

# ADEQ

ARKANSAS  
Department of Environmental Quality

August 10, 2009

Denise Bosnick  
Director of Environmental Quality  
West Memphis Utility Commission  
P. O. Box 1868  
West Memphis, Arkansas 72303

RE: City of West Memphis Draft Ordinance for Streamlining Rule Requirements  
(NPDES Permit Number AR0022039, AFIN 18-00109)

Dear Ms. Bosnick:

On October 14, 2005 EPA modified 40 CFR Part 403. These modifications to Part 403 are commonly referred to as the "Streamlining Rule Revisions". After EPA published the Model Pretreatment Ordinance (MPO) in January 2007, Arkansas NPDES permits for cities with approved pretreatment programs were issued with Streamlining update requirements. The City of West Memphis permit has an effective date of August 1, 2008. The City was required to submit a draft ordinance within twelve months of the effective date of the permit. The City submitted the draft ordinance by email on May 1, 2008. The Department appreciates the City's voluntary efforts to comply with the Streamlining revisions.

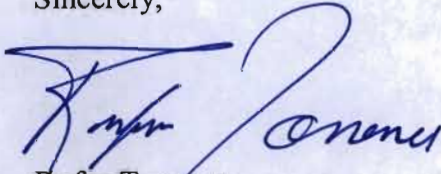
The Department reviewed the City's draft ordinance for compliance with the Streamlining revisions and noted some necessary corrections and updates to comply with the new rule. These required corrections and updates are indicated in red on the enclosures. The Department noted recommended changes in green 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.

August 10, 2009  
Page 2 of 2

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.

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 by email at [torrence@adeq.state.ar.us](mailto:torrence@adeq.state.ar.us).

Sincerely,

A handwritten signature in blue ink that reads "Rufus Torrence". The signature is stylized with a large, sweeping initial "R" and "T".

Rufus Torrence  
ADEQ Engineer

CC: Cindy Gardner, Technical Assistance Manager, Enforcement Branch

Enclosures: DRAFT Proposed Sewer Use Ordinance  
ADEQ Checklist-Pretreatment Program Legal Authority Reviews

## ADEQ CHECKLIST – PRETREATMENT PROGRAM LEGAL AUTHORITY REVIEWS

NAME OF POTW: City of West Memphis  
 DATE OF REVIEW: August 10, 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.

NONE = No Provision necessary    REQ = Required Provision    REC = Recommended Provision    X X = Required Streamlining Rule Change

A. Definitions [403.3 & 403.8(f)(2)]	Part 403 Citation	Model SUO Section	PROVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
1. Act, Clean Water Act	403.3(b)	§ 1.4 A		X		§ 1.4 (1)	
2. Authorized or Duly Authorized Representative of the User	403.12(i)	§ 1.4 C		X		§ 1.4 (3)	
3. Best Management Practices or BMPs	403.3(e)	§ 1.4 E		X*	X	§ 1.4 (4)	
4. Categorical Pretreatment Standard or Categorical Standard		§ 1.4 F		X		§ 1.4 (7)	
5. Indirect Discharge or Discharge	403.3(i)	§ 1.4 M		X		§ 1.4 (21)	
6. Industrial User (or equivalent)	403.3(j)	§ 1.4 LL		X		§ 1.4 (22) & (57)	May Change (57)
7. Interference	403.3(k)	§ 1.4 O		X		§ 1.4 (25)	
8. National Pretreatment Standard, Pretreatment Standard or Standard	403.3(l)	§ 1.4 BB		X		§ 1.4 (42)	
9. New Source	403.3(m)	§ 1.4 T		X		§ 1.4 (31)	
10. Pass Through	403.3(p)	§ 1.4 V		X		§ 1.4 (35)	Must Change
11. Pretreatment Requirement	403.3(t)	§ 1.4 AA		X		§ 1.4 (41)	
12. Publicly Owned Treatment Works or POTW	403.3(q)	§ 1.4 DD		X		§ 1.4 (43)	
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		§ 1.4 (49)	
14. Significant Noncompliance	403.8(f)(2)(vii)	§ 9 (A-C)		X X		§ 9(A-C)	
14. Significant Noncompliance	403.8(f)(2)(vii)	§ 9 (D-H)			X	§ 9(D-H)	

\*The 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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				PROVISIONS	POTW Ordinance Section		
	Part 403 Citation	Model SUO Section	NONE	REQ	REC	Comments / Notes	
15. Slug Load or Slug Discharge	403.8(f)(2)(vi)	§ 1.4 HH		X		§ 1.4(50)	
16. Other definitions based on terms used in the POTW Ordinance						*****	
17. Control Authority						§ 1.4(11)	
18. Approval Authority						§ 1.4(2)	May Change
19. Waters of State						§ 1.4(59)	May Add
<b>B. National Pretreatment Standards – Prohibited Discharges</b>							
1. General Prohibitions							
a. Interference	403.5(a)	§ 2.1A		X		§ 2.1A	
b. Pass Through	403.5(a)	§ 2.1A		X		§ 2.1A	
2. Specific Prohibitions [403.5(b)]							
a. Fire/Explosion Hazard (60° C or 140° F flashpoint)	403.5(b)(1)	§ 2.1B(1)		X		§ 2.1B(1)	
b. pH/Corrosion	403.5(b)(2)	§ 2.1B(2)		X		§ 2.1B(2)	
c. Solid or Viscous/Obstruction	403.5(b)(3)	§ 2.1B(3)		X		§ 2.1B(3)	
d. Flow Rate/Concentration (BOD, etc.)	403.5(b)(4)	§ 2.1B(4)		X		§ 2.1B(4)	
e. Heat; exceeds 40° C (104°F)	403.5(b)(5)	§ 2.1B(5)		X		§ 2.1B(5)	
f. Petroleum/Nonbiodegradable Cutting/Mineral Oils	403.5(b)(6)	§ 2.1B(6)		X		§ 2.1B(6)	
g. Toxic Gases/Vapor/Fumes	403.5(b)(7)	§ 2.1B(7)		X		§ 2.1B(7)	
h. Trucked/Hauled Waste	403.5(b)(8)	§ 2.1B(8)		X		§ 2.1B(8)	

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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		§ 2.2	
4. Local Limits Development <i>[NOTE: POTWs 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.]</i>	403.5(c) & (d)	§ 2.4		X		§ 2.3	May Change
5. Prohibition Against Dilution as Treatment	403.6(d)	§ 2.6		X		§ 2.5	
6. Best Management Practices Development <i>[NOTE: Optional streamlining provision.]</i>	403.5(c)(4)	§ 2.4C			X	§ 2.3	May Change
<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		§§ 4.7 & 5.2	
2. Individual Control Mechanism (e.g., permit) to ensure compliance - <i>Permit Content</i>	403.8(f)(1)(iii)	§ 4.2		X		§ 4.2	
a. Statement of Duration	403.8(f)(1)(iii) (B)(1)	§§ 5.1 & 5.2A(1)		X		§§ 5.1 & 5.2A(1)	
b. Statement of Nontransferability	403.8(f)(1)(iii) (B)(2)	§ 5.2A(2)		X		§ 5.2A(2)	
c. Effluent Limits	403.8(f)(1)(iii) (B)(3)	§ 5.2A(3)		X		§ 5.2A(3)	

