

# Proposed Legislation - Pretreatment Ordinance

AN ORDINANCE TO AMEND PART 1, CHAPTER 70, ARTICLE III, DIVISION 2 TO THE JONESBORO MUNICIPAL CODE SETTING FORTH UNIFORM REQUIREMENTS FOR USERS OF THE PUBLICLY OWNED TREATMENT WORKS FOR THE CITY OF JONESBORO, ARKANSAS AND ENABLING THE CITY OF JONESBORO, ARKANSAS TO COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS REQUIRED BY THE CLEAN WATER ACT (33 USC §1251 ET. SEQ.) AND THE GENERAL PRETREATMENT REGULATIONS (40 CFR PART 403); THE PROVISION OF PENALTIES, ADMINISTRATIVE FINES, SURCHARGES AND JUDICIAL ENFORCEMENT FOR THE VIOLATION THEREOF; THE REPEALMENT OF ALL ORDINANCES IN CONFLICT THEREWITH; AND FOR ALL OTHER PURPOSES PERTAINING TO THE PUBLICLY OWNED TREATMENT WORKS WITHIN THE JURISDICTION OF THE CITY OF JONESBORO, ARKANSAS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:

## SECTION 70-81 – TITLE

That Part 1, Chapter 70, Article III, Division 2, Sewer Use and Treatment – Sewer Use – Pretreatment Ordinance of the Jonesboro Municipal Code is hereby amended to read as follows:

## SECTION 70-82 – TABLE OF CONTENTS

This Ordinance shall be known as the "Pretreatment Ordinance."

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SECTION 70-83 – PURPOSE AND POLICY

This Ordinance sets forth uniform requirements for Industrial Users of the wastewater collection system and Publicly Owned Treatment Works of the City Water and Light Plant of the City of Jonesboro, Arkansas (CWL), herein also known as the POTW, and enables CWL to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code (U.S.C.) 1251 *et seq.*) and General Pretreatment Regulations set forth in 40 CFR 403. The objectives of this Ordinance are:

- (1) To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- (2) To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- (3) To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- (4) To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
- (5) To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
- (6) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW;
- (7) To enable CWL to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the POTW is subject; and
- (8) To encourage waste minimization, recycling, reuse, and Best Management Practices (BMPs) through pollution prevention activities.

This Ordinance shall apply to all Industrial Users of the wastewater collection system and POTW. This Ordinance authorizes the issuance of individual or general discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires Industrial User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

SECTION 70-84 – ADMINISTRATION

- (1) The CWL Board of Directors (Board) shall establish such fees for sewer service, connections, monitoring, inspections, permits, and surveillance as are necessary to properly administer the Industrial Pretreatment Program for Jonesboro, Arkansas, and to maintain and operate the POTW. The CWL Board may, in compliance with A.C.A. 8-4-103 (g) *et seq.*, as may be amended from time to time, authorize any judicial enforcement remedy to be taken by CWL against any Industrial User in violation of this Ordinance.
- (2) Except as otherwise provided herein, the CWL Board of Directors (Board), through its Manager, shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted to or duties imposed upon the Manager may be delegated by the Manager to other CWL personnel.

SECTION 70-85 – DEFINITIONS

Unless a provision explicitly states otherwise, the following terms and phrases as used in this Ordinance shall have the meanings hereinafter designated.

- (1) Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*
- (2) Administrative Fine. A monetary fine for violations of this Ordinance as set forth in Section 70-95 (6) of this Ordinance.
- (3) Approval Authority. The Director of the Arkansas Department of Environmental Quality (ADEQ).
- (4) Authorized or Duly Approved Representative of the Industrial User.
  - (A) If the Industrial User is a corporation or limited liability company, the Authorized Representative shall be as follows:
    - i) The president, secretary, treasurer, a vice-president, member, or manager of the corporation or company in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation or company; or
    - ii) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual or general 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 Industrial User is a partnership or sole proprietorship, an Authorized Representative shall be a general partner or proprietor, respectively.
  - (C) If the Industrial User is a Federal, State, or local governmental facility, an Authorized Representative shall be a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or the Authorized Representative's designee.
  - (D) The Authorized Representatives described above may designate a Duly Approved 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 Manager of CWL.
- (5) Authorized Representative of the Manager. The person appointed or authorized by the Manager to carry out designated responsibilities or functions of the Manager.
- (6) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions set forth in 40 CFR 403.5 (a) (1) and listed in Section 70-87 (1-3) of this Ordinance. BMPs may include treatment requirements, operating procedures, and practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw materials storage.
- (7) Biochemical Oxygen Demand (BOD<sub>5</sub>). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure for five (5) days at 20° centigrade, typically expressed in terms of concentration [milligrams per liter (mg/L)] or an equivalent mass loading based on flow [pounds per day (lb/day)].
- (8) Board of Directors (Board). The duly elected or appointed Board of Directors of CWL.
- (9) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the U. S. Environmental Protection Agency (EPA) in accordance with Sections 307 (b)

and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of Industrial Users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

- (10) Categorical Industrial User (CIU). An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.
- (11) Chemical Oxygen Demand (COD). The measure of the oxygen-consuming capacity of inorganic and organic matter present in a water or wastewater, typically expressed in terms of concentration (mg/L) or an equivalent mass loading based on flow (lb/day). The amount of oxygen consumed from a chemical oxidant in a specific test is not differentiated between stable and unstable organic matter and thus does not necessarily directly correlate with biochemical oxygen demand (BOD<sub>5</sub>).
- (12) City. The City of Jonesboro, in the County of Craighead, within the State of Arkansas; or the City Council of the City of Jonesboro.
- (13) City Water and Light Plant of the City of Jonesboro, Arkansas (CWL). The Municipal Improvement District (District), a Publicly Owned Entity, organized and existing under the provisions of Arkansas Code Annotated (A.C.A.) 14-218-101 *et. seq.*, as may be amended from time to time, as a consolidated Municipal Improvement District to own and operate the electric power, water, and wastewater utilities in the City.
- (14) Color. The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.
- (15) Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
- (16) Control Authority. The Board of Directors of CWL acting through its Manager, who is charged with certain duties and responsibilities by this Ordinance, or the Authorized Representative of the Manager. The Control Authority shall have jurisdiction over the POTW's Industrial Users.
- (17) Council or City Council. The duly elected or appointed governing body of the City.
- (18) Daily Discharge. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.
- (19) Daily Maximum Limit. 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.
- (20) District. City Water and Light Plant of the City of Jonesboro, Arkansas (CWL).
- (21) Environmental Protection Agency or EPA. The U. S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director, the Regional Administration, or duly authorized official of said agency.
- (22) Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed Categorical Pretreatment Standards which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act; any source of discharge that is not a "New Source."
- (23) Excessive Biochemical Oxygen Demand (BOD<sub>5</sub>). A BOD<sub>5</sub> concentration in excess of 250 mg/L.
- (24) Excessive fats, oils, and grease (FOG). A FOG concentration in excess of 100 mg/L.

- (25) Excessive Total Suspended Solids (TSS). A total suspended solids concentration in excess of 250 mg/L.
- (26) Garbage. Domestic and commercial solid wastes from the preparation, cooking, and dispensing of food and from the handling, storage, and sale of produce.
- (27) Grab Sample. A sample that is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (28) Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-domestic source.
- (29) Industrial User (IU) or User. A source of indirect discharge.
- (30) Industrial Wastes. The liquid wastes from industrial manufacturing processes, trade, or business, distinct from sanitary sewage.
- (31) Instantaneous Discharge Limit. The maximum concentration or equivalent loading of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.
- (32) Interceptor. A device designed to skim, settle, or otherwise remove fats, oils, grease, sand, flammable wastes, or other harmful substances.
- (33) Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources:
- (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 CWL's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory and/or regulatory provisions or permits issued thereunder or more stringent State or local regulations:
    - i) Section 405 of the Clean Water Act;
    - ii) The Solid Waste Disposal Act (SWDA), including Title II, commonly referred to as the Resource Conservation and Recovery Act (RCRA);
    - iii) Any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA;
    - iv) The Clean Air Act;
    - v) The Toxic Substances Control Act; and
    - vi) The Marine Protection, Research, and Sanctuaries Act.
- (34) Lower Explosive Limit. The minimum concentration in air at which a gas or vapor will flame with an ignition source.
- (35) Local Limit or Technically Based Local Limit (TBL). Specific discharge limits developed and enforced by CWL upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5 (a) (1) and (b).
- (36) Manager. The person appointed by the Board of Directors of CWL to manage and supervise the electric, water, and wastewater utilities of the District and charged with certain duties and responsibilities by this Ordinance, or the Authorized Representative of the Manager.
- (37) Mayor. The Mayor of the City.
- (38) Medical Waste. Wastes generated by the medical industry, including but not limited to isolation wastes,

infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, any object or substance that is capable of transmitting infectious organisms, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

- (39) Milligrams per Liter (mg/L). The equivalent amount as parts per million (ppm) and is a weight-to-volume ratio. A milligram per liter value multiplied by a factor of 8.34 is equivalent to pounds per million gallons of water.
- (40) Monthly Average. The sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.
- (41) Monthly Average Limit. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during the calendar month divided by the number of “daily discharges” measured during that month.
- (42) National Pollutant Discharge Elimination System (NPDES) Permit. A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).
- (43) New Source.
  - (A) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307 (c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that Section, provided that:
    - i) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
    - ii) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or
    - iii) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the Existing Source should be considered.
  - (B) Construction on a site at which an Existing Source is located results in a modification of the Existing Source rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of Section 70-85 (43) (A) (ii) or (iii) of this Ordinance but otherwise alters, replaces, or adds to the existing process or production equipment.
  - (C) Construction of a New Source as defined under this paragraph shall be considered to have commenced if the Owner or operator has:
    - i) Begun or caused to begin as part of a continuous on-site construction program:
      - a) Any placement, assembly, or installation of facilities or equipment; or
      - b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities necessary for the placement, assembly, or installation of New Source facilities or equipment; or
    - ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in the New Source’s operation within a reasonable time. Options to purchase or contracts which may be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies shall not constitute a contractual obligation under this paragraph.

