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## CHAPTER 23. CITY SEWER SERVICE

### ARTICLE 1. GENERAL PROVISIONS

2.80. Purpose and Policy. An ordinance regulating industrial waste pretreatment facilities and discharge of industrial, commercial and domestic wastewater into the City of Frankenmuth, Michigan publicly owned treatment works and providing for pollutant limitations, data collection, monitoring and sampling, and providing for penalties for the violation thereof.

The objectives of this Chapter are:

- (1) To prevent the introduction of pollutants into the City of Frankenmuth wastewater treatment system which will interfere with the normal operation of the system or contaminate the resulting municipal sludge;
- (2) To prevent the introduction of pollutants into the City of Frankenmuth wastewater system which do not receive adequate treatment in the POTW, and which will pass through the system into receiving waters or the atmosphere or otherwise be incompatible with the system;
- (3) To improve the opportunity to recycle and reclaim wastewater and sludge from the system.

2.81. Definitions. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this Chapter or Ordinance, shall have the meanings hereinafter designated.

- (1) "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 Director in an NPDES state with an approved State Pretreatment Program and the Administrator of the EPA in a non-NPDES state without an Approved State Pretreatment Program.
- (3) AUTHORIZED REPRESENTATIVE OF INDUSTRIAL USER. An authorized representative of an Industrial User may be: (a) a principal executive officer of at least the level of vice-president, if the Industrial User is a corporation; (b) a general partner or proprietor if the Industrial User is a partnership or proprietorship, respectively; or (c) a duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.
- (4) BIOCHEMICAL OXYGEN DEMAND (BOD) The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees Celsius expressed in terms of weight and concentration (milligrams per liter).
- (5) BUILDING DRAIN. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.
- (6) BUILDING SEWER A sewer conveying wastewater from the premises of a USER to the POTW.
- (7) BYPASS. The intentional diversion of wastestreams from any portion of an Industrial User's facility.

- (8) CATEGORICAL STANDARDS. National Categorical Pretreatment Standards or Pretreatment Standards.
- (9) CITY. The City of Frankenmuth or the City Council of the City of Frankenmuth.
- (10) COMBINED SEWER. A sewer receiving both surface runoff and wastewater.
- (11) DIRECTOR. The Superintendent of the Department of Public Works of the City of Frankenmuth, or his authorized agent, deputy or representative.
- (12) ENVIRONMENTAL PROTECTION AGENCY, or EPA. The U.S. Environmental Protection Agency, Administrator, or other duly authorized official.
- (13) GARBAGE. Solid wastes from the preparation, cooking and disposing of food, and from the handling, storage and sale of produce.
- (14) INDUSTRIAL USER. Any user which discharges industrial waste as defined in this Chapter.
- (15) INDUSTRIAL WASTES. The wastewater discharges from industrial, manufacturing, trade or business processes, or wastewater discharge from any structure with these characteristics, as distinct from their employee's domestic wastes or wastes from sanitary conveniences.
- (16) INTERFERENCE. The inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirement of the City's NPDES Permit or reduces the efficiency of the POTW. The term also includes prevention of wastewater sludge use or disposal by the POTW.
- (17) LABORATORY DETERMINATION. The measurements, tests and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition at the time of any such measurement, test or analysis of "Standard Methods for Examination of Water and Wastewater," a joint publication of the American Public Health Association, the American Waterworks Association and the Water Pollution Control Federation, or in accordance with any other method prescribed by the rules and regulations promulgated pursuant to this division.
- (18) NATIONAL CATEGORICAL PRETREATMENT STANDARD or PRETREATMENT STANDARD. Any federal regulation containing pollutant discharge limits promulgated by the EPA which applies to a specific category of industrial users.
- (19) NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM or NPDES PERMIT. A permit issued pursuant to section 402 of the Act (33 U.S.C. 1342).
- (20) NATIONAL PROHIBITIVE DISCHARGE STANDARD or PROHIBITIVE DISCHARGE STANDARD. Any regulation developed under the authority of 307(b) of the Act and 40 CFR, 403.5.
- (21) NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.
- (22) NEW SOURCE.

(A) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307 (c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

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 is 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) ii. or iii. above but otherwise alters, replaces, or adds to existing process or production equipment.

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

1. Begun, or caused to begin, as part of a continuous on site construction program;
  - 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 ii. 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.

(23) DOMESTIC SEWAGE (NDS). Wastewater which has a daily average BOD concentration of not more than two hundred (200) milligrams per liter, and a daily average concentration of suspended solids of not more than two hundred (200) milligrams per liter.

(24) PERSON. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or its legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

(25) pH. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

(26) PRETREATMENT REQUIREMENTS. Any substantive or procedural requirement for treating a waste prior to inclusion in the POTW.

