

ORDINANCE NO. 5746

**AN ORDINANCE REPEALING 5285, 5329, and 5435
AND ENACTING THE NEW WASTEWATER UTILITY USE ORDINANCE**

WHEREAS, the Federal Water Pollution Control Act, also known as the Clean Water Act (“Act”), and its implementing regulations, regulates the direct discharge of pollutants into surface waters from State and locally owned and operated wastewater treatment facilities;

WHEREAS, the Act requires local governments who own and operate a wastewater treatment facility to obtain a National Pollutant Discharge Elimination System (NPDES) Permit from the United States Environmental Protection Agency (“EPA”) or applicable state agency authorized by the Act to issue such permits before discharging pollutants into local rivers, streams, or other surface waters;

WHEREAS, the NPDES Permit imposes certain standard conditions on the permittee, which include, but are not limited to: a duty to comply with all permit conditions, reapply for and obtain a new permit when it expires and mitigate against any discharge in violation of the permit; a duty to operate and properly maintain all facilities and systems of treatment and control which are used or installed by the permittee to comply with permit conditions; a duty to provide information and allow inspections of its records, facilities, equipment or operation and sample or monitor for regulated substances or parameters; a duty to self-monitor the Effluent from its facilities and maintain self-monitoring records for three years following the date of the sample, measurement, report or application in question; and a duty to meet certain reporting requirements described in the permit;

WHEREAS, Title 36, Article 9, Chapter 2, Section 17 of the Indiana Code authorizes the City of Elkhart, Indiana (“City”) to collect, process, and dispose of waste substances and

domestic or sanitary wastewater, and to establish, maintain, and operate sewers, wastewater disposal systems, and systems to collect and dispose of waste substances;

WHEREAS, the City owns and operates its own sewer system and wastewater treatment facility known as the Public Owned Treatment Works (POTW), and maintains and administers a pretreatment program pursuant to Title 36, Article 9, Chapter 2, Section 17 of the Indiana Code, its NPDES Permit and Ordinance Nos. 5285, 5329, and 5435;

WHEREAS, the Common Council has been advised of those changes and believes they are necessary and proper to fulfill the purpose of the Ordinance, comply with the City's NPDES permit and comply with the Act; and

WHEREAS, the City has obtained the approval of the EPA to repeal Ordinance Nos. 5285, 5329, and 5435 and replace it with this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT;

Ordinances Numbered **5285, 5329, and 5435** are hereby repealed and replaced with the Wastewater Utility Use Ordinance of the City of Elkhart, Indiana and the following words, phrases and numbers.

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Section 1.0 Short Title and Purpose

1.1 Short Title

This Ordinance shall be known as the “Wastewater Utility Use Ordinance” and may be cited as such.

1.2 Purpose

It is the purpose of this Ordinance to establish uniform requirements for Dischargers to the POTW and enable the City to comply with applicable State and Federal laws required by the Clean Water Act and the general Pretreatment Regulations. This Ordinance further establishes a regulatory scheme to:

- 1.2.1 Prevent the introduction of Pollutants into the municipal Wastewater system which may cause Interference with the operation of the system or contaminate the resulting Sludge;
- 1.2.2 Prevent the introduction of Pollutants into the municipal Wastewater system which may Pass Through the system, inadequately treated into receiving waters or the atmosphere or otherwise be incompatible with the system;
- 1.2.3 Improve the opportunity to recycle and reclaim Wastewaters and Sludge from the system;
- 1.2.4 Protect the physical integrity of the Publicly Owned Treatment Works (POTW);
- 1.2.5 Provide for the safety of the public and workers on and in the POTW;
- 1.2.6 Comply with the City’s NPDES permit conditions; and
- 1.2.7 Authorize the City, the Utility, the Board, the Director and their duly authorized representatives to administer and enforce this Ordinance.

Section 2.0 Definitions and Abbreviations

2.1 Definitions

Unless otherwise defined in this Ordinance, the terms and phrases shall be defined as follows:

2.1.1 Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et. seq.*

2.1.2 Approval Authority means the Region 5 Administrator of the United States Environmental Protection Agency or delegated designee thereof.

2.1.3 Authorized or Duly Authorized Representative of the User means the following:

(a) If the User is a corporation:

(1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(2) The manager of one or more manufacturing, production, or operating 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 actions 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.

- (b) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.
- (c) 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.
- (d) The individuals described in paragraphs (a) through (c), above, may designate a 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 Director.

2.1.4 Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 2.1 A and B [40 C.F.R. §§ 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, Sludge or Waste disposal, or drainage from raw materials storage.

2.1.5 Blowdown means the minimum Discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which

would cause concentration in amounts exceeding limits established by best engineering practice.

- 2.1.6 Board means the Board of Public Works of the City of Elkhart. It is the governing body of the Publicly Owned Treatment Works. See also Control Authority.
- 2.1.7 Building Drain means the part of the plumbing that is the lowest horizontal piping within a building or house that conducts water, Wastewater or Storm Water to a Sewer Lateral.
- 2.1.8 Bypass see the definition for “Industrial Pretreatment Bypass.”
- 2.1.9 Categorical Industrial User means an Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.
- 2.1.10 Categorical Pretreatment Standards means National Pretreatment Standards specifying quantities or concentrations of Pollutants or Pollutant properties which may be Discharged or introduced to the POTW by existing or new Industrial Users in specific industrial subcategories as established by the EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.
- 2.1.11 Carbonaceous Biochemical Oxygen Demand or cBOD₅ means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed as a concentration.

- 2.1.12 Chemical Oxygen Demand (COD) means a measure of the oxygen equivalent of that portion of the organic matter in a sample that is susceptible to oxidation by a strong chemical oxidant.
- 2.1.13 City means the City of Elkhart, Indiana.
- 2.1.14 Combined Sewer means a Sewer designed and constructed to convey Sanitary Wastewaters (domestic, Commercial, or Industrial Wastewaters) and Storm Water through a single pipe system to the POTW Treatment Plant.
- 2.1.15 Commercial User means a source of Wastewater discharging to the POTW from business establishments including, but not limited to, stores, markets, office buildings, restaurants, shopping centers, and which is not an Industrial User as defined in this Ordinance.
- 2.1.16 Compatible Pollutants means those Pollutants that are normally removed by the POTW treatment system such as Carbonaceous Biochemical Oxygen Demand, suspended solids, total phosphorus, ammonia nitrogen, and pathogens.
- 2.1.17 Composite Sample means a minimum of four samples collected over a time greater than 15 minutes that is representative of a Discharge which may be either time or flow proportional.
- 2.1.18 Control Authority means the Board of Public Works of the City of Elkhart.
- 2.1.19 Daily Maximum means the arithmetic average of all Effluent samples for a Pollutant collected during a calendar day.
- 2.1.20 Daily Maximum Limit means the maximum allowable Discharge limit of a Pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of

the day. Where Daily Maximum Limits 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.

2.1.21 Demand Monitoring means monitoring conducted by the Director in addition to the two unscheduled monitoring events required each year.

2.1.22 Direct Discharge means the introduction or addition of any Pollutant, or combination of Pollutants, into any Waters of the State of Indiana from a point source.

2.1.23 Director means the person responsible for supervising the operation of the POTW, or that person's duly authorized representative.

2.1.24 Discharge means the pouring forth, emission or release of Pollutants or Wastewater from any source.

2.1.25 Domestic Wastewater means Sanitary Wastewater discharged by Residential Users typically containing less than 250 mg/L of cBOD₅ and less than 250 mg/L of TSS. Domestic Wastewater does not contain a component of Industrial Waste or Storm Water.

2.1.26 Effluent means the water, together with any wastes that may be present, flowing out of a drain, Sewer, receptacle or outlet.

2.1.27 Effluent Limitation means any restriction established by the Control Authority or the Approval Authority on quantities, Discharge rates and concentrations of Pollutants that are discharged from point sources into the POTW or Waters of the State.

- 2.1.28 Environmental Protection Agency (EPA) means the U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
- 2.1.29 Existing Source means an Industrial User that is not a New Source as defined in 40 C.F.R. § 403.
- 2.1.30 Fats, Oils and Grease (FOG) means a group of substances including hydrocarbons, fatty acids, soaps, fats, waxes, oils or any other materials that are extracted by a solvent from an acidified sample that are not volatilized during the laboratory test procedures. Oils and Greases are more specifically defined by the standard method used for their determination.
- 2.1.31 Food Service Establishment (FSE) means an operation or enterprise that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. This does not include establishments designated as “Pre-Packaged Food Store Only” with a “Limited Food Service License” by the Elkhart County Health Department.
- 2.1.32 Four Day Average Discharge means the calculated result of totaling the mass or average concentration of all daily Discharges sampled or measured during four consecutive sampling days, though not necessarily consecutive calendar days, divided by the number of daily Discharges sampled or measured.
- 2.1.33 Garbage means the animal and vegetable Waste resulting from the handling, preparation, cooking, and serving of foods. It is composed largely of putrescible organic matter and its natural moisture.

- 2.1.34 Grab Sample means an individual sample or group of samples collected over a period of time not exceeding 15 minutes.
- 2.1.35 Incompatible Pollutants means any Pollutants which are not Compatible Pollutants.
- 2.1.36 Indirect Discharge means the introduction or addition of any Pollutant, or combination of Pollutants into a POTW from any nondomestic source.
- 2.1.37 Industrial Pretreatment Bypass or Bypass means an intentional diversion of waste streams from any portion of an Industrial User's treatment facility.
- 2.1.38 Industrial User means a source of Industrial Waste discharging to the POTW.
- 2.1.39 Industrial Waste means any solid, liquid or gaseous substance or heat energy discharged, permitted to flow into or enter the POTW from an industrial, manufacturing or commercial process or from the development, recovery or processing of any natural resource carried on by any person and shall further mean any Waste from an Industrial User, but not including Sanitary Wastewater or Storm Water.
- 2.1.40 Infiltration means the groundwater entering the POTW directly or via Private Sewers, Building Drains and Sewer Lateral connected therewith, or entering a Sewer, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls.
- 2.1.41 Inflow means water other than Wastewater entering the POTW from sources such as cellars, yard areas, foundation drains, roof drains, drains from springs and swampy areas, stream backflow, manhole areas, cross connections between Storm

and Sanitary Sewers, catch basins, cooling towers, geothermal system discharge, Storm Water, surface runoff and street waters or drainage.

2.1.42 Inspector means a person authorized by the Director to perform inspection and monitoring duties to determine compliance with this Ordinance.

2.2.43 Instantaneous Limit means the maximum concentration of a Pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

2.1.44 Interference means a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (b) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations):
 - (1) Section 405 of the Clean Water Act,
 - (2) the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to subtitle D of the SWDA),

- (3) the Clean Air Act,
- (4) the Toxic Substances Control Act, and
- (5) the Marine Protection, Research and Sanctuaries Act.

2.1.45 Local Limit means specific Discharge limits developed and enforced by the Control Authority upon Industrial or Commercial Users to implement the general and specific Discharge prohibitions listed in 40 C.F.R. §§ 403.5(a)(1) and (b).

