

From: [Denton, Loren](#)
To: [Hannon, Arnita](#); [Cook-Shyovitz, Becky](#); [Samy, Kevin](#); [Pollins, Mark](#); [Giles-AA, Cynthia](#); [Stoner, Nancy](#); [Nagle, Deborah](#); [Bosma, Connie](#); [Shinkman, Susan](#); [Chester, Steven](#); [Weiss, Kevin](#); [Crossland, Andy](#); [Sawyers, Andrew](#)
Subject: RE: Status: Briefing; TPs
Date: Thursday, December 12, 2013 4:59:45 PM
Attachments: [DeputyAdministratorBriefingDec2013USCMNLNACoDialogueMtg.docx](#)
[Revised Talking Points for DAA 12 11 13 \(3\).docx](#)

Attached are Bob P's talking points and a one-pager on Iowa League of Cities in case he gets a question on it.

Loren Denton
 Chief, Municipal Enforcement Branch
 Water Enforcement Division
 U.S. EPA (2243A)
 Washington, D.C. 20460
 Phone: (202) 564-1148

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From: Weiss, Kevin
Sent: Thursday, December 12, 2013 4:25 PM
To: Denton, Loren
Subject: FW: Status: Briefing; TPs

From: Hannon, Arnita
Sent: Thursday, December 12, 2013 3:26 PM
To: Weiss, Kevin; Crossland, Andy
Cc: Samy, Kevin; Cook-Shyovitz, Becky
Subject: Status: Briefing; TPs

Hi Guys!

Are you close to sending the Briefing and Talking Points over? Please cc Kevin Samy and Becky Cook-Shyovitz when you send this material just in case I've had to leave the office. I am also having trouble sending messages from my blackberry and just got back to my desk so really sorry about having to be a pain J !

Thx as always,

Arnita

PS – Just got word that Nancy Sutley's schedule will prevent her from coming tomorrow fyi!

M. Arnita Hannon

Intergovernmental Liaison
Office of Congressional and Intergovernmental Relations
US EPA
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
202.564.3704 (O)
202.302.9109 (M)
240.602.7118 (C)
202.501.1545 (Fax)
hannon.arnita@epa.gov

If asked about EPA's response to Iowa League of Cities:

- EPA received a letter dated November 26, 2013 from the U.S. Conference of Mayors, the National League of Cities and other organizations requesting clarification of the Agency's position on the *Iowa League of Cities* decision in the 8th Circuit Court of Appeals. EPA is currently reviewing the letter and will provide a response in the near future.

Background of Iowa League of Cities Decision

- In Iowa League of Cities v. EPA (March 25, 2013) the Eighth Circuit Court of Appeals:

(1) vacated portions of two letters that EPA sent to Senator Grassley in response to his questions about blending and mixing zones because the letters constituted legislative rules that were promulgated without notice and comment rulemaking in violation of the APA; and

2) held that EPA exceeded its statutory authority insofar as it imposes secondary treatment regulations on flows within treatment facilities (e.g. apply effluent limitations to the discharge of flows from one internal treatment unit to another), and thus within the Eighth Circuit this decision will have practical effect of limiting how the Agency approaches blended wastestreams.

- The Eighth Circuit's opinion is inconsistent with EPA's long-standing interpretation of the Clean Water Act, the bypass rule and the secondary treatment standard as prohibiting the routing of waste streams around secondary treatment units and subsequently blending the partially treated wastewater back in with treated flows. EPA's position is that blending is a bypass and can only be justified upon a demonstration of "no feasible alternatives."
- EPA has determined that the *Iowa League of Cities*' interpretation of blending and bypass is binding within the Eighth Circuit. Outside the Eighth Circuit, EPA will continue to apply the bypass rule consistent with the Agency's existing interpretation of its regulations.