- (27) **PROPERLY SHREDED GARBAGE.** The wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (½) inch in any dimension.
- (28) **PUBLICLY OWNED TREATMENT WORKS or POTW.** A treatment works as defined by section 212 of the Act (33 U.S.C. 1292), which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant. For the purposes of this ordinance, "POTW" shall also include any persons outside of the City who are, by contract or agreement with the City, users of the City's POTW.
- (29) **PUBLIC SEWER.** A sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.
- (30) Shall is mandatory; MAY is permissive.
- (31) **SIGNIFICANT NONCOMPLIANCE.** A industrial user is in significant noncompliance if its violation meets one or more of the following criteria: (a) any violation of an effluent limit (average or daily maximum) that the Control Authority believes has caused, alone or in combination with other discharges, interference or pass through: or endangered the health of the sewage treatment personnel or the public; (b) any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (c) violations of compliance schedule milestones, contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance by 90 days or more after the schedule date; (d) failure to accurately report noncompliance; or (e) any other violation or group of violations that the Control Authority considers to be significant.
- (32) **SIGNIFICANT INDUSTRIAL USER.** Any Industrial User of the City's wastewater disposal system who (a) is subject to categorical standards; or (b) has a discharge flow of 25,000 gallons or more per average work day; or (c) has a flow greater than 5% of the flow in the City's wastewater treatment system; or (d) has in his wastes toxic pollutants as defined pursuant to Section 307 of the Act, State Statutes and rules; or (e) is found by the City, State of Michigan Department of Natural Resources or the U.S. Environmental Protection Agency (EPA) to have significant impact, either singly or in combination with other contributing industries, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or air emissions generated by the system.
- (33) **SLUG LOAD.** Any substance released in a discharge at a rate and/or concentration that causes interference to the POTW.
- (34) **STANDARD INDUSTRIAL CLASSIFICATION (SIC).** A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.
- (35) **STATE.** The State of Michigan.
- (36) **SUPERINTENDENT.** The person designated by the City to supervise the operation of the publicly owned treatment works, who is charged with certain duties and responsibilities by this article, or his duly authorized representative.
- (37) **SANITARY SEWER.** A sewer which carries wastewater and to which storm, surface, and ground waters are not intentionally admitted.
- (38) **SEWER.** A pipe or conduit for carrying wastewater.

- (39) **STORM SEWER or STORM DRAIN.** A sewer which carries storm and surface waters and drainage, but excludes wastewater and polluted industrial wastes.
- (40) **SUSPENDED SOLIDS.** The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.
- (41) **USER.** Any person who contributes, causes or permits the contribution of wastewater into the POTW.
- (42) **WASTEWATER.** The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with groundwater, surface water, and storm water that may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.
- (43) **WATERCOURSE.** A channel in which a flow of water occurs, either continuously or intermittently.
- (44) **WATERS OF THE STATE.** All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Michigan or any portion thereof.

#### 2.82. Use of Public Sewers Required.

- (1) It shall be unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property within the City of Frankenmuth, or in any area under the jurisdiction of said City, any human or animal excrement, garbage, or other objectionable waste.
- (2) It shall be unlawful to discharge to any natural outlet within the City of Frankenmuth, or in any area under the jurisdiction of said City, any sanitary wastewater, industrial wastes, or other polluted waters.
- (3) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purpose, situated within the City and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary sewer of the City, is hereby required at his expense to install suitable wastewater facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this Chapter, within ninety (90) days after the date of official notice to do so, provided that said public sewer is within one hundred (100) feet of the property line.

Exception: The above stated requirement may be delayed if the property meets all of the following conditions:

- (a) The property was originally developed when a public sanitary sewer was not available.
- (b) A properly certified permit for construction of a private wastewater disposal system was issued by the Saginaw County Health Department prior to the availability of the public sanitary sewer and the private wastewater disposal system was constructed according to that permit.
- (c) The Saginaw County Health Department has inspected the private wastewater disposal system and certified to the City of Frankenmuth that the system complies with its rules and regulations. Any costs associated with that inspection shall be borne by the property owner.

- (d) The private wastewater disposal system must continue to be in compliance with the Saginaw County Health Department's rules and regulations throughout the period of this exception. This provision requires recertification by the Saginaw County Health Department at least once every five (5) years.
- (e) This exception will cease to exist on the tenth (10th) anniversary of the date of completion of construction of the public sanitary sewer or the twentieth (20th) anniversary of the date of the original installation of the private wastewater disposal system whichever date occurs last.
- (f) This exception will cease to exist if a building permit is issued with a value of at least 25% of the existing building valuation.
- (g) The property owner must register an official notice with the Saginaw County Register of Deeds utilizing a form provided by the City of Frankenmuth regarding these facts and the date by which the property must be connected to the public sanitary sewer.

(4) The requirements of section (3) shall be in addition to any requirements that may be imposed by the United States, the State of Michigan, the county or the City.

(5) No sewer collection will be permitted unless there is capacity available in all downstream sewers, lift stations, force mains and the POTW treatment plant, including capacity for treatment of BOD and suspended solids.

