

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING CHAPTER 51
“SEWER AND WATER SERVICE” OF TITLE V “PUBLIC WORKS” OF THE CODE OF
MANSFIELD, TEXAS BY AMENDING SECTIONS 51.010 THROUGH 51.024,
“INDUSTRIAL WASTEWATER REGULATIONS” IN THEIR ENTIRETY; PROVIDING
THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES;
PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE;
PROVIDING A PENALTY FOR VIOLATIONS HEREOF UP TO \$2,000.00 AND EACH
DAY A VIOLATION EXISTS SHALL BE A SEPARATE OFFENSE; PROVIDING FOR
PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City of Mansfield (“City”) is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the City Council of City has previously adopted regulations governing Industrial Wastewater in Chapter 51 of the Code of Ordinances of the City; and,

WHEREAS, the Industrial Wastewater Regulations authorize the issuance of wastewater discharge permits; provide for monitoring, compliance, and enforcement activities; establish administrative review procedures; require user reporting; provides for the setting of fees for the equitable distribution of costs resulting from the program established herein; and provide for penalties for violation, both civil and criminal; and,

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (EPA) require the City to make certain modifications to the Industrial Wastewater Regulations to comply with federal and state law; and,

WHEREAS, the City Council has reviewed the proposed amendments and finds that it is in the best interest of the public to amend Chapter 51 relating to Industrial Wastewater regulations in order to protect the health, safety and general welfare of the resident of Mansfield and the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS:

SECTION 1.

That Sections 51.010 through 51.024 of Chapter 51, “Sewer and Water Service”, of Title V “Public Works” of the Code of Mansfield, Texas, are hereby amended in their entirety to read as follows:

INDUSTRIAL WASTEWATER REGULATIONS**§51.010 GENERAL PROVISIONS.**

(A) Purpose and policy.

(1) These regulations set forth uniform requirements for users of the Publicly Owned Treatment Works for the city and enables the city to comply with all applicable state and federal laws,

including the Clean Water Act (33 United States Code §1251 et seq.) and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of these regulations are:

- (a) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
- (b) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- (c) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- (d) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
- (e) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- (f) To enable the control authority to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the Publicly Owned Treatment Works is subject.

(2) These regulations shall apply to all users of the Publicly Owned Treatment Works. This subchapter authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(B) Administration. Except as otherwise provided herein, the Pretreatment Coordinator shall administer, implement, and enforce the provisions of these regulations. Any powers granted to or duties imposed upon the Pretreatment Coordinator may be delegated by the City Manager to other city personnel.

(C) Abbreviations. The following abbreviations, when used in this subchapter, shall have the designated meanings:

- BOD - Biochemical Oxygen Demand
- BMP - Best Management Practice
- CFR - Code of Federal Regulations
- CIU - Categorical Industrial User
- COD - Chemical Oxygen Demand
- CRWS- Central Regional Wastewater System
- EPA - U.S. Environmental Protection Agency
- gpd - gallons per day
- IU - Industrial User
- MCRWS- Mountain Creek Regional Wastewater System
- mg/l - milligrams per liter
- NAICS- North American Industrial Classification System
- NPDES - National Pollutant Discharge Elimination System
- NSCIU- Non-Significant Categorical Industrial User
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classification
- SIU - Significant Industrial User
- TCEQ - Texas Commission on Environmental Quality

TPDES - Texas Pollutant Discharge Elimination System
TRA - Trinity River Authority
TSS - Total Suspended Solids
TTO - Total Toxic Organics
U.S.C. - United States Code

(D) Definitions. For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) ACT or "THE ACT." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251 et seq.

(2) APPROVAL AUTHORITY. The Regional Administrator of EPA or the Director of a state agency delegated to act on EPA's behalf with an approved pretreatment program (e.g., Director of TCEQ).

(3) AUTHORIZED REPRESENTATIVE OF THE USER.

(a) If the user is a corporation:

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

2. The manager of one or more manufacturing, production, or operation facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(c) If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) The individuals described in subsections (a) through (c), above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City of Mansfield Pretreatment Coordinator.

(4) BEST MANAGEMENT PRACTICES (BMPs). The schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in §51.011 (A) and (B) [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(5) BIOCHEMICAL OXYGEN DEMAND (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20° centigrade, usually expressed as a concentration (e.g., mg/l).

(6) CATEGORICAL INDUSTRIAL USER (CIU). An Industrial User subject to a Categorical Pretreatment Standard or Categorical Standard.

(7) CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with §§307(b) and (c) of the Act (33 U.S.C. §1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(8) CITY. The City of Mansfield or the City Council of Mansfield, Contracting Party of the Trinity River Authority's Central Regional Wastewater System and the Trinity River Authority's Mountain Creek Regional Wastewater System.

(9) CITY MANAGER. The person designated by the City Council of Mansfield who is charged with certain duties and responsibilities by this chapter or a duly authorized representative.

(10) COMPOSITE SAMPLE. A sample that is collected over time, formed either by continuous sampling or by mixing discrete samples. The sample may be composited either as a TIME COMPOSITE SAMPLE: composed of discrete sample aliquots collected at constant time intervals providing a sample irrespective of stream flow; or as a FLOW PROPORTIONAL COMPOSITE SAMPLE: collected either as a constant sample volume at time intervals proportional to flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots.

(11) CONTROL AUTHORITY. Trinity River Authority of Texas as holder of the TPDES permit.

(12) 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.

(13) ENVIRONMENTAL PROTECTION AGENCY OR EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

(14) 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 §307 of the Act.

(15) EXTRAJURISDICTIONAL USER. A user the City has determined requires a permit to discharge, other than a local government, which is located outside the jurisdiction of the City, and which discharges or plans to discharge to the POTW.

(16) GRAB SAMPLE. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

(17) INDIRECT DISCHARGE or DISCHARGE. The introduction of pollutants into the POTW from any non-domestic source regulated under §307(b), (c), or (d) of the Act.

