

ARTICLE VII. WASTEWATER DISCHARGE AND POLLUTION ABATEMENT

DIVISION 1. GENERALLY

Sec. 38-221. Purpose and scope of article.

(a) This article sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the city, and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the general pretreatment regulations (40 CFR 403).

(b) The objectives of this article are to:

- (1) Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) Prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
- (3) Promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) Protect municipal personnel who may be affected by sewage, sludge and effluent in the course of their employment, as well as protecting the general public;
- (5) Provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (6) Ensure that the city complies with its NPDES or non-discharge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

(c) This article provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established in this article.

(d) This article shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312 and/or G.S. 153A-275. Except as otherwise provided in this article, the POTW director shall administer, implement and enforce the provisions of this article. Any powers granted to or imposed upon the POTW director may be delegated by the POTW director to other city personnel. By discharging wastewater into the municipal wastewater system, industrial users located outside the city limits agree to comply with the terms and conditions established in this article, as well as any permits, enforcement actions or orders issued under this article.

(Ord. No. 1995-16, part 1, 5-2-1995)

Sec. 38-222. Definitions and abbreviations.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act and *the act* mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq.

Approval authority means the director of the division of environmental management of the state department of environment, health and natural resources, or his designee.

Authorized representative of the industrial user.

- (1) If the industrial user is a corporation, authorized representative shall mean:
- a. The president, secretary 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
 - b. The manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000.00 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
- (3) If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in subsections (1) through (3) of this definition may designate another 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.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees Celsius, usually expressed as a concentration (e.g., mg/l).

Building sewer means a sewer conveying wastewater from the premises of a user to the POTW.

Bypass means the intentional diversion of waste streams from any portion of a user's treatment facility.

Carbonaceous biochemical oxygen demand (CBOD) means the quantity of oxygen utilized (less the nitrogenous demand by the addition of a nitrogen inhibitor) in the biological oxidation of organic matter under standard laboratory procedures for five days at 20 degrees Celsius, usually expressed as a concentration (e.g., mg/l).

Categorical standards means national categorical pretreatment standards or pretreatment standard.

Environmental Protection Agency and *EPA* mean the U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of such agency.

Grab sample means a sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

Holding tank waste means any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Indirect discharge and *discharge* mean the discharge or the introduction from any nondomestic source regulated under section 307(b), (c) or (d) of the act, 33 USC 1317, into the POTW, including holding tank waste discharged into the system.

Industrial user and *user* mean any person who is a source of indirect discharge.

Interference means the inhibition or disruption of the POTW treatment processes or operations, or its sludge process, use or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal

statutes, regulations or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the act (33 USC 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 USC 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Medical waste means 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.

National categorical pretreatment standard and *categorical standard* mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the act (33 USC 1317) which applies to a specific category of industrial users, and which appears in 40 CFR chapter 1, subchapter N, parts 405 to 471.

National Pollutant Discharge Elimination System permit and *NPDES permit* mean a permit issued pursuant to section 402 of the act (33 USC 1342), or pursuant to G.S. 143-215.1 by the state under delegation from the EPA.

National prohibitive discharge standard and *prohibitive discharge standard* mean absolute prohibitions against the discharge of certain substances. These prohibitions appear in division 2 of this article and are developed under the authority of section 307(b) of the act and 40 CFR 403.5.

New source.

(1) New source means any building, structure, facility or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the act which will be applicable such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsection (1)b or c of this definition but otherwise alters, replaces or adds to existing process or production equipment.

(3) For purposes of this definition, construction of a new source has commenced if the owner or operator has:

- a. Begun, or caused to begin, as part of a continuous on-site construction program:
 1. Any placement, assembly or installation of facilities or equipment; or
 2. 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
- b. 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 definition.

Non-contact cooling water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product or finished product.

Non-discharge permit means a disposal system permit issued by the state pursuant to G.S. 143-215.1.

Pass-through means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation of the POTW's NPDES or non-discharge permit or a downstream water quality standard.

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state and local government entities.

pH is a measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

Pollutant means any waste as defined in G.S. 143-213(18), and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, CBOD, COD, toxicity or odor).

POTW director means the city director of public works.

POTW treatment plant means that portion of the POTW designed to provide treatment to wastewater.

Pretreatment and *treatment* mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

Pretreatment program means the program for the control of pollutants introduced into the POTW from nondomestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standards means prohibited discharge standards, categorical standards and local limits.