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				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),J]</i>		403.8(f)(1) (iii) (B)(3)	§ 5.2A(3)		XX		§ 5.2A(3)	
e. Self-Monitoring Requirements		403.8(f)(1) (iii) (B)(4)	§ 5.2A(4)		X		§ 5.2A(4)	
f. Reporting & Notification Requirements		403.8(f)(1) (iii) (B)(4)	§ 5.2A(4)		X		§ 5.2A(4)	
g. Recordkeeping Requirements		403.8(f)(1) (iii) (B)(4)	§ 5.2A(4)		X		§ 5.2A(4)	
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 o the Model SUIOJ]</i>		403.8(f)(1) (iii) (B)(4) & 403.12(e)(2)	§ 5.2A(5)			X	§ 5.2A(5)	Must Add
i. Statement of Applicable Civil and Criminal Penalties		403.8(f)(1) (iii) (B)(5)	§ 5.2A(6)		X		§ 5.2A(6)	Proposed cite change
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) (iii) (B)(6)	§ 5.2A(7)		XX		§ 5.2A(7)	Proposed cite change

	NONE = No Provision necessary	REQ = Required Provision	REC = Recommended Provision	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(8)			X	§ 5.2A(8)	Must Add
l. Permit Application/Reapplication Requirements <i>[Note: Optional permit provision]</i>			§§ 5.3 & 5.7			X	Not Applicable	
m. Permit Modification <i>[Note: Optional permit provision]</i>			§ 5.4			X	§ 5.3	
n. Permit Revocation/Termination <i>[Note: Optional permit provision]</i>			§§ 5.6 & 10.8			X	§§ 5.5 & 10.8	
o. Proper Operation and Maintenance <i>[Note: Optional permit provision]</i>			§ 3.1			X	§ 3.1	
p. Duty of Halt/Reduce <i>[Note: Optional permit provision]</i>			§ 10.7			X	§ 10.7	
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)	§ 5.2A(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 (§ 24C).]</i>	403.8(f)(1) (iii) (B)(3)	§ 5.2A(3)		XXX*	X	Not Applicable	
e. Self-Monitoring Requirements	403.8(f)(1) (iii) (B)(4)	§ 5.2A(4)			X	Not Applicable	
f. Reporting & Notification Requirements	403.8(f)(1) (iii) (B)(4)	§ 5.2A(4)			X	Not Applicable	
g. Recordkeeping Requirements	403.8(f)(1) (iii) (B)(4)	§ 5.2A(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)	§ 5.2A(5)			X	Not Applicable	
i. Statement of Applicable Civil and Criminal Penalties	403.8(f)(1) (iii) (B)(5)	§ 5.2A(6)			X	Not Applicable	

XXX\* 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>	403.12(b)(2)	§§ 5.3 & 5.7		X	X	Not Applicable	
l. Permit Modification <i>[Note: Optional permit provision]</i>	403.12(b)(3)	§ 5.4		X	X	Not Applicable	
m. Permit Revocation/Termination <i>[Note: Optional permit provision]</i>	403.12(b)(4)	§§ 5.6 & 10.8		X	X	Not Applicable	
n. Proper Operation and Maintenance <i>[Note: Optional permit provision]</i>	403.12(b)(5)	§ 3.1 & 4.5A(6)		X	X	Not Applicable	
o. Duty of Halt/Reduce <i>[Note: Optional permit provision]</i>	403.12(b)(6)	§ 10.7		X	X	Not Applicable	
p. Requirement to submit Chain-of-Custody forms with monitoring data <i>[Note: Optional permit provision]</i>	403.12(b)(7)	§ 6.1B(4) & 6.2		X	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	§§ 5.2b(2) & 10.4	
From categorical users	403.12(e)	§ 6.4A		XX		§ 6.4A	
From significant non-categorical users	403.12(h)	§ 6.4A		XX		§ 6.4A	
From other potential problems to be reported	403.12(i)	§ 6.6		X		§ 6.6	

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	Part 403 Citation	Model SUO 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		§ § 6.5 & 6.6	
g. Notice of violation/sampling requirement <i>[NOTE: Required streamlining revision.]</i>	403.12(g)(2)	§ 6.8		XX		§ 6.8	
h. Requirement to conduct representative sampling	403.12(g)(3)	§ 6.4E		X̄		§ 6.4E	
i. Notification of changed discharge	403.12(i)	§ 6.5		X		§ 6.5	
j. Notification of discharge of hazardous waste	403.12(p)	§ 6.9		X̄		§ 6.9	
<b>Other Reporting Requirements</b>							
k. Data accuracy certification & authorized signatory	403.6(a)(2)(ii) & 403.12(l)	§ § 6.4D & 6.14		X̄		§ § 6.4D & 6.14	
l. Recordkeeping Requirement (3 years or longer)	403.12(o)	§ 6.13		X		§ 6.13	
- Including documentation associated with Best Management Practices <i>[NOTE: Required streamlining provision.]</i>	403.12(o)	§ 6.13		XX		§ 6.13	
m. Submission of all monitoring data <i>[NOTE: Required streamlining revision]</i>	403.12(g)(6)	§ 6.4F		X		§ 6.4F	
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			X̄	§ § 4.7C & 6.14B	

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	Part 403 Citation	Model SUO Section	REVISIONS			POTW Ordinance Section	Comments / Notes
			NONE	REQ	REC		
o. Certification of pollutant not present <i>[NOTE: Optional provision, required only if the POTW has incorporated § 6.4 B of the Model SUO]</i>	403.12(e)(2)(v)	§ 6.14C			X	§ 6.14C	
<b>E. Test Procedures [40 CFR Part 136 &amp; 403.12(g)]</b>							
1. Analytical procedures (40 CFR Part 136) <i>[NOTE: Required streamlining provisions]</i>	403.12(g)	§ 6.10		X		§ 6.10	May Change
2. Sample collection procedures <i>[NOTE: Required streamlining provisions]</i>	403.12(g)(3) & (4)	§ 6.11 A&C		X X		§ 6.11 A&C	
<b>F. Inspection and Monitoring Procedures [403.8(f)]</b>							
1. Right to enter all parts of the facility at reasonable times	403.8(f)(1)(v)	§ 7.1		X		§ 7.1	
2. Right to inspect generally for compliance	403.8(f)(1)(v)	§ 7.1		X		§ 7.1	
3. Right to take independent samples	403.8(f)(1)(v), 403.8(f)(2)(v) & 403.8(f)(2)(vii)	§ 7.1		X		§ 7.1	
4. Right to require installation of monitoring Equipment	403.8(f)(1)(iv)	§ 7.1		X		§ 7.1	May Change
5. Right to inspect and copy records	403.12(o)(2)	§ 7.1		X		§ 7.1	
<b>G. Remedies for Non-compliance (Enforcement) [403.8(f)(1)(vi)]</b>							
1. Non-emergency response							
a. Injunctive relief	403.8(f)(1)(vi)	§ 11.1		X		§ 11.1	
b. Civil/Criminal penalties	403.8(f)(1)(vi)	§§ 11.2 & 11.3		X		§§ 11.2 & 11.3	