(Ordinance No. 2001-04, 03-06-2001)

### 2.83. Building Sewers and Connections.

- (1) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining permission from the Director.
- (2) All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- (3) A separate and independent building sewer shall be provided for every building; except where one (1) building stands at the rear of another on an interior lot and no separate and independent sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer.
- (4) Each lot or parcel of land shall be provided with at least one (1) connection to the sanitary sewer system at the time that the sanitary sewer is constructed in the street, court or alley.
- (5) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Director, to meet all requirements of this Chapter.
- (6) The building sewer shall be cast iron soil pipe, ASTM specification A74-42 or equal; vitrified clay sewer pipe, ASTM specification C13-44T or equal; or other suitable material approved by the Director. Joints shall be tight and waterproof. The Director may require cast iron pipe with leaded joints where the building sewer is

exposed to damage by tree roots. If installed in filled or unstable ground, non-metallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the Director.

(7) The size and slope of the building sewer shall be subject to the approval of the Director, but in no event shall the diameter be less than six (6) inches. The slope of such six (6) inch pipe shall be not less than one-eighth (1/8) inch per foot.

(8) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three (3) feet of any bearing wall, which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipes and fittings.

(9) In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary wastewater carried by such drain shall be lifted by approved artificial means and discharged to the building sewer.

(10) All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the Director. Pipe laying and backfill shall be performed in accordance with ASTM specification C12-19 except that no backfill shall be placed until the work has been inspected.

(11) All joints and connections shall be made gastight and watertight, and only jointing materials and methods may be used meeting the approval of the Director.

(12) The connection of the building sewer into the public sewer shall be made at the "Y" branch, if such branch is available at a suitable location, or by use of special fittings approved by the Director.

(13) The applicant for the building sewer shall notify the Director when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Director or his representative.

(14) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

2.84. Storm Sewer Connection. Each premise within the City of Frankenmuth that is serviced by a sanitary sewer must, in addition, be serviced by a surface water outlet directly connected to the storm sewer system for the express purpose of discharging surface or ground waters therein.

No User shall discharge or cause to be discharged any storm water, surface water, groundwater, water from footing drains, or roof water to any sanitary sewer or sewer connection. Any premises connected to a storm sewer shall comply with county, state and federal requirements as well as those of the City.

Downspouts and roof leaders shall be disconnected from sanitary sewers within six (6) months of the date of adoption of this Ordinance. If this is not done, the City shall perform this work and bill the User.

Storm water, groundwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as combined sewers or storm sewers. Discharge of cooling water or unpolluted process water to a natural outlet shall be approved only by the Michigan Water Resources Commission.

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### 2.85. Eavestroughs.

- (1) All buildings shall be equipped with approved eavestroughs or other means of collection and discharge of roof water. Said eavestrough shall be maintained in a clean and satisfactory operating condition at all times.
- (2) In all cases where a building is equipped with eavestroughs or other means for the collection of roof water, and no storm sewer is available on the site, the downspouts and/or roof water conductor pipes shall be discharged on the ground or paved surface at a distance of not less than seventy-two (72) inches from the building line, unless otherwise approved by the Building Inspector.
- (3) The grade line at the building wall, in all cases, shall be such that the slope is away from the wall at the rate of at least one-half (½) inch per foot for a minimum of twelve (12) feet, or to the property line. In cases where settlement of the ground has occurred at the building wall, it shall be the responsibility of the property owner to add fill to correct the condition so as to conform to the above slope requirement.
- (4) Window wells that are situated so that in the opinion of the Director they can be considered a point of entry of unpolluted surface water, shall be equipped with an approved cover of light-transmitting material, so as to effectively limit the amount of roof or unpolluted surface water from gaining entrance into said area or well.
- (5) The City Manager and other duly authorized employees of the City, bearing proper credentials and identification, shall be permitted to enter upon said properties for the purpose of inspection, observation, or measurement in accordance with the provisions of this section.
- (6) Any person found to be violating any provision of this section shall be served by the City with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. Any person, who shall continue any violation beyond the time limit provided for in the written notice, shall be guilty of a violation of this Chapter.

## **ARTICLE 2. REGULATIONS**

2.86. General Prohibitions Governing Discharges to the Publicly Owned Treatment Works. No User shall contribute, directly or indirectly, any pollutant or wastewater that will pass through or interfere with the operation or performance of the POTW. These general prohibitions apply to all such Users of the POTW whether or not the User is subject to the National Categorical Pretreatment Standards or requirements. A user may not contribute the following substances to the POTW:

- (1) Any pollutants with a closed cup flashpoint of less than 140 degrees Fahrenheit (the RCRA ignitability standard for liquid characteristics waste).
- (2) Any wastewater having a temperature greater than 150 degrees Fahrenheit 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 degrees F (40 degrees C).
- (3) Any water or waste that may contain more than one hundred (100) milligrams per liter of fat, oil or grease.

