



ARKANSAS  
Department of Environmental Quality

June 5, 2009

Mr. Gary Smith, Director of Utilities  
Van Buren Municipal Utilities  
P. O. Drawer 1269  
Van Buren, Arkansas 72957

RE: City of Van Buren Draft Ordinance for Streamlining Rule Requirements  
(NPDES Permit Number AR0021482, AFIN 17-00062)

Dear Mr. Smith:

On October 14, 2005 EPA modified 40 CFR Part 403. These modifications to Part 403 are commonly referred to as the "Streamlining Rule Revisions". Part III paragraph 8.a in the Van Buren North Treatment Plant NPDES permit number AR0040967 required the City to submit to ADEQ (department) the necessary modifications to comply with the Streamlining revisions by March 1, 2009. In reference to Van Buren Municipal Utilities letter dated February 25, 2009, the department has received the City's draft ordinance for incorporating the Streamlining revisions.

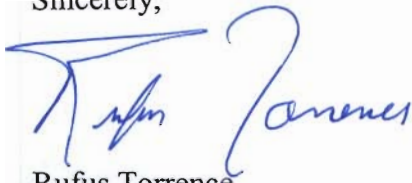
The department reviewed the City's draft ordinance for compliance with the Streamlining revisions and noted some necessary corrections and updates to comply with the new rule. These required corrections and updates are indicated in red on the enclosures. The department noted recommended changes in green which should enhance the City's existing legal authority. The department also provided instructions and listed items which require attention. These instructions and items of attention are highlighted in yellow. The department welcomes any concerns which you or members of the City staff may have. The City is encouraged to make suggestions on improving the department's changes.

The department used the enclosed checklist to ensure that (1) all the required "Streamlining" updates were included in the attached draft and (2) all recommended language to enhance the existing legal authority was included.

June 5, 2009  
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The department looks forward to working with you and your staff on these "Streamlining" changes. If you have any questions or concerns, please contact my office at 501-682-0626 or [torrence@adeq.state.ar.us](mailto:torrence@adeq.state.ar.us).

Sincerely,



Rufus Torrence  
ADEQ Engineer

CC: Cindy Gardner, Technical Assistance Manager, Enforcement Branch

Enclosures: DRAFT Proposed Sewer Use Ordinance  
Table of Contents for Sewer Use Ordinance  
ADEQ Checklist-Pretreatment Program Legal Authority Reviews

## ADEQ CHECKLIST – PRETREATMENT PROGRAM LEGAL AUTHORITY REVIEWS

NAME OF POTW: Van Buren Municipal Utilities  
 DATE OF REVIEW: June 1, 2009

Note: Several changes to the National Pretreatment Regulations made as a result of the Streamlining Rule are more stringent than the previous Federal requirements and therefore are considered required modifications for the POTW. Therefore, to the extent that existing POTW legal authorities are inconsistent with these required changes, they must be revised. Where local authorities are already consistent with these required provisions, further changes are not necessary.

	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
<b>A. Definitions [403.3 &amp; 403.8(f)(2)]</b>							
1. Act, Clean Water Act	403.3(b)	§ 1.4 A		X		§10.08.01.b	
2. Authorized or Duly Authorized Representative of the User	403.12(l)	§ 1.4 C		X		§10.08.01.e	
3. Best Management Practices or BMPs	403.3(e)	§ 1.4 E		X*	X	§10.08.01.f	
4. Categorical Pretreatment Standard or Categorical Standard		§ 1.4 F		X		§10.08.01.i	
5. Indirect Discharge or Discharge	403.3(i)	§ 1.4 M		X		§10.08.01.y	
6. Industrial User (or equivalent)	403.3(j)	§ 1.4 LL		X		§10.08.01.z	Must Add
7. Interference	403.3(k)	§ 1.4 O		X		§10.08.01.aa	
8. National Pretreatment Standard, Pretreatment Standard or Standard	403.3(l)	§ 1.4 BB		X		§10.08.01.ff	
9. New Source	403.3(m)	§ 1.4 T		X		§10.08.01.gg	
10. Pass Through	403.3(p)	§ 1.4 V		X		§10.08.01.jj	Must Change
11. Pretreatment Requirement	403.3(t)	§ 1.4 AA		X		§10.08.01.oo	
12. Publicly Owned Treatment Works or POTW	403.3(q)	§ 1.4 DD		X		§10.08.01.mm	
13. Significant Industrial User <i>[NOTE: §1.4 GG(3) is an optional streamlining provision for Non-Significant Categorical Industrial User classification.]</i>	403.3(v)	§ 1.4 GG		X		§10.08.01.vv	
14. Significant Noncompliance	403.8(f)(2)(vii)	§ 9 (A-C)		X X		§10.08.06.7	Must Change
14. Significant Noncompliance	403.8(f)(2)(vii)	§ 9 (D-H)			X	§10.08.06.7	Must Change

\*City is not required to allow BMPs but if the City elects to allow this option or has CIUs with BMP requirements as categorical standards, then a definition is required.

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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
15. Slug Load or Slug Discharge	403.8(f)(2)(vi)	§ 1.4 HH		X		§10.08.01.ww	
16. Other definitions based on terms used in the POTW Ordinance							
17. Control Authority						§10.08.01.n	
18. Approval Authority						§10.08.01.d	
						*****	
						*****	
						*****	
<b>B. National Pretreatment Standards -- Prohibited Discharges</b>							
1. General Prohibitions							
a. Interference	403.5(a)	§ 2.1A		X		§10.08.02.1.1	May Add
b. Pass Through	403.5(a)	§ 2.1A		X		§10.08.02.1.1	May Add
2. Specific Prohibitions [403.5(b)]							
a. Fire/Explosion Hazard (60° C or 140° F flashpoint)	403.5(b)(1)	§ 2.1B(1)		X		§10.08.02.1.2.a	
b. pH/Corrosion	403.5(b)(2)	§ 2.1B(2)		X		§10.08.02.1.2.c	
c. Solid or Viscous/Obstruction	403.5(b)(3)	§ 2.1B(3)		X		§10.08.02.1.2.b	
d. Flow Rate/Concentration (BOD, etc.)	403.5(b)(4)	§ 2.1B(4)		X		§10.08.02.1.2.j	
e. Heat; exceeds 40° C (104°F)	403.5(b)(5)	§ 2.1B(5)		X		§10.08.02.1.2.i	
f. Petroleum/Nonbiodegradable Cutting/Mineral Oils	403.5(b)(6)	§ 2.1B(6)		X		§10.08.02.1.2.o	
g. Toxic Gases/Vapor/Fumes	403.5(b)(7)	§ 2.1B(7)		X		§10.08.02.1.2.p	
h. Trucked/Hauled Waste	403.5(b)(8)	§ 2.1B(8)		X		§10.08.02.1.2.q	

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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
3. National Categorical Standards	403.8(f)(1)(ii)	§ 2.2		X		§10.08.02.2.1	
4. Local Limits Development [NOTE: POTW's may develop Best Management Practices (BMPs) to implement the prohibitions listed in 40 CFR 403.5(a)(1). Such BMPs shall be considered local limits and Pretreatment Standards.]	403.5(c) & (d)	§ 2.4		X			
5. Prohibition Against Dilution as Treatment	403.6(d)	§ 2.6		X		§10.08.02.2.4	
6. Best Management Practices Development [NOTE: Optional streamlining provision.]	403.5(c)(4)	§ 2.4C			X	§10.08.02.2.5	
<b>C. Control Discharges to POTW System</b>							
1. Deny/Condition New or Increased Contributions	403.8(f)(1)(i)	§§ 4.8 & 5.2		X		§10.08.05.2	
2. Individual Control Mechanism (e.g., permit) to ensure compliance - Permit Content	403.8(f)(1)(iii)	§ 4.2		X			
a. Statement of Duration	403.8(f)(1)(B)(1)	§§ 5.1 & 5.2A(1)		X		§10.08.05.2.7.a	
b. Statement of Nontransferability	403.8(f)(1)(B)(2)	§5.2A(2)		X		§10.08.05.2.7.b	
c. Effluent Limits	403.8(f)(1)(B)(3)	§ 5.2A(3)		X		§10.08.05.2.7.c	

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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
d. Best Management Practices <i>[Note: This is a required streamlining provision for CIUs with BMP requirements as part of its Categorical Standards. But if BMPs are being applied to other CIUs or noncategorical SIUs without categorical BMP requirements, then this provision would be optional and is only required if the POTW has incorporated the use of BMPs (§ 2.4 C).]</i>	403.8(f)(1)(B)(3)	§ 5.2A(3)		XX		§10.08.05.2.7.c <b>Must Add</b>	
e. Self-Monitoring Requirements	403.8(f)(1)(B)(4)	§ 5.2A(4)		X		§10.08.05.2.7.d	
f. Reporting & Notification Requirements	403.8(f)(1)(B)(4)	§ 5.2A(4)		X		§10.08.05.2.7.d	
g. Recordkeeping Requirements	403.8(f)(1)(B)(4)	§ 5.2A(4)		X		§10.08.05.2.7.d	
h. Process for Seeking a Waiver for Pollutants Not Present or Expected to be Present <i>[NOTE: Optional streamlining provision. Required only if the POTW has incorporated § 6.4B of the Model SUO.]</i>	403.8(f)(1)(B)(4) & 403.12(e)(2)	§ 5.2A(5)			X	Not Applicable	
i. Statement of Applicable Civil and Criminal Penalties	403.8(f)(1)(B)(5)	§ 5.2A(6)		X		§10.08.05.2.7.e	
j. Slug Discharge Requirements (if necessary) <i>[NOTE: Required streamlining change. Where the POTW has determined that slug controls are necessary, the ordinance must provide authority for the POTW to include such requirements in IU permits.]</i>	403.8(f)(1)(B)(6)	§ 5.2A(7)		XX		§10.08.05.2.7.j <b>Must Add</b>	

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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
k. Specific waived pollutant <i>[NOTE: Optional streamlining provision. Required only if the POTW has incorporated § 6.4B of the Model SUO.]</i>	403.8(f)(1)(iii)(B)(4)	§ 5.2A(9) 6.4B			X	Not Applicable	
l. Permit Application/Reapplication Requirements <i>[Note: Optional permit provision]</i>		§§ 5.3 & 5.7			X	§10.08.05.2.7.i	
m. Permit Modification <i>[Note: Optional permit provision]</i>		§ 5.4			X	§10.08.05.2.7.g	
n. Permit Revocation/Termination <i>[Note: Optional permit provision]</i>		§§ 5.6 & 10.8			X	§10.08.05.2.7.h	
o. Proper Operation and Maintenance <i>[Note: Optional permit provision]</i>		§ 3.1			X	Not Applicable	
p. Duty of Halt/Reduce <i>[Note: Optional permit provision]</i>		§ 10.7			X	Not Applicable	
q. Requirement to submit Chain-of-Custody forms with monitoring data <i>[Note: Optional permit provision]</i>					X	Not Applicable	
3. General Control Mechanism to ensure compliance <i>[NOTE: Optional streamlining provision. Required only if the POTW has incorporated the use of General Permits (§ 4.6 of the Model SUO).]</i> - Permit Content	403.8(f)(1)(iii)(A)	§ 4.2 & 4.6			X	Not Applicable	
a. Statement of Duration	403.8(f)(1)(iii)(B)(1)	§§ 5.1 & 5.2A(1)			X	Not Applicable	
b. Statement of Nontransferability	403.8(f)(1)(iii)(B)(2)	§ 5.2A(2)			X	Not Applicable	