Publicly owned treatment works (POTW) and *municipal wastewater system* mean a treatment works as defined by section 212 of the act (33 USC 1292), which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this article, the term "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the city's POTW.

Severe property damage means substantial physical damage to property, damage to the user's 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.

Significant industrial user means any industrial user of the wastewater disposal system who:

- (1) Has an average daily process wastewater flow of 25,000 gallons or more;
- (2) Contributes more than five percent of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge;
- (3) Is required to meet a national categorical pretreatment standard; or
- (4) Is found by the city, the state division of environmental management or the U.S. Environmental Protection Agency to have the potential for impact, singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.

Significant noncompliance and *reportable noncompliance* mean a status of noncompliance defined as follows:

- (1) Violations of wastewater discharge limits:
 - a. Chronic violations: 66 percent or more of the measurements exceed, by any magnitude, the same daily maximum limit or the same average limit in a six-month period.
 - b. Technical review criteria (TRC) violations: 33 percent or more of the measurements are equal to or greater than the TRC times the limit (maximum or average) in a six-month period. There are two groups of TRCs. For conventional pollutants (CBOD, TSS, fats, oil and grease), TRC equals 1.4. For all other pollutants, TRC equals 1.2.
 - c. Any other 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 plant personnel or the public.
 - d. Any discharge of a pollutant that has caused imminent endangerment to human health or welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- (2) Violations of compliance schedule milestones contained in a pretreatment permit or enforcement order, for starting construction, completing construction and attaining final compliance, by 90 days or more after the schedule date.
- (3) Failure to provide reports for compliance schedules, self-monitoring data, baseline monitoring reports, 90-day compliance reports and periodic compliance reports within 30 days from the due date.
- (4) Failure to accurately report noncompliance.
- (5) Any other violation or group of violations that the control authority considers to be significant.

Slug load means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in division 2 of this article.

Standard Industrial Classification (SIC) is a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

Stormwater means stormwater, groundwater, rainwater, street drainage, subsurface drainage, yard drainage or any flow occurring during or following any form of natural precipitation and resulting therefrom.

Superintendent means the person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this article, or his duly authorized representative.

Suspended solids means 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.

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.

Wastewater means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water and stormwater that may be either treated or untreated, which are contributed into or permitted to enter the POTW.

Wastewater permit means the permit provided for in division 4 of this article.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and 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 or any portion thereof.

(b) The following abbreviations, when used in this article, shall have the designated meanings:

TABLE INSET:

BOD	Biochemical oxygen demand
CBOD	Carbonaceous biochemical oxygen demand
CFR	Code of Federal Regulations
COD	Chemical oxygen demand
EPA	Environmental Protection Agency
gpd	Gallons per day
l	Liter
mg	Milligrams
mg/l	Milligrams per liter
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and maintenance
POTW	Publicly owned treatment works
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification

SWDA	Solid Waste Disposal Act
TKN	Total Kjeldahl nitrogen
TSS	Total suspended solids
USC	United States Code

(Ord. No. 1995-16, part 1, § 1.2, 5-2-1995)

Cross references: Definitions generally, § 1-2.

Sec. 38-223. 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 POTW director/superintendent that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data. When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this article, the National Pollutant Discharge Elimination System (NPDES) permit, the non-discharge permit and/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. All records relating to compliance with pretreatment standards shall be made available to officials of the approval authority and the EPA upon request.

(Ord. No. 1995-16, part 7, 5-2-1995)

Sec. 38-224. Enforcement.

(a) *Administrative remedies.*

(1) *Notification of violation.* Whenever the POTW director/superintendent finds that any industrial user has violated or is violating this article, a wastewater permit or any prohibition, limitation or requirements contained therein, or any other pretreatment requirement, the POTW director/superintendent may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(2) *Consent orders.* The POTW director/superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period, also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to subsection (a)(4) of this section.

(3) *Show cause hearing.*

a. The POTW director/superintendent may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this article or is in

noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. If the POTW director/superintendent determines that a show cause order should be issued, a 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 this 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 before the hearing. Service may be made on any agent or officer of a corporation.

b. The POTW director/superintendent shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

c. A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under subsection (b) of this section, nor is any action or inaction taken by the POTW director/superintendent under this section subject to an administrative appeal under section 38-310.