- (44) Noncontact Cooling Water. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (45) Normal Domestic Wastewater. Wastewater generated from residential uses and discharged into the POTW. Such wastewater shall contain an average concentration of BOD<sub>5</sub> not more than 250 mg/L; TSS not more than 250 mg/L; and fats, oils, and grease not more than 100 mg/L.
- (46) Owner. The person or persons who own any interest in the structure or property to which such ownership relates.
- (47) Objectionable Waste. Any wastes that can harm either the sewers, sewer treatment processes or equipment, have an adverse effect on the receiving stream or otherwise endanger life, health, or property, or constitutes a nuisance.
- (48) Pass Through. A discharge which exits the POTW into waters of the State 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 CWL's NPDES permit, including an increase in the magnitude or duration of a violation.
- (49) Penalty. A monetary fine for violations of this Ordinance, as set forth in Section 70-96.
- (50) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.
- (51) pH. A measure of the acidity or alkalinity of a substance, expressed in standard units (S.U.).
- (52) Pollutant. Including but not limited to any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharge equipment, rock, sand, cellar dirt, agricultural industrial wastes, and certain characteristics and constituents of wastewater including but not limited to pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, and odor.
- (53) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless specifically allowed by an applicable Pretreatment Standard.
- (54) Pretreatment Requirements or Requirements. Any substantive or procedural requirement related to pretreatment imposed on an Industrial User, other than a Pretreatment Standard.
- (55) Pretreatment Standards or Standards. The prohibited discharge standards, Categorical Pretreatment Standards, and Technically Based Local Limits (TBLLs).
- (56) Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances, as set forth in Section 70-87 (1) of this Ordinance.
- (57) Publicly Owned Treatment Works (POTW). A "treatment works" as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by CWL. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes and any conveyances which convey wastewater to a treatment plant.
- (58) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

- (59) Sewage. Human excrement and gray water (household showers, dish washing operations, etc.).
- (60) Significant Industrial User (SIU).
- (A) A User subject to Categorical Pretreatment Standards; ~~and~~ or
- (B) A User that:
- i) Discharges an average of 25,000 gpd or more of process wastewater to the POTW, excluding sanitary, noncontact, cooling, and boiler blowdown wastewater; or
  - ii) Contributes a process waste stream which contributes five percent (5%) or more of the average dry weather hydraulic or organic capacity of the treatment plant; or
  - iii) Is designated as a Significant Industrial User by CWL 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.
- (61) Slug Load or Slug. Any discharge at a flow rate or concentration which may cause a violation of the prohibited discharge standards set forth in Section 70-87 (1) of this Ordinance or any discharge of a non-routine, episodic nature, including but not limited to an accidental spill/slug or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or may in any other way violate CWL's Pretreatment Regulations, Local Limits, or NPDES permit conditions.
- (62) Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the U. S. Office of Management and Budget.
- (63) Standard Methods. The examination and analytical procedures set forth in the latest edition at the time of analysis of Standard Methods for the Examination of Water and Wastewater as prepared, approved, and published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation.
- (64) Stormwater. Any flow occurring during or following any form of natural precipitation, and resulting therefrom, including snowmelt.
- (65) Surcharge. A sewer service fee, as set forth in Section 70-99, charged in addition to the normal monthly sewer rate, which may be assessed to those Users who discharge wastewater to the POTW.
- (66) Surface Water. Any watercourse, pond, stream, ditch, lake, or other body of water occurring on the earth's surface.
- (67) Suspended Solids or Total Suspended Solids (TSS). The total suspended matter that floats on the surface of or is suspended in water, wastewater, or other liquids, and is removable by laboratory filtering.
- (68) To Discharge. To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of wastewater; or to allow, permit, or suffer any of these acts or omissions.
- (69) Toxic Pollutant. Any one of the pollutants or combination thereof, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. 1317) of the Act.
- (70) Treatment Plant Effluent or Effluent. Any discharge of wastewater from the POTW into the waters of the State.
- (71) User or Industrial User (IU). A source of indirect discharge.
- (72) Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, contributed to the POTW.

- (73) Wastewater Treatment Plant (WWTP) or Treatment Plant. That portion of the POTW designed to provide treatment of sewage and industrial waste.
- (74) Watercourse. A channel in which a flow of water occurs, either continuously or intermittently.
- (75) Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon any state or any portion thereof.

The word “shall” is construed as mandatory.

The word “may” is construed as permissive or discretionary.

The use of the singular shall be construed to include the plural and the plural shall include the singular, as indicated by the usage context.

#### SECTION 70-86 – ABBREVIATIONS

The following abbreviations shall have the designated meanings:

- ADEQ - Arkansas Department of Environmental Quality
- BMP - Best Management Practice
- BOD<sub>5</sub> - Biochemical Oxygen Demand
- CFR - *Code of Federal Regulations*
- CIU - Categorical Industrial User
- COD - Chemical Oxygen Demand
- CWL - City Water and Light Plant of the City of Jonesboro, Arkansas
- EPA - U. S. Environmental Protection Agency
- FOG - Fats, oils, and grease
- gpd - Gallons per Day
- IU - Industrial User
- L - Liter
- lb/day - Pounds a Day
- mg - Milligrams
- mg/L - Milligrams per Liter
- NOV - Notice of Violation
- NPDES - National Pollutant Discharge Elimination System
- O&M - Operation and Maintenance
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classifications
- SIU - Significant Industrial User
- S.U. - Standard Units
- SWDA - Solid Waste Disposal Act (42 U.S.C. 6901, *et seq.*)

- TBL - Technically Based Local Limits
- TSS - Total Suspended Solids
- USC - United States Code
- WWTP - Wastewater Treatment Plant

SECTION 70-87 – REGULATION OF DISCHARGES

(1) Prohibited Discharge Standards

(A) General Prohibitions

No Industrial User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all Industrial Users of the POTW, whether or not they are subject to Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or Requirements.

(B) Specific Prohibitions

No Industrial User may contribute or cause to be introduced the following pollutants, substances, or wastewater to the POTW:

- i) Pollutants which create a fire or explosive hazard in the municipal wastewater collection system or POTW, including but not limited to waste streams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
- ii) Any wastewater having a pH less than 6.0 S.U. or more than 11.5 S.U., or otherwise causing corrosive structural damage to the POTW or equipment or endangering CWL personnel;
- iii) Solid or viscous substances in amounts which will cause obstruction of the flow to and within the POTW or result in interference, but in no case solids greater than one half (1/2) inch (1.27 centimeters) in any dimension;
- iv) Any wastewater containing pollutants, including oxygen demanding pollutants (BOD<sub>5</sub>, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW or any wastewater treatment or sludge process, or which will constitute a hazard to humans;
- v) Any wastewater having a temperature greater than 150°F (65°C) or that which will inhibit biological activity in the treatment plant and result in interference, but in no case wastewater which causes the temperature at the introduction into the WWTP to exceed 104°F (40°C);
- vi) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
- vii) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- viii) Any trucked or hauled pollutants, except at discharge points designated by the Manager in accordance with Section 70-88 (5) of this Ordinance;
- ix) Any noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent human entry into the sewers for maintenance and repair;
- x) Any wastewater which imparts color that cannot be removed by the treatment process such as but not limited to dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating CWL's NPDES permit;
- xi) Wastewater containing any radioactive wastes or isotopes except as specifically

approved by the Manager in an individual industrial wastewater discharge permit and in compliance with applicable State or Federal regulations;

- xii) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Manager;
- xiii) Any sludges, screenings, or other residues from the pretreatment of industrial wastes;
- xiv) Any medical wastes, except as specifically authorized by the Manager in an individual or general industrial wastewater discharge permit;
- xv) Any wastewater causing the treatment plant's effluent to fail a toxicity test;
- xvi) Any wastes containing detergents, surface-active agents, surfactants, or other substances that may cause excessive foaming or scum in the POTW;
- xvii) Any wastes containing fats, oils, or grease (FOG) of animal, vegetable, or mineral origin exceeding one hundred (100) mg/L, except as specifically authorized by the Manager; and
- xviii) Any liquids, solids, or gases which by reason of nature or quantity are or may be sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. Wastewater causing two (2) readings on an explosions hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 5% or any single reading over 10% of the Lower Explosive Limit of the meter.

Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that could facilitate discharge to the POTW. All floor drains located in process or material storage areas must discharge to the Industrial User's pretreatment facility, if applicable (see Section 70-88 of this Ordinance), before connecting with the POTW.

