed under the Clean Water Act. In response to this focus, EPA has published their preliminary thinking on how to deal with the blending issue (see Attachment I). Tri-TAC believes, in general, this thinking is consistent with the Clean Water Act and past practices, and will avoid the large future expenditures with little environmental benefit that would result if rules were put in place requiring all flows to receive secondary treatment. Specifically, POTWs support the concept that blending of peak flows does not negate the

responsibility of POTWs to meet the final discharge effluent limitations set forth in their NPDES permits. POTWs also support the requirements for proper operation and maintenance of collection systems such that wet weather flows are minimized to the extent practicable. Finally, where necessary we feel it is important to have clear language in NPDES permits that recognizes the legality of blending during peak wet weather flows.

In reviewing the federal regulations on blending (referred to by EPA as “bypassing”) it is clear that routine bypasses are prohibited; however, regulatory enforcement is expressly discretionary (40C.F.R. § 122.41(m)(4)). The regulations also state bypassing is not prohibited if the following are shown:

- (A) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage. Many of the bypasses of secondary treatment during wet weather meet the exception associated with preventing "severe property damage" under §121.41(m)(1)(ii)(which is defined as substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial or permanent loss of natural resources). If the microorganisms are washed out of the secondary system, this would cause the systems to be "inoperable." Also, if forcing the flows through secondary would cause raw sewage spills, this could cause damage to property and/or natural resources.
- (B) No feasible alternatives existed. This would have to be explored on a case-by-case basis.
- (C) Notice was given per 122.41(m)(3). This again rests on each case.

However, the requirements of §122.41(3)(m) (regarding notice) and §122.41(m)(4)(regarding the prohibition) do not apply where the bypass does not cause effluent limitations to be exceeded as long as a POTW can show that such bypass is "for essential maintenance to assure efficient operation." See 40 C.F.R. §122.41(m)(2). If bypass is part of the design of a plant in wet weather or required for regular maintenance, then this should be viewed as part of the approved O&M plan and should fall under this exception.

The regulations support an interpretation that blending during wet weather events is “for essential maintenance to assure efficient operation.” We urge EPA to make this determination and establish needed policy to allow continuation of blending in the future.

Sincerely,

PHIL BOBEL, Chair  
Tri-TAC