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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
c. Effluent Limits	403.8(f)(1) (iii) (B)(3)	§ 5.2.A(3)			X	Not Applicable	
d. Best Management Practices <i>[Note: This is a required streamlining provision for CIUs with BMP requirements as part of its Categorical Standards. But if BMPs are being applied to other CIUs or noncategorical SIUs without categorical BMP requirements, then this provision would be optional and is only required if the POTW has incorporated the use of BMPs (§ 2.4C).]</i>	403.8(f)(1) (iii) (B)(3)	§ 5.2.A(3)		XX*	X	Not Applicable	
e. Self-Monitoring Requirements	403.8(f)(1) (iii) (B)(4)	§ 5.2.A(4)			X	Not Applicable	
f. Reporting & Notification Requirements	403.8(f)(1) (iii) (B)(4)	§ 5.2.A(4)			X	Not Applicable	
g. Recordkeeping Requirements	403.8(f)(1) (iii) (B)(4)	§ 5.2.A(4)			X	Not Applicable	
h. Process for Seeking a Waiver for Pollutants Not Present or Expected to be Present <i>[Note: Required only if POTW has incorporated the use of Pollutants Not Present and § 6.4 of the Model SUO.]</i>	403.8(f)(1) (iii) (B)(4) & 403.12(e)(2)	§ 5.2.A(5)			X	Not Applicable	
i. Statement of Applicable Civil and Criminal Penalties	403.8(f)(1) (iii) (B)(5)	§ 5.2.A(6)			X	Not Applicable	

XX\* Required provision if City elects to issue General permits for CIUs with BMP requirements or for other SIUs where the City has included the BMP provision.



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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
j. Slug Discharge Requirements (if necessary) <i>[NOTE: Required streamlining change. The ordinance should indicate that a user is required to develop a slug discharge control plan if determined by the POTW to be necessary.]</i>	403.8(f)(1)(iii)(B)(6)	§ 5.2A(7)			X	Not Applicable	
k. Permit Application/Reapplication Requirements <i>[Note: Optional permit provision]</i>		§§ 5.3 & 5.7			X	Not Applicable	
l. Permit Modification <i>[Note: Optional permit provision]</i>		§ 5.4			X	Not Applicable	
m. Permit Revocation/Termination <i>[Note: Optional permit provision]</i>		§§ 5.6 & 10.8			X	Not Applicable	
n. Proper Operation and Maintenance <i>[Note: Optional permit provision]</i>		§ 3.1			X	Not Applicable	
o. Duty of Halt/Reduce <i>[Note: Optional permit provision]</i>		§ 10.7			X	Not Applicable	
p. Requirement to submit Chain-of-Custody forms with monitoring data <i>[Note: Optional permit provision]</i>					X	Not Applicable	
<b>D. Required Reports</b>							
1. Develop compliance schedule for installation of technology	403.8(f)(1)(iv)	§§ 5.2b(2) & 10.4			X	§10.08.05.3.0.1	May Modify

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2. Reporting Requirements [403.12] <i>Types of Reports</i>	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
a. Baseline monitoring report	403.12(b)	§ 6.1		X		\$10.08.05.3	Must Add
(i) Identifying Information	403.12(b)(1)	§ 6.1B(1) & § 4.5A(1)a		X		\$10.08.05.3	Must Add
(ii) Other Environmental Permits Held	403.12(b)(2)	§§ 6.1B(1) & 4.5A(2)		X		\$10.08.05.3	Must Add
(iii) Description of operations	403.12(b)(3)	§§ 6.1B(1) & 4.5A(3)a		X		\$10.08.05.3	Must Add
(iv) Flow measurements	403.12(b)(4)	§§ 6.1(b)(2) & 4.5A(6)		X		\$10.08.05.3	Must Add
(v) Measurement of pollutants	403.12(b)(5)	§ 6.1B(2)		X		\$10.08.05.3	Must Add
(vi) Certification	403.12(b)(6)	§ 6.1B(3)		X		\$10.08.05.3	Must Add
(vii) Compliance schedule	403.12(b)(7)	§ 6.1B(4)		X		\$10.08.05.3	Must Add
b. Compliance schedule progress report	403.12(c)	§ 6.2		X		\$10.08.05.3.0.1	
c. Report on compliance with categorical Pretreatment Standard deadline	403.12(d)	§ 6.3		X		\$10.08.05.3.1	
d. Periodic reports on continued compliance							
- From categorical users	403.12(e)	§ 6.4A		XX		\$10.08.05.3.2	
- From significant non-categorical users	403.12(h)	§ 6.4A		XX		\$10.08.05.3.2	
e. Notice of potential problems to be reported immediately (including slug loads)	403.12(f)	§ 6.6		X		\$10.08.05.3.1	

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	Part 403 Citation	Model SUC Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
f. Notification of changes affecting potential for a slug discharge <i>[NOTE: Required streamlining revision]</i>	403.8(f)(2)(vi)	§ § 6.5 & 6.6		XX		§10.08.02.2.5	
g. Notice of violation/sampling requirement <i>[NOTE: Required streamlining revision.]</i>	403.12(g)(2)	§ 6.8		XX		§10.08.05.3.2	
h. Requirement to conduct representative sampling	403.12(g)(3)	§ 6.4E		X		§10.08.05.5	
i. Notification of changed discharge	403.12(j)	§ 6.5		X		§10.08.05.3.3	May Move
j. Notification of discharge of hazardous waste	403.12(p)	§ 6.9		X		§10.08.05.3.3	May Move
<b>Other Reporting Requirements</b>							
k. Data accuracy certification & authorized signatory	403.6(a)(2)(ii) & 403.12(l)	§ § 6.4D & 6.14		X		§10.08.05.3.2	
l. Recordkeeping Requirement (3 years or longer)	403.12(o)	§ 6.13		X		§10.08.08	
- Including documentation associated with Best Management Practices <i>[NOTE: Required streamlining provision.]</i>	403.12(o)	§ 6.13		XX		§10.08.08	Must Add
m. Submission of all monitoring data <i>[NOTE: Required streamlining revision]</i>	403.12(g)(6)	§ 6.4F		X		§10.08.05.3.2	May Add
n. Annual certification by Non-significant categorical Industrial Users <i>[Note: Optional provision, required only if the POTW has incorporated §1.4GG(3) of the Model SUO.]</i>	403.3(v)(2)	§ § 4.7C & 6.14B			X	§10.08.05.3.2	

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				NONE	REQ	REC		
		403.12(e)(2)(v)	§ 6.14C			X	Not Applicable	
o. Certification of pollutant not present [NOTE: <i>Optional provision, required only if the POTW has incorporated § 6.4 B of the Model SUO</i> ]								
<b>E. Test Procedures [40 CFR Part 136 &amp; 403.12(g)]</b>								
		403.12(g)	§ 6.10		X		§10.08.05.3.2	
1. Analytical procedures (40 CFR Part 136) [NOTE: <i>Required streamlining provisions</i> ]								
		403.12(g)(3) & (4)	§ 6.11 A&C		X X		§10.08.05.3.2.2	
2. Sample collection procedures [NOTE: <i>Required streamlining provisions</i> ]								
<b>F. Inspection and Monitoring Procedures [403.8(f)]</b>								
		403.8(f)(1)(v)	§ 7.1		X		§10.08.05.5	
1. Right to enter all parts of the facility at reasonable times								
		403.8(f)(1)(v)	§ 7.1		X		§10.08.05.5	
2. Right to inspect generally for compliance								
		403.8(f)(1)(v), 403.8(f)(2)(v) & 403.8(f)(2)(vii)	§ 7.1		X		§10.08.05.5	
3. Right to take independent samples								
		403.8(f)(1)(iv)	§ 7.1		X		§10.08.05.4	
4. Right to require installation of monitoring Equipment								
		403.12(o)(2)	§ 7.1		X		§10.08.08	
5. Right to inspect and copy records								
<b>G. Remedies for Non-compliance (Enforcement) [403.8(f)(1)(vi)]</b>								
1. Non-emergency response								
		403.8(f)(1)(vi)	§ 11.1		X		§10.08.07.6	
a. Injunctive relief								
		403.8(f)(1)(vi)	§§ 11.2 & 11.3		X		§10.08.07.1&.4	
b. Civil/Criminal penalties								

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	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
<b>2. Emergency response</b>							
a. Immediately halt actual/threatened discharged	403.8(f)(1)(vi)(B)	§ 10.7		X		§10.08.06.1	
3. Legal authority to enforce Enforcement Response Plan	403.8(f)(1)(vi)	§ 11.4		X		§10.08.06.10	Must Add
<b>H. Public Participation</b>							
1. Publish list of Industrial Users in Significant Noncompliance [NOTE: Required streamlining revision]	403.8(f)(2)(viii)	§ 9		XX		§10.08.06.7	
<b>2. Access to data [403.8(f)(1)(vii) &amp; 403.14]</b>							
a. Government	403.14(a) & (c)	§ 8		X		§10.08.05.6	
b. Public	403.14(b)	§ 8		X		§10.08.05.6	
<b>I. Optional Provisions</b>							
<b>1. Net/Gross adjustments [streamlining provision]</b>							
2. Equivalent mass limits for concentration Limits [streamlining provision]	403.15 403.6(c)	§ 2.2 D § 2.2 E				Not Applicable Not Applicable	
3. Equivalent concentration limits for mass limits [streamlining provision]	403.6(c)	§ 2.2 F			X	Not Applicable	
4. Upset Notification	403.16	§ 13.1			X	§10.08.06.9	
5. Waive monitoring for pollutant not present or expected to the present [streamlining provision]	403.12(e)(2)	§ 6.4B			X	Not Applicable	
6. Reduce periodic compliance reporting [streamlining provision]	403.12(e)(3)	§ 6.4C			X	Not Applicable	
7. Other special agreement or waivers (excluding waiver of National Categorical Pretreatment Standards and Requirements)			X			Not Applicable	

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	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
8. Hauled Waste Reporting/Requirements		§ 3.4			X	§10.08.02.1.q	
9. Grease Interceptor Reporting/Requirements		§ 3.2 C			X	Not Applicable	
10. Authority to issue Notice of Violations (NOVs)		§ 10.1			X	§10.08.06.3	
11. Authority to issue Administrative Orders (AOs)		§ 10.4			X	§10.08.06.5	
12. Authority to issue Administrative Penalties		§ 10.6			X	§10.08.07.3	
13. Authority to enforce again falsification or tempering					X	§10.08.07.4	
14. Any other supplemental enforcement actions as noted in the POTW's enforcement response plan					X	Not Applicable	
						*****	
						*****	
						*****	
15. Permit Appeals Procedures					X	§10.08.06.8	
16. Penalty or Enforcement Appeals Procedures					X	§10.08.06.8 & .07.3.b	
17. Bypass Notification	403.17	§ 13.3			X	Not Applicable	

Document(s) submitted for review:  
 Draft Proposed Sewer Use (Pretreatment) Ordinance

Name of Reviewers  
 Rufus Torrence

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    - 3.0 Baseline Monitoring Report
    - 3.1 Compliance Data Report
    - 3.2 Periodic Compliance Reports
    - 3.3 Reports of Changed Conditions
  - 4. Monitoring Facilities
  - 5. Inspection and Sampling
  - 6. Confidential Information
  - 7. Annual Report
- 10.08.06 Enforcement
  - 1. Emergency Suspension of Service and Discharge Permits
  - 2. Revocation of Permit
  - 3. Notification of Violation—Administrative Adjustments
  - 4. Show Cause Hearing
  - 5. Consent Orders
  - 6. Judicial Proceedings
  - 7. Enforcement Actions—Annual Publication
  - 8. Right of Appeal
  - 9. Operating Upsets
  - 10. Remedies Non-exclusive
- 10.08.07 Penalties
  - 1. Civil Penalties
  - 2. Additional Civil Penalties for Recovery of Costs
  - 3. Administrative Penalties
  - 4. Criminal Penalties
  - 5. Limitations as to Criminal and/or Civil Penalties
- 10.08.08 Record Retention

Comment: Add titles to sections

Comment: Move this section to the correct location.