(2) Federal Categorical Pretreatment Standards

The National Categorical Pretreatment Standards set forth in 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

- (A) Where a Categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6 (c).
- (B) When the limits in a Categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Manager 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.
- (C) When wastewater subject to a Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the Manager may impose an alternate limit based on the combined waste stream formula in 40 CFR 403.6 (e).
- (D) An Industrial User may obtain a variance from a Categorical Pretreatment Standard if the User can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to the User's discharge are fundamentally different from the factors considered by EPA when developing the Categorical Pretreatment Standard.
- (E) When a Categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an IU may request that CWL convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Manager. To be eligible for equivalent mass limits established by CWL, the IU must meet all of the requirements set forth in 40 CFR 403.6 (c) (5) (i) and below.
  - i) The IU must:

- a) Employ or demonstrate that it will employ water conservation methods and technologies that substantially reduce water use during the term of the Industrial User's control mechanism;
  - 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 waste streams, 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 IU's request for equivalent mass limits.
- ii) An IU 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 Manager whenever production rates are expected to vary by more than 20% from baseline production rates determined by 40 CFR 403.6 (c) (5) (i) (C) and as described in 70-87 (2) (E) (i) (c) in this Section. Upon notification of a revised production rate, the Manager must reassess the equivalent mass limits 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 70-87 (2) (E) (i) (a) of this Section.
- iii) When developing equivalent mass limits, the Manager:
- a) Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the IU by the concentration-based daily maximum and monthly average standard for the applicable Categorical Pretreatment Standard and the appropriate unit conversion factor;
  - b) Will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility, upon notification of a revised production rate;
  - c) May retain the same equivalent mass limit in subsequent control mechanism terms if the IU'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 70-87 (7) of this Ordinance. The IU must also be in compliance with Section 70-98 (3) of this Ordinance regarding the prohibition of bypass.
- (F) Once incorporated into a User's permit, the IU must comply with the equivalent limitations developed in this Section in lieu of the promulgated Categorical Standards from which the equivalent limitations were derived.
- (G) Many Categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average,

limitations. Where such Categorical Pretreatment Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

- (H) Any IU operating under a control mechanism incorporating equivalent mass limitations calculated from a production based standard shall notify the Manager within two (2) 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 Manager of such anticipated change will be required to meet the mass limits in its control mechanism that were based on the original estimate of the long-term average production rate.

(3) Local Limits

To protect against pass through and interference, no Industrial User may discharge or cause to be discharged into the POTW any wastewater pollutant concentration exceeding the Technically Based Local Limits (TBLLs) developed from time to time by the Manager in his or her discretion or as required by CWL's NPDES permits, authorized by 40 CFR 403.5 (c), and approved by the Approval Authority.

When deemed appropriate by the Manager in his or her sole discretion, specific discharge permit limitations or BMPs will be developed based on criteria approved by the Manager from time to time. These TBLLs may be performance based or based on best professional judgment, as determined by the Manager in his or her sole discretion on a case-by-case basis. The Manager may also develop BMPs in individual or general wastewater discharge permits to implement specific pollutant limitations. Such BMPs shall be considered Local Limits and Pretreatment Standards.

TBLLs shall apply at the "monitoring point" described in the individual or general industrial wastewater discharge permits. All concentration limits for metals shall be in terms of "total" metals unless otherwise indicated. At the discretion of the Manager, mass limitations may be imposed in addition to or in place of concentration based TBLLs. When new Local Limits are implemented or revised, CWL will provide individual notice to parties who have requested such notice and an opportunity to respond, as set forth by 40 CFR 403.5 (c) (3).

(4) Most Stringent Requirement or Standard to Apply

The most stringent of Federal, State of Arkansas, or local Requirements or Standards shall govern as the applicable Pretreatment Requirement or Standard.

(5) Special Agreement

The Board may enter into special agreements with Industrial Users, setting special terms under which the Users may discharge to the POTW. In no case shall a special agreement waive compliance with a Pretreatment Standard or Requirement.

(6) Dilution

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

## SECTION 70-88 – PRETREATMENT OF WASTEWATER

(1) Pretreatment Facilities

Industrial Users shall provide necessary wastewater pretreatment as required to comply with this Ordinance and shall achieve compliance with all Categorical Pretreatment Standards, Local Limits, and the prohibitions

set out in Section 70-87 (1) of this Ordinance, within the time limitations specified by the EPA, the State, or CWL, whichever is more stringent. Facilities required to pretreat wastewater to a level acceptable to CWL shall be provided, operated, and maintained at the Industrial User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Manager for review and shall be approved by the Manager before construction of the facility. The review of such plans and operating procedures will in no way relieve the Industrial User from the responsibility of modifying the facility as necessary to produce a discharge acceptable to CWL under the provisions of this Ordinance. Any subsequent changes in pretreatment facilities or method of operation shall be reported to and accepted by the Manager prior to the User's initiation of said changes.

(2) Additional Pretreatment Measures

- (A) Whenever deemed reasonably necessary for proper operation of the POTW, the Manager may require Industrial Users to restrict discharge of wastewater during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate non-industrial sewage waste streams from industrial waste streams, and other measures as may be necessary to protect the POTW and determine the Industrial User's compliance with the requirements of this Ordinance.
- (B) Whenever deemed reasonably necessary for proper operation of the POTW, the Manager may require Industrial Users to install and maintain, on the User's property and at the User's expense, a suitable storage and flow control facility to ensure equalization of flow. The Manager may require that such flow equalization control facilities be equipped with alarms and controls for metering and regulating the rate of discharge, the regulation of which shall be directed only by the Manager or the Authorized Representative of the Manager. An individual or general wastewater discharge permit may be issued solely for flow equalization.
- (C) FOG and sand interceptors shall be provided when, in the opinion of the Manager, they are necessary for the proper handling of wastewater containing excessive amounts of fats, oils, grease, flammable wastes, sand, and/or other objectionable wastes, except such interceptors shall not be required for residential use.

All interceptors shall: be of the type and capacity approved by the Manager; be located and installed as approved by the Manager; comply with all applicable Federal, State, and local Pretreatment Standards or Requirements, including local Ordinances promulgated under the Jonesboro Municipal Code or as otherwise specified by the Manager; be located to be easily accessible for cleaning and inspection; and be continuously operated and maintained in a satisfactory and effective operating state as defined by the Manager.

Such interceptors shall be inspected, cleaned, and repaired by the User at own expense in accordance with all applicable Federal, State, and local Pretreatment Standards or Requirements, including local Ordinances promulgated under the Jonesboro Municipal Code or as otherwise specified by the Manager.

Storage, handling, transportation, and disposal of all wastes generated from interceptors shall be performed in accordance with all applicable Federal, State, local regulations, and policies adopted by CWL that pertain to that type and/or class of waste.

- (D) Industrial Users with the potential to discharge flammable substances may be required by the Manager to install and maintain an approved combustible gas detection meter.

(3) Accidental Discharge/ Slug Control Plans

The Manager shall evaluate whether each SIU needs an accidental or slug discharge control plan or other action to control slug discharges. The Manager may require any Industrial User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control slug discharges. An accidental discharge or slug discharge control plan shall address, at a minimum, the following:

- (A) Description of discharge practices, including non-routine batch discharges;
- (B) Description of stored chemicals;
- (C) Procedures for immediately notifying CWL of any accidental or slug discharge. Such notification must also be given for any discharge which would violate any of the prohibited discharges in Section 70-87 of this Ordinance; and
- (D) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

All SIUs shall notify CWL immediately of any changes at its facility affecting potential for a slug discharge.

(4) Tenant Responsibility

Where an Owner of property leases premises to any other person as a tenant under any rental or lease agreement and if either the Owner or the tenant is an Industrial User, either or both parties may be held responsible for compliance with the provisions of this Ordinance.

(5) Hauled Wastewater

- (A) Septic tank waste may be accepted into the POTW, at the sole discretion of CWL, at a receiving structure designated by the Manager and at such times established by the Manager, provided such wastes do not violate Section 70-87 of this Ordinance or any other requirements established or adopted by the Board. The Manager may require septic tank waste haulers to obtain an individual or general wastewater discharge permit from CWL for individual vehicles to use such facilities. The Manager shall have authority to prohibit the disposal of such wastes if, in the Manager's sole discretion, its disposal would interfere with the treatment plant operation. Septic waste haulers shall also be subject to all other applicable Sections of this Ordinance.
- (B) The discharge of hauled industrial waste into the POTW requires prior approval by CWL. Industrial waste may be accepted into the POTW, at the sole discretion of CWL, at a receiving structure designated by the Manager and at such times established by the Manager, provided such wastes do not violate Section 70-87 of this Ordinance or any other requirements established or adopted by the Board. The Manager may require industrial waste haulers to obtain an individual or general wastewater discharge permit from CWL for individual vehicles to use such facilities. The Manager shall have authority to prohibit the disposal of such wastes if, in the Manager's sole discretion, its disposal would interfere with the treatment plant operation. Industrial waste haulers shall also be subject to all other applicable Sections of the Jonesboro Municipal Code.
- (C) Industrial and septic waste haulers may discharge loads only at locations designated by the Manager. No load may be discharged without prior consent of the Manager. The Manager may collect samples of each hauled load to ensure compliance with applicable Standards. The Manager may require waste haulers to provide a waste analysis of any load prior to discharge.
- (D) Industrial and septic waste haulers shall provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler; permit number, if applicable; vehicle identification; names and addresses of sources of waste; and volume and characteristics of waste. For hauled industrial wastes, the form shall also identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.
- (E) Fees for dumping septage and industrial waste shall be established by the Manager as part of the Pretreatment charges and fee system, as authorized in Section 70-100 (1).

## SECTION 70-89 – WASTEWATER DISCHARGE PERMIT ELIGIBILITY

### (1) Wastewater Survey

When requested by the Manager, all Industrial Users must submit information on the nature and characteristics of its wastewater by completing a wastewater survey prior to commencing discharge. The Manager is authorized to prepare a special form for this purpose and may periodically require Industrial Users to update this information. Failure to complete this survey or update the information as required shall be considered a violation of this Ordinance and reasonable grounds for terminating water and wastewater service to the Industrial User.