(4) *Administrative orders.* When the POTW director/superintendent finds that an industrial user has violated or continues to violate this article, permits or orders issued under this article, or any other pretreatment requirement, the POTW director/superintendent may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

a. Immediately comply with all requirements.

b. Comply in accordance with a compliance time schedule set forth in the order.

c. Take appropriate remedial or preventive action in the event of a continuing or threatened violation.

d. Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(5) *Emergency suspensions.*

a. The POTW director/superintendent may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary 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, interferes with the POTW or causes the POTW to violate any condition of its NPDES or non-discharge permit.

b. Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW director/superintendent 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 POTW director/superintendent shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW director/superintendent prior to the date of the hearing described in this subsection.

(6) *Termination of permit.* Any user who violates the following conditions of this article, or applicable state and federal regulations, is subject to having its permit terminated:

a. Failure to accurately report the wastewater constituents and characteristics of his discharge;

b. Failure to report significant changes in operations, or wastewater constituents and characteristics;

c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or

d. Violation of conditions of the permit.

Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under subsection (a) of this section why the proposed action should not be taken.

(b) *Other available remedies.* Remedies in addition to those otherwise mentioned in this article are available to the POTW director/superintendent, who may use any single one or a combination against a noncompliant user. Additional available remedies include but are not limited to the following:

(1) *Criminal violations.* The district attorney for the 11th Judicial District may, at the request of the city, prosecute noncompliant users who violate the provisions of G.S. 143-215.6B. Under state law, it is a crime to negligently violate any term, condition or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition or requirement of a pretreatment permit, or to knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time a person is placed in imminent danger of death or serious bodily injury (G.S. 143-215.6B(h)), and to falsify information required under G.S. ch. 143, art. 21 (G.S. 143-215.6B(i)).

(2) *Injunctive relief.* Whenever a user is in violation of the provisions of this article or an order or permit issued under this article, the POTW director/superintendent, through the city attorney, may petition the superior court of justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

(3) *Water supply severance.* Whenever an industrial user is in violation of the provisions of this article or an order or permit issued under this article, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.

(4) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this article, or of a permit or order issued under this article, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW director/superintendent. Any person creating a public nuisance shall be subject to the provisions of chapter 16 governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying the nuisance.

(c) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive. The POTW director/superintendent 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's enforcement response plan. However, the POTW director/superintendent may take other action against any user when the circumstances warrant. Further, the POTW director/superintendent is empowered to take more than one enforcement action against any noncompliant user.

(d) *Civil penalties.*

(1) Any user who is found to have failed to comply with any provision of this article, or the orders, rules, regulations and permits issued under this article, may be fined up to \$25,000.00 per day per violation.

(2) In determining the amount of the civil penalty, the POTW director/superintendent shall consider the following:

- a. The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation.
- b. The duration and gravity of the violation.
- c. The effect on groundwater or surface water quantity or quality or on air quality.
- d. The cost of rectifying the damage.
- e. The amount of money saved by noncompliance.
- f. Whether the violation was committed willfully or intentionally.
- g. The prior record of the violator in complying or failing to comply with the pretreatment program.
- h. The costs of enforcement to the city.

(3) Appeals of civil penalties assessed in accordance with this section shall be as provided in section 38-310.

(Ord. No. 1995-16, part 8, 5-2-1995; Ord. No. 2000-13, 2-15-2000)

Sec. 38-225. Annual publication of list of users not certified.

At least annually, the POTW director/superintendent shall publish, in the largest daily newspaper circulated in the service area, a list of those industrial users which were found to be not certified, as defined in 15A NCAC 2H.0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Ord. No. 1995-16, part 9, 5-2-1995)

Sec. 38-226. Affirmative defenses to discharge violations.

(a) *Upset.*

(1) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (a)(2) of this section are met.

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

- a. An upset occurred and the user can identify the cause of the upset;
- b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and
- c. The user has submitted the following information to the POTW director/superintendent 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.

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

(4) 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.

(5) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of the user's 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, is lost, or fails.

(b) *Prohibited discharge standards defense.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 38-241(a) or the specific prohibitions in section 38-241(b)(2), (b)(3), (b)(5) through (7), (b)(9) through (22), (c), (d) and (e) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:

(1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass-through or interference; or

(2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(c) *Bypass.*

(1) 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 ensure efficient operation. These bypasses are not subject to the provisions of subsections (c)(2), (3) and (4) of this section.