(18) INSTANTANEOUS MAXIMUM ALLOWABLE DISCHARGE LIMIT. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(19) INTERFERENCE. A discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the control authority's NPDES or TPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: §405 of the Act; the Solid Waste Disposal Act, including Title

II commonly referred to as the Resource Conservation and Recovery Act (RCRA); 40 CFR 503 sludge regulations; any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act and 30 TAC 312; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

(20) MAY. The meaning of "may" in these regulations is as a permissive, or optional, command.

(21) MEDICAL WASTE. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(22) MONTHLY AVERAGE. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

(23) NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake, or other body of surface or ground water.

(24) NPDES (NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM). National Pollutant Discharge Elimination System permit program of the Environmental Protection Agency, and/or the permit program of the state agency delegated to act on EPA's behalf with an approved pretreatment program (e.g., TPDES or Texas Pollutant Discharge Elimination System).

(25) 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 §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:

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

3. 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 rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of (a)(2.) or (3.) of this subsection above but otherwise alters, replaces, or adds to existing process or production equipment.

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

1. Begun, or caused to begin, as part of a continuous onsite construction program:

a. Any placement, assembly, or installation of facilities or equipment; or

b. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

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

(26) NON-CONTACT COOLING WATER. Water used for cooling, which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

(27) NON-SIGNIFICANT CATEGORICAL INDUSTRIAL USER (NSCIU).

(a) The City may determine that an IU subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User (NSCIU) rather than a Significant Industrial User (SIU) on a finding of any of the three criteria below:

1. The IU never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard);

2. The IU is required by a categorical Pretreatment Standard to not discharge categorical wastewater. An IU that meets this criteria shall continue to be prohibited from discharging categorical wastewater; or

3. The IU is subject to numeric categorical Pretreatment Standard(s) and does not discharge categorical wastewater.

(b) The following conditions must be met for an IU classified as a NSCIU:

1. The IU, prior to City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

2. The IU annually submits the certification statement required in §51.013(F)(3) [see 40 CFR 403.12(q)], together with any additional information necessary to support the certification statement; and

3. The IU never discharges any untreated concentrated wastewater.

(28) NORMAL WASTEWATER. Wastewater which the average concentration of suspended solids and five-day BOD does not exceed 250 mg/l each.

(29) NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS). A system used by the Federal Government for collecting and organizing industry-related statistics. The NAICS codes are updated every five years to stay current with industry developments.

(30) PASS THROUGH. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Control Authority's NPDES or TPDES permit, including an increase in the magnitude or duration of a violation.

(31) 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.

(32) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

(33) POLLUTANT. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

(34) PRETREATMENT. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

(35) PRETREATMENT COORDINATOR. The person designated by the city who is charged with certain duties and responsibilities by this subchapter, or a duly authorized representative.

(36) PRETREATMENT REQUIREMENTS. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

(37) PRETREATMENT STANDARDS or STANDARDS. Prohibited discharge standards, categorical pretreatment standards, and local limits.

(38) PROCESS WASTEWATER. Water that comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, waste product, or wastewater, and/or as defined in a National Pretreatment Standard.

(39) PROHIBITED DISCHARGE STANDARDS or PROHIBITED DISCHARGES. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in §51.011.

(40) PUBLICLY OWNED TREATMENT WORKS or POTW. A "treatment works," as defined by §212 of the Act (33 U.S.C. §1292) which is owned by the city and/or the Control Authority. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

(41) SEPTIC TANK WASTE. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(42) SEWAGE. Human excrement and gray water (household showers, dishwashing operations, etc.).

(43) SHALL. The meaning of "shall" in these regulations is as an imperative or mandatory command.

(44) SIGNIFICANT INDUSTRIAL USER.

- (a) A user subject to categorical pretreatment standards; or
- (b) A user that:

1. Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blow down wastewater);

2. Contributes a process wastestream which makes up 5% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

3. Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

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

(45) SLUG LOAD OR SLUG. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in §51.011(A).

(46) STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

(47) STORM WATER. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

(48) SUSPENDED SOLIDS. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

(49) TOTAL TOXIC ORGANICS. The sum of the masses or concentration of the toxic organic compounds listed in 40 CFR 122 Appendix D, Table II, excluding pesticides, found in IUs' discharge at a concentration greater than 0.01 mg/l. Only those parameters reasonably suspected to be present, at the discretion of the Pretreatment Coordinator, if any, shall be analyzed for with noncategorical industries. With categorical industries, TTOs will be sampled for as stipulated in the particular category or those parameters reasonably suspected to be present, at the discretion of the Pretreatment Coordinator, where not stipulated.

(50) TPDES. Texas Pollutant Discharge Elimination System permit program of the Texas Commission on Environmental Quality with federal regulatory authority to act on an approved pretreatment program.

(51) USER. A source of indirect discharge.

(52) WASTEWATER. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

(53) WASTEWATER TREATMENT PLANT OR TREATMENT PLANT. That portion of the POTW, which is designed to provide treatment of municipal sewage and industrial waste.

§51.011 GENERAL SEWER USE REQUIREMENT.

(A) Prohibited discharge standards.