### (2) Wastewater Discharge Permit Requirements

(A) It shall be unlawful for any SIU to discharge wastewater into the POTW without first obtaining an individual or general industrial wastewater discharge permit from the Manager with the exception that an SIU that has filed a timely application pursuant to Section 70-89 (3) of this Ordinance may continue to discharge for the time period specified therein. Any violation of the terms and conditions of an individual or general wastewater discharge permit shall be deemed a violation of this Ordinance and subjects the individual or general wastewater discharge permittee to the provisions in Section 70-95 through Section 70-97 of this Ordinance. Obtaining an individual or general wastewater discharge permit does not relieve a permittee of its obligation to comply with all applicable Federal and State Pretreatment Standards or Requirements.

(B) The Manager may require other Industrial Users, including liquid waste haulers, to obtain individual or general industrial wastewater discharge permits as necessary to carry out the purposes of this Ordinance.

### (3) Individual or General Wastewater Discharge Permitting: Existing Connections

Within ninety (90) days after notification, any Industrial User required to obtain an individual or general wastewater discharge permit that is discharging wastewater into the POTW and wishes to continue such discharges in the future shall apply to the Manager for an individual or general wastewater discharge permit in accordance with Section 70-89 (5) of this Ordinance. The Manager will furnish the User an appropriate permit application package. Existing Users shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) days after notification of the requirement to obtain an individual or general wastewater discharge permit, except in accordance with an individual or general wastewater discharge permit issued by the Manager.

### (4) Individual or General Wastewater Discharge Permitting: New Connections

Any User required to obtain an individual or general wastewater discharge permit proposing to begin or recommence discharging industrial wastes into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this individual or general wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence, unless the ninety (90) day period is otherwise waived by the Manager.

### (5) Individual or General Wastewater Discharge Permit Application Contents

All Users required to obtain an individual or general wastewater discharge permit must submit a permit application. All or part of the following information may be requested by the Manager as part of a permit application:

(A) Identifying Information.

- i) The name and address of the facility, including the name of the operator and Owners;
- ii) Contact information, description of activities, facilities, and plant production processes on the premises;

(B) Environmental Permits.

A list of any environmental control permits held by or for the facility;

(C) Description of Operations.

- i) A brief description of the nature and average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications (SIC) of the operation(s) carried out by the Industrial User. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes;
- ii) Types of wastes generated and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
- iii) Number and type of employees and proposed or actual hours of operation;
- iv) Type and amount of raw materials processed (average and maximum per day);
- v) Site plans; floor plans; mechanical and plumbing plans; details to show all sewers, floor drains, and appurtenances by size, location, and elevation; and all points of discharge;

(D) Time and duration of discharges;

(E) The location for monitoring all wastes covered by the permit;

(F) Flow Measurement.

Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula, as set out in 40 CFR 403.6 (e);

(G) 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 and/or mass, where required by the Standard or by the Manager, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations or mass shall be reported where required. The sample shall be representative of daily operations;
- iii) In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Manager or the applicable Standards to determine compliance with the Standard;
- iv) Sampling and analysis shall be pursuant with Section 70-91 (10) and (11) of this Ordinance;

(H) Any request to be covered by a general permit based on Section 70-89 (8) of this Ordinance; and

(I) Any other information as may be deemed necessary by the Manager to evaluate the individual or general wastewater discharge permit application.

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

(6) Application Signatories and Certification

(A) All individual or general wastewater discharge permit applications, Industrial User reports, and certification statements must contain the certification statement in Section 70-91 (14) (A) of this Ordinance and be signed by an Authorized Representative of the Industrial User.

(B) If the designation of an Authorized Representative of the Industrial User is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the User, a new written authorization satisfying the requirements of this Section must be submitted to the Manager prior to or together with any reports to be signed by an Authorized Representative of the Industrial User.

(7) Individual or General Wastewater Discharge Permit Decisions

The Manager will evaluate the data furnished by the Industrial User and reserves the right to require additional information. Within ninety (90) days of receipt of a complete individual or general wastewater discharge permit application, the Manager will determine whether or not to issue an individual or general wastewater discharge permit to the applicant. The Manager may deny any application for an individual or general wastewater discharge permit where it reasonably appears that the applicant's proposed wastewater, if discharged into the POTW, would interfere with the operation of the POTW or otherwise be incompatible with the POTW; interfere with reuse of sludge from the POTW; or pass through the POTW, inadequately treated, into the receiving waters of the State.

(8) Wastewater Discharge Permitting: General Permits

(A) At the discretion of the Manager, general permits may be used to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:

- i) Involve the same or substantially similar types of operations;
- ii) Discharge the same types of wastes;
- iii) Require the same effluent limitations;
- iv) Require the same or similar monitoring; and
- v) In the opinion of the Manager, are more appropriately controlled under a general permit than under individual wastewater discharge permits.

(B) To be covered by the general permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general permit, and any other information the Manager deems appropriate.

(C) The Manager will retain a copy of the general permit, documentation to support Manager's determination that a specific SIU meets the criteria in Section 70-89 (8) (A) (1-5) and applicable State regulations, and a copy of the User's written request for coverage for three (3) years after the expiration of the general permit.

(D) The Manager may not control an SIU through a general permit where the facility is subject to production-based Categorical Pretreatment Standards or Categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the combined waste stream formula set out in 40 CFR 403.6 (e) and Section 70-87 (2) (c) of this Ordinance.

SECTION 70-90 – WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

(1) Individual or General Wastewater Discharge Permit Duration

An individual or general wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual or general wastewater discharge permit may be issued for a period less than five (5) years, at the sole discretion of the Manager. Each individual or general wastewater discharge permit will indicate a specific expiration date.

(2) Individual or General Wastewater Discharge Permit Contents

An individual or general wastewater discharge permit shall include such conditions as are deemed to be reasonably necessary by the Manager to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and prevent damage to the POTW.

- (A) Individual or general wastewater discharge permits shall contain the following conditions:
  - i) A statement that indicates the individual or general wastewater discharge permit issuance date, expiration date, and effective date;
  - ii) A statement that the individual or general wastewater discharge permit is non-transferable without prior notification to and approval from the Manager in accordance with Section 70-90 (5) of this Ordinance, and provisions for furnishing the new Owner or operator with a copy of the existing wastewater discharge permit;
  - iii) Effluent limits, including BMPs, which are applicable to the User and based on applicable Standards in Federal, State, and local law;
  - iv) Self-monitoring, sampling, reporting, notification, and recordkeeping requirements. These requirements shall include an identification of pollutants or BMPs to be monitored; sampling location; sampling frequency; and sample type based on Federal, State, and local law;
  - v) Statement of applicable civil and criminal penalties and administrative fines for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such a schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law; and
  - vi) Requirements to control slug discharges, if determined by CWL to be necessary.
- (B) Individual or general wastewater discharge permits may contain, but need not be limited to, the following:
  - i) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
  - ii) Limits on the instantaneous, daily, and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;
  - iii) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;
  - iv) Development and implementation of spill/slug control plans or other special conditions, including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;
  - v) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
  - vi) The unit charge or schedule of Industrial User charges and fees for the management of the wastewater discharged to the POTW;
  - vii) Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;
  - viii) A statement that compliance with the individual or general wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual or general wastewater discharge permit;
  - ix) Development and implementation of Best Management Practices; and
  - x) Any other conditions as deemed appropriate by the Manager to ensure compliance with this Ordinance, and State and Federal laws, rules, and regulations.

(3) Wastewater Discharge Permit Process and Appeals

(A) Permit Appeals

Any person, including the Industrial User, may petition the Manager to reconsider the terms of an individual or general wastewater discharge permit within thirty (30) days of its issuance.

- i) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- ii) In its petition, the appealing party must indicate the individual or general wastewater discharge permit provision(s) objected to, the reasons for this objection, and the alternative condition to the provision objected to, if any, sought to place in the individual or general wastewater discharge permit.
- iii) The effectiveness of the individual or general wastewater discharge permit shall not be stayed pending the appeal.
- iv) If the Manager fails to act within sixty (60) days from receipt of the petition, a request for reconsideration shall be considered denied. Decisions not to reconsider an individual or general wastewater discharge permit, issue an individual or general wastewater discharge permit, or modify an individual or general wastewater discharge permit shall be considered the final administrative action for purposes of judicial review.
- v) Aggrieved parties seeking judicial review of the final administrative individual or general wastewater discharge permit decisions must do so by filing a complaint within a court of competent jurisdiction.

(4) Permit Modification

- (A) The Manager may modify an individual or general wastewater discharge permit at any time for good cause including, but not limited to, the following reasons:
  - i) To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
  - ii) To address significant alterations or additions to the Industrial User's operation, processes, or wastewater volume or character since the time of the individual or general wastewater discharge permit issuance;
  - iii) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  - iv) Information indicating that the permitted discharge poses a threat to the POTW, POTW personnel, beneficial sludge use, or the receiving waters;
  - v) Violation of any terms or conditions of the individual or general wastewater discharge permit;
  - vi) Misrepresentations or failure to fully disclose all relevant facts in the individual or general wastewater discharge permit application or in any required reporting;
  - vii) Revision of Categorical Pretreatment Standards pursuant to 40 CFR 403.13;
  - viii) To correct typographical or other clerical errors in the individual or general wastewater discharge permit; or
  - ix) To reflect a transfer of the facility ownership and/or operation to a new Owner/operator, where requested in accordance with Section 70-90 (5) of this Ordinance.

The filing of a request by the permittee for an individual or general wastewater discharge permit modification does not stay any existing individual or general wastewater discharge permit condition.