(2) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW director/superintendent, at least ten days before the date of the bypass, if possible.

(3) A user shall submit oral notice to the POTW director/superintendent 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 POTW director/superintendent may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(4) Bypass is prohibited, and the POTW director/superintendent may take an enforcement action against a user for a bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

c. The user submitted notices as required under subsection (c)(2) of this section.

(5) The POTW director/superintendent may approve an anticipated bypass, after considering its adverse effects, if the POTW director/superintendent determines that it will meet the three conditions listed in subsection (c)(4) of this section.

(Ord. No. 1995-16, part 10, 5-2-1995)

Secs. 38-227--38-240. Reserved.

DIVISION 2. REGULATIONS GOVERNING SEWER USE

Sec. 38-241. Prohibited discharge standards.

(a) *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass-through. These general prohibitions apply to all users of a POTW, whether or not the user is a significant industrial user or subject to any national, state or local pretreatment standards or requirements.

(b) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances or wastewater:

(1) Pollutants which create a fire or explosive hazard in the POTW, including but not limited to waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21.

(2) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, such solid or viscous substances including but not being limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, bones, feathers, slurry, lime residues, graphite sludge, textile lints or fibers, slops, whole blood, fleshings, chemical residues, paint residues, waxes, asphalt, hair, tar, plastics, wood, paunch manure, butcher's offal, animal viscera, lime or any solid or viscous substances capable of causing obstructions of any kind in either the collection system or at any point in the treatment plant. Also, any waste that will not pass through a one-fourth-inch mesh screen or its equivalent in screening ability is not to be discharged into the sanitary sewer collection system, but disposed of by an alternative means.

(3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.

(4) Any wastewater having a pH less than 5.5 or more than 10.5 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.

(5) Any wastewater containing pollutants, including oxygen-demanding pollutants (CBOD, etc.), in sufficient quantity (flow or concentration), either singly or by interaction with other pollutants, to cause interference with the POTW.

(6) Any wastewater having a temperature greater than 150 degrees Fahrenheit (66 degrees Celsius), or which will inhibit biological activity in the POTW 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 Fahrenheit (40 degrees Celsius).

(7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW director/superintendent in accordance with section 38-249.

(9) Any noxious or malodorous liquid, gas or solid or other wastewater which, either singly or by interaction with other wastes, is sufficient to create a public nuisance or hazard to life or is sufficient to prevent entry into the sewers for maintenance and repair.

(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. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the act, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

(11) Any wastewater which imparts color which cannot be removed by the treatment process, including but not limited to dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to

adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.

(12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW director/superintendent in compliance with applicable state or federal regulations.

(13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW director/superintendent.

(14) Fats, oils or greases of mineral, petroleum, animal or vegetable origin in concentrations greater than 100 mg/l.

(15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.

(16) Any medical wastes, except as specifically authorized by the POTW director/superintendent in a wastewater discharge permit.

(17) Any material containing ammonia, ammonia salts or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

(18) Any material that would be identified as hazardous waste according to 40 CFR 261 if not disposed of in a sewer, except as may be specifically authorized by the POTW director/superintendent.

(19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B.0200.

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

(21) Recognizable portions of the human or animal anatomy.

(22) Any wastes containing detergents, surface active agents or other substances which may cause excessive foaming in the municipal wastewater system.

(c) *Explosion hazards.* At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system), be more than five percent, or any single reading over ten percent, of the lower explosive limit (LEL) of the meter.

(d) *Use of garbage grinders.*

(1) Waste from garbage shredders and grinders shall not be acceptable for discharge into a community sewer except:

a. Wastes generated in preparation of food normally consumed on the premises; or

b. Where the user has obtained a permit for that specific use from the city, and agrees to undertake whatever self-monitoring is required to enable the city to determine the waste constituents and characteristics and applicable fees and charges.

(2) All grinders must shred the waste to a degree that all particles will be carried freely under normal flow conditions prevailing in the community sewer.

(3) Garbage grinders shall not be used for grinding plastic, paper products, inert materials or garden refuse.

(e) *Direct discharge through manhole or other opening.* No person shall discharge any substances directly into a manhole or other opening in a community sewer other than through an approved building sewer, unless he has been issued a permit by the city. If a permit is issued for such a direct discharge, the user shall pay the applicable charges and fees and shall meet the other conditions necessary to properly treat this discharge as required by the city.

