



Thomas C. Jorling  
Commissioner

August, 1990

**MEMORANDUM**

TO: Bureau Directors, Regional Water Engineers, Section Chiefs

SUBJECT: Division of Water Technical and Operational Guidance Series (1.5.3)  
NEUTRAL SURVEILLANCE PLAN  
(ORIGINATOR: Chuck Haugh)

**I. PURPOSE**

The purpose of this memorandum is to establish guidance for the neutral (unbiased) selection of point sources to be sampled in the absence of sufficient resources to sample all point source dischargers.

**II. BACKGROUND**

DEC's Surveillance of SPDES dischargers consists of three primary elements: Review of discharger self-monitoring reports (DMR's), Inspections, and Sampling. The majority of permit violations are detected through one or more of these primary elements. These are supported by other elements such as citizen complaints and laboratory inspections.

To avoid "selective enforcement," surveillance must be either (a) responsive to specific evidence of an existing violation, or (b) based on a scheme which is inherently neutral (unbiased).

In this context, "neutral" means that all dischargers with approximately the same characteristics for purposes of SPDES have approximately equal chance of being subjected to surveillance by DEC.

Article 17, Section 17-0829, of the New York State Environmental Conservation Law establishes the right of entry of an authorized representative of the Department upon presentation of credentials to any premises in which any effluent source is located or in which any records are required to be maintained. This section further establishes the right to have access to and copy any records required to be maintained; to inspect any monitoring equipment or method which is required; and to have access to and sample any discharges or pollutants to waters or to publicly owned treatment works.

**III. GUIDANCE**

A. For the approximately 1600 SPDES-permitted dischargers in New York which have been identified as major and significant minor (among the total number of approximately 7300; See TOGS 1.2.2):

1. DMR's are to be required to be filed with the Department at a frequency dependent upon the degree of risk of public health or environmental damage. The standard reporting period will be monthly. Less frequent reporting is allowable if the risk to public health and the environment is not greatly increased thereby.
2. Comprehensive inspections are to be conducted of all major and significant minor permittees at least annually, and the "ideal" number of reconnaissance inspections are three times per year for non-toxic dischargers and six times per year for toxic dischargers (TOGS 1.2.2).

Inspections based on specific evidence of existing violations are to be conducted as needed. Factors which constitute specific evidence include:

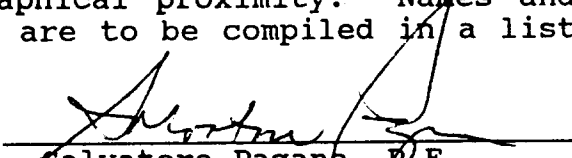
- a) violations reported on recent DMR's;
  - b) response to emergency situations, such as threat to public health or safety;
  - c) follow-up to previous inspections or to sampling which indicated violations;
  - d) specific enforcement case support;
  - e) citizen complaints;
  - f) laboratory inspection deficiencies.
3. Ideally, sampling should be performed at each major and significant minor discharge at least once per year. Unfortunately, this is not currently possible because of limitations of sampling and analytical resources. Therefore, sampling, except for that conducted because of existence of "specific evidence," must be based on a "neutral" plan. Criteria for developing the plan are as follows:
    - a) Response to the "specific evidence" factors cited in Section 2, immediately above (non-neutral); and
    - b) Within the following categories, length of time since last sampling and geographical grouping (neutral).
      - i) Dischargers designated as toxic (TOGS 1.2.2) and those for which toxic limits are to be set;
      - ii) All other major dischargers;
      - iii) All other significant minor dischargers.

Sampling based on Section a) above, is not neutral since it is based on prior knowledge of apparent or probable permit violations. Sampling based on Section b) above, is neutral since all dischargers in each category in the Region are to be considered for sampling, using only time of last sampling and geographical grouping as criteria for selection of which will be sampled.

To establish that portion of the Region's sampling program based on the neutral plan, determine the length of time which has passed since the last DEC sampling for all toxic-designated permittees. Permittees are to be ranked in priority order for sampling, with highest priority given to those for which greatest time has passed since sampling. Any permittee may be sampled if it is in close physical proximity and/or en route to a facility of high priority. If sufficient resources remain, repeat this for the other two categories listed in Section ii above.

- B. Non-significant class permittees are not to be inspected or sampled other than in response to specific evidence of existing violation, as delineated in Section III.A.2, above. DMR's are not sent to non-significant class dischargers per TOGS 1.2.2.
- C. At the beginning of each fiscal year, BWFO will allocate the SPDES analytical resource among the Regions, providing each with a dollar amount it has available at contract labs for conduct of analyses of samples. The Region determines the percent of these resources it will reserve for sampling in response to "specific evidence" as delineated above. The balance is devoted to neutral sampling.

The Region then determines the approximate number of "neutral plan" samples which can be taken and analyzed at facilities highest in priority and those in close geographical proximity. Names and permit numbers of these facilities are to be compiled in a list that should be kept in the region.

  
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