(5) Individual or General Wastewater Discharge Permit Transfer

Individual or general wastewater discharge permits may be reassigned or transferred to a new Owner and/or operator only if the permittee gives at least thirty (30) days advance notice to the Manager, unless the thirty (30) day period is otherwise waived by the Manager, and the Manager approves the individual or general wastewater discharge permit transfer. The notice to the Manager must include a written certification from the

new Owner and/or operator which:

- (A) States that the new Owner and/or operator has no immediate intent to change the facility's operations and processes;
- (B) Identifies the specific date on which the transfer is to occur; and
- (C) Assumes full responsibility for complying with the existing individual or general wastewater discharge permit.

Failure to provide advance notice of a transfer renders the existing individual or general wastewater discharge permit void on the date of facility transfer.

(6) Individual or General Wastewater Discharge Permit Revocation

Individual or general wastewater discharge permits may be revoked by the Manager for the following reasons:

- (A) Failure to notify the Manager of significant changes to the wastewater prior to the changed discharge;
- (B) Failure to provide prior notification to the Manager of changed conditions pursuant to Section 70-91 (5) of this Ordinance;
- (C) Misrepresentation or failures to fully disclose all relevant facts in the individual or general wastewater discharge permit application;
- (D) Falsification of self-monitoring reports and/or certification statements;
- (E) Tampering with monitoring equipment;
- (F) Refusal to allow the Manager timely access to the facility premises and records;
- (G) Failure to meet effluent limitations;
- (H) Failure to pay fines;
- (I) Failure to pay sewer charges, including any surcharges or capacity charges;
- (J) Failure to meet compliance schedules;
- (K) Failure to complete a wastewater survey or the individual or general wastewater discharge permit application, or failure to update such information as required by this Ordinance;
- (L) Failure to provide advance notice of the transfer of a permitted facility; or
- (M) Violation of any Pretreatment Standard or Requirement, any terms of the individual or general wastewater discharge permit, or this Ordinance.

Unless the transfer is approved in accordance with Section 70-91 (5) of this Ordinance, individual or general wastewater discharge permits shall be void upon transfer of facility ownership or following a period of ninety (90) days of disuse or cessation of operations at the facility. All existing individual or general wastewater discharge permits issued by CWL shall be superseded by the issuance of a new individual or general wastewater discharge permit to that User for the facility.

(7) Facility Closure Notification

A minimum of ninety (90) days before the closure of a facility or a period of facility disuse of ninety (90) days or more, the IU shall notify CWL in writing of the anticipated date of closure, as well as the anticipated date of resumption of facility use, if any.

(8) Wastewater Discharge Permit Reissuance

A User with an expiring individual or general wastewater discharge permit shall apply for the reissuance of an individual or general wastewater discharge permit by submitting a complete individual or general wastewater discharge permit application, acceptable to the Manager in accordance with Section 70-87 (5) of this

Ordinance, a minimum of sixty (60) days prior to the expiration of the Industrial User's existing individual or general wastewater discharge permit.

## SECTION 70-91 – REPORTING REQUIREMENTS

### (1) Baseline Monitoring Reports

- (A) Within either 180 days after the effective date of a Categorical Pretreatment Standard or 180 days after the final administrative decision on a category determination under 40 CFR 403.6 (a) (4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards currently discharging to or scheduled to discharge to the POTW shall be required to submit to the Manager a report which contains all of the information listed in Section 70-91 (1) (B) of this Ordinance. At least ninety (90) days prior to commencement of discharge, New Sources and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable Categorical Standard shall be required to submit to the Manager a report which contains the information listed in Section 70-91 (1) (B) of this Ordinance. A New Source shall also be required to report the intended method of pretreatment to meet applicable Pretreatment Standards and give estimates of anticipated flow and quantity of discharged pollutants.
- (B) The Industrial User shall submit the information required by this Section including:
- i) Identifying Information.  
The name and address of the facility, including the name of the operator and Owners;
  - ii) Environmental Permits.  
A list of any environmental control permits held by or for the facility;
  - iii) Description of Operations.  
A brief description of the nature and average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications (SIC) of the operation(s) carried out by the Industrial User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes;
  - iv) Flow Measurement.  
Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula, as set out in 40 CFR 403.6 (e);
  - v) Measurement of Pollutants.
    - a) The Categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources;
    - b) The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the Standard or by the Manager, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations or mass shall be reported where required. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 70-91 (10) of this Ordinance;
    - c) In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by the Manager or the applicable Standard to determine compliance with the Standard;
    - d) Sampling shall be pursuant with Section 70-91 (11) of this document;

- e) The User shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this Section;
  - f) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the User should measure the appropriate flows and concentrations necessary to allow use of the combined waste stream formula set forth in 40 CFR 403.6 (e) to evaluate compliance with the Pretreatment Standards. When an alternative concentration or mass limit has been calculated in accordance with 40 CFR 403.6 (e), this adjusted limit, along with supporting data, shall be submitted to the Control Authority;
  - g) The Manager 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
  - h) The baseline report shall indicate the time, date, and place of sampling and methods of analysis and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- vi) Compliance Certification.  
A statement reviewed by the Authorized Representative of the Industrial User, as defined in Section 70-85 (4) of this Ordinance, and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.
  - vii) Compliance Schedule.  
If additional O&M and/or pretreatment will be required to meet the Pretreatment Standards, the shortest schedule by which the Industrial User will provide such additional pretreatment and/or O&M must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 70-91 (2) of this Ordinance.
  - viii) Signature and Report Certification.  
All baseline-monitoring reports must be certified in accordance with Section 70-91 (14) (A) of this Ordinance and signed by an Authorized Representative of the Industrial User as defined in Section 70-85 (4) of this Ordinance.

(2) Compliance Schedule Progress Report

The following conditions shall apply to the schedule required by Section 70-91 (1) (B) (vii) of this Ordinance:

- (A) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards. Such events include hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation.
- (B) No increment referred to above shall exceed nine (9) months.
- (C) The Industrial User shall submit a progress report to the Manager no later than 14 days following each date in the schedule and the final date of compliance including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and the steps being taken by the Industrial User to return to the established schedule.
- (D) In no event shall more than nine (9) months elapse between each progress report to the Manager.

(3) Report on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable Categorical Pretreatment Standards or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any Industrial User subject to such Pretreatment Standards and Requirements shall submit to the Manager a report containing the information described in Section 70-91 (1) (B) (iv-v) of this Ordinance. For Industrial Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 70-87 (2) of this Ordinance and 40 CFR 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 another measure of operation), this report shall include the Industrial User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 70-91 (14) (A) of this Ordinance. All sampling shall be done in conformance with Section 70-91 (11) of this Ordinance.

(4) Periodic Compliance Reports

- (A) All SIUs subject to a Pretreatment Standard must, at a frequency determined by the Manager but in no case less than twice per year [in June and December at a minimum (or on dates specified), as required by 40 CFR 403.12 (e) (1)], submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such 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 BMP (or pollution prevention alternative) the SIU shall submit documentation required by CWL or the Pretreatment Standard necessary to determine the SIU's compliance status. At the discretion of CWL and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., CWL may modify the months during which the above reports are to be submitted.
- (B) All periodic compliance reports must be signed and certified in accordance with Section 70-91 (14) (A) of this Ordinance.
- (C) All wastewater samples must be representative of the SIU's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall not be grounds for the Industrial User to claim that sample results are unrepresentative of its discharge.
- (D) If an Industrial User subject to the reporting requirement set forth in this Section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Manager by the procedures prescribed in Section 70-91 (10) and (11) of this Ordinance, the results of this additional monitoring shall be included in the report.

(5) Report of Changed Conditions

Each Industrial User is required to notify the Manager of any planned significant changes, as defined below, to the Industrial User's operations or system which might alter the nature, quality, or volume of its wastewater at least sixty (60) days before the change.

- (A) The Manager may require the Industrial User to submit such information as deemed necessary to evaluate the changed condition, including the submission of an individual or general wastewater discharge permit application under Section 70-89 (5) of this Ordinance.
- (B) The Manager may issue an individual or general wastewater discharge permit under Section 70-90 (8) or modify an existing individual or general wastewater discharge permit under Section 70-90 (4) of this Ordinance.
- (C) No Industrial User shall implement the planned changed conditions(s) until and unless the Manager has responded to the Industrial User's notice.
- (D) For purposes of this requirement, flows in excess of the limitations set forth in the SIU's individual or

general industrial wastewater discharge permit and/or the discharge of any previously unreported pollutants shall be deemed significant changes.

(6) Reports of Potential Problems

- (A) In the case of any discharge including but not limited to accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or a slug load which may cause potential problems for the POTW [including a violation of the prohibited discharge standards in Section 70-87 (1) (A-B) of this Ordinance], it is the responsibility of the Industrial User to immediately telephone and notify the Manager of the incident. This notification shall include the location of discharge, type of waste, concentration, and volume, if known, and corrective actions taken by the Industrial User.
- (B) Within five (5) days following such discharge, the Industrial User shall, unless waived by the Manager submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, civil penalties, or other liability which may be imposed by this Ordinance.
- (C) Failure to notify the Manager in accordance with the provisions of Section 70-91 (6) (A) of this Ordinance shall be deemed a separate violation of this Ordinance.
- (D) SIUs are required to notify the Manager immediately of any changes at its facility affecting potential for a slug discharge.
- (E) A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place, advising employees whom to call in the event of a discharge described in Section 70-91 (6) (A) of this Ordinance. Employers shall ensure that all employees who may cause or suffer such a discharge to occur are advised of the emergency notification procedure.