(f) *Drainage of pollutants from processing or storage areas.* Pollutants, substances, wastewater or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All

floor drains located in processing or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

(g) *Enforcement.* When the POTW director/superintendent determines that a user is contributing to the POTW any of the substances enumerated in this section in amounts that may cause or contribute to interference with POTW operation or pass-through, the POTW director/superintendent shall:

- (1) Advise the user of the potential impact of the contribution on the POTW in accordance with section 38-224(a); and
 - (2) Take appropriate actions in accordance with division 4 of this article for such user to protect the POTW from interference or pass-through.
- (Ord. No. 1995-16, part 2, § 2.1, 5-2-1995)

Sec. 38-242. National categorical pretreatment standards.

(a) Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR chapter 1, subchapter N, parts 405 to 471, which are incorporated in this article.

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

(c) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW director/superintendent shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).

(d) 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.

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

(Ord. No. 1995-16, part 2, § 2.2, 5-2-1995)

Sec. 38-243. Local limits.

(a) An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following instantaneous maximum (grab samples) or daily average (composite samples) discharge limits:

250	mg/l		CBOD
200	mg/l		TSS
40	mg/l		TKN
0.003	mg/l		arsenic
0.003	mg/l		cadmium
0.061	mg/l		copper
0.041	mg/l		cyanide
0.049	mg/l		lead
<0.0002	mg/l		mercury
0.021	mg/l		nickel
0.005	mg/l		silver
0.05	mg/l	total	chromium
0.175	mg/l		zinc
2.13 mg/l	TTO		

(b) Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading is not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits.

(Ord. No. 1995-16, part 2, § 2.3, 5-2-1995)

Sec. 38-244. 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 article.

(Ord. No. 1995-16, part 2, § 2.4, 5-2-1995)

Sec. 38-245. Right of revision.

The city reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulations if deemed necessary to comply with the objectives presented in section 38-221 or the general and specific prohibitions in section 38-241, as allowed by 40 CFR 403.4.

(Ord. No. 1995-16, part 2, § 2.5, 5-2-1995)

Sec. 38-246. Dilution of discharge.

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 the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard or in any other pollutant-specific limitation developed by the city or state.

(Ord. No. 1995-16, part 2, § 2.6, 5-2-1995)

Sec. 38-247. Pretreatment of wastewater.

(a) *Pretreatment facilities.*

(1) Users shall provide wastewater treatment as necessary to comply with this article and wastewater permits issued under division 4 of this article and shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in section 38-241 within the time limitations as specified by the EPA, the state or the POTW director/superintendent, whichever is more stringent. Any facilities necessary for compliance 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 POTW director/superintendent before construction of the facility.

(2) The review of such plans and operating procedures shall 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 article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW director/superintendent prior to the user's initiation of the changes.

(b) *Additional pretreatment measures.*

(1) *Authority of director.* Whenever deemed necessary, the POTW director/superintendent 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 waste streams from industrial waste streams, and impose such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.

(2) *Flow-control facilities.* The POTW director/superintendent may require any person discharging into the POTW to install and maintain, on such person's property and at his 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.* Grease, oil and sand interceptors shall be provided when, in the opinion of the POTW director/superintendent, 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 a type and capacity approved by the POTW director/superintendent and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user, at his expense.

(4) *Gas detection meters.* Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(5) *Control manhole.* A control manhole shall be provided downstream from any building treatment, storage tank, or any other approved works to facilitate monitoring of industrial waste. The discharger shall provide and maintain the control manhole. Any and all users may be required by the city to construct a control manhole. The user who has constructed a monitoring facility may be waived of the requirement of a control manhole by the approving authority.

(Ord. No. 1995-16, part 2, § 2.7, 5-2-1995)

Sec. 38-248. Accidental discharge/slug control plans.

(a) At least once every two years, the POTW director/superintendent shall evaluate whether each significant industrial user needs an accidental discharge/slug control plan. The POTW director/superintendent may require any user to develop, submit for approval, and implement such a plan.

(b) Alternatively, the POTW director/superintendent may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

- (1) Description of discharge practices, including nonroutine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the POTW director/superintendent of any accidental or slug discharge, as required by section 38-336; 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.