Comment: Add this section

Comment: May add

Comment: Delete this section

Comment: May add

Color Code: Red => Required Change Green => Recommended Change  
Yellow => Attention Only

*(Streamlined)* ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ESTABLISHING RULES AND REGULATIONS FOR THE DISCHARGE OF WASTEWATERS INTO THE WASTEWATER TREATMENT SYSTEM OF THE CITY OF VAN BUREN, ARKANSAS, REPEALING VAN BUREN MUNICIPAL CODE CHAPTER 10.08 WITH EXCEPTIONS AND SUBSTITUTING THE PROVISIONS HEREIN SET OUT AND DECLARING AN EMERGENCY.

WHEREAS, the Clean Water Act, 33 U.S.C. 1251 et seq, as amended (hereinafter referred to as the “Act”) has resulted in an unprecedented program of cleaning up our Nation’s waters;

WHEREAS, this City has previously passed an Ordinance which is codified as Chapter 10.08 of the Van Buren Municipal Code. That amendments to said previous Chapter had become necessary and it is the intent of this Ordinance to repeal the previous Ordinance and substitute the terms and conditions contained within this Ordinance for said previous Chapter.

WHEREAS, this City seeks to provide for the use of its wastewater treatment system by industries served by it without damage to the physical facilities, without impairment of their normal function of collecting, treating and discharging domestic wastewater, and without the discharge by this City’s wastewater treatment system of pollutants which would violation the discharge allowed under its National Pollutant Discharge Elimination System (NPDES) permit and the applicable rules of all governmental authorities with jurisdiction over such discharges.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of Van Buren, County of Crawford, State of Arkansas, as follows:



SECTION 10.08.01 DEFINITIONS

a) Abbreviations      The following abbreviations shall have the designated meanings:

*ADEQ* – Arkansas Department of Environmental Quality  
(formerly Arkansas Department of Pollution Control and Ecology [ADPC&E])

*AO* – Administrative Order

*BOD* – Biochemical Oxygen Demand

**BMP – Best Management Practice**

**BMR – Baseline Monitoring Report**

*CFR* – Code of Federal Regulations

**CIU – Categorical Industrial User**

*COD* – Chemical Oxygen Demand

**CBOD – Carbonaceous Biochemical Oxygen Demand**

**EPA – Environmental Protection Agency**

*gpd* – gallons per day

*l* – Liter

*mg/L* – milligrams per liter

*NPDES* – National Pollutant Discharge System

**NSCIU – Non-Significant Categorical Industrial Users**

*O & M* – Operation & Maintenance

*POTW* – Publicly Owned Treatment Works

*RCRA* – Resource Conservation and Recovery Act

*SIC* – Standard Industrial Classification

**SIU – Significant Industrial User**

**SNC – Significant Noncompliance**

*SWDA* – Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)

*TSS* – Total Suspended Solids

*U.S.C.* – United States Code

*USEPA* – United States Environmental Protection Agency

**Comment:** The City must be consistent within this ordinance and must employ the term "Industrial User or User" throughout this ordinance. Defining the term "Industrial Discharger or Discharger" to have "User" include both "domestic" and "non-domestic" sources violates 40 CFR 403.3(i) &(j). For details refer to §10.08.01(u) below and to Part IV page 2 paragraph 12 in the City's NPDES permit #AR0021482.

**Comment:** The City has elected to include language for NSCIU in the definition of SIU in §10.08.01(vv) below.

**Comment:** Ditto (CIU above)

The term "Industrial User or User" is highlighted in yellow throughout this ordinance. The City must strike the term "Discharger" from this ordinance. For example, the City has already struck "discharger" in §10.08.02.1.1 and replaced it with "User". Please replace "Discharger" with "User" throughout this ordinance.

**Comment:** The City must include the term "Significant Noncompliance" in this ordinance. 40 CFR 403.8(f)(2)(viii) requires the City to determine SNC for the Users and publish those Users in SNC in the local newspaper. Refer to comments in §10.08.06(7) below for more details.

b) Act      The **Federal Water Pollution Control Act, also known as the Clean Water Act, as amended**, 33 U.S.C. Section 1251 et seq as amended

c) Administrative Order      Enforcement document issued by the **Superintendent Director** which directs **industrial user(s)** to undertake or cease specified activities.

d) Approval Authority      Director of the **State-Arkansas** Department of Environmental Quality (ADEQ)

**Comment:** "Approval" was accidentally placed in the definition.

e) Authorized Representative or Duly Authorized Representative of the Industrial User

1. If the industrial user is a corporation:
  - a. the president, secretary, treasurer or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - b. the manager of one or more manufacturing, production or operation facilities, **provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where employing more than 250 persons or having gross sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.**
2. If the industrial user is a partnership or sole proprietorship: ~~an authorized representative shall mean a general partner or proprietor, respectively;~~
3. If the industrial user is a Federal, State or local government facility: ~~an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her~~ **their** designee;
4. The individuals described in paragraphs 1 **through** 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or the position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

**f) Best Management Practice** **Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B §10.08.02.1.1 [40 CFR 403.5(a)(1) and (b)]. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.**

**g) BOD<sub>5</sub>** Biochemical Oxygen Demand means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five (5) days at 20°C, usually expressed in terms of weight and as a concentration (milligrams per liter).

**h) CBOD<sub>5</sub>** Carbonaceous Biochemical Oxygen Demand means the quantity of oxygen utilized in the biochemical oxidation of organic matter, with the addition of nitrification inhibitor, under standard laboratory procedures in five (5) days at 20°C, usually expressed in terms of weight and as a concentration (milligrams per liter).

**i) Categorical Pretreatment Standard or Categorical Standard** Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the ACT (33 U.S.C. Section 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

**j) Categorical Industrial User** An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

**k) City** The City of Van Buren, Arkansas.

**l) Color** The optical density at the visual wave length of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

**m) Consent Order** An agreement between the Commission and an industrial user containing:  
1) Compliance Schedule(s)  
2) Stipulated fines or remedial actions; and  
3) Signatures of the Commission and industry representatives.

**n) Control Authority** The City.

**Comment:** In accordance with 40 CFR 403.3(f), "Control Authority" refers to POTW. Per 403.3(q) the owner of a POTW is a municipality. Per Section 502(4) of the Act, municipality means a "City".

- o) Cooling Water The water discharged from any use such as air conditioning, cooling or refrigeration during which the only pollutant added to the water is heat.
- p) Commission The Van Buren Municipal Utilities Commission, which shall be the administrative representative of the City relative to this Ordinance and shall be the Control Authority.
- q) Combustible Conventional Such pollutants as BOD<sub>5</sub>, suspended solids, pH, fecal coliform bacteria, and other such pollutants as are now or may be in the future specified and controlled in this City's NPDES permit for its waste treatment works for which said works have been designed and used to remove such pollutants.
- r) Composite Sample The sample resulting from the combination of individual wastewater samples taken at select intervals based in increment of either flow or time.
- s) Department The Van Buren Municipal Utilities
- t) Director Superintendent The Superintendent Director of the Van Buren Municipal Utilities, or authorized representative, operating under the immediate direction of the Van Buren Municipal Utilities Commission.

**Comment:** The reviewer "strongly" recommends that the administrative representative of the City should be an official (preferably, the "Director".)

**Comment:** The "City" is the Control Authority (see above).

**Comment:** Refer to 40 CFR 401.16

u) Discharger Industrial Discharger Any non-residential user who discharges an effluent into a POTW by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches and all constructed devices and appliances appurtenant thereto.

**Comment:** Attempting to redefine "User" violates State and Federal law. This definition has "User" and "non-residential" tied together when in accordance 40 CFR Part 403.3(j), "all" Users are "non-residential". The City must replace "Discharger" with "User" throughout this ordinance to be not only consistent with Part 403 but also be consistent within this ordinance.

v) Environmental Protection Agency The U.S. Environmental Protection Agency or EPA

w) Existing Source Any source of discharge the construction or operation of which commenced prior to the publication of categorical pretreatment standard which will be applicable to such source if the standard is thereafter promulgated in accordance with section 307 of the Act. that is not a "New Source".

The City must define "Industrial User or User" instead. The City has defined Significant Industrial User and Categorical Industrial User and employs the term "Industrial User" in both definitions, in other definitions and throughout this ordinance. The City employs the term "Significant Discharger" and "Significant Industrial Discharger" and did not define these terms. In conclusion, being consistent with Part 403 is easier than attempting to redefine all key terms.

x) Grab Sample A sample which is taken from waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time over a period of time not to exceed fifteen (15) minutes.

y) Indirect Discharge

The discharge of The introduction of non-domestic pollutants into the POTW from a source regulated under Section 307 (b) or (c) of the Act, into the POTW. any nondomestic source source.

**Comment:** The reviewer modified this definition to match the definition in the EPA Model Pretreatment Ordinance (MPO).

z) Industrial User or User

A source of indirect discharge

**Comment:** The City must define "User" and "Industrial User"; these terms are used throughout this ordinance, the City's NPDES permit and the approved program. Refer to 40 CFR Part 403.3(j). The City must replace "Discharger" with "User" throughout this ordinance to be consistent not only within this ordinance but also with federal and state law.

aa) Interference

A discharge which alone or in conjunction with a discharge or discharges from other sources: 1) inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and 2) therefore, is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or more stringent state or local regulations: Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

bb) Local Limits

The effluent limitations established by the Van Buren Municipal Utilities Commission for a significant industrial discharger to the public sewer system. Developed for Industrial Users by the Director to specifically protect the Publicly Owned Treatment Plant (POTW) from "Interference and "Pass Through" based on site-specific design and disposal limits and conditions of the POTW. Local limits are developed to assure that IU discharges to POTWs do not cause the POTW to violate its permit limits, upset the POTW's biological, chemical or physical treatment processes, prevent the disposal of biosolids (sludge), impact worker health and safety or harm the collection system infrastructure.

cc) May

Is permissive or discretionary.

dd) Medical Wastes

Isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiological agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, dialysis wastes and any pharmaceutical medications, prescription or 'over the counter', used or expired.

