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# 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
- EPA published draft Blending Policy in Federal Register on December 22, 2005 (70 Fed. Reg. 76,013 (Dec. 22, 2005))
- This is DRAFT guidance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**

# 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 view 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”



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