(1) General prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. Storm water and all other unpolluted drainage shall be discharged to sewers that are specifically designated as storm sewers, or to a natural outlet approved by the Pretreatment Coordinator. No liquid, semi-liquid, ready mixed concrete, mortar, asphalt material, or chemical waste shall be deposited in any area that will drain to the storm sewer or natural outlet

(2) Specific prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(a) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;

(b) Wastewater having corrosive properties capable of causing damage or injury to structures, equipment and/or personnel of the POTW, as per the specific prohibition in the applicable local limits in §51.011(D). In no case shall wastewater containing a pH less than 5.5 (TRA-CRWS) and less than 6.0 (TRA-MCRWS) be discharged unless the works is specifically designated to accommodate such discharges;

(c) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, blockage, or damage to the POTW;

(d) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(e) Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);

(f) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

(g) 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;

(h) Trucked or hauled pollutants, except at discharge points designated by the Pretreatment Coordinator and the control authority in accordance with §51.012(D);

(i) 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 or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(j) Wastewater which imparts color which 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 the applicable NPDES or TPDES permit;

(k) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;

(l) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, and unpolluted wastewater, unless specifically authorized by the Pretreatment Coordinator and the control authority;

(m) Sludges, screenings, or other residues from the pretreatment of industrial wastes;

(n) Medical wastes, except as specifically authorized by the Pretreatment Coordinator and/or the control authority in a wastewater discharge permit;

(o) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;

(p) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;

(q) Fats, oils, or greases of animal or vegetable origin in concentrations greater than that specified in the applicable local limits in §51.011(D);

(r) A discharge of water, normal wastewater, or industrial waste that which in quantity of flow exceeds, for a duration of longer than 15 minutes, more than four times the average 24-hour flow during normal operations of the industry;

(s) Insecticides and herbicides in concentrations that are not amenable to treatment;

(t) Polychlorinated biphenyls;

(u) Garbage that is not properly shredded to such an extent that all particles will be carried freely under the flow conditions normally prevailing in wastewater mains, with no particle having greater than one-half inch cross-sectional dimension;

(v) Wastewater or industrial waste generated or produced outside the city, unless approval in writing from the Pretreatment Coordinator and the control authority has been given to the person discharging the waste; or

(w) Without the approval of the Pretreatment Coordinator and the control authority, a substance or pollutant other than industrial waste, normal wastewater, septic tank waste or chemical toilet waste that is of a toxic or hazardous nature, regardless of whether or not it is amenable to treatment, including but not limited to bulk or packaged chemical products.

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

(B) National Categorical Pretreatment Standards. The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

(1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Pretreatment Coordinator may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Pretreatment Coordinator shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

(3) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.

(4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(C) Reserved.

(D) Local limits.

(1) The following pollutant limits are established to protect against pass through and interference. No person shall discharge or cause or permit to be discharged, wastewater containing in excess of the following instantaneous maximum allowable discharge limits into the following system(s):

Toxic Pollutant	TRA CRWS Instantaneous Maximum Discharge Limits (mg/l)	TRA Instantaneous Allowable Discharge Limits (mg/l)	MCRWS Maximum Discharge Limits (mg/l)
Arsenic	0.2	N/A	
Cadmium	0.1	0.8	
Chlorides	N/A	7,605	
Chromium	2.1	N/A	
Copper	1.8	1.78	
Cyanide	0.4	N/A	
Lead	1.2	1.0	
Mercury	0.06	N/A	
Molybdenum	0.5	N/A	
Nickel	3.3	N/A	
Selenium	0.2	N/A	
Silver	0.8	N/A	
Zinc	6.1	2.8	
Oil and Grease	200	200	
pH	5.5 to 11.0 Standard Units	6.0 to 9.0 Standard Units	

(2) The above limits apply at the point where the wastewater is discharged to the POTW. All concentrations for metallic substances are for "total" metal unless indicated otherwise. The Pretreatment Coordinator may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

(E) Right of revision. The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

(F) Dilution. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Pretreatment Coordinator may impose mass limitations on users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

(G) Plant loading.

(1) No industry shall discharge wastewater containing a BOD or TSS loading that causes the city's pro-rata share of the total BOD or TSS loading to the POTW System to exceed the city's pro-rata share of the total flow to the POTW System. (Example: If the city contributes 25% of the total wastewater flow to the system, the city's cumulative BOD or TSS loading to the system, as measured at the city's points of entry to the system, shall not exceed 25% of the total BOD or TSS loading to the system.

(2) Any industry with a wastewater strength that will cause the city's cumulative wastewater loading, at the city's points of entry, to exceed the city's pro-rata share of the total wastewater loading based upon flow, shall be required to install pretreatment facilities to reduce its wastewater strength to an acceptable level.

§51.012 PRETREATMENT OF WASTEWATER.

(A) Pretreatment facilities. Users shall provide wastewater treatment as necessary to comply with this subchapter and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in §51.011(A) within the time limitations specified by EPA, the state, the Control Authority, or the Pretreatment Coordinator, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Pretreatment Coordinator for review, and shall be acceptable to the Pretreatment Coordinator before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the city under the provisions of this subchapter.

(B) Additional pretreatment measures.

(1) Whenever deemed necessary, the Pretreatment Coordinator may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and require such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this subchapter.

(2) The Pretreatment Coordinator may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Pretreatment Coordinator, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Pretreatment Coordinator and shall be so located to be easily accessible for cleaning and inspection. Such

interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

(4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter, or other control device as deemed necessary by the Pretreatment Coordinator.

(C) Accidental discharge/slug control plans. At least once every two years, the Pretreatment Coordinator shall evaluate whether each permitted SIU needs an accidental discharge/slug control plan. The Pretreatment Coordinator may require any user to develop, submit for approval, and implement such a plan. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;

(3) Procedures for immediately notifying the Pretreatment Coordinator and Control Authority of any accidental or slug discharge, as required by §51.015(F); and

(4) 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 runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(D) Hauled wastewater.

(1) Septage waste may be introduced into the POTW only at locations designated by the Pretreatment Coordinator and Control Authority, and at such times as are established by the Pretreatment Coordinator and Control Authority. Such waste shall not violate §51.011 or any other requirements established by the city. The Pretreatment Coordinator and/or Control Authority may require septic tank waste haulers to obtain wastewater discharge permits.

(2) Septage waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of generator, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(E) Best Management Practices. The Pretreatment Coordinator may develop BMPs and require users to implement such BMPs if necessary to protect the POTW. Such BMPs would be supplemental and not used as a replacement for compliance with local limits listed in §51.011(D) and Prohibited Discharge Standards in §§51.011(A) and (B).

§51.013 WASTEWATER DISCHARGE PERMIT APPLICATION.