2.1.46 May means that the act referred to is both permissible and approved.

2.1.47 Medical Waste means all Waste materials generated at health care facilities, such as hospitals, clinics, physician's offices, dental practices, blood banks, and veterinary hospitals/clinics, as well as medical research facilities and laboratories, as listed in 42 U.S. § 6992a.

2.1.48 Monthly Average means the sum of all daily Discharges measured during a calendar month divided by the number of daily Discharges measured during that month.

2.1.49 Monthly Average Limit means 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.

2.1.50 National Pretreatment Standard means any regulation that applies to Industrial Users and contains Pollutant Discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act. This term includes prohibitive Discharge limits established pursuant to 40 CFR § 403.5.

2.1.51 New Source

- (a) New Source means any building, structure, facility or installation that is discharging or may Discharge Pollutants, and its construction commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to the source, if those Standards are thereafter promulgated in accordance with Section 307(c) of the Act, provided one (1) of the following conditions are met:
- (1) The building, structure, facility or installation is constructed at a site at which no other source is located;
 - (2) The building, structure, facility or installation totally replaces the process or production equipment that caused the Discharge of Pollutants at an Existing Source;
 - (3) The production of Wastewater generating processes of the building, structure, facility or installation is substantially independent of an Existing Source at the same site. In determining whether these processes are substantially independent, the following factors will be considered:
 - (i) The extent to which the new facility is integrated with the existing plant; and
 - (ii) The extent to which the new facility is engaged in the same general type of activity as the Existing Source.
- (b) 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

2.1.50(a)(2) and (a)(3) above but otherwise alters, replaces, or adds to existing process or production equipment.

(c) Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

(1) Begun, or caused to begin, as part of a continuous on-site construction program:

(i) Any placement, assembly, or installation of facilities or equipment; or

(ii) Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities or equipment.; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

2.1.52 NPDES Permit means the National Pollutant Discharge Elimination System permit now or hereafter held by the City and setting forth conditions for the Discharge of any Pollutants or combinations of Pollutants.

- 2.1.53 Non-Contact Cooling Water means water used for cooling which does not come into direct contact with any raw material, intermediate product, Waste product or finished product and to which the only Pollutant added is heat.
- 2.1.54 Nuisance means any substance, which is injurious to health or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property.
- 2.1.55 Operation and Maintenance (O & M) means all expenses related directly to operating and maintaining, including replacement of, the Publicly Owned Treatment Works, as identified in the "Uniform System of Accounts for Wastewater Utilities" or as prescribed by the Indiana State Board of Accounts under the general headings, Plant Operation and Maintenance, Sewer Operation and Maintenance, Customer Accounts, Administrative and General, Insurance and Taxes (Indiana State Board of Accounts Special Districts Manual Chapter 23).
- 2.1.56 Pass Through means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
- 2.1.57 Person means any individual, partnership, corporation, association, trust, estate, governmental entity, any other legal entity, or its legal representative, or assign.
- 2.1.58 pH means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in Standard Units (S.U.).

- 2.1.59 Pollutant means, but is not limited to, any of the following discharged into water: dredged spoil, solid Waste, incinerator residue, filter backwash, sewage, Wastewater, garbage, Sludge, munitions, chemical Wastes, toxic Wastes, hazardous substances, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural Waste.
- 2.1.60 Pretreatment means 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, discharging or otherwise introducing such Pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes or any combination thereof, by process changes, or by other means, except dilution, as prohibited by Section 5.9 of this Ordinance.
- 2.1.61 Pretreatment Requirements means any substantive or procedural requirement related to Pretreatment imposed on a User, other than a Pretreatment Standard.
- 2.1.62 Pretreatment Standards or Standards means Prohibited Discharges as established in Sections 5.1 and 5.2 of this Ordinance, National Pretreatment Standards incorporated by reference in Section 5.3 of this Ordinance, and State Pretreatment Standards incorporated by reference in Section 5.4 of this Ordinance.
- 2.1.63 Private Sewer means a Sewer owned and maintained by the User for the collection and transport of Wastewater to the POTW.
- 2.1.64 Prohibited Discharge Standards or Prohibited Discharges means absolute prohibitions against the Discharge of certain substances; these prohibitions appear in Sections 5.1 and 5.2 of this Ordinance.

2.1.65 Publicly Owned Treatment Works (POTW) means a treatment works as defined by Section 212 of the Act, (33 U.S.C. § 1292) owned in this instance by the City of Elkhart. This definition includes any Sewers, pipes, and other conveyances conveying Wastewater to the POTW treatment plant. The term does not include pipes, Sewers or other conveyances not connected to a facility providing treatment or storage. For the purposes of this Ordinance, POTW shall also include any Sewers, pipes or other conveyances that convey Wastewater to the POTW from persons outside the City who are, by contract or agreement with the City, users of the City's POTW. The term also means the municipality, as defined in Section 502(4) of the Act, which has jurisdiction over the discharges to and the Direct Discharges from such a treatment works.

2.1.66 Public Entity means a political subdivision, including a municipality, a town, a county, a township or sewer district.

2.1.67 Public Sewer means a Sewer owned and maintained by the City for the collection of Wastewater.

2.1.68 Receiving Stream means the St. Joseph River and its tributaries.

2.1.69 Residential User means a source of Domestic Wastewater or Domestic Wastewater discharging to the POTW from a premises or building used primarily as a domicile for one or more Persons such as detached, semi-detached and row houses, mobile homes, apartments or permanent multi-family dwellings. Transit lodging is not considered a Residential User; it is included under the Commercial User definition.

- 2.1.70 Retail Food Establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, such as a restaurant, a catering operation, a market, a grocery store, a convenience store or an institution.
- 2.1.71 Sanitary Sewer means a Sewer designed to convey liquid and water-carried Wastes from residences, commercial buildings, industrial plants and institutions and to which Storm, surface and ground waters are not intentionally allowed to enter.
- 2.1.72 Sanitary Wastewater means the liquid and water-carried Waste from residences, commercial buildings, industrial plants, institutions, and other places that is transported by Sewers and is primarily composed of human and household Waste. Sanitary Wastewater, as received by the POTW, may contain a component of Industrial Waste.
- 2.1.73 Septic Tank means a watertight structure into which sewage is discharged for settling and solids digestion.
- 2.1.74 Severe Property Damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that 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.
- 2.1.75 Sewer means a pipe or conduit, which carries Wastewater or drainage water.
- 2.1.76 Sewer Lateral means the horizontal piping that extends from the end of the Building Drain to the Public Sewer or other place of disposal.

2.1.77 Shall means the act referred to is mandatory.

2.1.78 Significant Industrial User or SIU

- (a) The term Significant Industrial User means either:
 - (1) All Industrial Users subject to Pretreatment Standards under Sections 5.3 and 5.4 of this Ordinance; or
 - (2) Any other Industrial User that:
 - (i) Discharges an average of 10,000 gallons per day or more of process Wastewater to the POTW. This does not include Sanitary Wastewater, Non-contact Cooling Water and boiler Blowdown Wastewater;
 - (ii) Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW Treatment Plant;
 - (iii) Is designated as such by the Director 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;
 - (iv) Has Wastewater with a cBOD₅ or TSS concentration greater than 250 mg/L; or
 - (v) Has in its waste stream a toxic or hazardous substance, as defined by Federal or State statutes and rules.
- (b) The Director may, on its own initiative or in response to a petition received from an Industrial User, determine that an Industrial User is not a

Significant Industrial User if it does not meet the requirements of Section 2.1.77(a)(2) above.

2.1.79 Significant Noncompliance (SNC) means the status of an Industrial User that has caused or allowed a violation that meets one or more of the following criteria:

- (a) Chronic violations of Wastewater Discharge limits, defined here as those in which 66% or more of all the measurements taken for the same Pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 2.2.42 of this Ordinance;
- (b) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of Wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 2.2.42 of this Ordinance 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 5.0 (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 human health, welfare, or to the environment or has resulted in the Director's exercise of his suspension of service authority under Section 8 of this Ordinance to halt or prevent such a Discharge;
- (e) Failure to meet, within 90 calendar days after the schedule date, a compliance schedule milestone contained in an individual Wastewater Discharge Permit, or in an enforcement order for starting construction, completing construction, or attaining final compliance;
- (f) Failure to provide, within 30 calendar days after the due date, required reports such as:
 - (1) Baseline Monitoring Reports;
 - (2) 90-day compliance reports;
 - (3) Periodic self-monitoring reports; and
 - (4) Reports on compliance with compliance schedules.
- (g) Failure to accurately report noncompliance; and
- (h) Any other violation or group of violations that the Director determines will adversely affect the operation or implementation of the Pretreatment program which may include a violation of BMPs.

2.1.80 Slug Discharge means any discharge at a flow rate or concentration, which could cause a violation of the Prohibited Discharge standards in Sections 5.1 and 5.2 of this Ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an 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.

2.1.81 Sludge means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial Wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such Waste having similar characteristics and effects 42 U.S.C. § 6903.

2.1.82 State means State of Indiana.

2.1.83 Standard Industrial Classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

2.1.84 Standard Methods means an assembly of analytical techniques and descriptions commonly accepted in water and Wastewater treatment as listed in 40 C.F.R. § 136 and contained in "Standard Methods for the Examination of Water and Wastewater", published jointly by the American Public Health Association, American Water Works Association and the Water Environment Federation.

2.1.85 Standards see definition for "Pretreatment Standards."

2.1.86 Storm Sewer means a Sewer designed to transport only storm or surface water and does not lead to a Treatment Plant.

2.1.87 Storm Water means water resulting from rain, melting or melted snow, hail or sleet.

2.1.88 Storm Water Conveyance means any structural process used for transferring Storm Water between at least two points including, but not limited to, Storm

Sewers, piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains and roadways.

2.1.89 Surcharge means the extra charges for Sewer service assessed customers whose Wastewater is of such a nature that it imposes upon the POTW a burden greater than that covered by the basic service charge.

2.1.90 Surveillance means the ongoing systematic collection and analysis of data.

2.1.91 Suspended Solids means solids, which either float on the surface or are suspended in water, Wastewater or other liquids, and which are removable by laboratory filtration.

2.1.92 Toxic Pollutant means any Pollutant or combination of Pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a) or other Acts. The Board reserves the right to add additional parameters demonstrated to produce toxic effects, which may or may not be on the aforementioned list.

2.1.93 Treatment Plant means that portion of the POTW designed to provide treatment to Wastewater.

2.1.94 Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the Effluent Limitations of this Ordinance because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventative maintenance, or careless or improper operations.

- 2.1.95 User means a Person who discharges any Pollutant, Wastewater or any other substance into the POTW or Storm Water Conveyance. The term User includes both the owner and occupant of real estate that is the source of a Discharge into the POTW or Storm Water Conveyance.
- 2.1.96 User Charge means a charge levied on Users of the POTW for the User's proportionate share of the cost of Operation and Maintenance, including replacement of the POTW.
- 2.1.97 Utility means the City of Elkhart's Wastewater Utility.
- 2.1.98 Waste means Sanitary Wastewater and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, processing, manufacturing, or industrial operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.
- 2.1.99 Wastewater means liquid or water-carried Wastes from residential, commercial, industrial, municipal, agricultural, or other sources.
- 2.1.100 Wastewater Constituents and Characteristics means the chemical, physical, bacteriological and radiological properties, including volume, flow rate and such other properties which serve to define, classify or measure the contents, quality, quantity and strength of Wastewater.
- 2.1.101 Waters of the State means
- (a) Either:
 - (1) The accumulation of water, surface and underground, natural and artificial, public and private; or

(2) A part of the accumulations of water that are wholly or partially within, flow through, or border upon the State.