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				NONE	REQ	REC		
2. Emergency response		Part 403 Citation	Model SUO Section					
a. Immediately halt actual/threatened discharged		403.8(f)(1)(vi)(B)	§ 10.7		X		§ 10.7	
3. Legal authority to enforce Enforcement Response Plan		403.8(f)(1)(vi)	§ 11.4		X		§ 11.4	
<b>H. Public Participation</b>								
1. Publish list of Industrial Users in Significant Noncompliance <i>[NOTE: Required streamlining revision]</i>		403.8(f)(2)(viii)	§ 9		X X		§ 9	
2. Access to data [403.8(f)(1)(vii) & 403.14]								
a. Government		403.14(a) & (c)	§ 8		X		§ 8	
b. Public		403.14(b)	§ 8		X		§ 8	
<b>I. Optional Provisions</b>								
1. Net/Gross adjustments <i>[streamlining provision]</i>		403.15	§ 2.2 D			X	Not Applicable	
2. Equivalent mass limits for concentration Limits <i>[streamlining provision]</i>		403.6(c)	§ 2.2 E			X	Not Applicable	
3. Equivalent concentration limits for mass limits <i>[streamlining provision]</i>		403.6(c)	§ 2.2 F			X	Not Applicable	
4. Upset Notification		403.16	§ 13.1			X	§ 13.1	
5. Waive monitoring for pollutant not present or expected to the present <i>[streamlining provision]</i>		403.12(e)(2)	§ 6.4B			X	§ 6.4B	
6. Reduce periodic compliance reporting <i>[streamlining provision]</i>		403.12(e)(3)	§ 6.4C			X	§ 6.4C	Must Add
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	§ 3.4	
9. Grease Interceptor Reporting/Requirements		§ 3.2 C			X	§ 3.2 C	
10. Authority to issue Notice of Violations (NOVs)		§ 10.1			X	§ 10.1	
11. Authority to issue Administrative Orders (AOs)		§ 10.4			X	§ 10.4	
12. Authority to issue Administrative Penalties		§ 10.6			X	§ 10.6	
13. Authority to enforce again falsification or tampering					X	§ 5.5 D & E	
14. Any other supplemental enforcement actions as noted in the POTW's enforcement response plan					X	Not Applicable	
						*****	
						*****	
						*****	
15. Permit Appeals Procedures					X		
16. Penalty or Enforcement Appeals Procedures					X		
17. Bypass Notification	403.17	§ 13.3			X	§ 13.3	

Document(s) submitted for review:  
West Memphis Proposed Draft Ordinance

Name of Reviewers  
Rufus Torrence

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

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

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO SET FORTH UNIFORM REQUIREMENTS FOR DIRECT AND INDIRECT CONTRIBUTORS INTO THE WASTEWATER COLLECTION AND TREATMENT SYSTEM FOR THE CITY OF WEST MEMPHIS; AND FOR OTHER PURPOSES.**

**WHEREAS**, The City of West Memphis finds it necessary to regulate the use of public sewers and drains and the discharge of waters and wastes in the public sanitary sewer system;

**WHEREAS**, the regulations contained in the present ordinances of the City of West Memphis should be brought into compliance with applicable laws and regulations of the Environmental Protection Agency of the United States of America, the Department of **Pollution Control and Ecology**, **Environmental Quality** of the State of Arkansas and the provisions of the "Clean Water Act", being public law 92-500, as amended by public law 95-217, as well as the general pretreatment regulations enacted pursuant thereto (begin 40 CFR, part 403); and

**WHEREAS**, these proposed regulations have been approved by the appropriate regulatory agencies;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF WEST MEMPHIS, ARKANSAS, THAT:**

**SECTION 1. GENERAL PROVISIONS**

**1.1 Purpose and Policy**

This Ordinance sets forth uniform requirements for **direct and indirect** users into the wastewater collection and treatment system for the City of West Memphis, Arkansas, and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this Ordinance are:

- (A) To prevent the introduction of Pollutants into the Publicly Owned Treatment Works that will Interfere with its operation;
- (B) To prevent the introduction of Pollutants into the Publicly Owned Treatment Works which will Pass Through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

**Comment:** Please refer to only "User" in this ordinance. "Direct" connotes discharge to waters of the state and "Indirect" is part of the definition of User (see section 1.4.22 below).

- (C) To protect both Publicly Owned Treatment Works personnel who may be affected by Wastewater and sludge in the course of their employment and the general public;
- (D) To promote reuse and recycling of industrial Wastewater and sludge from the Publicly Owned Treatment Works;
- (E) To provided for fees for the equitable distribution of the cost of operation, maintenance and improvements of the Publicly Owned Treatment Works; and
- (F) To enable the City to comply with its National Pollutant Discharge Elimination System Permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.
- (G) To promote and encourage Pollution prevention and waste minimization and waste reduction at Industrial Users prior to their recycling, treatment, or disposal options.

This Ordinance shall apply to all Users of the Publicly Owned Treatment Works. The Ordinance authorizes the issuance of Wastewater Discharge Permits; provides for monitoring, compliance and enforcement activities, establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

## **1.2 Administration**

Except as otherwise provided herein, the General Manager shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the General Manager may be delegated by the General Manager to a duly authorized employee.

## **1.3 Abbreviations**

The following abbreviations, when used in this Ordinance, shall have the designated meanings:

**ADEQ – Arkansas Department of Environmental Quality**

BMP – Best Management Practice

BMR – Baseline Monitoring Report

BOD – Biochemical Oxygen Demand

CFR – Code of Federal Regulations

CIU – Categorical Industrial User

COD – Chemical Oxygen Demand  
EPA – U.S. Environmental Protection Agency  
gpd – gallons per day  
IU – Industrial User  
mg/l – milligrams per liter  
NPDES – National Pollutant Discharge Elimination System  
NSCIU – Non-Significant Categorical Industrial User  
POTW – Publicly Owned Treatment Works  
RCRA – Resource Conservation and Recovery Act  
SIU – Significant Industrial User  
SNC – Significant Noncompliance  
TSS – Total Suspended Solids  
U.S.C. – United States Code

#### **1.4 Definitions**

Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Ordinance, shall have the meaning hereinafter designated:

- (1) Act or "The Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*
- (2) Approval Authority. **Director of the** Arkansas Department of Environmental Quality (ADEQ).
- (3) Authorized or Duly Authorized Representative of the User.

1. If the User is a corporation:

- (a) The president, secretary, treasurer, or 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 that 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 action taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate



procedures.

2. If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
  3. If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
  4. The individuals described in paragraphs 1 through 3, above, may designate Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or 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.
- (4) Best Management Practices or BMP's. Schedules of activities, prohibitions or practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5 (a) (1) and (b). BMP's to include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
  - (5) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under the standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g.,mg/l).
  - (6) Categorical Industrial User. An Industrial User subject to Categorical Pretreatment Standards or Categorical Standards.
  - (7) Categorical Pretreatment Standards or Categorical Standards. Any regulation containing Pollutant discharge limits promulgated by the Environmental Protection Agency in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of Users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
  - (8) Chemical Oxygen Demand (COD). A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.
  - (9) City. The City of West Memphis, Arkansas.
  - (10) Composite Sample. A composite sample is made up of more than one individual Grab Samples, which are combined, based on either time or flow. A time composite sample consists of equal volume Grab Samples collected at equal time intervals. A flow composite sample may consist of equal

volume Grab Samples taken at varying time intervals; samples of variable volume **in proportion to flow** collected proportional to flow.

**Comment:** Redundant

- (11) Control Authority. The City.
- (12) Control Manhole. A manhole giving access to a building Sewer at some point before the building Sewer discharge mixes with other discharge in the public Sewer.
- (13) Daily Maximum Limit or Daily Maximum. The maximum allowable discharge limit of pollutant during a calendar day. Where daily maximum limitations are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where daily maximum limitations are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.
- (14) Director of Environmental Quality (Director). Authorized representative of the West Memphis Utility Commission and the General Manager of the West Memphis Utility Commission that administers, implements, and enforces the provisions of the Pretreatment Program and of this Ordinance.
- (15) Environmental Protection Agency, or EPA. The U.S. Environmental Protection Agency, or where appropriate the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.
- (16) Existing Source. Any source of discharge that is not a "New Source".
- (17) Garbage. Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.
- (18) General Manager. The General Manager **referred to as the Director of Environmental Quality** of the West Memphis Utility Commission is the person designated by the City to supervise the operation of the Publicly Owned Treatment Works and who is charged with certain duties and responsibilities by this Ordinance, or his duly authorized representative **referred to as the Director of Environmental Quality**.
- (19) Governing Board. The West Memphis Utility Commission (the Utility), which may act through the General Manager, his deputy, agent or representatives possessing written evidence of authority to so act.
- (20) Grab Sample. A sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed

**Comment:** Placing this phrase after "representative" creates a circular reference since the GM is the Director. For clarity try moving the phrase to modify "GM" instead of "representative".

fifteen (15) minutes.