- ee) NPDES National Pollutant Discharge Elimination System permits program as administered by the U.S. EPA or the ADEQ
- ff) National Pretreatment Standard, Pretreatment Standard or Standard Any regulation containing pollutant discharge limits promulgated by the United States Environmental Protection Agency (USEPA) in accordance with section 307(b) & (c) of the Act, which applies to **Industrial Users**. This term includes prohibitive discharge limits established pursuant to 403.5.
- gg) New Source (1) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
- (a) The building, structure, facility or installation is constructed at a site which no other source is located; or
  - (b) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (c) The production or wastewater generation processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is **integrated with the existing plant, and the extent to which the new facility is** engaged in the same general style of activity as the existing source, **should shall** be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create new building, structure, facility or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
  - (a) Begun, or caused to begin as a part of a continuous onsite construction program.
    - (i) Any placement, assembly, or installation of facilities or equipment, or
    - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (b) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

hh) O and M                      Operation and Maintenance

ii) Other Waste                      Decayed wood, sawdust, shavings, bark, lime, refuse, ashes, garbage, offal, oil, tar, chemicals and all other substances except sewage and industrial wastes.

jj) Pass Through                      A discharge which exits the POTW into **surface** waters of the **United States state** in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause or violation of any requirement of the City's NPDES permit, **including an increase in the magnitude or duration of a violation.**

kk) pH                                      **A measure of the acidity or alkalinity of a solution, expressed in standard units. An expression of the concentration of hydrogen ions in solution. Measurement of pH indicates an acid solution when pH is less than 7 and an alkaline solution when the pH is greater than 7. pH is the negative logarithm of the hydrogen ion concentration of an aqueous solution.**

ll) Pollutant	Any dredged spoil, solid waste, incinerator residue, <b>filter backwash</b> , sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, <b>municipal</b> , agricultural wastes, and industrial wastes, and the <b>certain</b> characteristics of the wastewater [e.g., pH, temperature, TSS, turbidity, color, BOD <sub>5</sub> , <del>chemical oxygen demand</del> , <b>COD</b> , toxicity, or odor].
mm) POTW	Any sewage treatment works and the sewers and conveyance appurtenances discharging thereto, owned and operated by the City of Van Buren, Arkansas.
nn) Pretreatment	The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater <del>to a less harmful state</del> prior to, or in lieu of, <del>discharging or otherwise</del> introducing such pollutants into a <b>the</b> POTW. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes; or by other means, except by diluting the concentration of pollutants unless allowed by an applicable pretreatment standard.
oo) Pretreatment Requirements	Any substantive or procedural requirement related to pretreatment imposed on a <b>user</b> , other than a pretreatment standard.
<b>pp) Pretreatment Standards or Standards</b>	<b>Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits.</b>
qq) Prohibited Discharges	Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 10.08.02(1.) of this Ordinance.
rr) Sewage	Water-carried human wastes or a combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface, storm or other waters as may be present.
ss) Sewer	Any pipe, conduit, ditch or other device used to collect and transport sewage or storm water from the generating source.
tt) Shall	Is mandatory.
uu) SIC Code	Standard Industrial Classification Code: a classification pursuant to the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget.

**Comment:** Part of the term is missing.



vv) Significant  
Industrial User

(1) All industrial users subject to Categorical Pretreatment Standards under 40 CFR Chapter I, Subchapter N; and any other industrial user that: (2) A user that: (a) discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow down wastewater); (b) contributes a process waste stream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or (3) is designated as such by the City Control Authority as defined in 40 CFR 403.12(a) on the basis that it the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. (3) The City may determine that an Industrial User subject to categorical pretreatment standards is a Non-Significant Categorical User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blow down wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met: Upon finding that a user meeting the afore listed criteria has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City (or the Commission) may, at any time, on its own initiative or in response to a petition received from the user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such a user should not be considered a significant industrial user. (a) the Industrial User, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements; (b) the Industrial User annually submits the certification statement required in Section 6.14B [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and (c) the Industrial User never discharges any untreated concentrated wastewater.

(4) Upon finding that a user meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

**Comment:** The City has employed the term "Significant Industrial Discharger" throughout this ordinance and never provided a definition for "Significant Industrial Discharger". The City has misapplied the definition of "User" and attempted inappropriately to substitute the term "Discharger". The term "User", "Industrial User" and "Significant Industrial User" are common terms in Part 403; this ordinance must be consistent with Federal and State law.

**Comment:** Strike the EPA Model Pretreatment Ordinance (MPO) reference and show CFR cite only.

- ww) Slugload Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 10.08.02(1) of this Ordinance. **A slug discharge is or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge, which has reasonable potential to cause Interference of Pass or Pass Through, or in any other way violate the POTW's regulations, local limits or Permit conditions.**
- xx) **Total** Suspended Solids The total suspended matter that floats on the surface of, or is suspended in water, wastewater or other liquid which is removable by laboratory filtering.
- yy) **Toxic Priority Pollutants** One of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the USEPA ~~under the provisions of Section 307 (33 U.S.C. 1317) of the Act in 40 CFR Part 423.~~
- zz) Treatment Plant Effluent Any discharge of pollutants from the POTW into **waters of the State.**
- aaa) Upset An exceptional incident in which a **Discharger User** unintentionally and temporarily is in a state of noncompliance with the standards set forth in this Ordinance due to factors beyond the reasonable control of the **Discharger User**, and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventative maintenance, or careless or improper operation thereof.
- bbb) Wastewater Liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

**Comment:** Correct Typo

**Comment:** The term "Toxic Pollutants" was incomplete. The City specified "Toxic Pollutants" but defined "Priority Pollutants". See Appendix A to 40 CFR 423 for the "126 Priority Pollutants".

EPA listed only 65 "toxic pollutants" in 40 CFR 401.15 as required by Section 307(a)(1) of the Act.

**Comment:** The City correctly specified "waters of the State". Good!

## SECTION 10.08.02 REGULATIONS

### 1. ~~GENERAL DISCHARGE PROHIBITIONS~~ Discharge Prohibitions

**Comment:** This section contains BOTH the "general" and "specific" prohibition found in 40 CFR 403.5.

#### 1.1 General Prohibitions

**Comment:** May add heading.

No ~~discharger shall contribute or cause to be discharged, directly or indirectly, any or the following described substances into the wastewater treatment system or otherwise to the facilities of the City.~~ **User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.**

**Comment:** Because the City did not define "User" to exclude "residential" customers and implied in the definition of "Discharger" that "residential users" are connected to the POTW and employed the term "residential user" in §10.08.02(2.5), this sentence makes residential households in Van Buren subject to this ordinance. This problem is corrected by replacing "discharger" with "User" throughout this ordinance.

#### 1.2 Specific Prohibitions

No **user** shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

**Comment:** May add heading

- a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction, to cause fire or explosion, including any waste stream with a closed-cup flash point of less than 140° F (60°C) using the test methods specified in 40 CFR 261.21, or be injurious in any other way to the operation of the POTW.
- b) Solid or viscous substances which will or may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater system.
- c) Any wastewater having a pH less than 5.0 or higher than 11 or having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the system.

- d) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction, to injure with any wastewater treatment process, to constitute a hazard to humans or animals, or to exceed the limitation set forth in Categorical Pretreatment Standards.
- e) Any noxious or malodorous liquids, gases or solids which either singly or by interaction are capable or creating a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair.
- f) Any substance which may cause the POTW's effluent or treatment residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act, any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State standards applicable to the sludge management method being used.
- g) Any substance which will cause the POTW to violate its NPDES and/or other Disposal System Permits.
- h) Any substance with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.
- i) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference; but in no case, wastewater with a temperature at the introduction into the POTW which exceeds 40°C (104°F).
- j) Any slugload, which shall mean any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a single extraordinary discharge episode of such volume or strength as to cause interference to the POTW.

- k) Any unpolluted water including, but not limited to, non-contact cooling water, unless it is in limited amounts that will not affect POTW efficiency and approved by the Commission.
- l) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as to exceed limits established by the Commission or **Director Superintendent** in compliance with applicable State or Federal regulations.
- m) Any wastewater which causes a hazard to human life or creates a public nuisance.
- n) Any water or wastewater containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/L or containing any substances which may solidify or become viscous at temperatures between 0°C (32°F) and 65°C (150°F).
- o) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- p) Pollutants which result in the pressure of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- q) Hauled Waste Water
  - 1) Septic tank waste may be introduced into the POTW only at locations designated by the **Director Superintendent**, and at such times as are established by the **Director Superintendent**. **Such waste shall not violation violate Section-2 established by the Director Superintendent.** Such waste shall not violate **Section 2 §10.08.02** of this ordinance or any other requirements established by the City. **The Director Superintendent may require septic tank waste haulers to obtain wastewater discharge permits.**

**Comment:** The reviewer is not sure of the City's intent here. This sentence appears to repeat the intent of the following sentence and should be removed.

**Comment:** This sentence is repeated in the next paragraph below.

- 2) The ~~Director Superintendent~~ shall require haulers of industrial waste to obtain wastewater discharge permits. The ~~Director Superintendent~~ may require generators of hauled industrial waste to obtain wastewater discharge permits. The ~~Director Superintendent~~ also may prohibit the disposal of hauled industrial waste. **The Director Superintendent may require septic tank waste haulers to obtain wastewater discharge permits.**
- 3) Industrial waste haulers ~~may~~ **shall** discharge loads only at locations designated by the ~~Director Superintendent~~. No load ~~may~~ **shall** be discharged without prior consent of the ~~Director Superintendent~~. The ~~Director Superintendent~~ may collect samples of each hauled load to ensure compliance with applicable standards. The ~~Director Superintendent~~ may require the industrial waste hauler to provide a waste analysis on any load prior to discharge.
- 4) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents and whether any wastes are RCRA hazardous wastes.

## 2. Limitations on Wastewater Strength

### 2.1 National Categorical Pretreatment Standards

National categorical pretreatment standards as promulgated by the U.S. Environmental Protection Agency (EPA) pursuant to the Act shall be met by all discharges of the regulated industrial categories. An application for modification of the national categorical pretreatment standards may be considered for submittal to the ~~Regional Administrator~~ **Approval Authority** by the City, when the City's wastewater treatment system achieves consistent removal of the pollutant as defined by 40 CFR Section 403.7.

**Comment:** See 40 CFR 403.7(a)(3)(i)

## 2.2 State Requirements

State requirements and limitation on discharges to the POTW shall be met by all **dischargers users** which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this or any other applicable ordinance.