(7) Reports from Unpermitted Industrial Users

All Industrial Users not required to obtain an individual or general wastewater discharge permit shall provide appropriate reports to the Manager as may be required by the Manager.

(8) Notice of Violation / Repeat Sampling and Reporting

If sampling performed by an Industrial User indicates a violation, the Industrial User must notify the Manager within 24 hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis and submit the results of the repeat analysis to CWL within 30 days after becoming aware of the violation. Where CWL performs compliance monitoring in lieu of the IU, CWL will perform the repeat sampling and analysis unless CWL notifies the User of the violation and requires the User to perform the repeat analysis. Repeat sampling shall not be required if:

- i) CWL performs sampling of the Industrial User's wastewater discharge at least once a month; or
- ii) CWL performs compliance monitoring, which indicates compliance, between the time that the initial sampling was conducted and when the Industrial User or CWL receives the results of the initial sampling which indicates a permit violation.

(9) Notification of the Discharge of Hazardous Waste

- (A) Any Industrial User who commences or causes the commencement of the discharge of hazardous waste shall notify the Manager, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be classified as a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste (as set forth in 40 CFR Part 261), the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the Industrial User discharges more than one hundred (100) kilograms of such waste per calendar month to the

POTW, the notification shall also contain the following information to the extent known and readily available to the Industrial User:

- i) An identification of the hazardous constituents contained in the wastes;
  - ii) An estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month; and
  - iii) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted pursuant to Section 70-91 (5) of this Ordinance. The notification requirement in this Section does not apply to pollutants already reported under the self-monitoring requirements of Sections 70-91 (1), (3), and (4) of this Ordinance.
- (B) Industrial Users discharging or causing the discharge of hazardous waste are exempt from the requirements of paragraph (A) of this Section during any calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30 (d) and 261.33 (e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30 (d) and 261.33 (e), requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.
- (C) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the Manager, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
- (D) In the case of any notification made under this Section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (E) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Ordinance, a permit issued thereunder, or any applicable Federal or State law.

(10) Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of an individual or general wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable Categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures approved by the Manager or approved by the Approval Authority.

(11) Sample Collection

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

- (A) Except as indicated in Section 70-91 (11) (B) and (C) of this Ordinance, the Industrial User must collect wastewater samples using 24-hour flow-proportional composite collection techniques. Where time-proportional or grab sampling is authorized by the Manager, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: cyanide, total phenol, and sulfide samples may be

composited in the laboratory or in the field; volatile organics and FOG samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by CWL, as appropriate. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

- (B) Samples for FOG; temperature; pH; cyanide; total phenols; sulfides; and volatile organic compounds must be obtained using grab collection techniques.
- (C) For sampling required in support of baseline monitoring and 90-day compliance reports required by Sections 70-91 (1) and 70-91 (3) of this Ordinance [40 CFR 403.12 (b) and (d)], a minimum of four (4) grab samples must be used for pH; cyanide; total phenols; FOG; sulfides; and volatile organic compounds for facilities for which historical sampling data does not exist. For facilities for which historical sampling data is available, the Manager may authorize a lower minimum of grab samples. For sampling required in support of periodic or continued compliance reports and reports from IUs not subject to Categorical Pretreatment Standards, as required by Sections 70-91 (4) and 70-91 (7) of this Ordinance [40 CFR 403.12 (e) and (h)], the IU shall be required by the Manager to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(12) Date of Receipt of Reports

Written reports will be deemed to have been submitted on the date post-marked. For reports that are not mailed, postage prepaid, into a mail facility serviced by the U. S. Postal Service, the date of submission shall be deemed the date of receipt of the report by the Manager.

(13) Recordkeeping

Industrial Users subject to the reporting requirements of this Ordinance shall retain and make available for inspection and copying, all records and information required to be retained under this Ordinance, including that obtained pursuant to any monitoring activities required by this Ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with BMPs established under Section 70-87 (3) of this Ordinance. Records shall include the date, exact place, method, and time of sampling; the name of the person(s) taking the samples; the dates analyses were performed; the names of the person(s) performing the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any enforcement action concerning compliance with this Ordinance or where the Industrial User has been specifically notified of a longer retention period by the Manager.

(14) Certification Statements

(A) Certification of Permit Applications and User Reports

The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 70-89 (6) of this Ordinance; Users submitting baseline monitoring reports under Section 70-91 (1) (B) (viii) of this Ordinance; Users submitting reports on compliance with the Categorical Pretreatment Standard deadlines under Section 70-91 (3) of this Ordinance; and Users submitting periodic compliance reports required by Section 70-91 (4) (A-D) of this Ordinance. The following certification statement must be signed by an Authorized Representative of the Industrial User as defined in Section 70-85 (4) of this Ordinance:

*"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 gathered and evaluated 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."*

(15) Exceptions to Reporting Requirements

Where the POTW performs the required sampling and analysis in lieu of the Industrial User, the User may not be required to submit the compliance certification required in Section 70-91 (1) (B) (vi) and Section 70-91 (3) of this Ordinance. In addition, where the POTW itself collects all the information required for the report, including flow data, the Industrial User may not be required to submit the report required in Section 70-91 (1), Section 70-91 (3), and Section 70-91 (4) of this Ordinance.

SECTION 70-92 – COMPLIANCE MONITORING

(1) Right of Entry: Inspection and Sampling

The Manager shall have the right to enter the facilities of any Industrial User to ascertain whether the purpose of this Ordinance and any individual or general permit or order issued hereunder is being met and whether the Industrial User is complying with all requirements thereof. Industrial Users shall allow the Manager ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- (A) Where an Industrial User has security measures in force which require proper identification and clearance before entry into its premises, the Industrial User shall make necessary arrangements with its security personnel so that, upon presentation of suitable identification, personnel from CWL will be permitted to enter without delay, for the purposes of performing their specific responsibilities.
- (B) The Manager shall have the right to locate on the Industrial User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.
- (C) The Manager may require the Industrial User to install monitoring equipment as necessary and in accordance with Section 70-92 (3) of this Ordinance. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Industrial User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated regularly and periodically to ensure accuracy.
- (D) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the Industrial User at the written or verbal request of the Manager and shall not be replaced. The costs of clearing such access shall be borne by the Industrial User.
- (E) Unreasonable delays in allowing authorized CWL personnel access to the Industrial User's premises shall be a violation of this Ordinance.

(2) Search Warrants

If the Manager has been refused access to a building, structure, property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this Ordinance; or that there is the need to inspect and/or sample as part of a routine inspection and sampling program of CWL designed to verify compliance with this Ordinance or any permit or order issued hereunder; or to protect the overall public health, safety, and welfare of the community; then upon application by the Manager through the CWL attorney, the applicable Court of the City or of the State shall issue a search and/or seizure warrant, describing therein the specific location subject to the warrant. The warrant shall specify what may be searched and/or seized on the property described and shall contain any other information required by applicable law. Such warrant shall be served at reasonable hours by the Manager in the company of a uniformed police officer of the City or as otherwise allowed or required by applicable law. In the event of an emergency affecting public health and safety, the Manager may authorize inspections and sampling without the issuance of a warrant.

(3) Location of Monitoring Facility

The location of the monitoring facility shall provide ample room in or near the monitoring facility to allow accurate sampling and preparation of samples and analysis and, whether constructed on public or private property, should be provided in accordance with the Manager's requirements and all applicable local construction standards and specification. Such facilities shall be constructed and maintained in such a manner

as to enable the Manager to perform independent monitoring activities.

#### SECTION 70-93 – CONFIDENTIAL INFORMATION

Information and data pertaining to an Industrial User obtained from reports, surveys, individual or general wastewater discharge permit applications, individual or general wastewater discharge permits, monitoring programs, and from CWL's inspection and sampling activities shall be available to the public without restriction, unless the Industrial User specifically requests and is able to demonstrate to the satisfaction of the Manager that the release of such documents or data would divulge information, processes, and/or methods of production entitled to protection as trade secrets under applicable law. Subject to the provisions of the Arkansas Freedom of Information Act, when requested and demonstrated by the Industrial User that such information should be held confidential, that information or data which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

#### SECTION 70-94 – PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE

The Manager shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW, a list of the Industrial Users which, during the previous 12 months, were in Significant Noncompliance (as defined in this Section) with applicable Pretreatment Standards and Requirements. An SIU (or any IU in violation of paragraphs (3), (4), or (8) of this Section) is in Significant Noncompliance if the violation meets or exceeds one or more of the following:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter during a six-month period exceed by any magnitude a numeric Pretreatment Standard or Requirement, including instantaneous discharge limits, as defined by Section 70-87 of this Ordinance;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for each pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including instantaneous discharge limits, as defined by Section 70-87 of this Ordinance multiplied by the applicable criteria [1.4 for BOD, TSS, and FOG and 1.2 for all other pollutants except pH];
- (3) Any other violation of a Pretreatment Standard or Requirement, as defined by Section 70-87 of this Ordinance (daily maximum, long-term average, instantaneous discharge limit, or narrative standard) that the Manager determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of CWL personnel and/or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment or has resulted in the Manager exercising emergency authority to halt or prevent such a discharge;
- (5) Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in an individual or general wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within 45 days after the due date, any required reports, including baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation(s), which may include a violation of Best Management Practices, which the Manager determines will adversely affect the operation or implementation of the local pretreatment program.