(b) The term does not include:

(1) A private pond; or

(2) An off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before Discharge unless the Discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

2.2 Abbreviations

BMP means Best Management Practice

cBOD₅ means five-day carbonaceous biochemical oxygen demand

CFR means Code of Federal Regulations,

COD means chemical oxygen demand,

EPA means the U.S. Environmental Protection Agency,

FOG means fats, oils and grease,

gpd means gallons per day

IDEM means the Indiana Department of Environmental Management,

L means liter,

mg means milligrams,

mg/L means milligrams per liter,

NPDES means National Pollutant Discharge Elimination System,

NH₃-N means ammonia nitrogen,

PO₄ means total phosphorus,

POTW means Publicly Owned Treatment Works,

ppm means parts per million,

RCRA means Resource Conservation and Recovery Act

SNC means significant non-compliance,

SIC means Standard Industrial Classification,

SIU means Significant Industrial User,

S.U. means standard units,

TRC means Technical Review Criteria,

TSS means total suspended solids

U.S.C. means United States Code

Section 3.0 General

3.1 Bylaws and Regulations of the Board of Public Works

The Board may adopt and enforce such reasonable regulations not in conflict herewith as it may be deemed necessary for the safe, economical and efficient management of the POTW and for the construction and use of building or house connection Sewers and connections to the POTW, which regulations may limit, or prohibit the introduction of, or infiltration by, Storm Water, surface water, and groundwater into the POTW.

3.2 Administrative Orders

The Board or its designated representative may issue to any Person, orders necessary to achieve and maintain compliance with the requirements and provisions of this Ordinance or a permit issued by the Board.

3.3 Enforcement Response Plan

The Board shall adopt an Enforcement Response Plan to be used when responding to incidents of User noncompliance with the provisions of this Ordinance.

3.4 Fines and Penalties

The Control Authority and the Director shall have the authority to assess fines and penalties as stated in this Ordinance and Enforcement Response Plan.

3.5 Confidential Information

3.5.1 Information and data on a User obtained from reports, questionnaires, permit applications, permits, monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the User specifically requests in writing 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 or confidential information pursuant to Federal or State law.

3.5.2 When requested by the Person furnishing a report, the portions of a report which might disclose trade secrets or confidential information shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this Ordinance, the National Pollutant Discharge Elimination System (NPDES) Permit, State Disposal System Permit or the Pretreatment Programs; provided, however, that such portions of a report shall be available for use by the State or any State agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater quantities and Wastewater Constituents and Characteristics will not be recognized as confidential information.

3.5.3 Notwithstanding anything in the paragraph immediately above, information accepted, in writing, by the Director as confidential, shall not be transmitted to any governmental agency except EPA or to the general public by the Director without User's written permission (327 IAC 12.1).

3.5.4 The EPA shall have immediate and unlimited access to all information compiled as part of the Pretreatment Program, including confidential documents.

3.6 Access to Premises and Right to Inspect

Authorized representatives of the Wastewater Utility shall have the right to enter upon the premises of the User at all reasonable times.

3.7 Tampering with or Damaging Utility Property

No person shall maliciously, willfully or recklessly, break, damage, destroy, uncover, deface, tamper or modify any structure, appurtenance or equipment which is a part of or owned by the Utility.

Section 4.0 Connection to Public Owned Treatment Works

4.1 Prohibition of Certain On-Site Wastewater Disposal Systems

A person shall not construct within the City limits a privy, cesspool, or dry well used for the disposal of Wastewater. Existing Septic Tank systems and absorption fields may be repaired and maintained in accordance with applicable laws and ordinances.

4.2 Connection to the POTW

4.2.1 Any Person constructing a new building requiring Wastewater service on property that is within the corporate limits of the City and is adjacent to or across from a public right-of-way or easement in which there is access to a Public Sanitary or

Combined Sewer, shall connect to said Sewer in accordance with applicable ordinances and regulations and shall not discharge Wastewater anywhere other than into the POTW.

4.2.2 Any Person connecting to the POTW shall notify the Utility Billing Office to establish an account.

4.2.3 All non-residential Users connecting to the Sewer shall complete and submit an Industrial Users Wastewater Questionnaire in accordance with Section 6.2.1(b) of this Ordinance.

4.3 Separate Sewer Requirements

A separate and independent Sewer Lateral shall be constructed for every new connection unless the Director approves an alternative Sewer Lateral.

4.4 Clear Water Connections

The connection, directly or indirectly, of clear water sources from new buildings to the municipal wastewater system is prohibited. Clear water sources include, but are not limited to, Inflow, roof downspouts, footing drains, geothermal system discharge, driveways, parking lots, single pass Non-Contact Cooling Water, or other sources of surface water runoff or groundwater. Further, the Director may require present Users to disconnect existing clear water sources at the User's expense.

4.5 Right to Prohibit New Connections

The Director shall have the right to prohibit new connections when the capacity of the POTW is deemed insufficient by the Director.

4.6 Responsibility of the Property Owner

Sewer Laterals under public or private property shall remain the full and sole responsibility of the property owner with regards to the maintenance, reaming, cleaning and all other related maintenance required for the normal operation of the Sewer Lateral.

Section 5.0 Regulations

5.1 General Prohibitions

5.1.1 No Person Shall Direct Discharge any Wastewater, Industrial Waste, Sanitary Wastewater or other polluted water into any Waters of the State within the corporate limits of the City without a NPDES permit and without first notifying the Director.

5.1.2 No Person Shall Discharge to any Storm Water Conveyance within the corporate limits of the City any Wastewater, Industrial Waste, Sanitary Wastewater or other Pollutant including, but not limited to, Septic Tank effluent, car wash wastewater, oil, radiator fluid, laundry wastewater, roadway accident spillage and household hazardous waste.

5.1.3 No Person Shall Discharge any Wastewater to the POTW except as authorized by the Director in accordance with the provisions of this Ordinance.

5.1.4 No Person Shall introduce or cause to be introduced, directly or indirectly, 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.

5.1.5 No Person Shall cause a combined sewer overflow.

5.2 Specific Prohibitions

No Person Shall introduce or cause to be introduced, directly or indirectly, into the POTW the following Pollutants, substances, or Wastewater:

- 5.2.1 A Pollutant which by reason of its nature or quantity is, or may be, sufficient either alone or by interaction with other substances to create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR §261.21. In addition, at no time shall two successive readings on an explosion hazard meter, at the point of Discharge into the system, or at any point in the system, be more than five percent or any single reading exceed 10% of the Lower Explosive Limit (LEL) of the substance measured. Such Pollutants may include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides;
- 5.2.2 A solid or viscous Pollutant, or other substances, which may cause obstruction to the flow in a Sewer or other Interference with the operation of the POTW such as, but not limited to:
- 5.2.3 Grease, Garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gasoline, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes;

- 5.2.4 Petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that may cause Interference or Pass Through;
- 5.2.5 Any Pollutant having a pH greater than 10.0 S.U. more than one percent of the time each month or for a period exceeding 30 minutes; or any Pollutant having any corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the POTW; or, in no case, any discharges with pH lower than 5.0 S.U. The POTW may require continuous documentation of compliance through pH strip chart recordings;
- 5.2.6 Any Pollutant which would either singly or by interaction with other Pollutants result in the presence of noxious or toxic gases, vapors, or fumes within the POTW in a quantity sufficient to create a public Nuisance or hazard to human health or to prevent entry into the Sewers for maintenance, repairs, inspections, or monitoring;
- 5.2.7 Any Pollutant, which may cause the POTW's Effluent or any other product of the POTW such as residues, Sludge, or scum to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a Pollutant discharged to the POTW cause the POTW to be in noncompliance with Sludge use or disposal criteria, guidelines or regulations of the Act; any criteria, guidelines, or regulations affecting Sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substance Control Act, or State criteria applicable to the Sludge management method being used;
- 5.2.8 Any Pollutant which may cause the POTW to violate its NPDES Permit;

- 5.2.9 Any Wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;
- 5.2.10 Any Wastewater having a temperature which will inhibit biological activity in the POTW resulting in Interference or damage to the POTW, but in no case Wastewater causing the temperature at the introduction into the POTW to exceed 40°C (104°F);
- 5.2.11 Any Pollutant, including an oxygen demanding Pollutant such as, but not limited to, cBOD5 or COD, released at a flow rate which will, either singly or by interaction with other Pollutants, cause Interference with the POTW. In no case, shall a Slug Discharge have a flow rate for any time period longer than 15 minutes, that is more than five times the flow during normal operation;
- 5.2.12 Any Pollutant, including an oxygen demanding Pollutant such as, but not limited to, cBOD5 or COD, released at a Pollutant concentration or contain concentrations or quantities of Pollutants which will, either singly or by interaction with other Pollutants, cause Interference with the POTW. In no case, shall a Slug Discharge have Pollutant concentration or contain concentrations or quantities of Pollutants that exceed the average 24-hour concentration or quantities during normal operation
- 5.2.13 Any Pollutant containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established under applicable State or Federal regulations;
- 5.2.14 Any Pollutant, which either alone or by interaction with other Pollutants, causes a hazard to human health, creates a public Nuisance, or is detrimental to the POTW;

- 5.2.15 Storm Water, surface water, groundwater, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, and Non-Contact Cooling Water, unless specifically authorized by the Director;
- 5.2.16 Sludges, screenings, or other residues from the Pretreatment of Industrial Wastes;
- 5.2.17 Medical Wastes, except as specifically authorized by the Director in an Industrial Wastewater Discharge Permit;
- 5.2.18 Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- 5.2.19 Trucked or hauled pollutants, except as allowed by the Director under special circumstances; and
- 5.2.20 Any Wastewater that causes the average concentration of hydrogen sulfide (H₂S) gas in the POTW to exceed 5 ppm or the maximum concentration of 50 ppm at any time.
- 5.2.21 No healthcare facility or reverse distributor as defined in 40 CFR Part 266 Subpart P shall discharge to the POTW any hazardous waste pharmaceutical as defined in 40 CFR Part 266 Subpart P.

5.3 National Categorical Pretreatment Standards

A User who falls within a regulated industrial subcategory shall comply with the National Categorical Pretreatment Standards (40 C.F.R §§ 405-471, as amended from time to time) for that particular industrial subcategory. If the National Categorical Pretreatment Standards are less stringent than the State Pretreatment Standards or Local Pollutant Limitations applicable to the User, the User shall comply with the more stringent

standards. The National Categorical Pretreatment Standards (Title 40 C.F.R. §§ 405-471), as amended from time to time, are hereby incorporated by reference into this Ordinance.

5.3.1 Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with Section 5.7.

5.3.2 When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Director may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or Effluent concentration for purposes of calculating Effluent limitations applicable to individual Industrial Users.