## 2.3 Right of Revision

The City reserves the right to amend this Ordinance to provide for more stringent limitations or requirements on discharges to the POTW where deemed necessary to comply with the objectives set forth in the preamble of this Ordinance.

## 2.4 Dilution

No **discharger user** shall increase the use of potable or process water in any way, nor mix separate waste streams for the purpose of diluting a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the standards set forth in this Ordinance.

## 2.5 Supplementary Limitations (Local Limits)

No **discharger user** shall discharge wastewater to the public sewer system which shall cause the POTW to which the sewer system is tributary to fail to meet the NPDES **discharge permit** limits for that POTW ~~or fail to meet the limits imposed by the Arkansas Water Quality Standards (latest revision)~~. The Van Buren Municipal Utilities Commission shall adopt and impose **discharge local** limits for any and all **users** of the system as required to meet ~~these standards~~ **the NPDES permit limits**. The **discharge local** limits shall be technically based limits predicated on the capability of the respective treatment facility to receive and to treat the wastewater loading, or headworks loading, and to (1) meet the required ~~discharge standards~~ **NPDES permit limits or prevent pass through**, to (2) prevent interference with the function and efficiency of the various treatment process, and to (3) prevent contamination of the treatment plant waste sludges which would prevent their ultimate disposal by landfill or land application. The **Commission Director** shall establish limits for industrial **dischargers users** based on an allocation of the treatment plant capacity to all **industrial users**. Headworks loadings from ~~commercial and residential~~ **users** which are not classified as

**Comment:** The City should focus on only local laws aimed at controlling industrial users. The Approval Authority will decide the applicable criteria for the City's NPDES permits.

**Comment:** The City must employ the term "local limits" to be consistent with 40 CFR 403.5(d). "Local Limits" are the only "National" pretreatment standards which POTWs can enact and the City must be consistent with Federal terminology to avoid confusion on the intent of this section.

**Comment:** As previously stated above, matching the term "residential" with "user" violates 40 CFR Part 403.3(j).

significant **industrial users** shall be the difference between the **technically-based maximum** allowable headworks loading plus a safety factor or reserve capacity to be established by the **Commission Director** and the wasteload allocated to **users** classified as significant **industrial users**. The **Commission Director** shall have the authority to require the further reduction of a contaminant by the greater contributors of that contaminant to the POTW if the headworks loading of the contaminant exceed the capability of the POTW to meet the **discharge standards NPDES permit limits**. The **industrial user** shall be required to provide and maintain the necessary pretreatment devices required to reduce the contaminant. Plans, specifications, and an operating procedures plan prepared by a professional engineer licensed to practice in the State of Arkansas shall be submitted to and receive the written approval of the Superintendent prior to permitting any discharge from that facility to the POTW.

The **Commission Director** may establish local **industrial-discharge** limits such that the maximum allowable headworks limits for the tributary POTW shall not be exceeded. The limitations may include, but not be limited to:

Biochemical Oxygen Demand	Zinc
Total Suspended Solids	Phenols
Ammonia Nitrogen	Arsenic
Cadmium	Selenium
Chromium	GCMS Organics
Lead	Beryllium
Copper	Mercury
Nickel	Cyanide
Silver	Molybdenum

**Comment:** The choice or method of allocation is strictly a local decision but the normal procedure is to subtract "domestic" loadings first before applying a safety factor and allocating to users. The procedure described here combines "commercial" loading with domestic loading. This allocation procedure gives an unfair advantage to commercial facilities which may be a significant source of the loading to the POTW. By using this allocation procedure, the City has voided the option to designate commercial facilities as SIUs which must have permits with local limits.

The reviewer recommends that this entire section be replaced with the language below.



No **discharger user** shall discharge wastewater containing any measurable trace amount above background amounts of the following:

Antimony	Pesticides
Beryllium	Rhenium
Bismuth	Strontium
Cobalt	Tellurium
Fungicides	Tin
Herbicides	Uranyl Ion

**The Director may develop Best Management Practices (BMPs) in wastewater discharge permits, to implement local limits and the requirements of Section SECTION 10.08.02 (1).**

#### 2.5 Supplementary Limitations (**Local Limits**)

To protect against pass through and interference, no Industrial User may discharge or cause to be discharged into the POTW any wastewater pollutant concentration exceeding the Technically Based Local Limits (TBLLs) developed from time to time by the Director as required by the respective POTW NPDES permit, as authorized by 40 CFR 403.5 (c), and approved by the Approval Authority. Technically Based Local Limits (TBLLs) based on calculated Maximum Allowable Industrial Loadings are located in the City's Pretreatment Program, Section \_\_\_\_\_. At the discretion of the Director, TBLLs may be imposed and shall apply at the "monitoring point" described in the individual industrial wastewater discharge permits. All concentration limits for metals shall be in terms of "total" metals unless otherwise indicated. At the discretion of the Director, mass limitations may be imposed in addition to or in place of concentration based TBLLs. The Director may also develop BMPs in individual wastewater discharge permits, to implement specific pollutant limitations. Such BMPs shall be considered Local Limits and Pretreatment Standards. When new Local Limits are implemented or revised, the Director will provide individual notice to parties who have requested such notice and an opportunity to respond, as set forth by 40 CFR 403.5 (c) (3). This requirement of notice also applies when Local Limits are set on a case-by-case basis.

**Comment:** The reviewer recommends that the City replace the language in Section 2.5 above with this language.

The City has attempted to provide too many "details" in Section 2.5 above. If the City has to change any of these "details", a new ordinance must be enacted. The best approach is to have all these "details" in the approved program and just reference the appropriate section in the approved program. The City may change the "details" in the approved program at any time without enacting a new ordinance.

For example, the language in Section 2.5 above describes an allocation procedure that allows commercial facilities to have an unfair advantage over industrial facilities. The City would have to enact a new ordinance to change this allocation procedure. The recommend language allows the City to change the allocation procedure at any time (subject to oversight by the Approval Authority).

## 2.6 Wastewater Operator Licensing

All facilities with wastewater treatment facilities: Wastewater operators licensed by the State of Arkansas Department of Environmental Quality (ADEQ) shall be employed for the sole purpose of ensuring effluent quality discharged to the City's municipal sewer system. The degree of licensure required shall be determined by the **Director Superintendent**, under the direction of the Commission, based upon the type of facility and the amount of wastewater being discharged into the system.

## 3. Accidental Discharges

Each **discharger user** shall provide protection from accidental discharge of prohibited or regulated materials or substances regulated by this Ordinance. Where deemed to be necessary by the City, facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the **discharger user**'s own cost and expense. Detailed plans ~~prepared by a licensed professional engineer~~ showing facilities and operating procedures to provide this protection shall be submitted to the Department for review, and shall be approved by the **Director Superintendent** before construction of the facility. The plan shall also require:

- (a) Description of discharge practices, including non-routine batch discharge;
- (b) Description of stored chemicals;
- (c) Procedures for immediately notifying the Department of slug discharges including General Discharge Prohibition, section 10.08.02.1 of this Ordinance with procedures for follow-up written notification within five (5) days;
- (d) ~~If necessary,~~ Procedures to prevent adverse impact from **any** accidental spills or slug discharge. **Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.**

No new **discharger user** who proposes to discharge to the POTW after the effective date of this Ordinance shall be permitted to introduce pollutants into the system until Accidental Discharge Protection Procedures have been approved by the **Director Superintendent**. Review and approval of such plans and operating procedures by the **Director Superintendent** shall not relieve the **discharger user** from the responsibility to modify its facility as necessary to meet the requirements of this Ordinance.

**Discharger users** shall notify the Department immediately upon the occurrence of a “slug load”, or accidental discharge of substances prohibited by this Ordinance. This notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any **discharger user** who discharges a slugload of prohibited materials shall be liable for any expense, loss or damage to the POTW, in addition to the amount of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

**Significant Industrial Users are required to notify the Director immediately of any changes at its facility affecting the potential for a Slug Discharge.**

Signs shall be permanently posted in conspicuous places on **discharger user**'s premises, advising employees whom to call in the event of a slug or accidental discharge. Employers shall instruct all employees who may cause or discover such a discharge with respect to emergency notification procedure. Emergency notification contacts and procedures shall be specified within the **discharger user**'s permit.

**Comment:** Required Streamlining revision.

SECTION 10.08.03: MONITORING FEES

1. Purpose

It is the purpose of this section to provide for the payment of fees from **Discharger users** to the City's wastewater disposal system, to compensate the City for the cost of administration of the pretreatment program established herein.

2. Charges and Fees

The Commission shall adopt charges and fees which may include:

- a) Fees for monitoring, inspections and surveillance
- b) Fees for permit applications
- c) Fees for filing appeals
- d) Fees for reviewing accidental discharge procedures and construction

3. Review of Fee Structure

The fee structure included in Section 10.08.03(2) shall be computed annually by the Commission during the month of December and shall be corrected to represent the actual costs described by Section 10.08.03(1) and such shall determine the fee structure for the following 12-month period.

SECTION 10.08.04: PARAMETERS FOR THE ESTABLISHMENT  
OF SEWER USE FEES

1. Purpose

Sewer services shall not be provided to any industrial **or commercial** user at a rate which is less than the cost to the City for providing such service, including the installation, operation and maintenance of facilities required to provide the service. Rates for sewer service shall be that as provided by Ordinance.

**Comment:** By definition commercial establishments are "Industrial Users".

Billing of sewer use rates for wastewater whose parameters exceed **local limits** established by the **Commission Director** shall not constitute approval of such non-complying discharge and shall not preclude enforcement action by the City.

SECTION 10.08.05: ADMINISTRATION

Except as otherwise provided herein, the **Director Superintendent** shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the **Director Superintendent** may be delegated by the **Director Superintendent** to other City personnel.

1. Wastewater Discharges

It shall be unlawful to discharge sewage, industrial wastes or other wastes without authorization by the Commission to any sewer within the jurisdiction of the City and/or to the City's treatment work(s). **Commercial and** industrial users of the public sewer system shall be surveyed at time intervals of 3 years or less to determine the significance of the user's discharge and whether such is to be construed to be a significant **discharger industrial user**.

2. Individual Wastewater Discharge Permits

2.1 General Individual Wastewater Discharge Permit Requirement

All significant Industrial **Dischargers Users** connecting to or proposing to connect to ~~or to discharge sewage, industrial wastes or other wastes to~~ the POTW shall obtain a Wastewater Discharging Permit before connecting to or discharging to the POTW. The **Director Superintendent** may deny the issuance of a permit or issue a conditional permit to any significant industrial **discharger user** if such discharge represents new or increased amounts of pollutants which will cause inhibition of POTW processes, pass-through of contamination or contamination of sewage sludges to inhibit its normal disposal. **All existing SIUs connected to or contributing to the POTW shall obtain a wastewater discharge permit.** **Discharger Users** which are determined by the Department not to be a significant Industrial **Discharger User** shall not be required to obtain a permit to discharge.

**Comment:** The City has not elected to issue "General" permits. General permits apply to a category of industrial users and all users in this category have the same (General) permit.