(Ord. No. 1995-16, part 2, § 2.8, 5-2-1995)

Sec. 38-249. Hauled wastewater.

(a) Septic tank waste may be introduced into the POTW only at locations designated by the POTW director/superintendent, and at such times as are established by the POTW director/superintendent. Such waste shall not violate this division or any other requirements established by the city. The POTW director/superintendent may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The POTW director/superintendent may require haulers of industrial waste to obtain wastewater discharge permits. The POTW director/superintendent may require

generators of hauled industrial waste to obtain wastewater discharge permits. The POTW director/superintendent also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the POTW director/superintendent. No load may be discharged without prior consent of the POTW director/superintendent. The POTW director/superintendent may collect samples of each hauled load to ensure compliance with applicable standards. The POTW director/superintendent may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes. (Ord. No. 1995-16, part 2, § 2.9, 5-2-1995)
Secs. 38-250--38-270. Reserved.

DIVISION 3. FEES AND CHARGES

Sec. 38-271. Generally.

It is the purpose of this article to provide for the recovery of costs from users of the city's wastewater disposal system for the implementation of the program established in this article. The applicable charges or fees shall be set forth in the city's schedule of charges and fees.

(Ord. No. 1995-16, part 3, § 3.1, 5-2-1995)

Sec. 38-272. User charges.

(a) *Applicability.* A user charge shall be levied on all users, including but not limited to persons, firms, corporations or governmental entities, that discharge, cause or permit the discharge of sewage into the POTW.

(b) *Costs included.* The user charge shall reflect at least the cost of debt service and operation and maintenance (including replacement) of the POTW.

(c) *Basis and calculation.* Each user shall pay its proportionate cost based on volume of flow.

(d) *Review.* The city shall review annually the sewage contributions of users and the total costs of debt service and operation and maintenance of the POTW and will make recommendations to the council for adjustments in the schedule of charges and fees as necessary.

(e) *Charges for flow not directly attributable to users.* Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.

(f) *Measurement of water usage.* When charges and fees are based on the water usage, the charges and fees shall be applied against the total amount of water used from all sources, public and private, determined by means of the user and approved by the city, adding the private sources' volume to the metered water consumption.

(Ord. No. 1995-16, part 3, § 3.2, 5-2-1995)

Sec. 38-273. Surcharges generally.

(a) *Applicability.* All industrial users of the POTW are subject to industrial waste surcharges on discharges which exceed the levels in section 38-275(1).

(b) *Basis and calculation.* The amount of surcharge will be based upon the mass emission rate (in pounds per day) discharged above the levels in section 38-275(1). The amount charged per pound of excess will be set forth in the schedule of charges and fees.

(c) *Determination of flow; credit for water not returned to sewer.*

(1) The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:

a. Metered water consumption as shown in the records of meter readings maintained by the city; or

b. If required by the city, or at the individual discharger's option, other flow-monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the city. The metering system shall be installed and maintained at the user's expense according to arrangements that may be made with the city.

(2) Where any user procures all or part of his water supply from sources other than the city, the user shall install and maintain, at his own expense, a flow-measuring device of a type approved by the city.

(3) If the discharger elects to be billed for wastewater volume by a wastewater flow-monitoring device as provided in this article, the flow-monitoring device will be inspected and certified for accuracy each quarter of the calendar year by a city-approved technician at the discharger's expense. Failure to inspect and to provide the certification will result in the use of the water meter readings for calculation of charges by the city. City sewer customers are billed based on 100 percent of the water volume meters; however, the rate charged is set to reflect a savings to the discharger for 20 percent of water not returned to the sewer. Dischargers that wish to receive credit in excess of the 20 percent allowance built in the rates may use readings of a flow-monitoring device. For any readings below 80 percent, the discharger may receive credit not to exceed a total credit of ten percent. In cases where the reading is below 70 percent of the water usage, the discharger will be given only the ten percent credit unless detailed calculations are submitted to and approved by the city manager annually verifying that such flow-monitoring device reading is reasonable and expected. Dischargers shall be charged for 100 percent of the water used when the reading of the flow-monitoring device reflects a volume returned greater than 80 percent of the water meter reading. In no case shall dischargers be billed at a volume greater than 100 percent of the water volume supplied from all sources.

(d) *Sampling of wastewater.* The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the city. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR 136.