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- (4) Any gasoline, benzene, naphtha, fuel oil, petroleum oil, nonbiodegradable cutting oil, or other flammable or explosive liquid, solid or gas.
  - (5) Any garbage that has not been properly shredded.
  - (6) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the POTW.
  - (7) Any waters or wastes having a pH lower than five (5.0) or higher than ten (10), or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the POTW.
  - (8) Any malodorous gas or substance capable of creating a public nuisance.
  - (9) Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to: (a) injure or interfere with any treatment process, (b) constitute a hazard to humans or animals, or (c) create any hazard in the receiving waters of the POTW.
  - (10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process.
  - (11) Any substance which will cause the POTW to violate its NPDES Permit or the receiving water quality standards.
  - (12) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a flow rate and/or pollutant concentration which will cause interference to the POTW.
  - (13) Any trucked or hauled pollutants to the POTW except at discharge points designated by the POTW. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, that contain the substances or possess the characteristics enumerated in the prohibitions section and which, in the judgment of the Superintendent, may have a deleterious effect upon the POTW treatment works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the City may:
    - (A) Reject the wastes;
    - (B) Require pretreatment;
    - (C) Charge a surcharge to the discharger.

#### 2.87. Interceptors.

- (1) Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid waste containing grease in excessive amounts, or any flammable wastes, sand, and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection.
- (2) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which when bolted in place shall be gastight and watertight.

(3) Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times.

2.88. National Categorical Pretreatment Standards. Upon the promulgation of the National Categorical Pretreatment Standards for a particular industrial subcategory, the pretreatment standard, if more stringent than limitations imposed under this Chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this Chapter and shall be considered part of this Chapter. The Superintendent shall notify all affected users of the applicable reporting requirements.

2.89. Combined Wastestream Formula. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Superintendent shall impose an alternate limit using the Combined Wastestream Formula in 40 CFR 403.6 (e).

2.90. State Requirements. State requirements and limitations on discharges shall apply in any case where they are more stringent than Federal requirements and limitations or those in this Chapter.

2.91. City’s Right of Revision. The City reserves the right to establish by ordinance more stringent limitations or requirements on discharges to the wastewater disposal system if deemed necessary to comply with the objectives presented in section 2.80 of this Chapter.

2.92. Supplementary Limitations. No user shall discharge wastewater containing concentrations (or mass limitations) greater than the following enumerated materials, except under permit from the Authority. For industrial users with discharges that do not meet the following standards or permit provisions, pretreatment of the wastewater shall be required to meet the appropriate concentrations or mass limitations.

<b>Material</b>	<b>Concentration (mg/l)</b>	<b>Mass Limitation (lbs/day)</b>
Arsenic	.0025	.038
Cadmium	.0050	.075
Copper	.0700	1.05
Cyanide	.0120	.18
Lead	.0100	.150
Mercury	Non-detect*	-
Nickel	.0570	.853
Silver	.0050	.075
Total Chromium	.0250	.375
Zinc	.4000	6.00
BOD	3600	54000
Suspended Solids	2400	36000
Ammonia	350	5255
Phosphorous	25	375

This prohibition of toxic pollutants will conform to Section 307(A) of the Act.

The City may impose mass limitations on dischargers that are using dilution to meet the Pretreatment Standards or Requirements of this Chapter, or in other cases where the City deems the imposition of mass limitations appropriate.

2.93. Special Agreements. No statement contained in this Chapter shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste with unusual strength or character may be accepted by the City for treatment, subject to payment therefore, by the industrial concern, unless prohibited by State or Federal Regulations.

2.94. Excessive Discharge. No user shall ever increase the use or process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards, or in any other pollutant-specific limitation developed by the City or State. Dilution may be an acceptable means of complying with some of the prohibitions set forth in section 2.88, upon prior written approval of the Superintendent.

2.95. Accidental Discharges. Where required a user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this Chapter. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner's or users own cost and expense. Detailed plans showing facilities and operating procedures to provide this protection shall be submitted to the City for review, and shall be approved by the City before construction of the facility. All required users shall complete such a plan within ninety (90) days of notice. If required by the City, a user who commences contribution to the POTW after the effective date of this Chapter shall not be permitted to introduce pollutants into the system until the City has approved accidental discharge procedures. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this Chapter. In the case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the POTW of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

(1) WRITTEN NOTICE. Within five (5) days following an accidental discharge, the user shall submit to the Superintendent a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notifications shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this article or other applicable law.

(2) NOTICE TO EMPLOYEES. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees of whom to call in the event of a dangerous discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure.

2.96. Control Manholes. When required by the Superintendent, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent. The manhole shall be installed at the owner's expense, and shall be maintained by him so as to be safe and accessible at all times.

All measurements, tests and analyses of the characteristics of water as collected at any control manhole, shall be determined in accordance with procedures established by the EPA and contained in 40 CFR, Part 136, as amended.

2.99. Protection from Damage. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the POTW. Any person violating this provision shall be guilty of a violation of this Code.

2.100. Powers and Authority of Inspectors. Industrial Users shall allow the Superintendent and other duly authorized employees of the City, upon the presentation of credentials and other documents as may be required by law, to:

- (1) Enter upon the Users premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Chapter;
- (4) Sample or monitor, for the purposes of assuring permit compliance, any substances or parameters at any location;
- (5) Inspect any production, manufacturing, fabricating, or storage area where pollutants, regulated under the permit, could originate, be stored, or be discharged to the sewer system..