**Comment:** This phrase is not only redundant but also incorrect. SIU is defined above and a facility with only "sewage/domestic" wastewater discharge to the POTW is not only not a SIU but also not a User. Furthermore, Users may also discharge "process/industrial wastes or other wastes" and still not be classified as a SIU.

**Comment:** The City must already have these existing SIUs permitted. This language is for a POTW developing a new program.

## 2.2 Permit Application

Significant Industrial **Discharger Users** shall complete and file with the Department, a permit application in the form prescribed by the **Director Superintendent**, and accompanied by the appropriate fee. Permit applications shall be signed by an Authorized Representative of the **Industrial User**. Proposed new **Discharger Users** shall apply at least 60 days prior to connecting to the POTW. No discharge permit shall be issued unless and until the following conditions have been met:

- a) Disclosure of name, mailing address and physical location of the **Discharger User**;
- b) Disclosure of Standard Industrial Classification (SIC) number;
- c) Disclosure of wastewater constituents and characteristics. ~~including but not limited to those mentioned in Section 2 of this Ordinance as determined by an ADEQ or USEPA approved analytical laboratory.~~ Analyses may be chemical and/or biological, performed in accordance with procedures established by the U.S. EPA and contained in 40 CFR Part 136, as amended;
- d) Disclosure of the time and duration of discharges;
- e) Disclosure of average daily and instantaneous peak wastewater flow rates, in gallons per day, including known or anticipated daily, monthly and seasonal variations, if any;
- f) Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation (referenced to mean sea level or other reproducible bench mark);
- g) General description of activities, facilities and plant processes on the premises including all materials which are or may be discharged to the sewers or treatment works of the City;

h) Disclosure of the nature and the concentration on any pollutants or materials in the discharge which are limited by any city, state, or federal pretreatment standards, together with a statement regarding whether or not compliance is being achieved with this Ordinance on a consistent basis and if not, whether additional operation and maintenance activities and/or additional pretreatment is necessary for the Discharger User to comply with this Ordinance.

**Comment:** This language normally appears in the reporting section [section 10.08.05(3) in this ordinance] as part of the "Baseline Monitoring Report" and "Compliance Schedule". The reviewer has modified section 10.08.05(3) to include recommended language to cover BMRs and schedules.

i) Where additional pretreatment and/or operation and maintenance activities will be required to comply with this Ordinance, the Discharger User shall provide a declaration of the shortest schedule by which the Discharger User will provide such additional pretreatment and/or implementation of additional operational and maintenance activities.

(1) The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Discharge to comply with the requirements of this Ordinance including, but not limited to, dates relation to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, completing final plans, executing and letting construction and all other acts necessary to achieve compliance with this Ordinance.

(2) Under no circumstance shall the City permit a time increment for any single step directed toward compliance which exceeds 9 months.

(3) Not later than 14 days following each milestone date in the schedule and the final date for compliance, the Discharger User shall submit a progress report to the Department, including no less than a statement as to whether or not it complied with the increment of progress presented by that milestone date and, if not, the date on which it expects to comply with this increment of progress, the reason for delays and the steps being taken by the Discharger User to return the construction to the approved schedule. In no event shall more than 9 months elapse between such progress reports to the Department.

- j) Disclosure of each product provided by type, amount, process or processes, and rate of production;
- k) Disclosure of the type of raw material utilized;
- l) All permit applications for new or modified permits shall be signed by an agent of the **Discharger User** authorized to make such applications and by a professional engineer licensed to practice in the State of Arkansas, and all renewal applications for existing permits shall be signed by an agent of the **Discharger User** authorized to make such applications;
- m) All sewers shall have an inspection and sampling manhole or structure with an opening of no less than 24 inches diameter and an internal diameter of no less than 36 inches containing flow measuring, recording and sampling equipment as required by the **Director Superintendent** in the **Discharger User**'s permit to assure compliance with this Ordinance.

The **Director Superintendent** will evaluate the complete application and data furnished by the **Discharger User** and may require additional information. Within 60 days after acceptance of the data furnished, the **Director Superintendent** may issue a Wastewater Discharge Permit subject to terms and conditions provided herein.

### 2.3 Permit Modifications

The City reserves the right to amend any Wastewater Discharge Permit issued hereunder in order to assure compliance by the City with applicable laws and regulations. Within 9 months of the promulgation of a National Categorical Pretreatment Standard, the Wastewater Discharge Permit of each **Discharger User** subject to such standards shall be revised to require compliance with such standards within the time frame prescribed by such standards. All National Categorical Pretreatment Standards adopted after the promulgation of this Ordinance shall be adopted by the City as a part of this Ordinance. Where a **Discharger User**, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Wastewater Discharge Permit; as required by Section 10.08.05(2.2), the **Discharger User** shall apply for a Wastewater Discharge Permit from the City within 180 days after the promulgation of the Applicable National Categorical Pretreatment Standard by the U.S. EPA. In addition, the **Discharger User** with an existing Wastewater Discharge Permit shall submit to the **Director**



Superintendent within 180 days after the promulgation of an applicable National Categorical Pretreatment Standard, the information required by paragraphs (h) and (i) of Section 10.08.05 (2.2). The Discharger User shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

#### 2.4 Permit Conditions

Wastewater Discharge Permits shall specify no less than the following:

- a) Fees and charges to be paid upon initial permit issuance;
- b) Limits on the wastewater constituents and characteristics regulated thereby;
- c) Limits on rate and time of discharge and/or requirements for flow regulations and equalization;
- d) Requirements for installation and maintenance of inspection and sampling facilities;
- e) Special conditions as the Director Superintendent may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types and standards for rest and reporting schedule;
- f) Compliance Schedules;
- g) Requirements for submission of special technical reports or discharge reports where same differ from those prescribed by this Ordinance.

#### 2.5 Permits Duration

All Wastewater Discharge Permits shall be issued for a period of not more than three years, subject to amendment or revocation as provided in this Ordinance. Under extraordinary circumstances, a permit may be issued for a stated period or may be stated to expire on a specific date. Discharger Users shall be responsible for reapplying at least 90 days prior to the expiration of their permit.

## 2.6 Limitations on Permit Transfer

Wastewater Discharge Permits are issued to a specific **Discharger User** for a specific operation and are not assignable to another **Discharger User** without written permission of the **Commission Director** nor are the wastewater permits transferable to another location.

## 2.7 Contents of Permit

Permit forms shall include, but not be limited to, the following information:

- (a) Statement of Duration;
- (b) Statement of non-assignability or non-transferability without written permission of the Commission;
- (c) Effluent limits, **including Best Management Practices**, based on applicable general pretreatment standards, categorical pretreatment standards, local limits and State and local laws;
- (d) Self-monitoring, sampling, reporting, notification and record keeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type;
- (e) Statement of applicable administrative, civil and criminal penalties for violations;
- (f) Statement of Appeal Procedure;
- (g) Statement regarding Permit Modification;
- (h) Statement regarding Revocation of Permit;
- (i) Statement regarding Reissuance of Permit.

**Comment:** Required Streamlining Revision

- (j) **Requirement to control Slug Discharge, if determined by the Director to be necessary.**

**Comment:** Required Streamlining Revision

3. Reporting Requirements ~~for Permittee~~

**Comment:** Strike "for Permittee". Categorical Industrial Users are required to submit these reports even if the City has not issued them a permit.

3.0 Baseline Monitoring Report

**Comment:** The City "may" use this language but the City "must" include the requirement to submit Baseline Monitoring Reports.

In accordance with 40 CFR 403.12 (b) within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the Director the Baseline Monitoring Report. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall also submit to the Director the Baseline Monitoring Report. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

3.0.1 Compliance Schedule

**Comment:** The City may include the provision for Compliance Schedules here.

The following conditions shall apply to the schedule required by 40 CFR 403.12(b)(7):

(1) The schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial users to comply with the requirements of this Ordinance including, but not limited to, dates relation to hiring an engineer, hiring other appropriate personnel, completing preliminary plans, completing final plans, executing and letting construction and all other acts necessary to achieve compliance with this Ordinance.

(2) Under no circumstance shall the City permit a time increment for any single step directed toward compliance which exceeds 9 months.

(3) Not later than 14 days following each milestone date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the City, including no less than a statement as to whether or not it complied with the increment of progress presented by that milestone date and, if not, the date on which it expects to comply with this increment of progress, the reason for delays and the steps being taken by the Industrial User to return the construction to the approved schedule. In no event shall more than 9 months elapse between such progress reports to the City.

### 3.1 Compliance ~~Date~~ Report

Within 90 days following the date for final compliance by the **Discharger User** with applicable **categorical** Pretreatment Standards ~~set forth in this Ordinance~~ or 90 days following commencement of the introduction of wastewater into the POTW by a New **Discharger Source**, any **Discharger User** subject to ~~this Ordinance pretreatment standards or requirements~~ shall submit to the **Director Superintendent** a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge, and the average and maximum daily flow in gallons **as described in 40 CFR 403.12(d)**. The report shall state whether the applicable Pretreatment Standard or Requirements are being met on a consistent basis and, if not, what additional O & M and/or pretreatment is necessary to bring the **Discharger User** into compliance with the applicable Pretreatment Standards or Requirements. This statement shall be signed by a duly authorized representative of the **Discharger User**.

**Comment:** Applicable only to "New Sources" and not all "New Users". The term "New Source" applies to "Categorical Industrial Users" only. "New Source" is defined in Section 10.08.01.gg above.

~~All industrial discharger users shall promptly notify the Director Superintendent in advance of any substantial change in the volume or characters of pollutants in their discharge including any material, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.~~

**Comment:** This requirement is not part of the "90 Day Compliance Report". The reviewer recommends moving this paragraph to the new 3.3 section below.

~~All industrial discharger users shall promptly notify the Director Superintendent immediately of all discharges by the discharger user that could cause interference or upset to the POTW, including any slug loading.~~

**Comment:** This requirement is not part of the "90 Day Compliance Report". The reviewer recommends moving this paragraph to the new 3.3 section below.

### 3.2 Periodic Compliance Reports

(1) ~~Any Discharger~~ All SIUs subject to a Pretreatment Standard set forth in this Ordinance, after the compliance date of such Pretreatment Standard, or, in the case of a new ~~Discharger~~ SIU, after commencement of the discharge to the City's facilities shall submit to the **Director Superintendent**, ~~as required by the Commission~~, a report indicating the nature and concentration of prohibited or regulated substances in the effluent which are limited by the Pretreatment Standards hereof. In addition this report shall include a record of all measured or estimated average and maximum daily flows during the reporting period reported in Section 10.08.05(3.1) hereof. Flows shall be reported on the basis of actual measurement, provided however, where cost or feasibility considerations justify, the **Director Superintendent** may accept reports of average and maximum flows estimated by verifiable techniques. The ~~Commission~~ **Director**, for good cause when considering such factors as local high or low flow rates, holidays, budget cycles, or other extenuating factors may authorize the submission of said reports on dates other than those specified above. All wastewater reports must be signed by an Authorized Representative of the **Industrial User** and contain the following certification statement:

**Comment:** The Commission has no authority to preempt Federal and State laws. 40 CFR 403.12(e) specifies the requirement to submit periodic compliance reports.