(A) Wastewater analysis. When requested by the Pretreatment Coordinator, a user must submit information on the nature and characteristics of its wastewater by the deadline stipulated. The Pretreatment Coordinator is authorized to prepare a form for this purpose and may periodically require users to update this information.

(B) Wastewater discharge permit requirement.

(1) No SIU or NSCIU user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Pretreatment Coordinator, except that an SIU or an NSCIU that has filed a timely application pursuant to §51.013(C) may continue to discharge for the time period specified therein.

(2) The Pretreatment Coordinator may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of these regulations. To determine the status of a user in

relation to these regulations, users may be required to perform sampling as specified by the Pretreatment Coordinator.

(3) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this subchapter and subjects the wastewater discharge permittee to the sanctions set out in §§51.018 through 51.020. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements with any other requirements of federal, state and local law.

(C) Wastewater discharge permitting: existing connections. Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this subchapter and who wishes to continue such discharges in the future, shall, within ninety (90), apply to the Pretreatment Coordinator for a wastewater discharge permit in accordance with §51.013(E), and shall not cause or allow discharges to the POTW to continue after 90 days of the effective date of this subchapter except in accordance with a wastewater discharge permit issued by the Pretreatment Coordinator. If, in the Pretreatment Coordinator's judgment, the passing of this subchapter does not significantly affect the IUs current permit, then the existing permit will continue through to the expiration date.

(D) Wastewater discharge permitting: new connections. Any user required to obtain a wastewater discharge permit that proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with §51.013(E), must be filed prior to the date upon which any discharge will begin or recommence.

(E) Wastewater discharge permit application contents. All users required to obtain a wastewater discharge permit must submit a permit application. The Pretreatment Coordinator may require all users to submit as part of an application the following information:

- (1) All information required by §51.015(A)(2);
- (2) Description of activities, facilities, and plant processes on the premises, including 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;
- (3) Number and type of employees, hours of operation, and proposed or actual hours of operation;
- (4) Each product produced by type, amount, process or processes, and rate of production;
- (5) Type and amount of raw materials processed (average and maximum per day);
- (6) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (7) Time and duration of discharges; and
- (8) Any other information as may be deemed necessary by the Pretreatment Coordinator to evaluate the wastewater discharge permit application. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

(F) Application signatories and certification.

(1) All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,

and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and civil penalties for knowing violations."

(2) If the designation of an authorized representative of the 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 company, a new written authorization satisfying the requirements of this subsection must be submitted to the Pretreatment Coordinator prior to or together with any reports to be signed by an authorized representative of the user.

(3) A facility determined to be a NSCIC by the Pretreatment Coordinator must annually submit the signed certification statement signed by an authorized representative. This certification must accompany an alternative report required by the Pretreatment Coordinator:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR § ____, I certify, to the best of my knowledge and belief, that during the period from _____, _____ to _____, _____ [months, days, year]:

(a) The facility described as _____[facility name] met the definition of a Non Significant Categorical Industrial; [Note: See 40 CFR §403.3(v)(2)]

(b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

(c) This compliance certification is based on the following information.

_____.
(G) Wastewater discharge permit decisions. The Pretreatment Coordinator will evaluate the data furnished by the user and may require additional information. Within 60 days of receipt of a complete wastewater discharge permit application; the Pretreatment Coordinator will determine whether or not to issue a wastewater discharge permit. The Pretreatment Coordinator may deny any application for a wastewater discharge permit.

§51.014 WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS.

(A) Wastewater discharge permit duration. A wastewater discharge permit shall be issued for a specified time period, not to exceed five years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five years, at the discretion of the Pretreatment Coordinator. Each wastewater discharge permit will indicate a specific date upon which it will expire.

(B) Wastewater discharge permit contents. A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Pretreatment Coordinator to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(1) Wastewater discharge permits must contain:

(a) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years;

(b) A statement that the wastewater discharge permit is nontransferable without prior notification to the city in accordance with §51.014(E), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

(c) Effluent limits including BMPs based on applicable pretreatment standards;

- (d) Self-monitoring, sampling, reporting, notification, and record-keeping requirements including those for BMPs. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;
- (e) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law; and
- (f) Requirements to control Slug Discharge, if determined by the Pretreatment Coordinator to be necessary.

(2) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

- (a) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (b) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- (c) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
- (d) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- (e) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
- (f) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- (g) A statement that compliance with the 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 wastewater discharge permit;
- (h) Requirements to implement BMPs, if determined by the Pretreatment Coordinator to be necessary; and
- (i) Other conditions as deemed appropriate by the Pretreatment Coordinator to ensure compliance with this subchapter, and state and federal laws, rules and regulations.

(C) Reserved.

(D) Wastewater discharge permit modification. The Pretreatment Coordinator may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the users operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating that the permitted discharge poses a threat to POTW, POTW personnel, or the receiving waters;
- (5) Violation of any terms or conditions of the wastewater discharge permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR §403.13;

- (8) To correct typographical or other errors in the wastewater discharge permit; or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

(E) Wastewater discharge permit transfer.

(1) Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives a minimum of sixty (60) days advance notice to the Pretreatment Coordinator and the Pretreatment Coordinator approves the wastewater discharge permit transfer. The notice to the Pretreatment Coordinator must include a written certification by the new owner or operator which:

- (a) States that the new owner and/or operator have 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) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

(2) Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

(F) Wastewater discharge permit revocation.

(1) The Pretreatment Coordinator may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

- (a) Failure to notify the Pretreatment Coordinator of significant changes to the wastewater prior to the changed discharge;

- (b) Failure to provide prior notification to the Pretreatment Coordinator of changed conditions pursuant to §51.015(E);

- (c) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

- (d) Falsifying self-monitoring reports;

- (e) Tampering with monitoring equipment;

(f) Failure to allow the Pretreatment Coordinator timely access to the facility premises and records;

- (g) Failure to meet effluent limitations;

- (h) Failure to pay fines;

- (i) Failure to pay sewer charges;

- (j) Failure to meet compliance schedules;

(k) Failure to complete a wastewater survey or the wastewater discharge permit application;

(l) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(m) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this subchapter.