- (21) Indirect Discharge. The introduction of pollutants into the POTW from any non-domestic source.
- (22) Industrial User (IU). A source of Indirect Discharge.
- (23) Industrial Wastes. The liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary Sewage.
- (24) Industrial Waste Discharge Permit. A permit for establishments producing Industrial Wastes as more particularly set out in Section (4) of this Ordinance.
- (25) Interference. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and 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 there under, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, 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 Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
- (26) Local Limit. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5 (a)(1) and (b).
- (27) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (28) Monthly Average. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during the month.
- (29) Monthly Average Limit. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

- (30) National Pollution Discharge Elimination System or NPDES Permit. A permit issued pursuant to Section 402 of The Act (33 U.S.C. 1342).
- (31) 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 at 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 generating 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 engaged in the same general type of activity, as the Existing Source should 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 a new building, structure, facility or installation meeting the criteria of Subparagraphs (1)(a), or (1)(b) 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 part of a continuous onsite construction program:
    - (a) Any placement, assembly, or installation of facilities or equipment; or
    - (b) Significant site preparation work including clearing, excavation, or removal of existing building, 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 is 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.

- (32) Noncontact Cooling Water. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (33) Normal Domestic Wastewater. Wastewater including that from non-residential sources, but excluding industrial process Wastewater, in which neither the concentrations of five-day Biochemical Oxygen Demand (BOD) or total suspended solids (TSS) do not exceed the level of 250 mg/L or the concentration of oil and grease do not exceed the level of 100 mg/L.
- (34) Oil and Grease. Any material recovered as a substance soluble in the solvent.
- (35) Pass Through. A discharge which exits the POTW into 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 of violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).
- (36) Person. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents, or assigns.
- (37) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.
- (38) Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash sewage, garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes and certain characteristics of Wastewater (e.g., pH temperature, TSS, turbidity, color, BOD, COD, toxicity or odor).
- (39) Pretreatment. The reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of Pollutant properties in wastewater prior to, or in lieu of, introducing such Pollutants into the 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 the Pollutants unless allowed by an applicable pretreatment standard.

**Comment:** See section 1.4 (59) below.

- (40) Pretreatment Program. The Utility's EPA and/or Arkansas Department of Environmental Quality approved program to administer the requirements of 40 CFR 403, the General Pretreatment Regulations.
- (41) Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a User, other than Pretreatment Standard.
- (42) Pretreatment Standard or Standards. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards and Local Limits.
- (43) Publicly Owned Treatment Works (POTW). A treatment works as defined by Section 212 of The Act, (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any devices or systems used in collection, storage, treatment, recycling, and reclamation of Sewage or Industrial Wastes of liquid nature and any conveyances, which convey Wastewater to a treatment plant. For the purposes of this Ordinance, "POTW" shall also include any Sewers that convey Wastewaters to the POTW from Persons outside the City, who are by contract or agreement with the City, Users of the City's POTW.
- (44) Sanitary Sewer. A Sewer, which carries Sewage and to which storm, surface, and ground waters are not intentionally admitted.
- (45) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- (46) Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
- (47) Sewer. A pipe or conduit for carrying Sewage.
- (48) Shall is mandatory; May is permissive.
- (49) Significant Industrial User.
- (1) An Industrial User subject to Categorical Pretreatment Standards; or
  - (2) An Industrial User that discharges an average of twenty-five thousand (25,000) gallons or more of process wastewater to the POTW (excluding sanitary, non-contract cooling, and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the City on the basis

that 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 Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than one hundred (100) gallons of total categorical Wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met: (a) the Industrial User, prior to the City's findings, has consistently complied with all applicable Categorical Pretreatment Standards and Requirements; (b) the Industrial User annually submits the certification statement required 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 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 an Industrial 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.
- (50) Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 2.1 of this ordinance. A slug Discharge is any discharge of a non-routine, episodic nature, including but not limited to accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.
- (51) Standard Industrial Classification (SIC). A classification pursuant to the standard industrial classification manual issued by the executive office of the president, office of management and budget, 1972.
- (52) State. State of Arkansas.
- (53) Storm Sewer. A Sewer, which carries storm and surface waters and drainage, but excludes Sewage and Industrial Wastes, other than unpolluted cooling water.
- (54) Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from precipitation, including snowmelt.

- (55) Total Suspended Solids or Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering.
- (56) Toxic Pollutants. Any Pollutant or combination of Pollutants listed as toxic in regulations promulgated by the administration of the Environment Protection Agency under the provisions of CWA 307(a) or other acts.
- (57) User or Industrial User. Any Person, who contributes, causes or permits the contribution of wastewater into the City's POTW, is a source of Indirect Discharge.
- (58) 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.
- (59) Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Arkansas or any portion thereof.

**Comment:** See section 1.4.22 above.

**Comment:** See Arkansas Code §8-4-102 (8).

## SECTION 2. GENERAL SEWER USE REQUIREMENTS

### 2.1 Prohibited Discharge Standards

- A. **General Prohibitions.** No 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.
- B. **Specific Prohibitions.** No User shall introduce or cause to be introduced into the POTW the following Pollutants, substances, or Wastewater:
- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
  - (2) Wastewater having a pH less than 5.5 or more than 10.0, or otherwise causing corrosive structural damage to the POTW or equipment;



- (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference.
- (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or Pollutant concentration which, either singly or by interaction with other Pollutants, will cause Interference with the POTW;
- (5) Wastewater which will inhibit biological activity in the treatment plant resulting in Interference, but in no case Wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees F (40 degrees C);
- (6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;
- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- (8) Trucked or hauled Pollutants, except at discharge points designated by the Director in accordance with Section 3.4 of this Ordinance;
- (9) Storm Water, surface Water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, Noncontact Cooling Water, and unpolluted Wastewater, unless specifically authorized by Director.
- (10) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;
- (11) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/L.
- (12) Medical Wastes, except as specifically authorized by the Director in a Wastewater Discharge Permit.
- (13) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
- (14) Hauled or trucked liquid wastes, except at the specific discharge point(s) designated by the Director.

Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

## **2.2 National Categorical Pretreatment Standards**

A. Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405–471.

- (1) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (2) When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).
- (3) A User may obtain a variance from a Categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
- (4) A CIU may obtain a net/gross adjustment to a Categorical Standard in accordance with 40 CFR 403.15.

B. If waters or wastes are discharged, or are proposed to be discharged, to the POTW, ~~which contain the substances or possess the characteristics enumerated in Section 2.3 of this Ordinance,~~ and which in the judgment of the Governing Board may have a deleterious effect upon sewage works, sewage treatment processes, plant equipment, or waters of the State of Arkansas, or which otherwise create a hazard to life or constitute a public nuisance, the Governing Board may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the POTW;
- (3) Require payment of sewer surcharge to cover the added cost of handling and treating the waste not covered by the sewer service charges for transporting and treating normal Wastewater;
- (4) Require control over the quantities and rate of discharge;

**Comment:** The reviewer recommends removing numerical limits in Section 2.3 below and removing all references to any specific characteristics here. The City may use the recommended language shown below in Section 2.3.

- (5) If the Governing Board permits the pretreatment or equalization of Wastewater flows, the design and installation of the plants equipment shall be subject to the review and approval of the Governing Board and subject to the requirements of all applicable codes, ordinances, and laws, and the regulations and requirements of the Arkansas Department of Environmental Quality, the Arkansas Department of Health, and the U.S. Environmental Protection Agency;
- (5) Commence any action for appropriate legal and/or equitable relief, including but not limited to injunctive relief, in any court of appropriate jurisdiction.