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Self-monitoring by Significant **Industrial Users** which indicates a violation shall notify the **Director Superintendent** within 24 hours of being aware of the violation. The **user** shall repeat the sampling or monitoring within 30 days after being aware of the violation and shall report the results to the Department within that 30-day period. **Resampling by the Industrial User is not required if the Department performs sampling at the User's facility at least once a month, or if the Department performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the Department receives the results of this sampling, or if the Department has performed the sampling and analysis in lieu of the Industrial User.**

**Comment:** Required Streamlining revision.

(2) Reports of **permittees Users** shall contain all results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where required by the **Director Superintendent**. The frequency of monitoring by the **Discharger User** shall be as prescribed in the applicable Pretreatment Standard of this Ordinance. All analyses shall be performed in accordance with 40 CFR Part 136 and amendment thereto, **and sampling requirements shall comply with 40 CFR 403.12(g)(3) & (4).** **If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Director, using the procedures prescribed in this section, the results of this monitoring shall be included in the report.**

**Comment:** The Users have to submit these reports even if the City has not permitted them.

**Comment:** Required Streamlining revision.

(Comment: Where 40 CFR Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with **the procedures set forth in the EPA publication *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (April, 1977) and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator or the U.S. EPA.** **sampling and analytical procedures approved by the Approval Authority of the U.S. EPA.**

**Comment:** ADEQ is not familiar with this EPA publication and recommends that in the future the City should submit each request on a case by case basis.

**Note: All SIUs are required to submit periodic compliance reports.**

- (a) Except as specified in Section 6.4.C, all Significant **Industrial Users** must submit no less than twice per year (June and December [or on dates specified]) reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the **User** must submit documentation required by the Director or the Pretreatment Standard necessary to determine the compliance status of the **User**.
- (b) Annual certification by Non-Significant Categorical **Industrial Users**. A facility determined to be a Non-Significant Categorical **Industrial User** pursuant to 40 CFR 403.3(v)(2) must annually submit the following certification statement, signed in accordance with the signature requirements in paragraph 1 of this section. This certification must accompany any alternative report required by the Control Authority.

*Based on my inquiry of the persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR \_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_ to \_\_\_\_, \_\_\_\_ (month, day, year): (b) The facility described as \_\_\_\_ (facility name) met the definition of a non-significant categorical **industrial user** as described in 40 CFR 403.3(v)(2); (b) the facility complied with all applicable pretreatment standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance is based on the following information:*

Comment: Line missing

Comment: (a)

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### 3.3 Reports of Changed Conditions

Each User must notify the Director of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least [ \_\_\_\_ ( \_\_\_\_ ) ] days before the change.

A. The Director may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 10.08.05.2.2 of this ordinance.

B. The Director may issue an individual wastewater discharge permit under Section 10.08.05.2.4 of this ordinance or modify an existing wastewater discharge permit under Section 10.08.05.2.4 of this ordinance in response to changed conditions or anticipated changed conditions.

All industrial discharger users shall promptly notify the Director Superintendent in advance of any substantial change in the volume or characters of pollutants in their discharge including any material, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.

All industrial discharger users shall promptly notify the Director Superintendent immediately of all discharges by the discharger user that could cause interference or upset to the POTW, including any slug loading.

#### 4. Monitoring Facilities

Each significant Industrial Discharger User shall provide and operate at the Discharger User's own expense, a monitoring facility to allow inspection, sampling, and flow measurement of each sewer discharge to the City's facilities. Each monitoring facility shall be situated on the Discharger User's premises, except where such a location would be impractical or cause undue hardship on the Discharger User, the Director Superintendent may concur with the facility being constructed in the public street or sidewalk area providing that the facility is located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Discharger User.

All monitoring facilities shall be constructed and maintained in accordance with all applicable local construction standards and specifications. Construction shall be completed within 120 days of receipt of permit by Discharger User.



## 5. Inspection and Sampling

The **Director Superintendent** may inspect the monitoring facilities of any **Discharger User** to determine compliance with the requirements of this Ordinance. Significant **discharger users** shall be inspected and sampled at least once per year. All significant users shall be evaluated at intervals not to exceed 24 months to determine the need for or modification of a slug control plan. The **Discharger User** shall allow the **Director superintendent** or its authorized representatives to enter upon the premises of the **Discharger User** at all reasonable hours, for the purposes of inspection, sampling, or records examination. The **Director Superintendent** shall have the right to set up on the **Discharger User's** property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. The **Director Superintendent** shall the right to an equal and identical portion of any bonafide sample (upon demand) collected by the **Discharger User** from waste streams being discharged to the POTW. The **Discharger User** shall have the right to an equal and identical portion of any bonafide sample (upon demand) collected by the **Director Superintendent** from waste streams being discharged to the POTW. The **Director Superintendent** shall provide written notification to the **Discharger User** of the results of any and all analyses made with the sample. All analyses shall be compared to applicable pretreatment standards and discharge limits. All records and sampling shall be made with sufficient care to provide evidence admissible in any enforcement proceedings. Record of the details of all bonafide sampling shall be maintained in a Chain-of-Custody document which shall indicate type of sample collection, location of sample collection, all persons involved with the collection, conveyance, and testing of a sample, methods of sample preservation, and testing standard utilized.

All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

**Comment:** This paragraph supports the Required Streamlining revision.

6. Confidential Information

Information and data furnished to the City with respect to the nature and frequency of discharge shall be available to the public or other governmental agency without restriction unless the **Discharger User** specifically requests at the time of submittal and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets or proprietary information of the **Discharger User**. Each page containing confidential information shall be stamped with the words "confidential business information". When requested by a **Discharger User** furnishing a report, the portions of a report which may disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) permit, State Disposal System permit and/or the Pretreatment Programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the **Discharger User** furnishing the report. Waste water constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction. Information specifically designated as and accepted by the City as being confidential, shall not be transmitted to any governmental agency by the City until and unless a ten-day notification is given to the **Discharger User**.

~~7. Annual Report~~

~~The Commission shall provide the Approval Authority with an annual report that briefly describes the POTW's pretreatment program activities.~~

**Comment:** The reviewer recommends that the City delete this section. The Approval Authority is responsible for implementing Annual Reporting requirements. The Control Authority must enact laws intended to regulate "Industrial Users".

## SECTION 10.08.06: ENFORCEMENT

### 1. Emergency Suspension of Service and Discharge Permits

The **Commission Director** may, for good cause, suspend the wastewater treatment service and/or the Wastewater Discharge Permit of any **Discharger User** by the procedure set forth by a written enforcement response plan adopted by the Commission when it appears to the **Commission Director** that an actual or threatened discharge presents or threatens an imminent or substantial danger to the health or welfare of persons, substantial danger to the environment, interfere with the operation of the POTW, or violated any pretreatment limits imposed by this Ordinance. Any **discharger user** notified of the suspension of the City's wastewater treatment service and/or the **Discharger User's** Wastewater Discharge Permit shall, within a reasonable period of time, as determined by the **Director Superintendent**, cease all discharges. In the event of failure of the **Discharger User** to comply voluntarily with the suspension order within the specified time, the City shall take all lawful actions necessary to suspend the access of the **user** to the POTW. The **Commission Director** shall reinstate the Wastewater Discharge Permit and/or the wastewater treatment service upon proof by the **Discharger User** of the elimination of the non-complying danger as set forth above.

### 2. Revocation of Permit

The **Commission Director** may revoke the permit, by the procedure set forth by a written enforcement response plan adopted by the Commission, of any **Discharger User** which fails to (a) factually report the wastewater constituents and characteristics of its discharge;

(b) report significant changes in operations or in wastewater constituents or characteristics;

(c) refuses reasonable access to the **Discharger User's** premises by representatives of the **Commission Director** for the purpose of inspection or monitoring;

(d) violates the conditions of its permit, or this Ordinance, or any final judicial order entered with respect thereto; or

(e) refuses to participate in the self-monitoring program as specified in the **Discharger User's** permit as provided for by this Ordinance.

3. Notification of Violation – Administrative Adjustment

Whenever the **Director Superintendent** finds that any **discharger user** has violated or is violating any provision of this Ordinance, wastewater discharge permit, or any prohibition or limitation of the requirements contained herein, the **Director Superintendent** shall serve or cause to be served upon such **Discharger User** a notice either personally or by certified mail, return receipt requested, stating the nature of the alleged violation. If the **user** fails to correct a violation within 15 days of receiving notice of the violation, the **Director Superintendent** may issue an Administrative Order for the correction of the violation, however, the **user** is not relieved of the responsibility of unauthorized discharges which occur within the 15-day interval. Within 30 days of the date of receipt of the notice, the **Discharger User** shall respond personally or in writing to the **Director Superintendent** advising of the **discharger user**'s position with respect to the allegations. This response shall include an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of this plan in no way relieves the **user** of liability for any violations occurring before **of or** after receipt of the **Notice of Violation**. Thereafter, the parties shall meet to ascertain the veracity of the allegations and where necessary, establish a plan for the satisfactory correction thereof. Nothing in this section shall limit the authority of the **Director Superintendent** to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation. This section does not apply to Section 10.08.06(1) actions.

**Comment:** Notice of Violation (NOV) is a common term employed by EPA. The City should consistently apply this term throughout this ordinance. Replace "notification of non-compliance" with "Notice of Violation".

4. Show Cause Hearing

Where violations of all applicable pretreatment standards are not corrected by timely compliance, as set forth by a written enforcement response plan adopted by the Commission, the **Commission Director** may order any **Discharger User** which causes or allows conduct prohibited by Section 10.08.05(2) hereof, to show cause before the **Commission Director** or its duly authorized representative, why the proposed permit revocation should not be taken. A written notice shall be served on the **Discharger User** by personal service, or certified or registered mail, return receipt requested, specifying the time and place of a hearing to be held by the **Commission Director** or its designee regarding the violation, the reasons why the enforcement action is to be taken, and the

proposed enforcement action to be taken. The notice of the hearing shall be served no less than 15 days before the hearing. Service may be made on any agent, officer, or authorized representative of a **Discharger-User**. The proceedings at the hearing shall be considered by the **Commission Director** which shall enter appropriate orders with respect to the alleged improper activities of the **Discharger-User**. Appeal of such orders may be taken by the **Discharger User** in accordance with applicable local or state law.

5. Consent Orders

The **Director Superintendent** may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for non-compliance. Such documents will include a specific action to be taken by the **user** to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as administrative orders.

6. Judicial Proceedings

Following the entry of any order by the **Commission Director** with respect to the conduct of a **Discharger User** contrary to the provisions of this Ordinance or Federal or State pretreatment requirements, the Attorney for the Commission or City may, following the authorization of such action by the City, commence an action for appropriate legal and/or equitable relief.