5.3.3 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 in accordance with 40 C.F.R. § 403.6(e).

5.4 State Pretreatment Standards

A User shall comply with State Pretreatment Standards (327 IAC 5-18-8, as amended from time to time) applicable to the User. If the State Pretreatment Standards are less stringent than the National Pretreatment Standards or Local Pollutant Limitations applicable to the User, the User shall comply with the more stringent standards. The State Pretreatment Standards, as amended from time to time, are hereby incorporated by reference into this Ordinance.

5.5 Local Pollutant Limitations

No Person shall discharge Wastewater containing concentrations, referred to as Local Pollutant Limitations, in excess of:

2.1 mg/L	arsenic
1.2 mg/L	cadmium
4.5 mg/L	copper
1.75 mg/L	cyanide
200 mg/L	total fats, oils or grease (FOG)
100 mg/L	total petroleum hydrocarbons (TPH)
0.60mg/L	lead
0.009 mg/L	mercury
4.1 mg/L	nickel
1.0 mg/L	phenol
1.2 mg/L	silver
7.0 mg/L	chromium
4.2 mg/L	zinc

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 Control Authority may impose mass limitations in addition to the concentration-based limitations above.

5.6 Best Management Practices

The Director may develop BMPs, by ordinance or in individual Wastewater Discharge permits, to implement Local Limits and the requirements of Sections 5.1 and 5.2.

5.7 Equivalent Mass Limits

When a Categorical Pretreatment Standard is expressed only in terms of Pollutant concentrations, an Industrial User may request that the Control Authority convert the

limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Director. The Control Authority may establish equivalent mass limits only if the Industrial User meets all the conditions listed in Sections 5.7.1 and 5.7.2.

5.7.1 To be eligible for equivalent mass limits, the Industrial User must:

- (a) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its individual Wastewater Discharge Permit;
- (b) Currently use control and treatment technologies adequate to achieve compliance with the applicable Categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;
- (c) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous Effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
- (d) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and
- (e) Have consistently complied with all applicable Categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

5.7.2 An Industrial User subject to equivalent mass limits must:

- (a) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
- (b) Continue to record the facility's flow rates through the use of a continuous Effluent flow monitoring device;
- (c) Continue to record the facility's production rates and notify the Director whenever production rates are expected to vary by more than 20% from its baseline production rates determined in 5.7.1(c). Upon notification of a revised production rate, the Director will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and
- (d) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraphs 5.7.1(a) of this Section so long as it discharges under an equivalent mass limit.

5.7.3 When developing equivalent mass limits, the Director:

- (a) Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated processes of the Industrial User by the concentration-based Daily Maximum and Monthly Average Standard for the applicable Categorical Pretreatment Standard and the appropriate unit conversion factor;
- (b) Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

- (c) May retain the same equivalent mass limit in subsequent individual Wastewater Discharge permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to Section 5.9. The Industrial User must also be in compliance with Section 5.17 regarding the prohibition of Bypass.
- 5.7.4 The Director may convert the mass limits of the categorical Pretreatment Standards of 40 C.F.R. §§ 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Director.
- 5.7.5 Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section (5.7) in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.
- 5.7.6 Many Categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or four-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.
- 5.7.7 Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Director within two business days after the User has a reasonable basis to know

that the production level will significantly change within the next calendar month. Any User not notifying the Director of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

5.8 City's Right of Revision

The City reserves the right to establish, by ordinance or permit, more stringent limitations or requirements on discharges to the POTW and Storm Water Conveyance system if the City deems it necessary in order to comply with the objectives of this Ordinance.

5.9 Dilution Prohibitions

5.9.1 No User shall ever increase the use of process water or, in any other way attempt to dilute a Discharge as a partial or complete substitute for adequate treatment to achieve compliance with a Pretreatment Requirement or Standard.

5.9.2 Unpolluted water, including, but not limited to, City water, Non-Contact Cooling Water, or Blowdown shall not be discharged to the POTW for purposes of diluting Wastewater in order to reduce Sewer rates or charges of the User.

5.10 Interceptors, Separators, and Traps

5.10.1 Control devices such as interceptors, separators, and traps shall be installed at all Food Service Establishments as required in the FOG Ordinance as amended and at all Industrial or Commercial User's facilities when, in the opinion of the Director, the control device is necessary to contain fat, oil, grease, sand, or other harmful inert materials in the User's Wastewater.

5.10.2 The User shall be responsible for determining the appropriate size and type of control device to be used at their facility only for Oil Separators.

5.10.3 The control device shall be located as close to the source of fat, oil, grease or sand laden waters as possible. The placement of the control device shall allow the cover to be visible at all times and easily removable for cleaning. Clearances

shall be such that with the cover removed, the internal baffling can be serviced and all wetted surfaces are visible.

5.10.4 Each control device shall be clearly labeled on the cover. The label should identify the type of device such as "Grease Trap", "Oil Separator", or "Sand Interceptor".

5.10.5 The control device shall be regularly pumped or cleaned and maintained with maintenance and disposal records maintained onsite and available for inspection. Records shall be retained onsite for a minimum of three years.

5.11 Control Manhole Requirements

5.11.1 All non-Residential Users who own, operate, or maintain a commercial or industrial facility connected to the POTW who make a new connection or modify an existing connection to the POTW shall install a Control Manhole unless the Director determines that a Control Manhole is not required.

5.11.2 Additionally, the Director shall have the authority to require any User, at the User's expense, to install a Control Manhole if determined that such manhole is necessary to protect the POTW.

5.12 Limitations on Point of Discharge

No person shall Discharge any Waste, Wastewater, Pollutant or other substance directly into a manhole or other opening in the POTW other than through the approved Sewer Lateral, except in accordance with the terms of this Ordinance or by express written permission of the Director.

5.13 Regulation of Waste Received from Other Jurisdictions

5.13.1 If another Public Entity located outside of the City's Sewer service area, contributes Wastewater to the POTW, the Control Authority shall enter into an inter-local agreement with the contributing Public Entity.

5.13.2 Prior to entering into an inter-local agreement required by Section 5.13.1 of this Ordinance, the Control Authority shall request the following information from the contributing Public Entity:

- (a) A description of the quality and volume of Wastewater discharged to the POTW by the contributing Public Entity;
- (b) An inventory of all Users located within the contributing Public Entity that are discharging to the POTW; and
- (c) Such other information as the Control Authority may deem necessary.

5.13.3 An inter-local agreement, as required by Section 5.13.1 of this Ordinance, shall contain the following conditions:

- (a) A requirement for the contributing Public Entity to adopt a Sewer use ordinance which is at least as stringent as this Ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 6.3.2 of this Ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the City's ordinance or Local Limits;
- (b) A requirement for the contributing Public Entity to submit a revised User inventory on at least an annual basis;
- (c) A provision specifying which Pretreatment implementation activities, including Industrial Wastewater Discharge Permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing Public Entity; which of these activities will be conducted by Director and which

of these activities will be conducted jointly by the contributing Public Entity and the Director;

- (d) A requirement for the contributing Public Entity to provide the Director with access to all information that the contributing Public Entity obtains as part of its Pretreatment activities;
- (e) Limits on the nature, quality, and volume of the contributing Public Entity's Wastewater at the point where it Discharges to the POTW;
- (f) Requirements for monitoring the contributing Public Entity's Discharge;
- (g) A provision ensuring the Director access to the facilities of Users located within the contributing Public Entity's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Director; and
- (h) A provision specifying remedies available for breach of the terms of the inter-local agreement.

5.14 Acceptance of Wastewater - Unusual or Extraordinary Circumstances

The Director, acting on behalf of the POTW, may make arrangements with any Person when, in the opinion of the Director, unusual or extraordinary circumstances warrant acceptance of certain Wastewater for treatment, subject to payment of applicable fees. Under no circumstances shall the Director allow the Discharge of any Wastewater to the POTW, if it will violate any section of this Ordinance or which permits the Person to violate any applicable Pretreatment Standard or Requirement.

5.15 Right to Reject Wastewater

The Director shall have the right to reject Wastewater and prohibit the Discharge of rejected Waste into the POTW. The Director may require Pretreatment of the Wastewater when the strength or character of the Wastewater is such that it could cause damage to or interfere with the operation of the POTW.

5.16 Spills, Slug Discharges and Operational Upsets

5.16.1 Slug Discharge Prevention/Control Plan

- (a) Each Significant Industrial User (SIU) shall provide protection from spills or Slug Discharges. The Director shall determine if a Slug Discharge control plan is required by an SIU. An SIU that is required to have a Slug discharge control plan shall implement the plan and not commence discharging to the POTW until the plan has been submitted to the Director. The Director's review of such plan, including any facilities and operating procedures, shall not relieve the SIU from the responsibility to modify such plan as necessary to maintain compliance with applicable Federal, State, and local regulations. In addition, the submission of such plan to the Director shall not relieve the SIU of its responsibility to comply with all other laws and regulations governing the use, storage, and transportation of hazardous substances. The SIU shall provide and maintain all facilities needed to implement the plan.
- (b) The Slug Discharge control plan may be part of an SIU's existing contingency plan, emergency response plan, or spill plan developed under other Federal, State or local regulations. At a minimum, the following elements shall be part of the submitted plan:

- (1) Description of Discharge practices, including non-routine batch discharges;
 - (2) Description of stored chemicals, including chemical name, amount stored and storage location;
 - (3) Notification procedures, in accordance with paragraph 5.16.2 of this Section, for immediately notifying the POTW of spills or Slug Discharges, including any Discharge prohibited by this Ordinance.
 - (4) If necessary, procedures to prevent adverse impacts from Slug Discharges or spills, including, but not limited to, the following:
 - (i) Inspection and maintenance of storage areas;
 - (ii) Handling and transfer of materials;
 - (iii) Loading and unloading operations;
 - (iv) Control of plant site runoff;
 - (v) Worker training;
 - (vi) Building of containment structures or equipment;
 - (vii) Measures for containing toxic organic pollutants, including solvents; and
 - (viii) Measures and equipment for emergency responses.
- (c) Such plans shall be revised and updated whenever plant operational changes affect the validity of the plans, but in any case, not less often than every three years. Failure to comply with this requirement may result in administrative enforcement as defined in Section 8.1 of this Ordinance. Any significant plan revisions, including revisions involving construction

of new facilities, shall be submitted to the Director prior to implementation of such revisions.

(d) Notice to Employees

A notice shall be permanently posted on the SIU's bulletin board or other prominent place advising employees who to call in the event of a spill or Slug Discharge. Employers shall insure that all employees who may cause such a spill or Slug Discharge to occur are advised of the emergency notification procedure.

5.16.2 Reports of Spills, Slug Discharges and Operation Upsets

(a) Oral Notice

The User shall notify the City's Public Works and Utilities Department by telephone within 15 minutes of becoming aware of any spill, Slug Discharge, or operation Upset. The notification shall include all information known at that time, including, but not limited to location and duration of the discharge, type of Waste, including concentration, pH, volume and corrective actions.

(b) Written Notice

(1) Within five working days following such an incident, the User shall submit to the Director a detailed written report signed by the User describing the cause of the Discharge and the measures to be taken by the User to prevent similar future occurrences.