## SECTION 70-95 – ADMINISTRATIVE ENFORCEMENT REMEDIES

### (1) Notification of Violation

Whenever the Manager or Authorized Representative of the Manager finds that any Industrial User has violated or is violating this Ordinance, an individual or general wastewater discharge permit, orders issued hereunder, or any other Pretreatment Standard or Requirement, the Manager or Authorized Representative of the Manager may serve upon said Industrial User a written Notice of Violation (NOV). Within 20 calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the Industrial User to the Manager, or if the original notice was served by the Authorized Representative of the Manager rather than the Manager, then to the Authorized Representative of the Manager. Submission of this plan in no way relieves the Industrial User of liability for any violations occurring before or after receipt of the NOV. Nothing in this Section shall limit the authority of the Manager or Authorized Representative of the Manager to take any action, including emergency or any other enforcement actions, without first issuing an NOV.

### (2) Consent Orders

The Manager or Authorized Representative of the Manager is hereby empowered to enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any Industrial User responsible for noncompliance. Such orders may include specific action to be taken by the Industrial User to correct the noncompliance within a time period also specified by the order. Consent Orders shall have the same force and effect as the administrative orders issued pursuant to Sections 70-95 (4) and (5) of this Ordinance and shall be judicially enforceable.

### (3) Show Cause Hearing

The Manager or Authorized Representative of the Manager may order any Industrial User which causes or contributes to violation(s) of this Ordinance, individual or general wastewater discharge permits, orders issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the Manager or Authorized Representative of the Manager and show cause why a proposed enforcement action should not be taken. Notice shall be served on the Industrial User specifying the time and place for the show cause hearing, the proposed enforcement action, the reasons for such action, and a request that the Industrial User show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by certified mail, return receipt requested and delivered to addressee only, at the address of the Industrial User indicated on its most recent wastewater discharge permit issued by the Manager or most recent sewer bill at least ten (10) business days prior to the hearing. Such notice may be served on any Authorized Representative of the Industrial User as defined in Section 70-85 (4) and as required by Section 70-89 (6) of this Ordinance. Whether or not the Industrial User appears as ordered, immediate enforcement action may be pursued following the hearing date. Nothing in this Section shall limit the authority of the Manager or Authorized Representative of the Manager to take any action, including emergency or other enforcement actions, without a show cause hearing.

### (4) Compliance Orders

When the Manager or Authorized Representative of the Manager finds that an Industrial User has violated or continues to violate the Ordinance, individual or general wastewater discharge permits, orders issued hereunder, or any other Pretreatment Standard or Requirement, the Manager or Authorized Representative of the Manager may issue an order to the Industrial User responsible for the discharge directing the Industrial User to come into compliance. If the Industrial User does not come into compliance within the time specified in the Manager's or Authorized Representative of the Manager's compliance order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Federal Pretreatment Standard or Requirement, nor does a compliance order release the Industrial User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the Industrial User.

(5) Cease and Desist Orders

When the Manager or Authorized Representative of the Manager finds that an Industrial User is in violation of this Ordinance, the Industrial User's individual or general wastewater discharge permit, any order issued hereunder, any other Pretreatment Standard or Requirement, or that the Industrial User's past violations are likely to reoccur, the Manager or Authorized Representative of the Manager may issue an order to the Industrial User directing the Industrial User to cease and desist all such violations and:

- (A) Immediately comply with all requirements; and
- (B) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the Industrial User.

(6) Administrative Fines

- (A) When the Manager or Authorized Representative of the Manager finds that an Industrial User has violated, or continues to violate, any provision of this Ordinance, an individual or general wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the Manager or Authorized Representative of the Manager may fine such Industrial User in an amount not to exceed one thousand dollars (\$1,000) for each violation of this Ordinance, and each day of a continuing violation may be deemed a separate violation in an amount not to exceed five hundred dollars (\$500) for each day the violation continues. The Manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- (B) A lien against the Industrial User's property may be imposed for unpaid charges, fines, and penalties.
- (C) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the Industrial User.

(7) Emergency Suspensions

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

- (A) Any Industrial User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of an Industrial User's failure to immediately and voluntarily comply with the suspension order, the Manager or Authorized Representative of the Manager shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage or endangerment to the POTW, the POTW's receiving stream, or any person. The Manager or Authorized Representative of the Manager shall allow the Industrial User to recommence discharging to the POTW when the Industrial User has demonstrated to the satisfaction of the Manager that the period of endangerment has passed, unless the termination proceedings set forth in Section 70-95 (8) of this Ordinance are initiated against the Industrial User.
- (B) A User that is responsible, in whole or in part, for any discharge presenting imminent and substantial endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Manager or Authorized Representative of the Manager, prior to the date of any show cause or termination hearing under Sections 70-95 (3) and 70-95 (8) of this Ordinance.

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

(8) Termination of Discharge

In addition to those provisions set forth in Section 70-90 (6) of this Ordinance, any Industrial User that violates the following conditions of this Ordinance, individual or general wastewater discharge permits, any orders issued hereunder, or any other Pretreatment Standard or Requirement, including but not limited to those conditions listed in this Section, is subject to termination of wastewater discharge:

- (A) Violation of individual or general wastewater discharge permit conditions;
- (B) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (C) Failure to report significant changes in operations or wastewater volume, constituents, and/or characteristics prior to discharge;
- (D) Refusal of reasonable access to the Industrial User's premises for the purpose of inspection, monitoring, and/or sampling; or
- (E) Violation of the Pretreatment Standards set forth in Section 70-87 of this Ordinance.

Such Users in violation will be notified by the Manager or Authorized Representative of the Manager of the proposed termination of its discharge and offered an opportunity to show cause under Section 70-95 (3) of this Ordinance why the proposed action should not be taken.

(9) Appeal of Orders of the Authorized Representative of the Manager

- (A) Any User aggrieved by any action of the Authorized Representative of the Manager made pursuant to this Section 70-95 may appeal the action by filing a written notice of appeal with the Manager within thirty (30) days of the action, along with full payment of any fine ordered to be paid. The notice of appeal shall state the specific reason why the action of the Authorized Representative of the Manager is alleged to be erroneous. Failure to submit a timely written notice of appeal shall be deemed a waiver of the administrative appeal to the Manager provided for herein.
- (B) If an appeal is timely filed in accordance with Section 70-95 (9)(A) of this Ordinance, a hearing shall be held before the Manager within thirty (30) days of the date of the filing of the notice of appeal or such other date mutually agreed upon in writing by the appellant and the Manager. The Manager shall make a determination within thirty (30) days of completion of the appeal hearing.
- (C) In the event the User's appeal is successful, payment of any associated fine shall be refunded to the User.
- (D) The appellant shall not be relieved of its obligations during the appeal process.
- (E) The decision of the Manager shall be considered the final administrative action for purposes of judicial review.
- (F) An aggrieved party seeking judicial review of the final administrative decision of the Manager must do so by filing a complaint within a court of competent jurisdiction within the time period permitted by Arkansas law.

(10) Request for Reconsideration of Action of the Manager

- (A) Any User aggrieved by any action of the Manager (acting directly and not through the Authorized Representative of the Manager) may request the Manager reconsider the action by filing a written request for reconsideration within thirty (30) days of the action, along with full payment of any fine ordered to be paid. The request for reconsideration shall state the specific reason why the action of the Manager is alleged to be erroneous. Failure to submit a timely written request for reconsideration shall be deemed a waiver of the request for reconsideration to the Manager provided herein.

- (B) If the Manager determines the request for reconsideration has merit, the Manager may convene a hearing on the matter. In the event the User's request for reconsideration is successful, payment of any associated fine shall be refunded to the User.
- (C) The appellant shall not be relieved of its obligations during the appeal process.
- (D) The decision of the Manager shall be considered the final administrative action for purposes of judicial review. An aggrieved party seeking judicial review of the final administrative decision of the Manager must do so by filing a complaint within a court of competent jurisdiction within the time period permitted by Arkansas law.

#### SECTION 70-96 – JUDICIAL ENFORCEMENT REMEDIES

##### (1) Injunctive Relief

Whenever a User has violated or continues to violate the provisions of this Ordinance, an individual or general wastewater discharge permit, any order issued hereunder, or any other Pretreatment Standard or Requirement, CWL may petition a Court of competent jurisdiction through the Manager and the CWL attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual or general wastewater discharge permit, order, or other requirement imposed by this Ordinance on activities of the Industrial User. Other actions, as appropriate for legal and/or equitable relief, may also be sought by CWL. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against an Industrial User.

##### (2) Civil Penalties

- (A) Any User which has violated or continues to violate this Ordinance, an individual or general wastewater discharge permit, any order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to CWL, for a maximum civil penalty of one thousand dollars (\$1,000.00) per violation per day, as provided by A.C.A. 8-4-103 (g) *et seq.*, as may be amended from time to time. In the case of the violation of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- (B) Such civil penalties shall be recoverable in a Court of competent jurisdiction; but, as provided by A.C.A. 8-4-103 (g) *et seq.*, as may be amended from time to time, such civil proceeding may be initiated only after a majority vote of the Board resolving to pursue such civil penalty.
- (C) CWL may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by CWL.
- (D) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factors as justice requires.
- (E) Filing a suit seeking civil penalties shall not be a prerequisite for taking any other action against an Industrial User.

##### (3) Criminal Prosecution

- (A) Any Industrial User that willfully or negligently violates any provision of this Ordinance, an individual or general wastewater discharge permit, or any orders issued hereunder, or any other Pretreatment Standard or Requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) per violation per day, as provided by A.C.A. 8-4-103 (g) *et seq.*, as may be amended from time to time.
- (B) Any Industrial User that knowingly makes any false statements, representations, or certifications in

any application, record, report, plan, or other documentation filed or required to be maintained pursuant to this Ordinance, an individual or general wastewater discharge permit, or order issued hereunder; or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation per day, as provided by A.C.A. 8-4-103 (g) *et seq.*, as may be amended from time to time.