7. Enforcement Actions – Annual Publication

A list of all **significant Discharger industrial users** which were the subject of enforcement proceedings pursuant to Section 10.08.06 of this Ordinance during the twelve (12) previous months, shall be annually published by the Commission in the local newspaper summarizing the enforcement action taken against the **Discharger Users** during the same twelve (12) months **whose violations remained uncorrected 45 or more days after notification of non-compliance notice of violation; or which have exhibited a pattern of non-compliance were in significant noncompliance with applicable Pretreatment requirements over that twelve month period, or which involved failure to accurately report non-compliance.**

**Comment:** Criteria C, D and H apply not only to SIUs but also to all “industrial users”.

**Comment:** The City should strike this entire phrase (“whose violations...notice of violation”) and address this concern in the “Enforcement Response Plan”. This concern falls under Criteria H below and the City may address this concern and similar concerns in the ERP. The City should simply specify SNC criteria only.

**Comment:** If the City elects to keep the phrase (noted in the comment above) here, then the City should employ “Notice of Violation” instead of “notification of non-compliance”. NOV is a common term and the City must not only be consistent with Federal and State law but must also be consistent within this ordinance. ADEQ will require the City to submit the number of NOV’s issued to the SIUs in each annual report.

**Comment:** The City must employ the term “Significant Noncompliance” in accordance with 40 CFR 403.8(f)(2)(viii). SNC is a common term and the City must be consistent with Federal and State law. ADEQ will require the City to submit a list of SIUs placed in SNC in each annual report.

**Comment:** The City has repeated Criteria G below. To avoid confusion, the City should strike this phrase.

~~A pattern of non-compliance~~ Significant Noncompliance shall mean:

**Comment:** Ditto (see above)

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of ~~all of~~ wastewater measurements taken ~~for the same pollutant parameter~~ during a six (6) month period exceed ~~the daily maximum limit or average limit for the same pollutant parameter by any amount;~~ (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, ~~as defined in Section 2 (40 CFR 403.3(1)) as defined in 40 CFR 403.3(1);~~
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of ~~all of~~ wastewater measurements taken for ~~each the same~~ pollutant parameter during a six (6) month period equal ~~s~~ or exceeds ~~s~~ the product of the ~~daily maximum limit or the average limit~~ numeric pretreatment standard or requirement including instantaneous limits, ~~as defined by Section 2 (40 CFR 403.3(1)) as defined by 40 CFR 403.3(1)~~ multiplied by the applicable criteria (1.4 for BOD<sub>5</sub>, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- C. Any other discharge violation of a pretreatment standard or requirement ~~as defined by Section 2 (40 CFR 403.3(1))~~ (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Director Superintendent believes determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health ~~or of~~ POTW personnel or the general public;
- D. Any discharge of pollutants that has caused imminent endangerment to the public or the environment, or has resulted in the Director's Superintendent's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

**Comment:** Streamlining Rule Revision

**Comment:** The City incorrectly cited the proper reference. "Section 2" refers to a cite in the MPO.

**Comment:** Ditto (see above)

- F. Failure to provide within ~~thirty (30)~~ **forty-five (45)** days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadline, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- G. Failure to accurately report noncompliance; or
- H. Any other violation(s), **which may include a violation of Best Management Practices**, which the **Director Superintendent** determines will adversely affect the operation or implementation of the local pretreatment program.

8. Right of Appeal

Any **Discharger User** or any interested party shall have the right to request in writing an interpretation or ruling by the **Commission Director** or any matter covered by this Ordinance and shall be entitled to a prompt written reply. In the event that such inquiry is by a **Discharger User** and deals with matters of performance or compliance with this Ordinance or deals with Wastewater Discharge Permit issued pursuant hereto for which enforcement activity relating to an alleged violation is the subject, receipt of a **Discharger User**'s request shall stay all enforcement proceedings, apart from emergency suspension enabled by 10.08.06.1 of this Ordinance, pending receipt of the aforesaid written reply. **Appeal of any final judicial order entered pursuant to this Ordinance may**

**be taken in accordance with local and state law.**

9. Operating Upsets

Any **Discharger User** **which experiences an upset in operations which places the Discharger User in a temporary state of non-compliance**

**shall inform the Department thereof within 24 hours of first awareness**

**with the Ordinance or a Wastewater Discharge Permit issued pursuant hereto**

**of the commencement of the upset. Where such information is given orally, a written**

**follow-up report thereof shall be filed by the Discharger User with the Director**

**Superintendent within five days. The report shall specify:**

**Comment:** The reviewer is not sure of the intent of this sentence. Try "User's appeal of any final judicial order ISSUED pursuant to this Ordinance may be taken by the Director in accordance with local and state law."

**Comment:** Federal law (403.16) excludes "Operating" upsets.

**Comment:** This is not the intent of 40 CFR 403.16; EPA did not intend that the Users SHALL inform the Control Authority about "Upsets". EPA intended that a User MAY establish an "affirmative defense" in anticipation of enforcement actions.

**Comment:** Federal law limits the "affirmative defense" to just categorical pretreatment standards.

- a) Description of the upset, the cause thereof and the upset's impact on a Discharger User's compliance status.
- b) Duration of non-compliance, including exact dates and times of non-compliance, and if the non-compliance continues, the time by which compliance is reasonably expected to occur.
- e) All steps taken or to be taken to reduce, eliminate and prevent reoccurrence of such an upset or other conditions of non-compliance.

**Comment:** The reviewer recommends replacing the above language with the language below to preserve EPA's intent.

A. For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (C), below, are met.

C. A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and the User can identify the cause(s) of the upset;
- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (3) The User has submitted the following information to Director within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days].



(a) A description of the indirect discharge and cause of noncompliance;

(b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

D. In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.

E. Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.

F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

10. The remedies provided for in this ordinance are not exclusive. The Director may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Director may take other action against any User when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant User.

**Comment:** The City may add paragraph 10 to this section.

**Comment:** However, the City must have the authority to implement an Enforcement Response Plan.

SECTION 10.08.07 PENALTIES, JUDICIAL ENFORCEMENT REMEDIES

1. Civil Penalties

Any **non-residential discharges** **User** exceeding the local limits established by the **Commission** **Director** as provided in Section 10.08.02(2.5) of this ordinance shall be considered non-complying discharges and a separate civil penalty **shall** **may** be assessed by the **Commission** **Director** for each parameter that is exceeded. The amount and method of establishing said civil penalties shall be that as provided by **the** **this** Ordinance. Payment of said civil penalties shall not be considered justification for said excessive discharges, or compensation for any damages caused by said excessive discharges. Further provided, that payment of said civil penalties shall not exempt the **excessive discharger** **user** from actions taken by the Commission under Section 10.08.06(1) and 10.08.06(2) of this Ordinance.

2. Additional Civil Penalties for Recovery of Costs

Any **Discharger** **User** violating any of the provisions of this Ordinance, or who discharges or causes a discharge producing a deposit or obstruction, or causes damage to or imparts the City's wastewater disposal system shall be liable to the City for any expense, loss or damage caused by such violation or discharge. The City shall bill the **Discharger** **User** for the costs incurred by the City for any cleaning, repair, or replacement work caused by the violation or discharge. Refusal to pay for the assessed costs shall constitute a violation of this ordinance and such violation and/or assessment shall then be determined by a court of competent jurisdiction.

3. Administrative Penalties

a) When the Director finds that a **user** has violated any provisions of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the **Superintendent** **Director** may fine such **user** in an amount approved by the Commission. The schedule of administrative fines and the conditions for their assessment shall be prepared by the Director and approved by the Commission. The amount of the fine may be escalating as approved by the Commission for continued or repeated violations. Fines shall not exceed a maximum of \$1,000 per day of offense. Administrative fines shall be included with sewer use fees.

b) **Users** desiring to dispute administrative fines must file a written request for the **Superintendent** **Director** to reconsider the fine along with full payment of the fine amount within 10 calendar days of its billing. Where the request has merit, the Director may convene a hearing on the matter. **In** **the** event the **user's** appeal is successful, the payment shall be returned to the **user**. The decision of the Director may be appealed to the Commission at a regularly scheduled meeting or a special meeting of the Commission convened for that specific purpose.

#### 4. Criminal Penalties

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Ordinance, or Wastewater Discharge Permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance or who shall violate this Ordinance in any way upon being convicted of violating this Ordinance, shall, be guilty of a misdemeanor and thereupon be fine no more than \$1,000 for each offense. Each day on which a violation shall occur or continues to occur shall be deemed to be separate and distinct offenses. In addition to the penalties herein provided, the City of Van Buren may recover reasonable attorney's fees, court costs, court reporters' fees and other expenses of litigation as restitution established by the court.

That Section 10.08.07 subsection 4 is hereby added to the Van Buren Municipal Code and shall read as follows:

#### 5. Limitations as to Criminal and/or Civil Penalties

That the City pursuant to this Ordinance and in compliance with federal minimum requirements set out in 40 CFR 403.8(f)(1)(vi)(A) and in accordance with Act 884 of 1991 and its successor legislation, if any, shall have the authority to collect those civil and criminal penalties as set out in Van Buren Municipal Code Section 10.08.07 in a court of competent jurisdiction such civil and criminal penalties in an amount not to exceed \$1,000 for each violation by industrial **users** of pretreatment standards or requirements. For the purpose of this subsection, each day of a continuous violation may be deemed a separate violation.

6. When the Director finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Director may petition the [insert name of appropriate Court] through [the City's] Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the User. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

**Comment:** The City must add paragraph 6 to this section to provide for injunctive relief in accordance with 40 CFR 403.8(f)(1)(vi).

#### SECTION 10.08.08: RECORDS RETENTION

All discharges subject to this Ordinance shall retain and preserve for not less than three (3) years any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by on in behalf of a Discharger User in connection with its discharge. Any Industrial User subject to the reporting requirements of this Ordinance shall make all monitoring records, including documentation associated with BMPs, available for inspection and copying by the Director Superintendent. All records which pertain to matters which are the subject of Administrative Adjustment or any other enforcement or litigation activities brought by the City pursuant hereto shall be retained and preserved by the Discharger User until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

**Comment:** Required Streamlining revision.

SECTION 10.08.09: SEVERABILITY

If any provision, paragraph, word, section or chapter of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

SECTION 10.08.10: CONFLICT

All ordinances and parts of ordinances inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict.

SECTION 10.08.11: EFFECTIVE DATE

THAT this Ordinance being necessary for the preservation of the public peace, health and safety, an emergency is declared and this Ordinance shall be and take effect and be in full force after its passage, approval and publication.

SECTION 10.08.12: REPEAL

This Ordinance specifically repeals previous Ordinance numbers 36-1981, 19-1981, 6-1990 and 3-1997 which are revised under the Van Buren Municipal Code Chapter 10.08. This Ordinance specifically repeals Van Buren Municipal Code Chapter 10.16.01 through 10.16.04, which is embodied in Ordinance #7-1992.

SECTION 10.08.13: EMERGENCY

It is ascertained and declared that there is an immediate need in order to protect the pretreated waste entering the City's sewer system in order to protect the health, lives and property of the inhabitants of the City of Van Buren, Arkansas, therefore, an emergency is found to exist and that this Ordinance is necessary for the preservation of public peace, health and safety, same shall take effect and be in force without delay, and same shall be enforced immediately.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Clerk