### **ARTICLE 3. FEES**

2.101. Purpose. It is the purpose of this section to provide for the recovery of costs from users of the POTW for the implementation of the program established herein. The applicable charges or fees shall be set as prescribed in Chapter 25, Sanitary Sewer Service User Charges.

Charges and Fees:

- (1) For reimbursement of costs of setting up and operating the Pretreatment Program;
- (2) For monitoring, inspections and surveillance procedures;
- (3) For reviewing accidental discharge procedures and construction;
- (4) For permit applications,
- (5) For filing appeals;
- (6) For consistent removal by the City of pollutants otherwise subject to Federal Pretreatment Standards; and
- (7) Others as the City may deem necessary to carry out the requirements contained herein.

The charges and fees for the services provided by the system shall be levied upon any user which may have any sewer connections with the POTW and which discharges industrial waste to the POTW or any part thereof. Such charges shall be based upon the quantity and quality of industrial wastewater used thereon or therein.

### **ARTICLE 4. ADMINISTRATION**

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2.102. Wastewater Dischargers. It shall be unlawful to discharge to the waters of the State within the City of Frankenmuth, or in any area under the jurisdiction of said City, and/or to the POTW any wastewater except as authorized by the Superintendent in accordance with the provisions of this Chapter except as provided by an NPDES Permit.

2.103. Wastewater Discharge Permits.

(1) GENERAL. All industrial dischargers proposing to connect to or to discharge sewage, industrial waste and other wastes to the POTW shall obtain a Wastewater Discharge Permit before connecting to or discharging to the POTW. All existing industrial dischargers connected to or discharging to the POTW shall obtain a Wastewater Discharge Permit within ninety (90) days after the effective date of this Chapter. All existing industrial dischargers planning a new, increased, or modified discharge shall obtain a new permit prior to initiation of operations of the new or modified facilities. An application for renewal of a permit that will expire shall be submitted one hundred (100) days prior to the expiration date and shall note any changes in the discharge since the issuance of the last permit.

(2) PERMIT APPLICATION. Industrial dischargers shall complete and file with the City of Frankenmuth, a permit application therefore in the form prescribed by the City, and accompanied by the appropriate fee. Existing industrial dischargers shall apply for a Wastewater Discharge Permit within thirty (30) days after the effective date of this Chapter, and proposed new dischargers shall apply at least ninety (90) days prior to connection to the POTW. No discharge permit shall be issued unless and until the following conditions have been met:

(A) Disclosure of name, address, and location of the discharger;

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

(C) Disclosure of Standard Industrial Classification (SIC) number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;

(D) Disclosure of wastewater constituents and characteristics including but not limited to those mentioned in this Chapter, as determined by bonafide chemical and biological analyses. Sampling and analysis shall be performed in accordance with procedures established by the EPA and contained in 40 CFR, Part 136, as amended;

(E) Disclosure of time and duration of discharges;

(F) Disclosure of average daily wastewater flow rates, in gallons per day, including daily, monthly and seasonal variations, if any. All flows shall be measured unless the City due to cost or nonfeasibility approves other verifiable techniques;

(G) Disclosure of site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation;

(H) Description of activities, facilities and plant processes on the premises including all materials that are or may be discharged to the POTW;

(I) Provision of a statement on whether or not compliance is being achieved with this Chapter on a continuing basis or whether additional equipment, operational changes, or maintenance activities are necessary for compliance with this Chapter;

(J) Where additional pretreatment and/or operation and maintenance activities will be required to comply with this Chapter, the user shall provide a declaration of the shortest schedule by which the user will provide such additional pretreatment and/or implementation of additional operational and maintenance activities;

(K) All permit applications for new or modified permits shall be signed by a principal executive officer of the user, and a qualified engineer (licensed professional), and all renewal applications for existing permits shall be signed by a principal executive officer of the user.

The City will evaluate the complete application and data furnished by the user and may require additional information. Within thirty (30) days after full evaluation and acceptance of the data furnished, the City shall issue a Wastewater Discharge Permit subject to the terms and conditions provided herein.

(3) PERMIT MODIFICATIONS. The City reserves the right to amend any Wastewater Discharge Permit issued hereunder in order to assure compliance by the City with applicable laws and regulations. Within one hundred and eighty (180) days of the promulgation of a National Categorical Pretreatment Standard, the Wastewater Discharge Permit of each user subject to such standards shall be revised to require compliance with such standards within the time frame prescribed by such standards. All National Categorical Pretreatment Standards adopted after the promulgation of this Chapter shall be adopted by the City as part of this Chapter. Where a User, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a Wastewater Discharge Permit as required by 3.02.2, the User shall apply for a Wastewater Discharge Permit from the City within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard by the U.S. EPA. In addition, the User with an existing Wastewater Discharge Permit shall submit to the City within one hundred eighty (180) days after the promulgation of an applicable National Categorical Pretreatment Standard, the information required by paragraphs (8) and (9) of Section 3.02.2. The User shall be informed of any proposed changes in this permit at least thirty (30) days prior to the effective date of change. Any alterations in the User's operations, including production rates, which result in new or increased pollutant contributions or substantial changes in the amount of pollutants or volume of wastewater's discharged may also be justification for modifying permits. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(4) PERMIT CONDITIONS. Wastewater Discharge Permits shall specify no less than the following:

