

Iowa League Challenges EPA Rule Reinterpretation

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On July 22, 2010, the Iowa League of Cities Executive Board approved filing a lawsuit against the Environmental Protection Agency (EPA) because of its reinterpretation of several federal rules for wastewater treatment plants and stormwater-related discharges. This approval follows a June 18 recommendation from the Iowa League's Environmental Coordination Committee to take such an action. Pursuant to the Board's approval, a suit was filed by Hall & Associates on behalf of the League in the Eighth Circuit Court of Appeals on Monday, July 26.

At issue is the EPA's reinterpretation, without going through administrative rule-making, of the existing federal bypass, mixing zone, and secondary treatment rules. The EPA previously allowed municipalities to use alternative approaches and innovative technologies to process peak flows. Municipal operations were also given options in treatment facility design to safely process peak flows that would otherwise upset the system's operations. Many communities designed physical/chemical treatment units to supplement plant capacity under wet weather conditions and to ensure advanced treatment units could properly function under peak flow events, such as unusually heavy rains and storms. Also, states were previously given flexibility to determine when and where swimming uses would reasonably be expected to occur, particularly under high flow conditions. The EPA allowed limited "mixing zones" and other less restrictive requirements where a state confirmed that such uses were improbable due to the physical setting.

Since 2009, however, the EPA has initiated a series of more restrictive federal rule interpretations regarding collection system design, bypass rule applicability, allowable mixing zones, and acceptable plant design/operations that have placed otherwise compliant facilities into ongoing violation and have dictated extreme sewer system and treatment plant designs to address rare wet weather flows. In other words, the EPA changed its approach without going through the rule-making process. It now asserts that previously approved rules and processes are unlawful, potentially putting many hundreds of millions of dollars at risk. Issues created by the EPA's reinterpretation include:

1. Requiring municipalities to construct additional treatment facilities even when underlying water quality standards and technology-based limitations are already being achieved.
2. Holding municipalities legally accountable for treating flows associated with "Noah's flood."
3. Preventing communities from designing facilities with state-of-the-art physical/chemical peak flow treatment technologies.
4. Forcing communities with advanced treatment processes to modify operations and designs to ensure all flows pass through the complete biological process.

The EPA has created a situation where cities will be in ongoing violation with no reasonable means to achieve compliance. Communities will be forced into large expenditures that have no relationship whatsoever to environmental needs or technology rule compliance. For these reasons, the Iowa League of Cities is seeking to overturn the illegal rule changes, inform the EPA on the extent of federal authority regarding wastewater plant design, direct the EPA to adhere to statutory provisions when developing wastewater requirements, and allow the states to continue to use cost-effective options to safely process peak wet weather flows.

Please direct all questions regarding this litigation to Alan Kemp, Executive Director of the Iowa League of Cities, at (515) 244-7282, or at AlanKemp@iowaleague.org.