(2) Such notification shall not relieve the User of any expense loss, damage or other liability which may be incurred as a result of

damage to the POTW, fish kills, or any other damage to person property or environment, damage to person, property or the environment.

- (3) Such notification shall not relieve the User of any fines, civil penalties, or other liability, which may be imposed by this Ordinance or other applicable law.
- (4) Following such an incident, the User may be required by the Director to appear before the Control Authority and provide a full explanation of the Discharge and of steps being taken to prevent its reoccurrence.

5.17 Industrial Pretreatment Bypasses

5.17.1 Allowable Bypasses

An Industrial User may allow a Bypass to occur if:

- (a) The Bypass does not cause a violation of this Ordinance or a condition of the Industrial User's Wastewater Discharge Permit;
- (b) The Bypass is for the sole purpose of allowing for essential maintenance of the facility to assure future efficient operation; and
- (c) The Industrial User provides notification to the Director as specified in Section 5.17.3 of this Ordinance.

These Allowable Bypasses are not subject to the provisions in Section 5.17.2 of this Ordinance.

5.17.2 Prohibited Bypasses

- (a) In the event a Prohibited Bypass occurs, the Director may take enforcement action against an Industrial User for such Bypass, unless the Industrial User can establish to the satisfaction of the Director the following conditions:
- (1) Such Bypass was unavoidable to prevent loss of life, personal injury or Severe Property Damage;
 - (2) 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, in the opinion of the Director, adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent such a Bypass from occurring during normal periods of equipment downtime or preventative maintenance; and
 - (3) The Industrial User complied with the notification requirements as specified in Section 5.17.3 of this Ordinance.
- (b) The Director may approve an anticipated Bypass, after considering its effects on the public, the POTW and the environment, if the Director determines that it will meet the three conditions listed in Section 5.17.1 above.

5.17.3 Notification of Bypasses

With any Bypass, the Industrial User shall comply with the following notification requirements.

(a) Anticipated Industrial Pretreatment Bypasses

If an Industrial User knows in advance of the need for an Industrial Pretreatment Bypass, the Director shall receive written notification from the Industrial User at least 48 hours before the date of such Bypass describing the cause of the Bypass, the Bypass's impact on any Effluent limits, and the anticipated date and duration of the Bypass.

(b) Unanticipated Industrial Pretreatment Bypasses

An Industrial User shall notify the Director of any unanticipated Industrial Pretreatment Bypass. The notification shall include the following:

- (1) Oral notice to the Director within 15 minutes after the Industrial User becomes aware of the Bypass. The notification shall include all information known at that time, including, but not limited to location and duration of the discharge, type of Waste, including concentration, pH, volume and corrective actions; and
- (2) A written report within five calendar days of the time the Industrial User becomes aware of such Bypass. This report shall specify the following:
 - (i) A description of the Bypass, the cause thereof, and the Bypass's impact on any Effluent limits;
 - (ii) The volume and duration of the Bypass, including exact dates and times;
 - (iii) If the cause of the Bypass has not been corrected, the anticipated time the Bypass is expected to continue; and

- (iv) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the Bypass.

5.18 Compliance Schedules

5.18.1 Any User, which is not in compliance with any limitations or requirements of this Ordinance, shall develop a compliance schedule of corrective measures to be taken in order to return to compliance. This schedule shall be submitted to the Director for review and approval. If the User does not submit an acceptable schedule, the Director may develop and enforce a schedule for the User. This schedule shall contain milestone dates for the commencement and completion of major events leading to the construction and operation of additional facilities required for the User to comply with this Ordinance. This may include, but is not limited to, dates relating to:

- (a) Hiring an engineer;
- (b) Hiring other appropriate personnel;
- (c) Completing preliminary plans;
- (d) Completing final plans and specifications;
- (e) Executing contracts for major components;
- (f) Commencing construction;
- (g) Completing construction and startup; and
- (h) All other acts necessary to achieve compliance with this Ordinance.

5.18.2 Any User subject to a compliance schedule shall submit a progress report to the Director no later than 14 calendar days following each date in the compliance schedule. This report shall include whether the User complied with the increment

of progress to be met on that date, the reason for any delay, if the date was not met, and the steps being taken to return to compliance. In no event, can more than nine months elapse between progress reports.

5.19 Duty to Comply

All Users shall comply with all applicable State and Federal Pretreatment regulations.

5.20 Certification of Wastewater Treatment Plant Operators

Any Person who works at an Industrial or non-industrial Wastewater treatment plant in the capacity of a Wastewater treatment operator shall be certified in accordance with 327 IAC 5-22, as amended from time to time.

5.21 Duty to Mitigate - Prevention of Adverse Impact

All Users shall take all reasonable steps to minimize or prevent any adverse impact of any Discharge in violation of this Ordinance which has a reasonable likelihood of adversely affecting human health, the POTW, the Receiving Stream or the environment.

5.22 Hazardous Waste Notification

5.22.1 Any Industrial User, discharging to the POTW as a part of its waste stream any substance which, if otherwise disposed of, would be a listed or characteristic hazardous waste under 40 C.F.R. § 261, shall notify the POTW in writing of such Discharge. All hazardous waste notifications shall include:

- (a) An identification of the hazardous constituents contained in the waste as set forth in 40 C.F.R. § 261;
- (b) The type of Discharge (continuous, batch or other);
- (c) An estimation of the mass of constituents in the waste stream expected to be discharged during the following 12 months; and

(d) A certification that the User 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.

5.22.2 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 of the Discharge of such substance within 90 days of the effective date of such regulations.

5.22.3 The Director may prohibit the Discharge of any waste to the POTW if it will cause endangerment to the health or welfare of persons, the environment, causes Interference to the POTW or causes the City to violate any condition of its NPDES Permit.

5.22.4 This provision does not create a right to Discharge any substance not otherwise permitted to be Discharged by this Ordinance, a permit issued hereunder, or any applicable Federal or State law.

5.23 Notification of Changed Discharge or Production

5.23.1 All Significant Industrial Users shall notify the POTW at least 30 calendar days in advance of any substantial change in the volume or character of Pollutants in their Discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification as required in Section 5.22 of this Ordinance.

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

5.23.3 Any User shall notify the Director immediately after becoming aware of any Discharge by the User constituting a violation of this Ordinance.

5.23.4 Any Significant Industrial User operating under an Industrial Wastewater Discharge Permit incorporating an equivalent mass or concentration limit calculated from a production based standard shall notify the Director within two business days after the Industrial User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Director of such anticipated change will be required to meet the mass or concentration limit in its permit that was based on the original estimate of the long-term average production rate.

5.24 Combined Sewers

5.24.1 Prohibition of New Combined Sewer Construction

No Person shall construct any new Combined Sewers.

5.24.2 New Construction Contributing to Existing Combined Sewer

All new Sewer construction contributing to a Combined Sewer shall be designed to minimize or delay peak flow contribution to the existing Combined Sewer using any the best available technology.

Section 6.0 Administration

6.1 Industrial Pretreatment

6.1.1 SIUs shall provide Wastewater treatment as needed to comply with this Ordinance and shall achieve compliance with all National or State Categorical Pretreatment Standards within the time limitations as specified in the Categorical

Pretreatment Regulations. A New Source SIU shall install and shall start-up all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge to the POTW. Such New Sources shall meet all applicable Pretreatment Standards and Requirements in the shortest time, not to exceed 90 days after the start of Discharge to the POTW. An SIU shall provide, operate and maintain any facilities required to pretreat Wastewater to meet applicable Pretreatment Standards

6.1.2 Detailed plans showing the Pretreatment facilities and operating procedures shall be submitted to the Director before construction of the facility for review to determine accessibility and safety of sampling locations throughout the Pretreatment facilities. The Director's review of such plans and operating procedures will in no way relieve the SIU from the responsibility of modifying the facility as necessary to produce an Effluent meeting the requirements of this Ordinance and Categorical Pretreatment Standards. Any subsequent changes in the Pretreatment facilities or method of operation shall be reported to the Director prior to the SIU's initiation of the changes.

6.1.3 At all times SIUs shall properly maintain and operate all control facilities and systems installed or used by the SIU to achieve compliance with this Ordinance. Such facilities shall at all times be accessible to inspection by the Director.

6.2 Industrial Wastewater Discharge Permits

6.2.1 General

- (a) All SIUs proposing to connect to or Discharge to the POTW shall obtain an Industrial Wastewater Discharge Permit before connecting to or commencing to Discharge to the POTW.
- (b) All non-Residential Users shall complete and submit to the Director an Industrial User's Wastewater Questionnaire. Based on the information contained in the completed Industrial User's Wastewater Questionnaire, the Director may require a User to apply for and obtain an Industrial Wastewater Discharge Permit.

6.2.2 Permit Application

All Users who are required to obtain an Industrial Wastewater Discharge Permit shall complete, sign and submit to the Director an application on the form provided by the Director, accompanied by the appropriate fees as listed in the Wastewater Utility Rate Ordinance.

(a) Application Information

In support of the permit application, each User may be required to submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address, and facility location;
- (2) Standard Industrial Classification (SIC) numbers according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;
- (3) Date of construction of any building, structure, facility or installation that is discharging or may Discharge Pollutants to the POTW;

- (4) Wastewater Constituents and Characteristics including, but not limited to, those mentioned in Section 5.5 of this Ordinance, as determined by a reliable analytical laboratory using sampling and analysis techniques performed in accordance with the most current version of 40 C.F.R. § 136;
- (5) Time and duration of process flow Discharge;
- (6) Average daily and estimated 30-minute peak Wastewater flow rates, including daily, monthly and seasonal variations if any;
- (7) Site plans, floor plans, mechanical and plumbing plans, and details to show all Sewers, Sewer connections, and appurtenances by the size, location and elevation and a current water use schematic;
- (8) Make and model of all current or proposed flow monitoring devices used for the purposes of compliance or billing;
- (9) Detailed description of the production process and Pretreatment process alone with a schematic of those systems with all components clearly identified;
- (10) Description of activities, facilities and plant processes on the premises, including all materials, which are or could be Discharged;
- (11) Basis of design of the Pretreatment facility, including, where applicable:
 - (i) Design Loading, including average, peak and future;
 - (ii) Rationale for process selection; and

- (iii) Calculation of predicted Effluent quality and loading under normal and peak operating conditions;
- (12) Where known, the nature and concentration of any Pollutants in the Discharge which are limited by any local, State or National Pretreatment Standards, including any listed or characteristic hazardous wastes as defined in federal regulations (40 C.F.R. § 261) and a statement regarding whether or not the Pretreatment Standards are being met on a consistent basis, and if not, whether additional Operation and Maintenance or additional Pretreatment is required for the User to meet applicable Pretreatment Standards;
- (13) If additional Pretreatment or Operation and Maintenance will be required to meet the Pretreatment Standards, the User shall provide the schedule by which they will meet the Standards. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. In addition, the following conditions shall apply to this schedule:
 - (i) The schedule shall contain phases of progress 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 which includes, but is not limited to hiring an engineer, completing preliminary

plans, completing final plans, executing contracts for major components, commencing construction, completing construction;

(ii) No phase referred to in paragraph (i) shall exceed nine months; and

(iii) No later than 14 calendar days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the Director, including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the User to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the Director;

(14) Number of employees, hours of operation of the User's plant and proposed or actual hours of operation of Pretreatment system;

(15) Proof that any required Wastewater treatment system at the User's facility is operated under a certified operator in accordance with 327 IAC 5-22, as amended from time to time;

(16) Each product and by-product produced by type, amount, process or processes and rate of production;

- (17) Type and amount of raw materials processed including the average and maximum per day;
- (18) List of any environmental control permits held by or for the facility; and
- (19) 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 6.3.6 (40 C.F.R. § 403.12(e)(2)).
- (20) Measurement of Pollutants.
 - (i) The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
 - (ii) The results of sampling and analysis identifying the nature and concentration or mass, where required by the Standard or by the Director, of regulated pollutants in the discharge from each regulated process.
 - (iii) Instantaneous, Daily Maximum, and long-term average concentrations or mass, where required, shall be reported.
 - (iv) The samples shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 6.6 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.