(A) Fees and charges to be paid upon initial permit issuance;

(B) Limits on the average and maximum wastewater constituents and characteristics regulated thereby;

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

(D) Requirements for installation and maintenance of inspection and sampling facilities;

(E) Special conditions as the City may reasonably require under particular circumstances of a given discharge including sampling locations, frequency of sampling, number, types, and standards for tests and reporting schedules;

(F) Compliance schedules;

(G) Requirements for submission of special technical reports or discharge reports where same differ from those prescribed by this Chapter;

(H) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

(5) PERMITS DURATION. All Wastewater Discharge Permits shall be issued for a period of five (5) years, subject to amendment or revocation as provided in this Chapter. Upon the expiration date, a new permit will be issued subject to section 2.102.

(6) LIMITATIONS ON A PERMIT TRANSFER. Wastewater Discharge Permits are issued to a specific user for a specific operation and are not assignable to another user without prior written approval of the City, or transferable to any other location.

(7) NEW SOURCE COMPLIANCE DEADLINE. Before beginning to discharge, new sources shall install, have in operating condition and start-up all pollution control equipment needed to meet the applicable pretreatment standards and requirements within the shortest feasible time, not to exceed 90 days. New sources shall meet all applicable pretreatment standards and requirements.

#### 2.104. Reporting Requirements for Permittee.

(1) COMPLIANCE DATE REPORT. Within ninety (90) days following the date for final compliance by the user with applicable Pretreatment Standards set forth in this Chapter or ninety (90) days following commencement of the introduction of wastewater into the POTW by a new user, any user subject to this Chapter shall submit to the Superintendent a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by Pretreatment Standards and Requirements and the average and maximum daily flow for these process units in the user facility which are limited by such Pretreatment Standards or Requirements. The report shall state whether the applicable Pretreatment Standards or Requirements are being met on a consistent basis and, if not, what additional operational and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable Pretreatment Standards or Requirements.

#### (2) PERIODIC COMPLIANCE REPORTS.

(A) The Superintendent shall require appropriate reporting from all users that discharge into the POTW. Users shall submit to the POTW at least once every six months on dates specified by the Superintendent, a description of the nature, concentration, and flow of the pollutants required to be reported to the POTW.

(B) The Superintendent may also impose mass limitations on Users that are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases in which the imposition of mass limitations is appropriate. In such cases the report required by subparagraph (a) of 2.103(2) shall also indicate the mass of pollutants of the User.

(C) 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.

(D) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Superintendent, the results of this monitoring shall be included in the report.

(E) Sampling and analysis may be performed by the POTW in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(3) CHANGED DISCHARGE. Each user must notify the Superintendent of any planned significant changes to the user's operation or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change.

(4) BASELINE MONITORING REPORTS.

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

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

1. Identifying Information - The name and address of the facility, including the name of the operator and owner.
2. Environmental Permits - A list of any environmental control permits held by or for the facility.
3. Description of Operations - A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
4. Flow Measurement - Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
5. Measurement of Pollutants -
  - a. The categorical pretreatment standards applicable to each regulated process.
  - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Superintendent, 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 this chapter.
  - c. Sampling must be performed in accordance with procedures set out in this chapter.

6. 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.

7. 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.

8. Signature and Certification - All baseline monitoring reports must be signed and certified.

(5) COMPLIANCE SCHEDULE PROGRESS REPORTS.

(A) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing, and completing construction, and beginning and conducting routine operation).

(B) No increment referred to above shall exceed nine (9) months.

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

(D) In no event shall more than 9 months elapse between such progress reports to the Superintendent.

(6) BYPASS PROVISIONS. Bypass is prohibited, and the POTW may take enforcement action against an Industrial User for bypass, unless:

(A) There is prior notification to the POTW, if the industrial user knows, in advance, of the need for a bypass;

(B) The bypass does not cause a violation of applicable categorical pretreatment standards or local limits and it is for "essential maintenance";

(C) The bypass was unavoidable to prevent loss of life, personal injury or severe property damage and there were no feasible alternatives.

Any unanticipated bypass shall require oral notice within twenty-four (24) hours and written notice within five (5) days. This report shall specify: (a) A description of the bypass, and its cause, including its duration; (b) whether the bypass has been corrected; and (c) the steps being taken or to be taken to reduce, eliminate and prevent a reoccurrence of the bypass.