**2.3 Specific Pollutant Limitations**

A. No person shall discharge specific Pollutant limitation in excess of these concentrations

	Daily Maximum	Monthly Average
Cadmium	0.09 mg/L	0.26 mg/L
Chromium	2.77 mg/L	1.71 mg/L
Copper	3.38 mg/L	2.07 mg/L
Cyanide	1.20 mg/L	0.66 mg/L
Lead	0.69 mg/L	0.43 mg/L
Nickel	3.08 mg/L	2.38 mg/L
Silver	0.43 mg/L	0.24 mg/L
Zinc	2.61 mg/L	1.48 mg/L

**Comment:** The City has provided specific numerical limitations. These limitations are based on the Effluent Limitations found in 40 CFR 433. These limits are valid for only Users with electroplating/metal finishing operations (see EPA Metal Finishing Dev Doc page 6-11). Therefore, these Users would automatically be covered under 40 CFR 413/433 and these limits may not be applicable for other Users.

The reviewer recommends that the City delete these limits and replace this section with the language below.

The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for total metal unless indicated otherwise.

The Governing Board and the City reserves the right to establish by ordinance or in Wastewater Discharge Permits, more stringent standards or requirements on discharges to the POTW to comply with the objectives presented in Section 1.1 of this Ordinance.

B. The Director may develop Best Management Practices (BMPs), by ordinance or in individual wastewater discharge permits, to implement Local Limits and the requirements of Section 2.1.

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 above with this language.

#### 2.4 Right of Revision ~~Reserved~~

The City reserves the right to establish, by ordinance or in individual Wastewater Discharge Permits more stringent standards or requirements on discharges to the POTW consistent with the purpose of this Ordinance.

**Comment:** The "case-by-case" basis allows the City to develop performance based local limits and set local limits based on best professional judgment (BPJ). In other words, if the City finds that 40 CFR 433 limits are applicable to a non-categorical IU, then the City may place these limits in the permit.

#### 2.5 Dilution

No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement. The Director may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements or in other case when the imposition of mass limitations is appropriate.

**Comment:** The Right of Revision is included in the recommended language above and is applicable only when cities adopt numerical limits.

### SECTION 3 - PRETREATMENT OF WASTEWATER

#### 3.1 Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with this Ordinance and shall achieve compliance with all Categorical Pretreatment Standards, Specific Pollutant Limits, and the prohibitions set out in Section 2.1 of this Ordinance within the time limitations specified by EPA, the State, or the Director whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed

plans describing such facilities and operating procedures shall be submitted to Director for review, and shall be acceptable to the Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Governing Board under the provisions of this Ordinance.

### **3.2 Additional Pretreatment Measures**

- A. If any waters or wastes which are discharged or which are to be discharged into the public Sewers contain or possess any of the characteristics enumerated in Section 2.1 (A) or (B) of this Ordinance and in the judgment of the Director, may have a deleterious effect upon the sewerage works, processes, equipment, sludges, or receiving waters or which otherwise create a hazard to life or constitutes a public nuisances, the Director may (a) reject the wastes, (b) require Pretreatment to an acceptable condition for discharge to the public Sewer, and/or (c) require control over the quantities and rate of discharge.

If the Director requires the Pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Director and subject to all applicable codes, ordinances, and laws. Where Pretreatment of flow equalization facilities are provided for any waters or wastes, they shall be continuously maintained in satisfactory and effective operation by the owner or occupant at his own expenses.

- B. Whenever deemed necessary, the Director may require Users to restrict their discharge during peak flow periods, designate that certain Wastewater be discharged only into specific Sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this Ordinance.
- C. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual Wastewater Discharge Permit may be issued solely for flow equalization.
- D. Grease, oil and sand interceptors (traps) shall be provided when, in the opinion of the the Director, they are necessary for the proper handling of liquid wastes containing oil and grease in excessive amounts, or any flammable wastes, sand or other harmful substances; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Director, and shall be located as to be readily and easily accessible for cleaning and inspection.

All interceptors shall be maintained by the owner, at his expense, in proper operating condition.

- E. When required by the Director, the owner of any property serviced by a building sewer carrying industrial waste shall provide a secure sample point or control manhole which is constructed in accordance with the latest revision of the Utility's Specification Requirements for sanitary sewers. The secure point or control manhole shall be safely located and accessible to duly authorized employees and/or representatives of the Utility at all times. When deemed necessary by the Director, the secure sample point or control manhole shall be provided with meters or other appurtenances to facilitate the monitoring of the wastewater. The cost of the installation and maintenance of a secure sample point or control manhole shall be borne by the owner. Any construction and/or alteration of a secure sample point or control manhole shall be approved by the Director before any construction has begun.
- F. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

### **3.3 Accidental Discharge/Slug Discharge Control Plans**

At least once every two (2) years, the Director shall evaluate whether each Significant Industrial User needs an accidental discharge/slug discharge control plan or other action to control Slug Discharge. The Director may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the Director may develop such a plan for any User. An accidental discharge/Slug Discharge control plan shall address, at a minimum, the following:

Description of discharge practices, including non-routine batch discharges;

Description of stored chemicals;

Procedures for immediately notifying the Director of any accidental or Slug Discharge, as required by Section 6.6 of this ordinance and the Industrial Waste Discharge Permit; and

Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but 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.

### **3.4 Hauled Wastewater**

- A. Septic tank waste may be introduced into the POTW only at locations designated by the Director and at such times as are established by the Director. Such waste shall not violate Section 2 of this Ordinance or any other requirements established by the Governing Board. The Director may require septic tank waste haulers to obtain a Wastewater Discharge Permits.
- B. The Director may require haulers of industrial waste to obtain Wastewater Discharge Permits. The Director may require generators of hauled industrial waste to obtain Wastewater Discharge Permits. The Director also may prohibit the disposal of hauled Industrial Waste. The discharge of hauled industrial waste is subject to all other requirements of this Ordinance.
- C. Industrial Waste haulers may discharge loads only at locations designated by the Director. No load may be discharged without prior consent of the Director. The Director may collect samples of each hauled load to ensure compliance with applicable standards. The Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- D. 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.

## **SECTION 4 - INDIVIDUAL WASTEWATER DISCHARGE PERMITS**

### **4.1 Wastewater Survey**

When requested by the Director, a user must submit information on the nature and characteristics of its wastewater within ninety (90) days of the request. The Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

### **4.2 Individual Wastewater Discharge Permit Requirement**

- A. No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual Wastewater Discharge Permit from the

Director, except that a Significant Industrial User that has filed a timely application pursuant to Section 4.3 of this Ordinance may continue to discharge for the time period specified therein.

- B. The Director may require other users to obtain individual Wastewater Discharge Permits as necessary to carry out the purposes of this Ordinance.
- C. Any violation of the terms and conditions of an individual Wastewater Discharge Permit shall be deemed a violation of this Ordinance and subjects the Wastewater Discharge Permittee to the sanctions set out in Sections 10 through 12 of this Ordinance. Obtaining an individual Wastewater Discharge Permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

#### **4.3 Individual Wastewater Discharge Permitting: Existing Connections**

Any existing industrial user identified by the Governing Board and required by the Director to obtain an Industrial Wastewater Discharge Permit shall be notified by the Director in writing and shall complete and return an Industrial Wastewater Discharge Permit Application within the time established by the Director. The Director may deny or condition the contribution of pollutants by such user in the Industrial Wastewater Discharge Permit.

#### **4.4 Individual Wastewater Discharge Permitting: New Connections**

Any user required by the Director to obtain a Wastewater Discharge Permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this Wastewater Discharge Permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence. The Director may deny or condition the contribution of pollutants by such user in the Industrial Wastewater Discharge Permit.