(v) Sampling must be performed in accordance with procedures set out in Section 6. of this Ordinance.

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

(b) Application Submission Time Frames

(1) New Sources required to obtain an Industrial Wastewater Discharge Permit shall submit an application to the Director at least 180 calendar days prior to the date when the New Source intends to commence discharging to the POTW. New Sources may submit an application less than 180 calendar days prior to the date the New Source intends to commence discharging to the POTW with prior approval from the Director.

(2) In the case of an initial issuance of an Industrial Wastewater Discharge Permit to an Existing Source or to an Industrial User determined by the Director to be subject to the permit requirements, an application shall be submitted to the Director no later than 120 calendar days after the latter of:

(i) The promulgation of an applicable National or State Categorical Pretreatment Standard; or

(ii) The date of notification by the Director of a determination made according to paragraph 6.2.1(b) of this Section.

- (3) An Industrial User with an existing permit shall submit an application to the Director at least 90 calendar days prior to a planned expansion or modification of production or treatment facilities or processes that are likely to cause a substantial change in the volume or character of Pollutants discharged to the POTW by the Industrial User. An application may be submitted in less than 90 calendar days with prior approval of the Director.

(c) Signatories to Permit Applications

All permit applications shall be signed as follows:

- (1) For a corporation: by a responsible corporate officer. For purposes of this section, “a responsible corporate officer” means either of the following:
 - (i) A president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or
 - (ii) The manager of one or more manufacturing, production, or operating 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 actions 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) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
- (3) Any Person signing a document under Section 6.2.2(c)(1) or 6.2.2(c)(2) shall make the following certification:

“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.”

6.2.3 Permit Modification, Revocation and Termination

- (a) The permittee shall be informed by the Director of any proposed permit changes at least 30 calendar days prior to the effective date of any change.
- (b) A permit may be modified, in whole or in part, revoked or terminated during its term for cause as specified in this Section 6.2.3. If the Control Authority determines that cause exists for modification or revocation of a permit, the Control Authority may require from the permittee an updated application or a pertinent portion of an application if such current information is needed to prepare the permit.
- (c) Causes for modification, revocation or termination of a permit include, but are not limited to the following:
 - (1) Violation of any term or condition of the permit;
 - (2) Failure of the permittee to disclose fully all relevant facts or any misrepresentation of any relevant facts by the permittee in an application or during the permit issuance process;
 - (3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any Discharge controlled by the permit, e.g., plant closure, a change in State law that requires the reduction or elimination of the Discharge, or information indicating that the permitted Discharge poses a substantial threat to human health or welfare;
 - (4) Failure of the permittee to accurately report the Wastewater Constituents and Characteristics of the permittee's Discharge;

- (5) Failure of the permittee to report significant changes in operations or Wastewater Constituents and Characteristics;
 - (6) Refusal of reasonable access to the permittee's premises for the purpose of inspection or monitoring; or
 - (7) Failure to implement all required plans including, but not limited to the following:
 - (i) Toxic Organic Management Plan;
 - (ii) Mercury Abatement Plan; and
 - (iii) Spill Prevention Plan.
- (d) In addition to the provisions of paragraphs (b) and (c), a permit may be modified for any of the following causes:
- (1) Material and substantial alterations or additions to the User's operation which were not covered in the effective permit, e.g., production changes, relocation or combination of Discharge points, changes in the nature or mix of products produced, provided that such alterations do not constitute total replacement of the process or production equipment causing the Discharge which converts it into a New Source; or
 - (2) Within nine months of the promulgation of a National or State Categorical Pretreatment Standard, the Industrial Wastewater Discharge Permit of Users subject to such standards shall be modified to require compliance with such standard within the time frame prescribed by such standard. In addition, the User with an

existing Industrial Wastewater Discharge Permit shall submit an updated application to the Director within 180 days after the promulgation of the applicable Categorical Pretreatment Standard.

- (e) A permittee shall:
 - (1) Report to the Director plans for or information about any activity that has occurred or will occur that would constitute cause for modification or revocation of a permit under this Section 6.2.3; and
 - (2) Comply with the existing permit until it is modified or reissued.

6.2.4 Permit Conditions.

- (a) Industrial Wastewater Discharge Permits shall be subject to all provisions of this Ordinance, all other applicable regulations, and User charges and fees established in the Wastewater Utility Rate Ordinance. Permits shall contain the following:
 - (i) A statement that indicates the Industrial Wastewater Discharge Permit issuance date, expiration date and effective date;
 - (ii) A statement that the Industrial Wastewater Discharge Permit is nontransferable without prior notification to the Director in accordance with Section 6.2.7 of this Ordinance, and provisions for furnishing the new owner or operator with a copy of the existing Industrial Wastewater Discharge Permit;
 - (iii) Limits on the average and maximum Wastewater Constituents and Characteristics;

- (iv) Limits on average and maximum rate and time of Discharge or requirements for flow regulations and equalization;
- (v) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;
- (vi) Requirements for installation and maintenance of inspection and sampling facilities, and for providing entry for sampling and inspection;
- (vii) Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number and type of samples, and standards for tests and reporting, schedules;
- (viii) Requirements for submission of technical reports or Discharge reports;
- (ix) Requirements for maintaining, retaining and allowing access to facility records relating to Wastewater Discharge;
- (x) Requirements for notification to the Director of any new introduction or substantial change in the volume or character of the Wastewater Constituents or Characteristics being introduced into the POTW;
- (xi) Requirements for notification of spills, Slug Discharges or Upsets in accordance with Section 5.16.2 of this Ordinance, or other violations of this Ordinance;

- (xii) 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 6.3.5;
 - (xiii) 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; and
 - (xiv) Any grant of the monitoring waiver by the Director (Section 6.3.5) must be included as a condition in the User's permit or other control mechanism.
- (b) Industrial Wastewater Discharge Permits may contain the following:
- (i) Compliance schedules;
 - (ii) Requirements to develop and implement spill and Slug Discharge control plans in accordance with Section 5.16 of this Ordinance;
 - (iii) Requirements for installation, Operation and Maintenance of pollution control equipment; and
 - (iv) Other conditions as deemed appropriate by the Director to ensure compliance with local Ordinances and State and National Pretreatment Standards and Requirements.

6.2.5 Permit Duration

An Industrial Wastewater Discharge Permit shall be issued for any specified time period not exceeding five years. The User shall apply for permit renewal a minimum of 180 days prior to the expiration of the User's existing permit.

6.2.6 Continuation of Expired Permit

An expired Industrial Wastewater Discharge Permit will continue to be effective and enforceable until the permit is reissued if:

- (a) The permittee has submitted a complete permit application at least 180 days prior to the expiration date of the User's existing permit; and
- (b) The failure to reissue the permit, prior to expiration of the previous permit, is not due to any act or failure to act on the part of the permittee.

6.2.7 Permit Transfer

Industrial Wastewater Discharge Permits are issued to a specific User for a specific operation. A permit may be transferred to another Person by a permittee, without modification or revocation, if the following events occur:

- (a) Industrial Wastewater Discharge Permits may be transferred to a new owner only if the permittee gives at least 30-days' advance notice to the Director and the Director approves the Industrial Wastewater Discharge Permit transfer. The notice to the Director must include a written certification by the new owner which:
 - (i) States that the new owner has no immediate intent to change the facility's operations and processes;
 - (ii) Identifies the specific date on which the transfer is to occur;and

(iii) Acknowledges full responsibility for complying with the existing Industrial Wastewater Discharge Permit.

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

(b) Within 30 calendar days after receiving the transfer notification from the permittee the Director shall notify the current permittee and the transferee of the need to modify, revoke or terminate the permit. The Director may require that a new application be filed rather than agreeing to the transfer of the permit.

6.2.8 Permit Comment Period

The Control Authority shall provide for a 15 calendar day comment period prior to the issuance of an Industrial Wastewater Discharge Permit. A User may submit written comments to the Control Authority during this comment period setting forth all facts or reasons known to the User which may be relevant to a decision by the Control Authority on the permit requirements.

6.2.9 Records Retention

Records shall be retained and preserved by the User for a minimum period of three years from the time of their creation. This includes documentation associated with Best Management Practices established under Section 5.6 along with any additional records or information obtained pursuant to monitoring activities undertaken by the User. All records that pertain to matters which are the subject of any enforcement action or litigation shall be retained and preserved by

the User until all enforcement activities have concluded and all periods of limitations with respect to any and all appeals have expired. This period of retention shall also be extended when requested by the Director, the Control Authority, or the Approval Authority.

6.3 Reporting and Re-sampling Requirements

In addition to the notification and reporting requirements specified in Sections 5.16, 5.17, 5.22, 5.23 and 6.2, Industrial Users shall provide the following information and reports. All information and reporting requirements under this section shall be submitted in writing to the Director.

6.3.1 Self-Monitoring Reports

All SIUs shall submit all notices and self-monitoring reports that are deemed necessary by the Director to assess and assure compliance by SIUs with applicable Pretreatment Standards and Requirements. These reports shall be required according to the conditions specified in an SIU's Industrial Wastewater Discharge Permit and shall be accompanied by a certification statement that shall be signed as required in Section 6.2.2(c)(3).

(a) Re-sampling Requirement

If sampling performed by the SIU indicates a violation, the SIU shall notify the Director within 24 hours after becoming aware of the violation. The SIU shall repeat the sampling and analysis and submit the results of the repeat analysis to the Director within 30 calendar days after notification unless a shorter time is specified by the Director.

(b) Additional Self-Monitoring

If an SIU monitors any Pollutant more frequently than required by the Director, using procedures established by 40 C.F.R. § 136, the SIU shall include the results of this monitoring in the report.

