

EPA Guidance Said to be used in the following areas. What are the facts and prospects for changes? Where would be incorporate changes to answer the criticism and carry out the program?

1. Blending

A bypass as an “intentional diversion of waste streams from any portion of a treatment facility” (40 CFR 122.41(m)(1)). Under the federal regulation bypasses may be allowed provided that a “no feasible alternative” analysis is conducted. As a result, EPA issued a draft Utility Analysis that can be utilized by applicant to satisfy the criteria for a bypass established in 40 CFR 122.41

The NPDES permitting agency can approve anticipated diversions around biological treatment units as a “bypass” in a permit, provided:

- The permittee demonstrates (and the NPDES authority agrees) there are no feasible alternatives to the diversion;
- The diversion from the secondary treatment units receives a minimum of primary treatment and any feasible supplemental treatment; and
- Effluent limitations based on secondary treatment and water quality-based effluent limits will be met.

See attached Draft Missouri Wet Weather Approach

2. E. coli criteria and effluent limitations

Recreational use criteria for bacteria (E. coli) are set in rule to be protective of the appropriate risk level corresponding to the recreational use according to EPA criteria documents. Effluent limitations are derived to be protective of the recreational use and any downstream uses that may be existing or designated. Staff did not utilize draft EPA guidance to derive short term Effluent limits for E.coli

3. Bacterial mixing zones

Mixing zones are regulatory areas of streams where effluent discharges are allowed to undergo initial dilution and secondary mixing with the water body. These areas are where chronic water quality criteria can be exceeded as long as acutely toxic conditions are prevented. Mixing zones provide initial dilution and secondary mixing while allowing aquatic life a zone of passage to avoid toxicity. To be protective of recreational uses, bacterial standards must be met in all areas of a stream at all times since recreational activities can occur near to an outfall as well as downstream. Bacteria standards are based on human health protection, not aquatic life protection. To protective uses as required by federal rule, mixing zones can not be allowed.

4. Toxic identification evaluation (TIE) and toxic reduction evaluation (TRE) related to whole effluent toxicity testing.

The Department utilizes draft EPA document Entitled “National Whole Effluent Toxicity (WET) Implementation Guidance under the NPDES Program”, published in November 2004. It provides recommendation for implementing WET program as required by EPA regulation. In 1989, EPA issued a document to provide guidance for the performance of Toxicity Reduction Evaluations (TREs) at industrial facilities. The document presents a generalized methodology for designing and conducting a TRE and 10 supporting case studies which illustrate various approaches that have been used in the performance of TREs to date (EPA-600-2-88-070).

5. Reasonable potential

Reasonable potential calculations and procedures are outlined in EPA's "Technical Support Document for Water Quality-based Toxics Control" (EPA 505/2-90-001). The reasonable potential methodology and statistical approach implement the water quality based effluent limit and reasonable potential requirements of 40 CFR 122.44(d)(1) in a manner that is scientifically, statistically, and regulatorily defensible. Prior to implementation of the reasonable potential calculations, it was alleged that rationales for including effluent limits in a permit were "arbitrary and capricious" or "indefensible". The reasonable potential analysis allows the department to include or remove effluent limitations with sound basis.

6. Stormwater pollution prevention plan (SWPPP)

Many of the stormwater permits contain a requirement to develop a SWPPP. Thus, the Department encourages applicants to utilize EPA stormwater webpage to develop their SWPPPs. The web page contains training and provides a template and examples of SWPPPs.

7. Jurisdictional waters

Jurisdictional waters - when the courts know, we'll know. In the meantime, we rely on the "waters of the state" definition in rule for permitting purposes.

8. Sanitary sewer overflows (SSOs)

The permit's factsheet contains language about SSOs. The referenced basement backups in the factsheet has been removed. This is not to say that the basement backups should not be addressed by permittees as part of the collection systems reduction strategy.

9. Design storm

The Department utilizes Chapter 8 -Design Guide for the purpose of plant design to address wet weather. Unless a reasonable data is provided by the applicant, the guides provides a formula for determining peak flow estimates. Should the data indicates significant peak flow factor that it would not make it economically viable or affordable, the applicant may provide the analysis as part of the no feasible alternative analysis.

10. Excessive inflow and infiltration (I&I)

The permit contains a condition that requires a development of I&I plan. The condition referenced, as a recommendation, the EPA CMOM document. At the request of many communities, the Department developed an I&I plan template that can be utilized by the permittee.

11. Affordability criteria

There are three different areas within the NPDES program that deal with affordability. The first place is under the Use Attainability Analysis. Controls that are stringent and would result in substantial and widespread economic and social impact, may qualify for relief. Conducting analysis under factor 6 of UAA may provide the basis that a use is not attainable (40 CFR 131.10 (g)). The second area is under Antidegradation requirement. The Antidegradation procedures approved by CWC references Interim Economic Guidance for Water Quality (1995). An applicant may demonstrate that an alternative would not be affordable, and therefore would not be selected. The third area is under the EPA bypass provision. One component of the No Feasible Analysis under the bypass provision is affordability. The draft Missouri Wet Weather document suggested a 2% MHI threshold.

12. Draft criteria in TMDLs

In the absence of numeric nutrient criteria for streams, the Department and EPA chose ecoregion nutrient criteria to develop TMDLs and wasteload allocations for streams with nutrient related impairments. The EPA ecoregion nutrient criteria offer a valid approach for protecting state waters from nutrient enrichment and ensure attainment and compliance with applicable water quality standards, including general criteria. The application of EPA ecoregion nutrient criteria for Consent Decree TMDLs is consistent with the intent and recommendations found in the EPA "Ambient Water Quality Criteria Recommendation" documents at http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/ecoregions_index.cfm. When Missouri has

approved nutrient criteria for streams in its Water Quality Standards, Consent Decree TMDLs that used ecoregion nutrient criteria will be reviewed and revised to reflect state nutrient criteria for streams.