#### **4.5 Individual Wastewater Discharge Permit Application Contents**

- A. All users required by the Director shall submit an Industrial Wastewater Discharge Permit application to the Governing Board, the form for which shall be provided by the Governing Board. The information required in the permit application shall, where requested or appropriate included but not limited to:

(1) Identifying Information.



- a. The name and address of the facility, including the name of the operator and owner.
  - b. Contact information, description of activities, facilities, and plant production processes on the premises;
- (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
- (3) Description of Operations.
- a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
  - b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
  - c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
  - d. Type and amount of raw materials processed (average and maximum per day);
  - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (4) Time and duration of discharges;
- (5) The location for monitoring all wastes covered by the permit;
- (6) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Section 2.2 (A) (2) (40 CFR 403.6(e)).
- (7) Measurement of Pollutants.
- a. The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for existing sources.
  - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Director, of regulated pollutants in the discharge from each regulated process.

- c. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.
- d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.10 of this Ordinance. Where the Standard requires compliance with a BMP or Pollution prevention alternative, the User shall submit documentation as required by the Director or the applicable Standards to determine compliance with the Standard.
- e. Sampling must be performed in accordance with procedures set out in Section 6.11 of this Ordinance.

(8) Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on Section 6.4 B [40 CFR 403.12(e)(2)].

(9) Any other information as may be deemed necessary by the Director to evaluate the permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

#### **4.6 Application Signatories and Certifications**

- A. All Wastewater Discharge Permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 6.14.A.
- B. If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Director prior to or together with any reports to be signed by an Authorized Representative.
- C. A facility determined to be a Non-Significant Categorical Industrial User by the Director pursuant to 1.4 must annually submit the signed certification statement in Section 6.14 B.

#### **4.7 Individual Wastewater Discharge Permit Decisions**

The Director will evaluate the data furnished by the User and may require additional information. Within thirty (30) days of receipt of a complete permit application, the Director will determine whether to issue an individual wastewater discharge permit. The Director may deny any application for an individual wastewater discharge permit.

### **SECTION 5 - INDIVIDUAL WASTEWATER DISCHARGE PERMIT ISSUANCE**

#### **5.1 Individual Wastewater Discharge Permit Duration**

An individual Wastewater Discharge Permit shall be issued for a specified time period, not to exceed three (3) years from the effective date of the permit. Each individual Wastewater Discharge Permit will indicate a specific date upon which it will expire.

#### **5.2 Individual Wastewater Discharge Permit Contents**

An individual Wastewater Discharge Permit shall include such conditions as are deemed reasonably necessary by the Director to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Individual Wastewater Discharge Permits must contain:

- (1) A statement that indicates the Wastewater Discharge Permit issuance date, expiration date and effective date;
- (2) A statement that the Wastewater Discharge Permit is nontransferable without prior notification to the Director in accordance with Section 5.5 of this Ordinance, and provisions for furnishing the new owner or operator with a copy of the existing Wastewater Discharge Permit;
- (3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;
- (4) Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of Pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law.

(5) The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 6.4 B.

**Comment:** This provision is required since the City has incorporated Section 6.4B into this ordinance. See EPA Jan 2007 Model Pretreatment Ordinance (MPO) for more details.

(6) A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.

(7) Requirements to control Slug Discharge, if determined by the Director to be necessary.

(8) Any grant of the monitoring waiver by the Director (Section 6.4 B) must be included as a condition in the User's permit.

**Comment:** This provision is required since the City has incorporated Section 6.4B into this ordinance. See MPO for more details.

B. Individual Wastewater Discharge Permits may contain, but need not be limited to, the following conditions:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(2) Requirements for the installation of Pretreatment technology, Pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of Pollutants into the treatment works;

(3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

(4) Development and implementation of waste minimization plans to reduce the amount of Pollutants discharged to the POTW;

(5) The unit charge or schedule of User charges and fees for the management of the Wastewater discharged to the POTW;

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

(7) A statement that compliance with the individual Wastewater Discharge Permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual Wastewater Discharge Permit; and

- (8) Other conditions as deemed appropriate by the Director to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations.

### **5.3 Wastewater Discharge Permit Modification**

The Director may modify a Wastewater Discharge Permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State or local Pretreatment Standards or requirements;
- B. To address significant alterations or additions to the User's operation, processes or Wastewater volume or character since the time Wastewater Discharge Permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- D. Information indicating that the permitted discharge poses a threat to the POTW and/or it's personnel, or the receiving waters;
- E. Violation of any terms or conditions of the Wastewater Discharge Permit.
- F. Misrepresentations or failure to fully disclose all relevant facts in the Wastewater Discharge Permit application or in any required reporting;
- G. Revision of or a grant of variance from Categorical Pretreatment Standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the Wastewater Discharge Permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator.

### **5.4 Wastewater Discharge Permit Transfer**

Wastewater Discharge Permits may be transferred to a new owner or operator only if the permittee gives at least sixty (60) days advance notice to the Director and the Director approves the Wastewater Discharge Permit transfer. The notice to the Director must include a written certification by the new owner or operator which:

- A. States that the new owner and/or operator has not immediate intent to

change the facility's operation and processes;

- B. Identifies the specific dates on which the transfer is to occur; and
- C. Acknowledges full responsibility for complying with the existing Wastewater Discharge Permit.

Failure to provide advance notice of a transfer renders the Wastewater Discharge Permit void as of the date of facility transfer.

#### **5.5 Wastewater Discharge Permit Revocation**

The Director may revoke an individual wastewater discharge permit for good cause, including but not limited to, the following reasons:

- A. Failure to notify the Director of significant changes to the Wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the Director of changed conditions pursuant to Section 6.5 of this Ordinance;
- C. Misrepresentation or failure to fully disclose all relevant facts in the Wastewater Discharge Permit application;
- D. Falsifying self-monitoring reports and certification statements;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the Director timely access to the facility premises and records;
- G. Failure to meet effluent limitations;
- H. Failure to pay fines;
- I. Failure to pay Sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a Wastewater survey or the Wastewater Discharge Permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

- M. Violation of any Pretreatment Standard or Requirement, or any terms of the Wastewater Discharge Permit or this Ordinance.

Individual Wastewater Discharge Permits shall be voidable upon cessation of operations or transfer of business ownership. All individual Wastewater Discharge Permits issued to a User are void upon the issuance of a new individual Wastewater Discharge Permit to that User.

## **SECTION 6 – REPORTING REQUIREMENTS**

### **6.1 Baseline Monitoring Reports**

- A. 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 a report which contains the information listed in paragraph B, below. 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 submit to the Director a report which contains the information listed in paragraph B, below. 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.

- B. Users described above shall submit the information set forth below.

(1) All information required in Section 4.5A (1) (a), Section 4.5A (2), Section 4.5A (3) (a), and Section 4.5A (6).

(2) Measurement of Pollutants.

- a. The User shall provide the information required in Section 4.5 A (7) (a) through (d).
- b. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
- c. Samples should be taken immediately downstream from Pretreatment facilities if such exist or immediately downstream from the regulated process if no Pretreatment exists. If other Wastewaters are mixed with the regulated Wastewater prior to Pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in

- accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;
- d. Sampling and analysis shall be performed in accordance with Section 6.10;
  - e. The Director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial Pretreatment measures;
  - f. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected Pollutant discharges to the POTW.

(3) Compliance Certification. A statement, reviewed by the User's Authorized Representative as defined in Section 1.4 (3) and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional Pretreatment is required to meet the Pretreatment Standards and Requirements.

(4) Compliance Schedule. If additional Pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional Pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 6.2 of this Ordinance.

(5) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 6.14 A of this Ordinance and signed by an Authorized Representative as defined in Section 1.4 (3).