6.3.2 Baseline Monitoring Report

Upon promulgation of a new or revised National Categorical Pretreatment Standard, all affected Industrial Users shall submit the following reports to the Director on forms provided by the Director;

- (a) Within 180 calendar days after the effective date of a Categorical Pretreatment Standard, Existing Sources subject to such Categorical Pretreatment Standards who are currently discharging to or scheduled to discharge to the POTW shall be required to submit a report containing the information listed in subparagraph (c) of this Section 6.3.2;
- (b) At least 90 calendar days prior to commencement of Discharge to the POTW, New Sources and sources that become Industrial Users subsequent to the promulgation of an applicable Categorical Pretreatment Standard shall be required to submit a report which contains the information listed in subparagraphs (c)(1) through (c)(5) of this Section 6.3.2. New Sources shall also be required to include in this report information on the method of Pretreatment the Industrial User intends to use to meet applicable Pretreatment Standards. New Sources shall give estimates of the information requested in subparagraphs (c)(4) and (c)(5) of this Section 6.3.2;
- (c) The Baseline Monitoring Report shall contain the following information:

- (1) Identifying information. The Industrial User shall submit the name and address of the facility including the name of the owner and operator;
- (2) Applicable permits. The Industrial User shall submit a list of any other environmental control permits held by the owner or operator of the facility;
- (3) Description of operations. The Industrial User shall submit a brief description of the nature, average rate of production, and Standard Industrial Classification of the operations performed by such Industrial User. This description should include a schematic process diagram, which indicates points of Discharge to the POTW from the regulated processes;
- (4) Flow measurement. The Industrial User shall submit information showing the measured average and maximum daily flow, in gallons per day, to the POTW from each regulated process stream;
- (5) Measurement of pollutants.
 - (i) The Industrial User shall identify the Pretreatment Standards applicable to each regulated process;
 - (ii) In addition, the Industrial User shall submit the results of required sampling and analysis identifying the nature and concentration or mass of regulated Pollutants in the Discharge from each regulated process. Where required, both the daily maximum and the average concentration or

mass shall be reported. The sample shall be representative of daily operations;

- (iii) A minimum of four Grab Sampling events shall occur. All samples shall be properly collected and analyzed for pH, cyanide, phenol, FOG, and volatile organics;
- (iv) For all other Pollutants at facilities in which historical sampling data do not exist, a minimum of four 24-hour composite samples shall be obtained through flow-proportional composite sampling techniques. The Director may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is not feasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four Grab Samples over a period greater than one hour, where the Industrial User demonstrates that this will provide a representative sample of the Effluent being Discharged. At facilities for which historical sampling data are available, the Director may authorize a lower minimum;
- (iv) The Industrial User shall take a minimum of one representative sample to compile data necessary to comply with the requirements of subparagraph (c)(5) of this Section 6.3.2;

- (v) Samples shall be taken immediately downstream from a Pretreatment facility if such a facility exists or immediately downstream from the regulated process if no Pretreatment facility exists;
- (vi) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 C.F.R § 136, as amended. Where 40 C.F.R § 136, does not contain sampling or analytical techniques for the Pollutant in question, or where the Director determines that the sampling and analytical techniques described in 40 C.F.R § 136, are inappropriate for the Pollutant in question, then sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, approved by the Director;
- (vii) 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; and
- (viii) The Baseline Monitoring 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.

- (6) Certification statement. The Industrial User shall submit a statement certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis. If Pretreatment Standards are not being met, then the Certification Statement shall specify whether additional O & M or additional Pretreatment is required for the Industrial User to meet the Pretreatment Standards and Requirements;
- (7) Compliance schedule. If additional Pretreatment or O & M are required to meet the Pretreatment Standards, the Industrial User shall provide a compliance schedule by which the Industrial User will provide such additional Pretreatment or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. The conditions contained in Section 5.18 shall apply to the schedule required by this section; and
- (8) Other. Industrial Users shall submit any other information required as listed in 40 C.F.R. §§ 403.12(b)(1) - (7).

6.3.3 Ninety-Day Compliance Report

Within 90 calendar 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 Industrial

User subject to such Pretreatment Standards and Pretreatment Requirements shall submit to the Director a report containing the information described in Section 6.3.2 of this Ordinance. For Industrial Users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 C.F.R. § 403.6 (c), this report shall contain a reasonable measure of the Industrial User's long-term production rate. For all other Industrial 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 Industrial User's actual quantity of product produced during the appropriate sampling period.

6.3.4 Periodic Compliance Reports

Except as specified in Section 6.3.5, all Significant Industrial Users must, at a frequency determined by the Director, submit no less than twice per year 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 SIU.

6.3.5 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.

6.3.6 Signatory Requirements and Report Certification

- (a) All reports required by this Ordinance and other information requested by the Director shall be submitted with the certification statement in Section 6.2.2(c)(3) of this Ordinance and properly signed by a person described in Section 6.2.2(c)(1) or (2), or by a Duly Authorized Representative.
- (b) The signatory may designate a Duly Authorized Representative provided:
 - (1) The authorization is made in writing by the Person described in Section 6.2.2(c)(1) or (2);
 - (2) The authorization specifies either the individual or a position having responsibility for the overall operation of the facility from which the industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
 - (3) The written authorization is submitted to the Director.
- (c) The Director shall be notified in writing prior to or together with any reports or information to be signed by a new signatory or authorized representative, if the signatory under Section 6.3.4(a) or authorization under Section 6.3.4(b) is no longer accurate.

6.4 Sampling Waiver

Pursuant to 40 C.F.R. § 403.12 and this Ordinance, the Director 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. This authorization is subject to the following conditions:

- 6.4.1 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;
- 6.4.2 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 6.2.2(a)19;
- 6.4.3 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;
- 6.4.4 Pursuant to 40 C.F.R. § 403.6, the request for a monitoring waiver must be signed in accordance with Section 6.3.8, and include the certification statement in Section 6.2.2(c)(3);
- 6.4.5 Non-detectable sample results may be used only as a demonstration that a Pollutant is not present if the EPA approved method from 40 C.F.R. § 136

with the lowest minimum detection level for that Pollutant was used in the analysis;

- 6.4.6 Any grant of the monitoring waiver by the Director must be included as a condition in the SIU'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;
- 6.4.7 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 6.3.7, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User;
- 6.4.8 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 6.3.4, or other more frequent monitoring requirements, and notify the Director; and
- 6.4.9 This provision does not supersede certification processes and requirements established in Categorical Pretreatment Standards, except as otherwise specified in the Categorical Pretreatment Standard.
- 6.4.10 Certification of Pollutants Not Present

Users that have an approved monitoring waiver based on Section 6.4 must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream 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 the activities at the facility since filing of the last periodic report under Section 6.3.4 of this Ordinance.

6.5 Monitoring Facilities

6.5.1 Measurement of SIU Industrial Waste Flow

Any Significant Industrial User who is discharging Industrial Waste to the POTW shall provide to the Director independent access and the means and facilities for observing, measuring and sampling such Industrial Waste. The Director shall have full access at all times to the SIU’s monitoring facility or facilities to conduct tests on quality and quantity of Effluent. The volume or quantity of Industrial Waste discharged by any Industrial User into the POTW may be determined by one or more of the following methods:

- (a) If the entire volume of water used by an SIU is purchased from the City, then the volume of water purchased from the City shall be considered to be the volume of Industrial Waste discharged;
- (b) If the entire volume of water used by an SIU is purchased from the City and the volume of water used for industrial purposes is less than the volume of water purchased from the City, the SIU shall either install and maintain a meter on the Industrial Waste line; or use another method

approved by the Director to determine the volume of Industrial Waste discharged; or

(c) If any SIU now discharging or proposing to discharge Industrial Waste to the POTW and does not purchase its entire water supply from the City, then the volume or quantity of Industrial Wastes discharged by an SIU shall be determined as follows:

(1) The SIU shall install and maintain a meter or meters on all private water supply lines. The volume of Industrial Waste discharged shall be considered the sum of the volume of water purchased from the City and the volume of water metered from the private water supply; or

(2) The SIU shall install and maintain a meter on the Industrial Waste line to determine the volume of Industrial Waste discharged.

6.5.2 Measurement of Other Non-residential Flow

If any other non-residential User now discharging or proposing to discharge to the POTW and does not purchase its entire water supply from the City, then the volume or quantity of Wastewater discharged by the non-residential User may be determined by one of the methods listed in Section 6.4.1.

6.5.3 Location of Monitoring Facilities

The Director may require an Industrial User to provide and operate, at its own expense, monitoring facilities to allow inspection, sampling and flow measurement of the User's Industrial Waste. The monitoring facility shall be located on the Industrial User's premises unless the Director determines that such

a location would be impractical for purposes of providing independent and unscheduled monitoring activities or causes undue hardship on the Industrial User. In such cases, with the Director's approval, the monitoring facility may be constructed in the public right-of-way or easement, in an unobstructed location. The location of the monitoring facility shall provide ample room in or near the monitoring facility to allow accurate sampling and preparation of samples for analysis. The Industrial User shall maintain its monitoring facilities and sampling and measuring equipment in safe and proper operating condition. Whether constructed on public or private property, the monitoring facilities shall be provided in accordance with the Director's requirements and all applicable local construction standards and specifications. Such facilities shall be constructed and maintained in a manner to enable the Director to perform independent monitoring activities.

6.6 Effluent Meters

Industrial and commercial Users may be required to use a Utility approved effluent meter to determine the flow of wastewater entering the POTW f.

6.6.1 It is the responsibility of the User to allow the Utility to access the meter.

6.6.2 It is the responsibility of the User to maintain the meter in working order. If the meter is not maintained in proper working order (e.g. chronic failure), the User shall be required to install a new meter. Chronic failure shall be defined as failure at least three times in a 24-month period.

6.6.3 Failure to repair or replace a meter within 30 days or as approved by the Director shall subject the User to penalties as outlined in the Enforcement Response Plan Penalty Matrix.

6.6.4 Meters shall be installed at a location that allows access to the meter from floor level, without the use of a ladder or other similar device and that will not subject the device to excessive heat or freezing.

6.7 Inspection and Sampling

6.7.1 Inspection

(a) The Director may inspect the facilities of any User to ascertain whether the User is complying with the provisions and requirements of this Ordinance. For Categorical Industrial Users, the Director shall perform a minimum of one scheduled and one unscheduled inspection each calendar year. For all non-categorical industrial users, the Director may perform a minimum of one inspection each calendar year.

(b) Upon request by the Director, Users shall allow the Director and the Approval Authority access to all parts of the premises within a reasonable time frame as determined by the Director for the purpose of ensuring compliance with this Ordinance. The Director and the Approval Authority shall have the right to enter onto a User's property to set up such devices as are necessary to sample, inspect, monitor or meter operations of the User to determine compliance with this Ordinance. Where a User has security measures in force which would require proper identification and clearance before entry onto its property, the User shall make necessary

arrangements so that upon presentation of suitable identification, the Director and the Approval Authority shall be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

- (c) Unreasonable delays in allowing the Director and the Approval Authority access to the User's premises shall be a violation of this Ordinance.

6.7.2 Search Warrants

The Director may obtain a search warrant from a court of competent jurisdiction when the Director has been refused access to a building, structure, property, or any part thereof. The Director must be able to demonstrate that a User is violating any provision of this Ordinance or as part of a routine inspection and sampling program, needs to inspect or sample to verify compliance with this Ordinance or to protect the overall public health, safety and welfare of the community.

6.8 Sample Analyses

- (a) All analyses, including sampling results submitted in support of any application, reports, evidence, or required by any permit or order, shall be performed in accordance with the techniques prescribed in 40 C.F.R. § 136, as amended. If 40 C.F.R. § 136 does not contain sampling or analytical techniques for the Pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures approved by the Director.
- (b) All Wastewater samples must be representative of the User's Discharge. Wastewater monitoring and flow measurement facilities shall be calibrated, 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.