(2) Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user.

(G) Wastewater discharge permit reissuance. A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit re-issuance by submitting a complete permit application, in accordance with §51.013(E), a minimum of sixty (60) days prior to the expiration of the user's existing wastewater discharge permit.

(H) Regulation of Wastewater Received from Other Jurisdictions

- (1) A municipality which contributes wastewater to the POTW, shall enter into an interlocal agreement with the City prior to contributing such wastewater.
- (2) Prior to the City entering into an interlocal agreement as provided in section (1) above, the City may request the following information from the contributing municipality:
 - (a) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
 - (b) An inventory of all Users located within the contributing municipality that are discharging to the POTW; and
 - (c) Such other information as the City may deem necessary.

(I) Extraterritorial Jurisdictional Users

- (1) An extraterritorial jurisdictional user shall apply for a permit in accordance with this section at least ninety (90) days prior to discharging to the POTW.
- (2) This section does not apply to extraterritorial jurisdictional users in jurisdictions which have an agreement with the City pursuant to §51.014(H).

(3) A wastewater discharge permit issued to an extraterritorial jurisdictional user shall be in the form of a contract, and must include, at a minimum, the components found in 40 CFR §403.8(f)(1)(iii) and shall require the approval of the City Council. An extraterritorial jurisdictional user shall agree to all the terms of these regulations and the terms of its wastewater discharging contract in accordance with the procedures set forth in §§51.013(E)-(F), §51.014(B), and §51.014(H) prior to discharging into the POTW.

§51.015 REPORTING REQUIREMENTS.

(A) Baseline monitoring reports.

(1) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Pretreatment Coordinator a report which contains the information listed in section (2), below. At least 90 days prior to commencement of their discharge, new sources, and sources that will become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Pretreatment Coordinator a report which contains the information listed in section (2), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(2) Users described above shall submit the information set forth below.

- (a) Identifying information. The name and address of the facility, including the name of the operator and owner.
- (b) Environmental permits. A list of any environmental control permits held by or for the facility.
- (c) Description of operations. A brief description of the nature, average rate of production, and standard industrial classifications and/or NAICS of the operation(s) carried out by such user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
- (d) Flow measurement. Information showing the measured or estimated average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(E).
- (e) Measurement of pollutants.

1. The categorical pretreatment standards applicable to each regulated process (and any new categorically regulated process for Existing Sources).
2. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Pretreatment Coordinator, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in §51.015(J). Where the standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the Pretreatment Coordinator or the applicable standards to determine compliance with the standard.
3. Sampling must be performed in accordance with procedures set out in §51.015(K).
4. If discharge flow conditions are representative of daily operations, the user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection. The Pretreatment Coordinator may require additional representative sampling to be conducted.
5. Representative samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR §304.6(e) to evaluate compliance with Pretreatment Standards.
6. The Pretreatment Coordinator 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.
7. The baseline report shall indicate the time, date and place of sampling and method of analysis, and shall certify that such sampling and analysis is representative of normal work cycle and expected pollutant discharges to the POTW.

(f) Certification. A statement, reviewed by the user's authorized representative 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.

(g) Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. 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 §51.015(B).

(h) Signature and certification. All baseline-monitoring reports must be signed and certified in accordance with §51.013(F).

(B) Compliance schedule progress reports. The following conditions shall apply to the compliance schedule required by §51.015(A)(2)(g).

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

(3) The user shall submit a progress report to the Pretreatment Coordinator no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

(4) In no event shall more than nine months elapse between such progress reports to the Pretreatment Coordinator.

(C) Reports on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Pretreatment Coordinator a report containing the information described in §51.015(A)(2)(d) through (f). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. In cases where the Categorical Pretreatment Standard requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the applicable Categorical Pretreatment Standard necessary to determine the compliance status of the user. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with §51.013(F).

(D) Periodic compliance reports.

(1) All SIUs shall, at a frequency determined by the Pretreatment Coordinator but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Categorical Pretreatment Standard or the Pretreatment Coordinator requires compliance with a BMP or pollution prevention alternative, the user shall submit documentation as required by the Pretreatment Coordinator or the applicable Categorical Pretreatment Standard necessary to determine the compliance status of the user. All periodic compliance reports must be signed and certified in accordance with §51.013(F).

(2) All NSCIUs shall submit a report annually in the month specified by the Pretreatment Coordinator. The report shall be completed according to the City's current reporting requirements, including the submittal of the applicable certification statement found in §51.013 (F)(3).

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

(4) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Pretreatment Coordinator, using the procedures prescribed in §51.015(J) and (K), the results of this monitoring shall be included in the report.

(E) Reports of changed conditions. Each user must notify the Pretreatment Coordinator of any planned significant changes to the users operations or system, which might alter the nature, quality, or volume of its wastewater a minimum of 30 days prior to the change.

(1) The Pretreatment Coordinator may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under §51.013(E).

(2) The Pretreatment Coordinator may issue a wastewater discharge permit under §51.013(G) or modify an existing wastewater discharge permit under §51.014(E) in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow increases of 20% or greater, and the discharge of any previously unreported pollutants that are determined to be of concern.

(F) Reports of potential problems.

(1) 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, that may cause potential problems for the POTW, the user shall immediately telephone and notify the city and the control authority of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(2) Within five days following such discharge, unless waived by the Director, the user shall submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability, which 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 user of any fines, penalties, or other liability which may be imposed pursuant to this subchapter.

(3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (1), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

(4) SIUs are required to notify the Pretreatment Coordinator immediately of any changes at their facilities affecting the potential for a Slug Discharge.

(G) Reports from unpermitted users. All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Pretreatment Coordinator as the Pretreatment Coordinator may require.

(H) Notice of violation/repeat sampling and reporting. If sampling performed by a user indicates a violation, the user must notify the Pretreatment Coordinator within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Pretreatment Coordinator within 30 days after becoming aware of the violation. The user is not required to resample if the Pretreatment Coordinator monitors at the user's facility at least once a month, or if the Pretreatment Coordinator samples between the user's initial sampling and when the user receives the results of this sampling.

