

Thomas C. Jorling
Commissioner

November 1988

M E M O R A N D U M

TO: Regional Water Engineers, Bureau Directors, Section Chiefs
SUBJECT: Division of Water Technical and Operational Guidance Series (1.6.2)
BYPASSES
(Originator: Arthur F. Warner)

I. PURPOSE

To provide guidance on when and under what circumstances bypasses of sewage treatment works are and are not approvable.

II. DISCUSSION/GUIDANCE

A. Anticipated bypasses, including shut-downs and partial treatment necessitated by construction or reconstruction of sewage treatment works, will be approvable only when:

1. The permittee/discharger demonstrates that the bypass is unavoidable (there are no feasible alternatives to the bypass such as the use of auxiliary treatment facilities or retention of untreated wastes. Cost alone will not be sufficient reason to reject an alternative);

and

The discharger/permittee must document that the bypass is a mitigating action which, over a subject period of time, will result in a lesser discharge of pollutants than otherwise would be the case;

and

At least 10 days before the day of shutdown, the permittee/discharger must provide the following to the Regional Water Engineer with a copy to the Division of Construction Management (DCM):*

- A plan identifying all work locations;
- Crew size for each work activity including the minimum number of hours needed to complete it;

- A work schedule, in a Critical Path Method (CPM) or bar chart format, with milestone events and time required to complete each activity. The schedule must be based on continuous round the clock work occurring concurrently at all possible sites. Where continuous and/or concurrent work is not possible, justification must be provided;

and

- A written confirmation of the schedule and staffing requirements from any organization/contractor utilized to perform the work, at least 24 hours before beginning the shutdown.

* NOTE: The "at least 10 days" notice is required by the SPDES General Conditions, Part II. However, in cases which involve factors such as prolonged bypasses (e.g. greater than a few hours), or complicated construction considerations, greater than the minimum ten day notice should be provided in order to allow for adequate time for review and approval. Such advanced notice will reduce delays due to department review. (At least 45 days is recommended.)

or

2. The bypass will result in no violations of effluent limits governing discharges by the facility/entity. If other conditions in the SPDES Permit or an existing consent order will be violated by the bypass, the facility/entity is also required to notify the Department in accordance with this guidance, pursuant to 6 NYCRR §756.3(b).

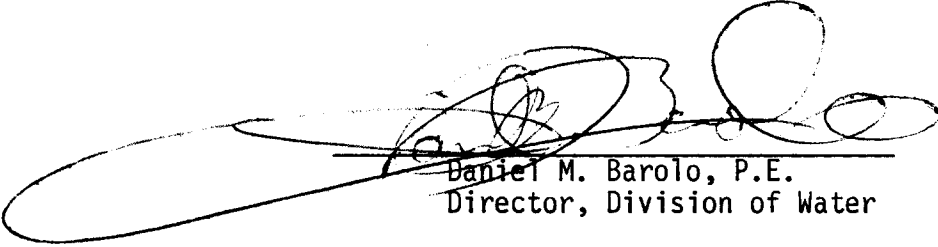
B. If conditions in II.A.1. are met, then:

1. If proposed bypass duration is six months or less, approval can be given at discretion of Regional Water Engineer by a no-action letter. The letter should establish the violations which would be caused by such bypass (for example a raw discharge is a direct violation of water quality standards and is prohibited by Article 17 of ECL); set forth interim limits; limit duration and scope of the bypass; set a schedule for eliminating the bypass; set monitoring and reporting requirements and other conditions as appropriate. The letter should establish that in exercise of prosecutorial discretion the Department will not act provided all conditions of the no-action letter are met. The letter must contain an expiration date and a clause providing for summary revocation if the conditions are violated. Violations nullify the provisions of the no-action letter and subject the discharger to enforcement action.

or

2. If proposed bypass duration is greater than six months, a formal order is required. The order must establish interim limits, a schedule for eliminating the bypass and stipulated penalties to be levied in the event of violation of the interim limits and/or the schedule.
- C. If conditions in II.A.2. are met, then no approval action is necessary but appropriate reporting and notification provisions of the SPDES permit must be complied with by the permittee/discharger.
- D. Any other bypass situation (including an unanticipated bypass) is not approvable. If such occurs, it is to be dealt with as a permit violation subject to appropriate Department compliance measures. The Regional Water Engineer shall consider the type of factors presented in IIA. and in the SPDES permit in establishing a case-by-case enforcement response (consistent with TOGS 1.4.2 and 1.4.1 and the Department's Water Pollution Enforcement Guidance memoranda) to such unapprovable bypass occurrences.
- E. Decisions regarding anticipated construction bypasses must be coordinated with the Bureau of Wastewater Facilities Operations (BWFO) with notification of the discharger's request to bypass provided by the Regional Water Engineer to BWFO as soon as possible prior to the date of beginning the bypass.

BWFO is responsible for advising the USEPA of the anticipated bypass and for coordinating as needed regarding concerns expressed by EPA. DCM will review all construction related shutdowns promptly and advise the RWE/BWFO of the reasonableness in terms of necessity and required minimum time.



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cc: Dr. Banks
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