- (C) As provided by A.C.A. 8-4-103 (g) *et seq.*, as may be amended from time to time, no criminal prosecution under Section 70-96 (3) (A) and (B) of this Ordinance, may be initiated except upon a majority vote of the Board resolving to pursue such criminal prosecution.
- (D) The criminal penalties provided in Section 70-96 (3) (A) and (B) of this Ordinance, shall be in addition to any other cause of action for personal injury or property damage available under State law and shall be in addition to administrative fines and civil penalties which may be assessed under Section 70-95 (6) and 70-96 (2), respectively, of this Ordinance.

(4) Remedies Nonexclusive

The provisions in Sections 70-94, 70-95, 70-96, and 70-97 of this Ordinance are not exclusive remedies. CWL reserves the right to take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with CWL's Enforcement Response Plan (ERP). However, CWL shall have the right to take other action against any User when the circumstances warrant. Furthermore, CWL is empowered to take more than one enforcement action against any noncompliant User. These actions may be taken concurrently.

SECTION 70-97 – SUPPLEMENTAL ENFORCEMENT ACTION

(1) Performance Bonds

The Manager may decline to reissue an individual or general wastewater discharge permit to any User which has failed to comply with the provisions of this Ordinance, any orders, or a previous individual or general wastewater discharge permit issued hereunder, unless such User first files a satisfactory bond, payable to CWL, in a sum not to exceed a value determined by the Manager to be necessary to achieve consistent compliance.

(2) Liability Assurance

The Manager may decline to reissue an individual or general wastewater discharge permit to any User which has failed to comply with the provisions of this Ordinance, any order, or a previous individual or general wastewater discharge permit issued hereunder, unless the User first satisfactorily demonstrates to the Manager the sufficient financial ability to restore or repair damage to the POTW caused by its discharge.

(3) Water Supply Severance

Whenever a User has violated or continues to violate the provisions of this Ordinance, an individual or general wastewater discharge permit, or any order issued hereunder, water service to the User may be severed. Service will only recommence at the User's expense and after the User has satisfactorily demonstrated the ability to comply.

(4) Public Nuisances

Any violation of this Ordinance, the individual or general wastewater discharge permit, or any order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the Manager. Any User creating a public nuisance shall be required to reimburse CWL or the City for any costs incurred in removing, abating, or remedying said nuisance, including but not limited to attorney's fees and costs.

(5) Fines for Late Reports

A fine of up to \$1,000 may be assessed to any User for each day that a report required by this Ordinance or a permit or order issued hereunder is late, beginning 20 days after the date the report is due. Further enforcement by CWL may be taken beginning 45 days after the date the report is due, including but not limited to the designation of the Industrial User as in Significant Noncompliance with this Ordinance. Actions taken by the Manager to collect late reporting fines shall not limit the Manager's authority to initiate other enforcement actions that may include fines for late reporting violations.

(6) Payment of Outstanding Fees, Fines, and Penalties

The Manager may decline to issue or reissue an individual or general wastewater discharge permit to any User who has failed to pay any outstanding fees, fines, or penalties, and any interest accrued therein, incurred as a result of any provision of this Ordinance, a previous individual or general wastewater discharge permit, or order issued hereunder.

SECTION 70-98 – AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

(1) Upset

- (A) For the purposes of this Section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (B) An upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of Section 70-98 (C) of this Ordinance are met.
- (C) An Industrial User wishing to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:
- i) An upset occurred, and the Industrial User can identify the causes(s) of the upset;
  - ii) The facility was at the time of upset being operated in a prudent and workmanlike manner, in compliance with applicable operation and maintenance procedures; and
  - iii) The Industrial User has submitted the following information to the Manager or Authorized Representative of the Manager within 24 hours of becoming aware of the upset [if this information is provided orally, a written submission must also be provided within five (5) days]:
    - a) A description of the indirect discharge and cause of noncompliance;
    - b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (D) In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an upset shall have the burden of proof.
- (E) Industrial Users will 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) The Industrial User shall control production of all discharges to the extent necessary to maintain compliance with Categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility, until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of electric power

of the treatment facility is reduced, lost, or fails.

(2) Prohibited Discharge Standards

An Industrial User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions listed in Section 70-87 (1) (A) of this Ordinance and specific prohibitions listed in Section 70-87 (1) (B) (iii-xviii) 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 Industrial 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 POTW was regularly in compliance with its NPDES permit, and in the case of interference was in compliance with applicable sludge use and/or disposal requirements.

(3) Bypass

(A) Definitions

- i) "Bypass" means the intentional diversion of waste streams from any portion of an Industrial User's treatment facility.
- ii) "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) An Industrial User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if for essential maintenance or to assure efficient operation. These bypasses are not subject to the provision of Sections 70-98 (3) (C) and (D) of this Ordinance.

(C) Notification of Bypass

- i) If an Industrial User knows in advance of the need for a bypass, the IU shall submit prior notice to the Manager, at least ten (10) days before the date of the bypass if possible.
- ii) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Manager within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Manager may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(D) Enforcement Action Against or Approval of a Bypass

- i) Bypass is prohibited, and the Manager may take enforcement action against an Industrial User for a bypass, unless:
  - a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- c) The Industrial User submitted notices as required under Section 70-98 (3) (C) of this Ordinance.
- ii) The Manager may approve an anticipated bypass, after considering its adverse effects, if such bypass meets the conditions listed in Section 70-98 (3) (D) (i) of this Ordinance.

SECTION 70-99 – EXCESSIVE POLLUTANT RATES

The Manager may charge Users the following surcharges and capacity charges in addition to the standard metered charge for sewer service. Sewer surcharges and capacity charges shall be based on the formulas set forth herein. Unit charges for excessive BOD<sub>5</sub>, TSS, and FOG shall be the current surcharges and capacity charges set forth in the CWL Sewer Service Rate Schedule.

(1) Excessive Strength Surcharge

The Manager may charge a surcharge, in addition to the standard metered charge for sewer service, to IUs who discharge wastewater into the POTW having a BOD<sub>5</sub> concentration in excess of 250 mg/L, a TSS concentration in excess of 250 mg/L, or a FOG concentration in excess of 100 mg/L.

Excessive Strength Surcharge Formula:

$$S = (V_{ww}) (8.34) [C_{BOD5} (BOD_5-250) + C_{TSS} (TSS-250) + C_{FOG} (FOG-100)]$$

- Where:
- S = Surcharge in dollars
  - V<sub>ww</sub> = Volume of wastewater in millions of gallons
  - 8.34 = Weight in pounds of one gallon of water
  - C<sub>BOD5</sub> = Charge per pound of BOD<sub>5</sub>
  - C<sub>TSS</sub> = Charge per pound of TSS
  - C<sub>FOG</sub> = Charge per pound of FOG
  - BOD<sub>5</sub> = BOD<sub>5</sub> in mg/L of the Industrial User's wastewater
  - TSS = TSS in mg/L of the Industrial User's wastewater
  - FOG = FOG in mg/L of the Industrial User's wastewater
  - 250 = Concentration in mg/L above which both BOD<sub>5</sub> and TSS are defined as “excessive” and a surcharge may be assessed
  - 100 = Concentration in mg/L above which FOG is defined as “excessive” and a surcharge may be assessed

(2) Excessive Strength Capacity Charge

The Manager may charge a capacity charge, in addition to the standard metered charge for sewer service, to IUs who discharge wastewater into the POTW having a BOD<sub>5</sub> concentration in excess of 250 mg/L or a TSS concentration in excess of 250 mg/L. The capacity charge shall be based on the greater of the BOD<sub>5</sub> and the TSS concentrations.

Excessive Strength Capacity Charge Formula:

$$CAP = (V_{ww}) (8.34) [((\text{Greater of BOD}_5 \text{ or TSS})-250) C_{CAP}]$$

- Where:
- CAP = Capacity Charge in dollars
  - V<sub>ww</sub> = Volume of wastewater in millions of gallons
  - 8.34 = Weight in pounds of one gallon of water
  - C<sub>CAP</sub> = Charge per pound for greater of BOD<sub>5</sub> or TSS
  - BOD<sub>5</sub> = BOD<sub>5</sub> in mg/L of the Industrial User's wastewater
  - TSS = TSS in mg/L of the Industrial User's wastewater
  - 250 = Concentration in mg/L above which both BOD<sub>5</sub> and TSS are defined as “excessive” and a capacity charge may be assessed

- (3) The payment of a surcharge or capacity charge by the User shall be in addition to and not in lieu of any reporting required under Sections 70-94 and 70-95.

#### SECTION 70-100 – MISCELLANEOUS PROVISIONS

- (1) Pretreatment Charges and Fees

CWL may adopt reasonable administrative charges and fees for the reimbursement of costs associated with setting up and operating the CWL Pretreatment Program which may include:

- (A) Fees for individual or general wastewater discharge permit applications, including the cost of evaluating and processing such applications;
- (B) Fees for monitoring, inspection, and surveillance procedures, including the cost of collecting and analyzing an Industrial User's discharge and reviewing monitoring reports submitted by Industrial Users;
- (C) Fees for reviewing and responding to accidental discharge procedures and construction;
- (D) Fees for filing appeals; and
- (E) Other fees as CWL may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Ordinance and are separate from all other fees, fines, and penalties chargeable by CWL.

- (2) Severability

If any court of competent jurisdiction invalidates any provision of this Ordinance, the remaining provisions shall not be affected and shall continue in full force and effect.

- (3) Conflicts

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