(I) Notification of the discharge of hazardous waste.

(1) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the

extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this section need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under §51.015(E). The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of §51.015(A), (C) and (D).

(2) Dischargers are exempt from the requirements of subsection (1), above, during a calendar month in which they discharge no more than 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 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 user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under §3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Pretreatment Coordinator, the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this subchapter, a permit issued thereunder, or any applicable federal or state law.

(J) Analytical requirements. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, as amended, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any applicable sampling and analytical procedures, including procedures suggested by the Pretreatment Coordinator, the EPA, TCEQ, or other parties approved by EPA.

(K) Sample collection.

(1) Except as indicated in subsections (2) and (3), below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Pretreatment Coordinator/or Control Authority may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory.

Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Pretreatment Coordinator, as appropriate. In addition, grab samples may be used to show compliance with instantaneous discharge limits.

(2) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(3) For sampling required in support of baseline monitoring and 90 day compliance reports required in §51.015(A) and (C) [40 CFR §403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data does not exist; for facilities for which historical sampling data are available, the Pretreatment Coordinator may authorize a lower minimum. For the reports required by §51.015(D) (40 CFR §§403.12(e) and 403.12(h)), the IU is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

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

(M) Record keeping. Users subject to the reporting requirements of this subchapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this subchapter and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with BMPs established in these regulations. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the date's analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the Pretreatment Coordinator, or where the Pretreatment Coordinator and/or Control Authority have specifically notified the user of a longer retention period.

§51.016 COMPLIANCE MONITORING.

(A) Right of entry: inspection and sampling. The Pretreatment Coordinator and/or the Control Authority, TCEQ, or USEPA or their designated representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this subchapter and any wastewater discharge permit or order issued hereunder. Users shall allow inspecting or sampling person 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.

(1) Where a user has security measures in force, which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the city, Control Authority, TCEQ or USEPA will be permitted to enter without delay for the purposes of performing specific responsibilities.

(2) The Pretreatment Coordinator and/or Control Authority shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the users operations. All sampling and analysis performed by the Pretreatment Coordinator and/or Control Authority to monitor compliance shall be at the expense of the IU.

(3) The Pretreatment Coordinator and/or Control Authority may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated, at a minimum, annually to ensure their accuracy.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Pretreatment Coordinator and/or Control Authority and shall not be replaced. The costs of clearing such access shall be borne by the user.

(5) Unreasonable delays in allowing the inspecting or sampling person access to the user's premises shall be a violation of this subchapter.

(6) In accordance with 40 CFR Part 403, the city shall inspect and monitor each permitted SIU a minimum of once per year. If the city elects to perform compliance monitoring for the SIU then the city will monitor the industry a minimum of semiannually.

(7) The City shall inspect each NSCIU a minimum of once per year. If the Pretreatment Coordinator elects to perform compliance monitoring for the NSCIU then the city will monitor the industry a minimum of one time each permit cycle.

(B) Search warrants. If the Pretreatment Coordinator and/or Control Authority has been refused or denied access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this subchapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the Pretreatment Coordinator designed to verify compliance with this subchapter or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Pretreatment Coordinator and/or Control Authority may seek issuance of a search warrant or an administrative search warrant from an appropriate court or judicial officer.

§51.017 CONFIDENTIAL INFORMATION.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the city and/or Control Authority, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall only be made available for inspection by the public pursuant to the Texas Public Information Act, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES or TPDES 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.

§51.018 PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE.

The Pretreatment Coordinator shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users, which at any time during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall be

applicable to all SIUs (or other IUs that violate subsections (C), (D), or (H) of this section) and shall mean:

- (A) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all the measurements taken during a six-month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount;
- (B) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
- (C) Any other discharge violation that the Pretreatment Coordinator determines has caused, alone or in combination with other discharges, interference, or pass through, including endangering the health of POTW personnel or the general public;
- (D) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the Pretreatment Coordinator or Control Authority's exercise of its emergency authority to halt or prevent such a discharge;
- (E) Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide within 30 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance; or
- (H) Any other violation(s), which may include a violation do BMPs, which the Pretreatment Coordinator determines will adversely affect the operation or implementation of the local pretreatment program.

§51.019 ADMINISTRATIVE ENFORCEMENT REMEDIES.

(A) Notification of violation. When the Pretreatment Coordinator finds that a user has violated, or continues to violate, any provision of this subchapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Pretreatment Coordinator may serve upon that user a written notice of violation. Within the time frame specified in the notice, which is usually, but not always, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Pretreatment Coordinator. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the Pretreatment Coordinator to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(B) Reserved.

(C) Show cause hearing. The Pretreatment Coordinator may order a user which has violated, or continues to violate, any provision of this subchapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Pretreatment Coordinator and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten days prior

to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

(D) Compliance orders. When the Pretreatment Coordinator finds that a user has violated, or continues to violate, any provision of this subchapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Pretreatment Coordinator may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(E) Cease and desist orders.

(1) When the Pretreatment Coordinator finds that a user has violated, or continues to violate, any provision of this subchapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Pretreatment Coordinator may issue an order to the user directing it to cease and desist all such violations and directing the user to:

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

(2) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(F) Reserved.

(G) Emergency suspensions.

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

(a) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension the Pretreatment Coordinator may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Pretreatment Coordinator may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Pretreatment Coordinator that the period of endangerment has passed, unless the termination proceedings in §51.019(H) are initiated against the user.

(b) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful

contribution and the measures taken to prevent any future occurrence, to the Pretreatment Coordinator prior to the date of any show cause or termination hearing under §51.019(C) or (H).
(2) Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(H) Termination of discharge.

(1) In addition to the provisions in §51.014(F) of this subchapter, any user who violates the following conditions is subject to discharge termination:

- (a) Violation of wastewater discharge permit conditions;
- (b) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (c) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
- (d) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
- (e) Violation of the pretreatment standards in §51.011.