## **6.2 Compliance Schedule Progress Reports**

The following conditions shall apply to the compliance schedule required by Section 6.1(B) (4) of this Ordinance:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional Pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- B. No increment referred to above shall exceed nine (9) months;



- C. The User shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and
- D. In no event shall more than nine (9) months elapse between such progress reports to the Director.

**6.3 Reports on Compliance with Categorical Pretreatment Standard Deadline**

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standard and Requirements shall submit to the Director a report containing the information described in Section 4.5A (6) and (7) and Section 6.1 (B) (2) of this Ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the User's long term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable Pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 4.6 of this Ordinance.

**6.4 Periodic Compliance Reports**

- A. Except as specified in Section 6.4 (C), all Significant Industrial Users must, at a frequency determined by the Director 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. The City may authorize an Industrial User subject to a Categorical Pretreatment Standard to forego sampling of a Pollutant regulated by a Categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the Pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the

Pollutant due to activities of the Industrial User. [see 40 CFR 403.12(e)(2)]  
This authorization is subject to the following conditions:

- (1) The waiver may be authorized where a Pollutant is determined to be present solely due to sanitary Wastewater discharged from the facility provided that the sanitary Wastewater is not regulated by an applicable Categorical Standard and otherwise includes no process Wastewater.
- (2) The monitoring waiver is valid only for the duration of the effective period of the individual Wastewater Discharge Permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual Wastewater Discharge Permit. See Section 4.5 (A) (8).
- (3) In making a demonstration that a Pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process Wastewater prior to any treatment present at the facility that is representative of all Wastewater from all processes.
- (4) The request for a monitoring waiver must be signed in accordance with Section 1.4 (3), and include the certification statement in Section 6.14 (A) (40 CFR 403.6(a) (2) (ii)).
- (5) Non-detectable sample results may be used only as a demonstration that a Pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that Pollutant was used in the analysis.
- (6) Any grant of the monitoring waiver by the Director must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Director for 3 years after expiration of the waiver.
- (7) Upon approval of the monitoring waiver and revision of the User's permit by the Director, the Industrial User must certify on each report with the statement in Section 6.14 (C) below, that there has been no increase in the Pollutant in its wastestream due to activities of the Industrial User.
- (8) In the event that a waived Pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of Section 6.4(A), or other more frequent monitoring requirements imposed by the Director and notify the Director.

(9) This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.

- C. The City may reduce the requirement for periodic compliance reports [see Section 6.4 (A) (40 CFR 403.12(e)(1))] to a requirement to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the ~~EPA/State~~ Approval Authority where the Industrial User's total categorical wastewater flow does not exceed any of the following [see 40 CFR 403.12(e)(3)]:

(1) 0.01 percent of the design dry weather hydraulic capacity of the POTW, or five thousand (5,000) gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches,

(2) 0.01 percent of the design dry-weather *organic treatment capacity* of the POTW, and

(3) 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved Local Limits were developed in accordance with Section 2.3 of this ordinance.

**Comment:** The City is not required to allow reduced reporting but since the City has elected this option, all the necessary language must be included.

Reduced reporting is not available to Industrial Users that have in the last two (2) years been in Significant Noncompliance, as defined in Section 9 of this ordinance. In addition, reduced reporting is not available to an Industrial User with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Director, decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period.

- D. All periodic compliance reports must be signed and certified in accordance with Section 6.14 (A) of this Ordinance.
- E. 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.
- F. 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 Section 6.11 of this Ordinance, the results of this monitoring shall be included in the report.

#### **6.5 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 fifteen (15) 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 4.5 of this Ordinance.
- B. The Director may issue an individual Wastewater Discharge Permit under Section 5 of this Ordinance or modify an existing Wastewater Discharge Permit under Section 5.3 of this Ordinance in response to changed conditions or anticipated changed conditions.
- C. No User shall implement the planned change condition(s) until and unless the Director has responded to the User's notice.

#### **6.6 Reports of Potential Problems**

- A. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- B. Within five (5) days following such discharge, the User shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this Ordinance.
- C. A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all

employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

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

#### **6.7 Reports from Unpermitted Users**

All Users not required to obtain an individual Wastewater Discharge Permit shall provide appropriate reports to the Director as the Director may require.

#### **6.8 Notice of Violation/Repeat Sampling and Reporting**

If sampling performed by a User indicates a violation, the User must notify the Director within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within thirty (30) days after becoming aware of the violation. Resampling by the Industrial User is not required if the City performs sampling at the User's facility at least once a month, or if the City performs sampling at the User between the time when the initial sampling was conducted and the time when the User or the City receives the results of this sampling, or if the City has performed the sampling and analysis in lieu of the Industrial User.

If the City performed the sampling and analysis in lieu of the Industrial User, the City will perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat sampling and analysis. See 40 CFR 403.12(g) (2). █

**Comment:** Delete bracket.

#### **6.9 Notification of the Discharge of Hazardous Waste**

- A. Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and

eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 6.5 of this Ordinance. The notification requirement in this Section does not apply to Pollutants already reported by Users subject to Categorical Pretreatment Standards under the self-monitoring requirements of Sections 6.1, 6.3, and 6.4 of this Ordinance.

- B. Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.
- C. In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- D. In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued there under, or any applicable Federal or State law.

#### **6.10 Analytical Requirements**

All Pollutant analyses, including sampling techniques, to be submitted as part of a Wastewater Discharge Permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the Pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the Pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including

procedures suggested by the Director or ~~other parties approved by EPA~~ the ~~Approval Authority~~

**Comment:** Allow ADEQ to assist the City.

### **6.11 Sample Collection**

Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

- A. Except as indicated in Section B and C below, the User must collect Wastewater samples using 24-hour flow proportional composite sampling techniques, unless time proportional Composite Sampling or Grab Sampling is authorized by the Director. Where time proportional Composite Sampling or Grab Sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple Grab Samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite Samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, Grab Samples may be required to show compliance with Instantaneous Limits.
- B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- C. For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 6.1 and 6.3 [40 CFR 403.12(b) and (d)], a minimum of four (4) Grab Samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Director may authorize a lower minimum. For the reports required by paragraphs Section 6.4 (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of Grab Samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

### **6.12 Date of Receipt of Reports**

Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

### **6.13 Recordkeeping**

Users subject to the reporting requirements of this Ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 2.3 (B). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the City, or where the User has been specifically notified of a longer retention period by the Director.

### **6.14 Certification Statements**

A. Certification of Permit Applications, Users Reports and Initial Monitoring Waiver. The following certification statement is required to be signed and submitted by users submitting permit application in accordance with Section 4; Users submitting baseline monitoring reports under Section 6.1; Users submitting reports on compliance with categorical Pretreatment Standard deadlines under Section 6.3; Users submitting periodic compliance reports required by Section 6.4 (A-D), and Users submitting an initial request to forego sampling of a pollutant on the basis of Section 6.4 (B). The following certification statement must be signed by an Authorized Representative as defined in Section 1.4 (3).

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.

B. Annual Certification for Non-Significant Categorical Industrial Users. A facility determined to be a Non-Significant Categorical Industrial User by the Director pursuant to Section 1.4 (47) and Section 4.6 (C) must annually submit the following certification statement signed in accordance with the signatory requirements in Section 1.4 (3). This certification must accompany an alternative report required by the Director.



Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standard under 40 CFR\_\_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_\_, \_\_\_\_ to \_\_\_\_\_, \_\_\_\_ (months, days, year):

(a) The facility described as \_\_\_\_\_ (facility name) met the definition of a Non-Significant Categorical Industrial User as described in Section 1.4 (47);

(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 period.

This compliance certification is based on the following information.

