



EPA to Update Blending Regulations

May 2018

On April 17, EPA announced it will be reaching out to stakeholders as it begins a new rulemaking process to provide certainty surrounding the use of “blending” by wastewater treatment plants. Through this effort, EPA seeks to provide regulatory clarity and certainty with respect to the use of blending, so that facilities can optimize wastewater treatment during wet weather, which will protect both water quality and public health in the communities they serve. EPA will be conducting stakeholder outreach during the coming months to gather critical input prior to issuing a proposed rulemaking.

We see this as a very positive sign. We expect a final rule that will authorize blending at all plants. The rule should require that blending be addressed in each plant’s NPDES permit including conditions addressing the flow management scheme through the plant (to ensure full secondary treatment is maximized) and some basic monitoring of the recombined effluent on days when blending occurs.

Another possibility is that EPA will simply decide to acquiesce to the 8th Circuit’s decision in *Iowa Cities* and conclude that EPA cannot regulate what happens inside the plant fence line. We suspect the former rather than the latter.

There is some concern about how this rule may affect the 8th Circuit decision and the utilities within the 8th Circuit who can now blend.

One reason we expect a rule allowing blending is that the Trump EPA will take credit for saving utilities billions of dollars and EPA can use those savings as a regulatory offset against other rules they are forced to adopt. President Trump’s Executive Order 13771 requires burden offsetting.

Finally, any states opposed to blending remain free to prohibit it (Section 510 of the CWA allows states to be more stringent).