(2) Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under §51.019(C) why the proposed action should not be taken. Exercise of this option by the Pretreatment Coordinator shall not be a bar to, or a prerequisite for, taking any other action against the user.

(I) Recovery of costs incurred by the city. Any user violating any of the provisions of this subchapter, the regulations, or rules of the control authority, orders issued by the Pretreatment Coordinator, or orders of any court of competent jurisdiction, or who discharges or causes a discharge producing a deposit, obstruction, deterioration in effluent quality, or causes damage to or impairs the POTW(s) shall be liable for any expense, loss, or damage caused by such violation or discharge. The Pretreatment Coordinator may order the user to clean up, repair, replace, and pay for any expenses, loss, or damages caused by the act of commission or omission by the user and bill the user for the costs incurred by the city for any cleaning, repair, or replacement work caused by the violation or discharge. Refusal to pay the assessed cost shall constitute a violation of this subchapter enforceable under the provisions of this chapter, including the penalty provisions. In addition, after notice to the user and failure of the user to pay or to perform as required by the Pretreatment Coordinator, the Pretreatment Coordinator may file suit in the appropriate court with jurisdiction in the amount of cost paid or incurred by the city and collect the amount as an itemized sworn account. The Pretreatment Coordinator may file such cost as a lien against the property.

(J) Any violation of the prohibitions or limits of this subchapter, wastewater discharge permit, or order issued hereunder is hereby declared a public nuisance and shall be corrected or abated as directed by the Pretreatment Coordinator. Any person(s) creating a public nuisance shall be subject to all city ordinances governing nuisances, including reimbursing the city for any costs incurred in removing, abating, or remedying said nuisance. The city may file such cost as a lien against the property.

§51.020 JUDICIAL ENFORCEMENT REMEDIES.

(A) Injunctive relief. When the Pretreatment Coordinator finds that a user has violated, or continues to violate, any provision of this subchapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Pretreatment Coordinator may petition the appropriate Court through the City's attorney, or designated representative, for the issuance of a temporary restraining order and temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge

permit, order, or other requirement imposed by this subchapter on activities of the user. The Pretreatment Coordinator may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

(B) Civil penalties.

(1) A user who has violated, or continues to violate, any provision of this subchapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty of \$1,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) The city may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

(3) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(C) Criminal prosecution.

(1) A user who violates any provision of this subchapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$2,000 per violation, per day.

(2) A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to the same penalties described in §51.020(C)(1). This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

(3) A user who makes any false statements, representations, or certifications in any application, subchapter, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or renders inaccurate any monitoring device or method required under this subchapter shall, upon conviction, be subject to the same penalties described in §51.020(C)(1).

(4) Criminal responsibility. A culpable mental state is not required to prove an offense under this subchapter.

(a) A person is criminally responsible for a violation of this subchapter if:

1. The person commits or assists in the commission of a violation, or causes or permits another person to commit a violation; or

2. The person owns or manages the property or facilities determined to be the cause of the illegal discharge under §§51.011(A), (B), or (D); 51.012(D) or 51.013(B).

(b) If conduct constituting an offense is performed by an "agent" acting on behalf of a corporation, partnership, or association and within the scope of his or her office or employment, the corporation, association, or partnership is criminally responsible for the offense. An "agent" means a director, officer, employee, or other person authorized to act on behalf of a corporation, association, or partnership.

(D) Remedies nonexclusive. The remedies provided for in this subchapter are not exclusive. The Pretreatment Coordinator may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city enforcement response plan. However, the Pretreatment Coordinator may take other action against any user when the circumstances warrant. Further, the Pretreatment Coordinator is empowered to take more than one enforcement action against any noncompliant user.

(E) Applicability of more stringent regulations.

(1) If national pretreatment standards, categorical or otherwise, more stringent than the discharge limits prescribed in this article are promulgated by the United States Environmental Protection Agency for certain industries, the more stringent national pretreatment standards will apply to the affected IU. A violation of the more stringent national pretreatment standards will also be considered a violation of this subchapter.

(2) Applicability of more stringent discharge limits. An IU within the city who discharges industrial waste ultimately received and treated by another governmental entity pursuant to a wholesale wastewater contract or a reciprocal agreement with the city is subject to the following additional rules:

(a) If the governmental entity has more stringent discharge limits than those prescribed by this subchapter, or by a discharge permit issued hereunder, because the United States Environmental Protection Agency requires the more stringent discharge limits as part of the governmental entity's wastewater pretreatment program, the more stringent discharge limits shall prevail.

(b) The Pretreatment Coordinator is authorized to issue a discharge permit to an IU affected by subsection (a) above, to insure notice of and compliance with the more stringent discharge limits. If the IU already has a discharge permit, the Pretreatment Coordinator may amend the permit to apply and enforce the more stringent discharge limits. An IU shall submit to the Pretreatment Coordinator an expected compliance date and an installation schedule if the more stringent discharge limits necessitate technological or mechanical adjustments to discharge facilities or plant processes.

(c) If the Pretreatment Coordinator chooses not to issue or amend a permit under subsection (b) above, the Pretreatment Coordinator shall notify the affected IU in writing of the more stringent discharge limits and their effective date. Regardless of whether or not a permit is issued or amended, an IU shall be given a reasonable opportunity to comply with the more stringent discharge limits.

(d) The more stringent discharge limits cease to apply upon termination of the city's wholesale wastewater contract or reciprocal agreement with the governmental entity, or upon modification or elimination of the limits by the government entity or the United States Environmental Protection Agency. The Pretreatment Coordinator shall take the appropriate action to notify the affected IU of an occurrence under this subsection.

(3) Variances in compliance dates. The Pretreatment Coordinator may grant a variance in compliance dates to an industry when, in the Pretreatment Coordinator's opinion, such action is necessary to achieve pretreatment or corrective measures. In no case shall the Pretreatment Coordinator grant a variance in compliance dates to an industry affected by national categorical pretreatment standards beyond the compliance dates established by the United States Environmental Protection Agency.