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

C. Certification of Pollutants Not Present. Users that have an approved monitoring waiver based on Section 6.4 (B) must certify on each report with following statement that there has been no increase in the pollutant in its wastestream due to activities of the user,

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR \_\_\_\_\_ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of \_\_\_\_\_ (list pollutant(s) in the wastewaters due to activities at the facility since filing of the last periodic report under Section 6.4 (A).

**Comment:** Add brackets

## SECTION 7 - COMPLIANCE MONITORING

### 7.1 Right of Entry: Inspection and Sampling

The Director shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of this Ordinance and any individual Wastewater Discharge Permit or order issued hereunder. Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The Director shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.
- C. The Director may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated **weekly, annually (or more frequently at the Director's discretion)** to ensure their accuracy.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be born by the User.
- E. Unreasonable delays in allowing the Director access to the User's premises shall be a violation of this Ordinance.

**Comment:** The "weekly" frequency appears to be too stringent and may cause needless expense for the Users. The reviewer suggest that any meter which has to be calibrated more often than quarterly should be replaced with a more reliable meter or a different metering approach.

## **7.2 Search Warrants**

If the Director has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Utility designed to verify compliance with this Ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Director may seek issuance of a search warrant from the District Court Judge of the City of West Memphis, Arkansas, or any other Court of competent jurisdiction.

## **SECTION 8 - CONFIDENTIAL INFORMATION**

Information and data on a User obtained from reports, surveys, Wastewater Discharge Permit applications, individual Wastewater Discharge Permits, and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the Director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or

data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or Pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

## **SECTION 9 - PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE**

The Director shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

- A. Chronic violations of Wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same Pollutant parameter during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2;
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of Wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other Pollutants except pH);
- C. Any other violation of a Pretreatment Standard or Requirement as defined by Section 2 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the Director determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;
- D. Any discharge of a Pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director'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 an individual Wastewater Discharge Permit

or enforcement order for starting construction, completing construction, or attaining final compliance;

- F. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with Categorical Pretreatment Standard deadlines, 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 determines will adversely affect the operation or implementation of the local Pretreatment Program.

## **SECTION 10 - ADMINISTRATIVE ENFORCEMENT REMEDIES**

### **10.1 Notification of Violation**

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 serve upon that User a written Notice of Violation. Within fifteen (15) days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the Director. Submission of such a plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

### **10.2 Consent Orders**

The Director may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include 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 the administrative orders issued pursuant to Sections 10.4 and 10.5 of this Ordinance and shall be judicially enforceable.

### **10.3 Show Cause Hearing**

The Director may order a User which 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, to appear before the Director and show cause why the proposed enforcement action should

not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 1.4 (3). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

#### **10.4 Compliance Orders**

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 issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, Sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of Pollutants discharged to the Sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

#### **10.5 Cease and Desist Orders**

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, or that the User's past violations are likely to recur, the Director may issue an order to the User directing it to cease and desist all such violations and directing the User to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

## **10.6 Administrative Fines**

- A. 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 fine such User in an amount not to exceed \$1,000.00. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within ten (10) days of being notified of the fine. Where a request has merit, the Director may convene a hearing on the matter. In the event the User's request is granted, the payment shall be returned to the User. The Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- C. Issuance or pursuit of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

## **10.7 Emergency Suspensions**

The Director may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

- A. Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including immediate severance of the Sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings in Section 10.8 of this Ordinance are initiated against the User.
- B. A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to

prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under Sections 10.3 or 10.8 of this Ordinance.

Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

#### **10.8 Termination of Discharge**

In addition to the provisions in Section 5.5 of this Ordinance, any User who violates the following conditions is subject to discharge termination:

- A. Violation of individual Wastewater Discharge Permit conditions;
- B. Failure to accurately report the Wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or Wastewater volume, constituents, and characteristics prior to discharge;
- D. Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or
- E. Violation of the Pretreatment Standards in Section 2 of this Ordinance.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 10.3 of this Ordinance why the proposed action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action against the User.

### **SECTION 11 - JUDICIAL ENFORCEMENT REMEDIES**

#### **11.1 Injunctive Relief**

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 District court through the City 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.

## **11.2 Civil Penalties**

- A. A User who 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 shall be liable to the Utility for a maximum civil penalty of \$1,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation; and, each day of continuing violation may be deemed a separate violation.
- B. The Director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a User.

## **11.3 Criminal Prosecution**

- A. A User who willfully or negligently violates any provision of this Ordinance, an individual Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for such term as allowed by the law or both.
- B. A User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least \$100.00 but not more than \$500.00 for any one (1) specified offense or violation thereof, and not less than \$100.00 but not more than \$1,000.00 for each repetition of such event or violation, or be subject to imprisonment for such term as allowed by law, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.
- C. A User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, individual



Wastewater Discharge Permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine of \$100.00 but not more than \$500.00 for any one (1) specified offense or violation thereof, and not less than \$100.00 but not more than \$1,000.00 for each repetition of such event or violation, or be subject to imprisonment for such term as allowed. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

#### **11.4 Remedies Nonexclusive**

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 Utility'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.

### **SECTION 12 - SUPPLEMENTAL ENFORCEMENT ACTION**

#### **12.1 Performance Bonds**

The Director may decline to issue or reissue an individual Wastewater Discharge Permit to any User who has failed to comply with any provision of this Ordinance, a previous individual Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, unless such User first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance.

#### **12.2 Liability Insurance**

The Director may decline to issue or reissue an individual Wastewater Discharge Permit to any User who has failed to comply with any provision of this Ordinance, a previous individual Wastewater Discharge Permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

#### **12.3 Payment of Outstanding Fees and Penalties**

The Director may decline to issue or reissue an individual Wastewater Discharge Permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this Ordinance, a previous individual Wastewater Discharge Permit, or order issued hereunder.

#### **12.4 Water Supply Severance**

Whenever 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, water service to the User may be severed. Service will recommence, at the User's expense, only after the User has satisfactorily demonstrated its ability to comply.

### **SECTION 13 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

#### **13.1 Upset**

- 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 the 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.

### **13.2 Prohibited Discharge Standards**

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 2.1(A) of this Ordinance or the specific prohibitions in Sections 2.1(B)(3) through (14) of this Ordinance if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause Pass Through or Interference and that either:

- A. A Local Limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or
- B. No Local Limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

### **13.3 Bypass**

- A. For the purposes of this Section,
  - (1) Bypass means the intentional diversion of wastestreams from any portion of a User's treatment facility.
  - (2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural

resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. A User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this Section.

C. Bypass Notifications

(1) If a User knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least ten (10) days before the date of the bypass, if possible.

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

D. Bypass

(1) Bypass is prohibited, and the Director may take an enforcement action against a User for a bypass, unless

- a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The User submitted notices as required under paragraph (C) of this section.

- (6) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (D)(1) of this Section.

## SECTION 14 - MISCELLANEOUS PROVISIONS

### 14.1 Pretreatment Charges and Fees

The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program, which may include:

- A. Fees for Wastewater Discharge Permit applications including the cost of processing such applications;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge, and reviewing monitoring reports and certification statements submitted by Users;
- C. Fees for reviewing and responding to accidental discharge procedures and construction;
- D. ~~fees for filing appeals~~;
- E. Fees to recover administrative and legal costs associated with the enforcement activity taken by the Director to address IU noncompliance; and
- F. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the City.

**Comment:** The city has included fees for filing appeals but the city elected not to include §§ 5.3 B & 10.6 C in the MPO for allowing appeals.

## SECTION 15 - SEVERABILITY

The provisions of the Ordinance are severable, and if any provision, paragraph, word, section, or article of this Ordinance is invalidated by any court of competent jurisdiction, it shall not affect the remainder of this Ordinance and the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
WILLIAM H. JOHNSON, MAYOR

ATTEST:

\_\_\_\_\_  
PHILLIP PARA, CITY CLERK

SPONSORED BY:

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