State Regulation Through…

- Rules/Statutes
- Enforcement
  - State
- Guidance
  - Implementing federal guidance
Enforcement

- Administrative Orders on Consent
- Consent Decrees
- Settlement Agreements
- Compliance Orders
Draft Blending Guidance

• Interprets federal bypass provision at 40 CFR 122.41(m)

• Applies to peak wet weather diversions at POTW treatment plant serving separate sanitary sewer conveyance systems that are recombined with flow from the secondary treatment units
Draft Blending Guidance

• Must perform a “no feasible alternatives” analysis

• *U.S. v. City of Toledo* (N.D. Ohio, 1999);
  • “Any bypass which occurs because of inadequate plant capacity is unauthorized…to the extent there are ‘feasible alternatives’ including the construction or installation of additional treatment

• Draft Utility Guidance
Draft Blending Guidance

- Controversial
  - Expensive
  - Water quality benefits unproven
  - Cost/benefit
  - Unintended consequences


- This is DRAFT guidance
Region 7

• Region 7 had remained silent

• Now, it is encouraging Missouri to:
  • Form a workgroup
  • Revise definition of “bypass”

• Objecting to all permits authorizing blending
  • Kansas
  • Region 10

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Backdoor Changes

• Imposing collection system requirements without rulemaking (CMOM, Inflow/Infiltration)

• Presuming that biological treatment is superior to any other form of treatment

• Piecemeal state implementation of federal priorities
Unintended Consequences

Deter communities from spending on advanced treatment technologies (membrane bioreactors, parallel treatment processes) because meeting water quality is not viewed as a defense...
Responses

- Participate in state policy making
- Engage elected officials in policy making
- Judicial review of agency action
- Legislation
Iowa Legislation

Senate File 339

“The intent of the general assembly is to address the rising costs of water and wastewater treatment compliance for regulated entities and affected communities by authorizing the use of alternative treatment technologies. The purpose of this section is to eliminate regulatory barriers that limit or prevent the use of new or innovative technologies.”
Iowa Legislation (cont.)

“The guidance documents shall be intended to encourage regulated entities to use such technologies and to assist design engineers with the submission of projects employing alternative wastewater treatment technologies that can be readily approved by the department.”