(7) OPERATING UPSETS. Any User that experiences an upset in operations that places the User in a temporary state of noncompliance with the provisions of this Chapter shall inform the POTW within twenty-four (24) hours of becoming aware of the upset. The User to the City shall submit a written follow-up report of the upset within five (5) days. The report shall specify: (a) Description of the upset, the cause(s) thereof and the upset's impact on the Users compliance status; (b) duration of noncompliance, including exact dates and times of noncompliance, and if not corrected, the anticipated time the noncompliance is expected to continue; and (c) all steps taken or to

be taken to reduce, eliminate and prevent recurrence of such an upset. An industrial user which complies with the notification provisions of section 2.103. (3) and/or (4) shall have an affirmative defense to any enforcement action brought by the City for any noncompliance with this aforesaid section, or an order or permit issued hereunder by the user, which arises out of violations attributable to and alleged to have occurred during the period of the documented and verified bypass and/or upset.

2.105. Pretreatment. Industrial users shall provide necessary wastewater treatment as required to comply with this Chapter and shall achieve compliance with all National Categorical Pretreatment Standards within the time limitations as specified by the Federal Pretreatment Regulations, 40 CFR 403, and as required by the City. Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the City for review, and shall be approved by the City before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the City under the provisions of this Chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the City prior to the user's initiation of the changes.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the EPA or Approval Authority upon request.

2.106. Hazardous Waste Report. Industrial Users shall notify the POTW, EPA, and the Approval Authority of any discharge of a listed or characteristic RCRA hazardous waste of more than fifteen (15) kilograms per calendar month. Such notification shall include the name, type of discharge, and estimation of the mass and concentration of such waste to the wastestream. This is a one-time notification requirement.

2.107. Signatory Requirements for Industrial User Reports. All statements or reports as required by this Chapter shall be signed by an authorized representative of the Industrial User, and certified to by a qualified representative.

2.108. Confidential Information. Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agencies without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

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

The City shall not transmit to any governmental agency or to the general public information accepted by the City as confidential until and unless a ten-(10) day notification is given to the User.

## ARTICLE 5. ENFORCEMENT

2.109. Notification of Violation.

(1) GENERAL. Whenever the Superintendent finds that any industrial user has violated or is violating this Chapter, or a wastewater permit or order issued hereunder, the Superintendent or his agent may serve upon said user written notice of the violation. Within five (5) days of the receipt date of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Superintendent. 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.

(2) REPORT SAMPLING & REPORTING. If sampling performed by a user indicates a violation, the user must notify the Superintendent 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 Superintendent within 30 days after becoming aware of the violation. The user is not required to resample if the Superintendent monitors at the user's facility at least once a month, or if the Superintendent samples between the user's initial sampling and when the user receives the results of this sampling.

#### 2.110. Harmful Contributions.

(1) The City may suspend the wastewater treatment service when such suspension is necessary, in the opinion of the City, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, causes interference to the POTW or causes the City to violate any condition of its NPDES Permit.

The City may seek to terminate the wastewater treatment services to any user which (a) fails to factually report the wastewater constituents and characteristics of its discharge; (b) fails to report significant changes in wastewater constituents or characteristics; (c) refuses reasonable access to the user's premises by representatives of the City for the purpose of inspection or monitoring; or (d) violates the conditions of this Chapter, or any final judicial order entered with respect thereto.

Any person notified of a suspension of the wastewater treatment service shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the City shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The City shall reinstate the wastewater treatment service upon proof of the elimination of the noncomplying discharge. A detailed written statement submitted by the user describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the City within fifteen (15) days of the date of occurrence.

2.111. Consent Orders. The Superintendent may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the non-compliance within a time period specified by the document.

#### 2.112. Show Cause Hearing.

(1) Any user subject to enforcement action under the provisions of this Chapter may request a hearing before the City Manager within ten (10) days of receipt of notification of proposed enforcement action. A hearing is to be held by the City Manager concerning the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause before the City Manager why the proposed enforcement action should not be taken.

(2) The City Manager may conduct the hearing and take the evidence, or may designate any officer or employee to:

(A) Issue in the name of the City Manager notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;

(B) Take the evidence;

(C) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the City Manager for action thereon.

(3) At any hearing held pursuant to this Chapter, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

(4) After the City Manager has reviewed the evidence he may issue and order to the user responsible for the discharge directing that, following a specific time period, the sewer service be discontinued unless adequate treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities, and that said devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(5) The City Manager shall also establish appropriate surcharges or fees to reimburse the City for the additional cost of operation and maintenance of the POTW due to the violations of this Chapter.

(6) Any action by the City Manager may be appealed to the City Council.

2.113. Injunctive Relief. Whenever an industrial user has violated or continues to violate the provisions of this Chapter or permit or order issued hereunder, the City, through counsel may petition the Court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the industrial user. The City shall have such remedies to collect these fees as it has to collect other sewer service charges.

2.114. Annual Publication. The City in the largest daily newspaper within its service area shall annually publish a list of Industrial Users that were subject to enforcement proceedings during the twelve-(12) previous months. Accordingly, the User is apprised that noncompliance with this Chapter may lead to an enforcement action and may result in publication of its name in an appropriate newspaper in accordance with this section.