Section 7.0 Wastewater Monitoring

7.1 Surveillance of Industrial Users

7.1.1 City Monitoring

- (a) The Director shall perform a minimum of two unscheduled monitoring events each calendar year at each SIU.
- (b) The Director may perform Demand Monitoring at an Industrial User when warranted in the opinion of the Director in response to a known or suspected violation discovered in a self-monitoring report, routine sampling trip or by public complaint. Demand Monitoring may consist of site inspection, records review and sampling as determined by the Director.
- (c) The Director may monitor and analyze the Wastewater of any SIU on a daily basis when just cause exists.

7.1.2 Self-monitoring

- (a) An SIU shall perform self-monitoring as established by all of the following:
 - (1) As required by the National Categorical Pretreatment Standards;
 - (2) As established in an SIU's Industrial Wastewater Discharge Permit; and

- (3) More frequently if required by the Director, based upon the potential degree of adverse impact to the POTW, variability in types or amounts of Pollutants discharged, concentration or Loading of Compatible Pollutants, or to ascertain continued compliance.
- (b) Upon request, the Director may allow an SIU to use one of the City's monitoring events in lieu of one of the required SIU self-monitoring events. This is limited to once per calendar year.
- (c) Each SIU shall measure and record the following data in accordance with the schedule established in the SIU's permit and the sampling and analytical requirements in Section 6.6 of this Ordinance:
 - (1) Total daily Wastewater discharge (gallons per day);
 - (2) Concentration of each Wastewater Constituent or Characteristic specified in the permit; and
 - (3) Total daily discharge (Loading) of each Wastewater Constituent or Characteristic specified in the permit.
- (d) If at any time the rate of Wastewater discharge, or concentration or mass of a Wastewater Constituent or Characteristic, exceeds the maximum limits in the permit, the Director shall be notified as required in Section 5.23

7.1.3 Monitoring Equipment

- (a) All metering or monitoring equipment installed by the SIU shall be installed, maintained and calibrated in accordance with the manufacturers' recommended standards for the specific equipment.
- (b) The Director may install additional metering or monitoring equipment during a surveillance period in or near the SIU's monitoring facility.
- (c) In the event of continuing exceedance of an SIU's Effluent Limitations or frequent fluctuations in an SIU's Wastewater Constituents and Characteristics, the Director may require an SIU to install additional monitoring equipment which may include, but not be limited to, a device for continuously and automatically measuring and recording flow and/or a device for automatically taking discrete and composite samples of Wastewater.

7.2 Surveillance Charge

The Director shall have the authority to charge any User a Surveillance charge. The Surveillance charge may be based on, but not limited to, the cost of sample collection, analysis and reporting as well as site inspection and records evaluation costs. Surveillance charges are listed in the Wastewater Utility Rate Ordinance.

Section 8.0 Enforcement

8.1 Administrative Enforcement

8.1.1 Notice of Violation with Compliance Order

The Director shall issue a Notice of Violation with Compliance Order to a User if the Director discovers a violation of this Ordinance, a permit issued hereunder, or any other applicable pretreatment requirement. The Notice of Violation shall

indicate to the User the exact nature of the violation. The Compliance Order shall identify the ordinance violated, describe the violation and shall direct the User to immediately cease committing a violation of this Ordinance.

8.1.2 User Response

The User shall respond in writing to the Notice of Violation with Compliance Order within 15 calendar days of receipt of notification. Lack of response shall be considered a violation of this Ordinance.

8.1.3 Consent Order

A Consent Order is an order issued by the Board and agreed upon by the User which incorporates the terms and conditions as follows:

- (a) A compliance schedule;
- (b) The monetary penalty as listed in the Enforcement Response Plan, if any;
- (c) A plan for remediating the violation; and
- (d) Authorized signatures of the representative of the User and the Board.

8.1.4 Cease and Desist Order

A Cease and Desist Order may be issued when the Director finds that a User has violated, or continues to violate, any permit, provision of this ordinance, order issued hereunder, or other pretreatment requirement. The Director may also issue a Cease and Desist Order if the User has failed to meet the terms and conditions of an issued Consent Order or if the User's past violations are likely to reoccur. The Director may issue such an order directing the User to cease all such violations. The User shall immediately comply with all requirements and take such appropriate remedial or preventive action as may be needed to properly

address a continuing or threatened violation. That may include halting operations 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.

8.1.5 Show Cause

(a) Order to Show Cause

The Board may issue a written Order to Show Cause to any User who violates or continues to violate any provision of this Ordinance, a permit, order issued hereunder, or any other applicable Pretreatment Requirement. The Order to Show Cause shall be served personally or by registered or certified mail or equivalent, return receipt requested, upon the User or the User's Duly Authorized Representative. The Order to Show Cause shall describe the noncompliance and the proposed enforcement action. The Order to Show Cause shall also specify the place where a written response shall be filed and the date by which it shall be filed. In addition, the Order to Show Cause should indicate that:

- (1) If the allegations of the Order to Show Cause are not disputed; the written response should include a statement that the User intends to comply with the Order. The response shall address each violation in the Order to Show Cause and describe the steps that the User intends to take to address the violation. The Director shall review the User's written response and shall notify the User within 30 calendar days after the written response is received whether the response is satisfactory. If the Director determines that the written

response is satisfactory, the matter shall not be scheduled for hearing. However, if the Director determines that the written response is unsatisfactory, then the matter shall be scheduled for a hearing before the Board. Failure to respond shall be a violation of this Ordinance.

- (2) If the allegations of the Order to Show Cause are disputed, the User shall submit a written request for a hearing before the Board. The President of the Board shall then issue a notice setting forth the date, time and place of the hearing and shall serve the notice upon the User in the same manner as prescribed for service of the Order to Show Cause.

(b) Hearing before the Board

The Board shall conduct the hearing at a regularly scheduled Board meeting or at any other time acceptable to the Board. The Board:

- (1) May request the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing; and
- (2) Shall take the evidence.

(c) Issuance of Orders

After the Board reviews the evidence, it may issue an order to the User directing that Wastewater service will be discontinued unless adequate treatment facilities or devices have been installed by a specified date. The Board may also order Wastewater service to be discontinued unless

existing treatment facilities and devices are properly operated. Further orders and directives may be issued. If the User violates the Board's order, the Board may also take any other appropriate legal action.

8.1.6 Termination of Service

Any User who violates or continues to violate any provision of this Ordinance, a permit, or order issued hereunder or any other applicable Pretreatment Standard or Requirement may be subject to suspension or termination of Wastewater service.

- (a) Any User notified by the City of a suspension or termination of Wastewater service or suspension or revocation of a permit shall immediately stop or eliminate all Discharges. In an emergency, the order to cease Discharge may be given by telephone, followed by written confirmation of such notice. In non-emergency situations, an administrative order may be used to suspend or terminate Wastewater service. If the User fails to comply with the suspension or termination order, the City shall take all steps as deemed necessary to halt the Discharge including immediate severance of the Wastewater connection.
- (b) The Board shall not reinstate the permit or the Wastewater service until proof of the elimination of the non-complying discharge and any costs for disconnection and reconnection of Wastewater service have been paid by the User.

8.1.7 Publication of Violations

The Director shall, at least annually, publish in the newspaper of general circulation, having the largest circulation within the City, a list of the Users that

were in Significant Noncompliance at any time during the previous 12 months.

8.2 Legal Action

8.2.1 A User shall be liable for any and all damages, losses and expenses sustained by the City as a result of noncompliance. The Corporation Counsel may commence an action for appropriate legal and equitable relief in the appropriate court of Elkhart County in order to obtain remedies for noncompliance by the User.

8.2.2 When the Director finds that a User has violated any terms of their permit, this Ordinance, any order issued hereunder, or any other Pretreatment Requirement, the City may petition the court for the issuance of a temporary or permanent injunction. The injunction would compel the specific performance of the User to be in compliance with the permit, order, or other requirement imposed by this Ordinance. The Director may also seek such other action as is appropriate for legal 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.

8.3 Affirmative Defenses

8.3.1 Prohibited Discharge Standards

A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions of this Ordinance, if the User 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.

8.3.2 Bypass

- (a) For the purposes of this Section:
 - (1) Bypass means the intentional diversion of waste streams 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, the User shall submit prior notice to the Director, at least 10 calendar 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 24 hours from the time the User becomes aware of the Bypass. A written submission shall also be provided within five calendar 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.
- (d) Bypass is prohibited, and the Director may take an enforcement action against a User for a Bypass, unless
- (1) Bypass was unavoidable to prevent loss of life, personal injury, or Severe Property Damage;
 - (2) 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

- (3) The User submitted notices as required under paragraph 8.3.2(c) of this section.
- (e) 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 8.3.2(b), (c) and (d) of this Section.

8.3.3 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) A User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, the following facts:
 - (1) An Upset occurred and the User can identify the cause of the Upset;
 - (2) The facility was at the time being operated in a prudent manner and in compliance with applicable O & M procedures; and

- (3) The User has submitted the following information to the Director within 24 hours of becoming aware of the Upset. If this information is provided orally, a written submission must be provided within five calendar days:
- (i) A description of the Indirect Discharge and cause of noncompliance;
 - (ii) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - (iii) Steps being taken or planned to reduce, eliminate, and prevent reoccurrence 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 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.

Section 9.0 Penalties/Costs

9.1 Effluent Limitation Penalties.

Any User, who is found to have violated any Effluent Limitation set forth in this Ordinance, contained in the User's Industrial Wastewater Discharge permit or found to cause the POTW to violate any Effluent Limitation in the POTW's permit shall be fined no more than \$2,500.00 for each offense. Each day on which a violation occurs or continues may be deemed a separate and distinct offense.

9.2 Administrative Penalties

Any User who is found to have non-effluent limit violations under this Ordinance or any orders, rules, regulations and permits issued hereunder, may be fined no more than \$2,500.00 for each offense. Each day on which a violation occurs or continues may be deemed a separate and distinct offense.

9.3 Falsifying Information

Any Person who makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this Ordinance or Industrial Wastewater Discharge Permit, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required under this Ordinance, shall, be punished by a fine of not more than \$2,500.00 for each violation.

9.4 Determination of Fines and Penalties

A list of all applicable fines shall be found in the Utility's Enforcement Response Plan. In addition to the penalties provided herein, the Utility may recover reasonable attorneys' fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit

at law against the person found to have violated this Ordinance or the orders, rules, regulations, and permits issued hereunder.

Section 10.0 Severability

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

Section 11.0 Conflict

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

Section 12.0 Effective Date

This Ordinance shall be in full force from and after its passage and approval, according to law.

ORDAINED this 1st day of July, 2019.

Brian Dickerson
President of the Common Council

ATTEST:

Sue M. Beadle, City Clerk

Presented to the Mayor by me this _____ day of July, 2019.

Sue M. Beadle, City Clerk

Approved by me this _____ day of July, 2019.

Timothy Neese, Mayor

ATTEST:

Sue M. Beadle, City Clerk