(4) Authority to regulate. The Pretreatment Coordinator may establish regulations, not in conflict with this subchapter other laws, to control the disposal and discharge of industrial waste into the wastewater system and to insure compliance with the city's pretreatment enforcement program

with all applicable pretreatment regulations promulgated by the United States Environmental Protection Agency. The regulations established shall, where applicable, be made part of any discharge permit issued to an IU by the Pretreatment Coordinator.

§51.021 RESERVED.

§51.022 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS.

(A) In an action brought in federal court only: upset provision.

(1) For the purposes of this section "upset," means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (3), below, are met.

(3) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An upset occurred and the user can identify the cause(s) of the upset;

(b) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(c) The user has submitted the following information to the Pretreatment Coordinator within 24 hours of becoming aware of the upset, if this information is provided orally, a written submission must be provided within five days:

1. A description of the indirect discharge and cause of noncompliance;

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

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

(4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) 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.

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

(B) In an action brought in municipal or state court only: act of God provision.

(1) An event that would otherwise be a violation that is caused solely by an act of God, war, strike, riot, or other catastrophe is not a violation.

(2) In any enforcement proceeding, the user seeking to establish the occurrence of an act of God, war, strike, riot, or other catastrophe shall have the burden of proof.

(3) In the event that subsections (B)(1) and (2) above have been demonstrated the user shall control production of all discharges to the extent necessary to maintain compliance with pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided.

(C) Bypass.

(1) For the purposes of this section:

(a) **BYPASS.** The intentional diversion of wastestreams from any portion of a user's treatment facility.

(b) **SEVERE PROPERTY DAMAGE.** 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.

(2) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (C)(3) and (4) of this section.

(3) (a) If a user knows in advance of the need for a bypass, it shall submit prior notice to the Pretreatment Coordinator, at least ten days before the date of the bypass, if possible.

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

(4) (a) Bypass is prohibited, and the Pretreatment Coordinator may take an enforcement action against a user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
3. The user submitted notices as required under subsection (C)(3) of this section.

(b) The Pretreatment Coordinator may approve an anticipated bypass, after considering its adverse effects, if the Pretreatment Coordinator determines that it will meet the three conditions listed in subsection (C)(4)(1.) of this section.

§51.023 RESERVED.

§51.024 MISCELLANEOUS PROVISIONS.

(A) Pretreatment charges and fees.

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

(a) Fees for wastewater discharge permit applications including the cost of processing such applications;

(b) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

(c) Fees for reviewing and responding to accidental discharge procedures and construction;

(d) Fees for filing appeals;

(e) Recovery of administrative and legal costs associated with enforcement activity taken by the city to address IUs noncompliance.

(f) Other fees as the city may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this subchapter and are separate from all other fees, fines, and penalties chargeable the city;

- (f) Fees for treating abnormal strength wastes; and
- (g) Fees incurred from an upset, bypass or unauthorized discharge.
- (2) Surcharge.

(a) The city may surcharge IUs for the treating of abnormal strength wastes. Water or wastes having: (1) a five day biochemical oxygen demand greater than 250 parts per million (ppm) by weight; or (2) containing more than 250 parts per million by weight of total suspended solids shall be subject to the review and approval of the Pretreatment Coordinator. Where the Pretreatment Coordinator has approved the admission of §51.024(A)(2)(a)(1.) and (2.) above into the POTW, that discharge may be subject to a surcharge as determined by the Pretreatment Coordinator. In no case shall a discharge be accepted that will prevent the POTW from meeting its limits.

(b) The surcharge will be assessed according to the following formula each month using the most current pollutant concentration data and the current month's wastewater flow:

$$\text{Surcharge} = \frac{Q}{1,000,000} \times [a(\text{BOD} - x) + b(\text{TSS} - y)][8.34]$$

Where:

Q = flow in gallons

8.34 = weight in pounds of one gallon water

x = normal limits of BOD in domestic wastewater expressed in milligrams per liter

y = normal limits of TSS in domestic wastewater expressed in milligrams per liter

a = unit cost of treatment per pound of BOD

b = unit cost of treatment per pound of TSS

BOD = measured amount of BOD, in mg/l

TSS = measured amount of TSS, in mg/l

(c) A surcharge is an additional charge by the POTW for the increased cost of handling discharge of unusual strength and character and shall not serve as a variance to the requirements of this subchapter. Exercise of this provision shall not be a bar to, or a prerequisite for, taking any other action against the user.

SECTION 2.

That this Ordinance shall be cumulative of all other ordinances of the City of Mansfield, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any sections, paragraphs, sentences, clauses or phrases of this Ordinance shall be declared void, ineffective, or unconstitutional by the valid judgment or final decree of a court of competent jurisdiction, such voiding, ineffectiveness, or unconstitutionality shall not affect any of the remaining sections,

paragraphs, sentences, clauses and phrases hereof, since the same would have been enacted by the City Council without the incorporation of any such void, ineffective or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

That all rights or remedies of the City of Mansfield, Texas, are expressly saved as to any and all violations of the Code of Mansfield, Texas or any amendments thereto regarding industrial wastewater that have accrued at the time of the effective date of this Ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

Any person, firm or corporation that violates, or continues to violate, any provision of this Ordinance, a wastewater discharge permit, or order issued under this Ordinance, or any other pretreatment standard or requirement shall upon conviction be guilty of a misdemeanor, punishable by a fine of no more than Two Thousand Dollars (\$2,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation. Each and every day any such violation shall continue shall be deemed to constitute a separate offense.

SECTION 6.

The City Secretary of the City of Mansfield is hereby directed to publish the caption and penalty clause of this Ordinance to the extent required by law.

SECTION 7.

This Ordinance shall take effect immediately from and after its passage on the first and final reading and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED ON THE FIRST AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THIS 13TH DAY OF JANUARY, 2025.

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM:

Patricia Adams, City Attorney