Environmental Protection Agency

§ 403.17 Bypass.

(a) Definitions. (1) **Bypass** means the intentional diversion of wastestreams from any portion of an Industrial User’s treatment facility.

(2) **Severe property damage** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) **Bypass not violating applicable Pretreatment Standards or Requirements.** An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

(c) **Notice.** (1) If an Industrial User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least ten days before the date of the bypass.

(2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Control Authority within 24 hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within 5 days of the time the Industrial User becomes aware of the bypass. The written submission...
shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(d) Prohibition of bypass. (1) Bypass is prohibited, and the Control Authority may take enforcement action against an Industrial User for a bypass, unless:
   (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
   (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
   (iii) The Industrial User submitted notices as required under paragraph (c) of this section.

(2) The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.


§ 403.18 Modification of POTW pretreatment programs.

(a) General. Either the Approval Authority or a POTW with an approved POTW Pretreatment Program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW Pretreatment Program that differs from the information in the POTW’s submission, as approved under § 403.11.

(b) Substantial modifications defined. Substantial modifications include:
   (1) Modifications that relax POTW legal authorities (as described in §403.8(f)(1)), except for modifications that directly reflect a revision to this part 403 or to 40 CFR chapters I, subchapter N, and are reported pursuant to paragraph (d) of this section;
   (2) Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to paragraph (d) of this section. Maximum Allowable Industrial Loading means the total mass of a pollutant that all Industrial Users of a POTW (or a subgroup of Industrial Users identified by the POTW) may discharge pursuant to limits developed under §403.5(c);
   (3) Changes to the POTW’s control mechanism, as described in §403.8(f)(1)(iii);
   (4) A decrease in the frequency of self-monitoring or reporting required of industrial users;
   (5) A decrease in the frequency of industrial user inspections or sampling by the POTW;
   (6) Changes to the POTW’s confidentiality procedures; and
   (7) Other modifications designated as substantial modifications by the Approval Authority on the basis that the modification could have a significant impact on the operation of the POTW’s Pretreatment Program; could result in an increase in pollutant loadings at the POTW; or could result in less stringent requirements being imposed on Industrial Users of the POTW.

(c) Approval procedures for substantial modifications. (1) The POTW shall submit to the Approval Authority a statement of the basis for the desired program modification, a modified program description (see §403.9(b)), or such other documents the Approval Authority determines to be necessary under the circumstances.

(2) The Approval Authority shall approve or disapprove the modification based on the requirements of §403.8(f) and using the procedures in §403.11(b)