## ARTICLE 6. OTHER PROVISIONS

2.115. Violations; Municipal Civil Infractions; Misdemeanors.

(1) Municipal Civil Infractions.

(a) Except as provided by section 2.115(2), a person who violates any provision of this Chapter (including, without limitation, and notice, order, permit, decision or determination promulgated, issued or made by the City under this Chapter) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$1,000.00 per day for each violation and not more than \$10,000.00 per day for each violation, plus costs and other sanctions.

(b) Increased fines for repeat offenses. Increased fines may be imposed for repeat offenses. As used in this section, "repeat offense," means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this Chapter (i) committed by a person within any 90-day period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this chapter shall be as follows:

(1) The fine for any offense that is a first repeat offense shall be not less than \$2,500.00, plus costs.

(2) The fine for any offense that is a second repeat offense or any subsequent repeat offense shall be not less than \$5,000.00, plus costs.

(c) Amount of Fines.

(1) *Municipal Civil Infraction Citations.* Subject to the minimum fine amounts specified in Sections 2.115(1)(a) and (b), the following factors shall be considered by a court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this chapter: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

(2) *Municipal Civil Infraction Notices; Schedule of Fines.* Notwithstanding any provision of this Code to the contrary, the amount of a municipal civil infraction fine due in response to the issuance of a municipal civil infraction notice for a violation as provided by Section 2.115(1)(a) shall be according to the schedule of civil fines as established by Section 1.155 of this Code.

(d) Authorized City Official. The City Manager or WWTP Superintendent are hereby designated as the authorized City officials to issue municipal civil infraction citations and municipal civil infraction violation notices for violations of this Chapter.

(2) Criminal Misdemeanor Penalties: Imprisonment. Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this chapter, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the POTW under this chapter; or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this chapter; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this chapter; or (4) commits any other act that is punishable under applicable state law by imprisonment for more than 90 days; shall, upon conviction, be guilty of a misdemeanor punishable by a fine of \$500.00 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

(Ordinance No. 2002-05; 08-07-2002)

2.116. Reimbursement of City.

(a) Any person who violates any provision of this Chapter, or who discharges or causes a discharge that produces a deposit or obstruction or otherwise damages or impairs the POTW, or causes or contributes to a violation of any federal, state or local law governing the POTW, shall be liable to and shall fully reimburse the City for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the POTW or the City as a result of any such discharge, violation, exceedence or noncompliance. The costs that must be reimbursed to the City shall include, without limitation, all of the following:

- (1) All costs incurred by the POTW and the City in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.
- (2) All costs to the POTW and the City of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance.
- (3) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the POTW or the City by any governmental agency or third party as a result of a violation of the POTW's NPDES permit (or other applicable law or regulation) that is caused by or contributed to by any discharge, violation, exceedence or noncompliance.
- (4) The full value of any City staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the City attorney and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance or otherwise enforcing the requirements of this Chapter.

Further, the City is authorized to correct any violation of this Chapter or damage or impairment to the POTW caused by a discharge and to bill the person causing the violation or discharge for the amounts to be reimbursed to the City. The costs reimbursable under this Section shall be in addition to fees, amounts or other costs and expenses required to be paid by users under other sections of this Chapter.

(b) In determining the amounts to be reimbursed to the City, the City may consider factors such as, but not limited to, the following:

- (1) The volume of the discharge.
- (2) The length of time the discharge occurred.
- (3) The composition of the discharge.
- (4) The nature, extent, and degree of success the City may achieve in minimizing or mitigating the effect of the discharge.
- (5) The toxicity, degradability and dispersal characteristics of the discharges.
- (6) The direct and indirect costs incurred by the City, or imposed upon the City to treat the discharges, including sludge handling and disposal costs.
- (7) Fines, assessments, levies, charges, expenses and penalties imposed upon and/or incurred by the City, including the City's costs of defense of actions, or suits brought or threatened against the City by governmental agencies or third parties.

(8) Such other factors, including the amount of any attorney's fees, consultant and expert fees, expenses, costs, sampling and analytical fees, repairs, etc., as the City deems appropriate under the circumstances.

(c) The failure by any person to pay any amounts required to reimburse to the POTW or the City as provided by this section shall constitute an additional violation of this Chapter.

(Ordinance No. 2002-05; 08-07-2002)

2.117. Appeals Procedures. Any person or party affected by this Chapter may file an appeal with the City Manager if he or she has reason to believe that any part or parts of the Chapter are not applicable toward a particular situation and place undue financial or other burden on the grieved party or person.

2.118. Severability. If any court of competent jurisdiction invalidates any provision, paragraph, word, section, or article of this Chapter, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

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

Editor's note: Ordinance No. 2000-05, adopted September 5, 2000, amended Chapter 23, relative to city sewer service, in its entirety to read as herein set forth. Prior to said amendment, Chapter 23 was amended by Ordinance No. 85-2a, adopted September 4, 1985 and Ordinance No. 87-7, adopted August 4, 1987.