(e) *Determination of wastewater constituents.* The determination of the character and concentration of the constituents of the wastewater discharge by the POTW director/superintendent or his duly appointed representatives shall be binding as a basis for charges.

(Ord. No. 1995-16, part 3, § 3.3, 5-2-1995; Ord. No. 1996-12, 4-16-1996; Ord. No. 1997-80, 12-16-1997)

Sec. 38-274. Pretreatment program administration charges.

The schedule of charges and fees adopted by the city under this article may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the pretreatment program.
 - (2) Monitoring, inspections and surveillance procedures.
 - (3) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications.
 - (4) Permitting.
 - (5) Other fees as the city may deem necessary to carry out the requirements of the pretreatment program.
- (Ord. No. 1995-16, part 3, § 3.4, 5-2-1995)

Sec. 38-275. Calculation of surcharges.

The basis for determination of surcharges under this article is as follows:

(1) *Characteristics of domestic wastewater.* Charges and fees shall be based upon a minimum basic charge for each premises, computed on the basis of wastewater from domestic premises with the following characteristics:

- a. CBOD: 250 mg/l.
- b. Total suspended solids: 200 mg/l.
- c. Oil and grease: 40 mg/l.
- d. Volume: 375 gallons per day per domestic premises.

(2) *Classification of users.* All users are to be classified by the city either by assigning each one to a user classification category according to the principal activity conducted on the user's premises, by individual user analyzation, or by a combination thereof. The purpose of such collective or individual classification is to facilitate the regulation of wastewater discharges based on wastewater constituents and characteristics to provide an effective means of source control, and to establish a system of charges and fees which will ensure an equitable recovery of the city's cost.

(3) *Basis of surcharge for nondomestic users.* The charges and fees for all classifications of users other than domestic premises shall be based on the relative difference between the average wastewater constituents and characteristics of that classification as related to those of domestic premises.

(4) *Basis of charges for permit users.* The charges and fees established for permit users shall be based on the measured or estimated constituents and characteristics of the wastewater discharge of that user, which may include but not shall not be limited to CBOD, COD, oil and grease, chlorine demand and volume.

(5) *Calculation of charges.* The charges for excesses of the constituents listed in this section will be based upon the mass emission rate of those constituents and determined thusly:

a. Mass emission rate shall be determined as follows:

$$\text{Mass Emission Rate, MER ()} = \text{MG} \times \text{C} \times 8.34$$

Where:

MER is the mass emission rate in pounds of a particular constituent.

MG is millions of gallons of wastewater.

C is the concentration in mg/l of the particular constituent being charged for (as an example, CBOD, COD, etc.).

8.34 is equal to the number of pounds per one gallon of water.

b. The amount of the charge in dollars will be calculated thusly:

$$\text{Ao} = \text{R} \times \text{MER ()}$$

Where:

Ao is equal to the amount of the charge in dollars.

R is equal to the rate of charge per pound of constituent.

MER () is equal to the pounds of a constituent.

c. An example of surcharge determination is as follows: Cannon's Corporation is a producer of canned fruits. They discharged 1,000,000 gallons of wastewater in the month of January. Analysis found that the wastewater has the following characteristics: CBOD = 400 mg/l, TSS = 950 mg/l. There were no other limitations exceeded in this example. There were 100 employees employed at the cannery. The limits of CBOD and TSS are 250 mg/l and 200 mg/l respectively.

The MER of CBOD is equal to:

$$\begin{aligned} \text{MERC}_{\text{CBOD}} &= (400 - 250) \times 8.34 \times 1 \text{ MG} \\ &= (150) \times 8.34 \times 1 \\ &= 1,121 \text{ lbs. of CBOD or } 1.121 \text{ thousand lbs. CBOD} \end{aligned}$$

If the charge for CBOD is R = \$145.00/1,000 lbs. CBOD, then the total charge for CBOD is equal to:

$$A_o = R \times \text{MER}$$

$$A_o = \$145.00 \times 1.121$$

$$A_o = \$162.55$$

If the charge for TSS is \$220.00/1,000 lbs., the charge would be computed thusly:

$$\begin{aligned} \text{MERT}_{\text{TSS}} &= (950 - 200) \times 8.34 \times 1 \text{ MG} \\ &= 750 \times 8.34 \times 1 \\ &= 6,255 \text{ lbs. TSS or } 6.255 \text{ thousand lbs. TSS} \end{aligned}$$

At a charge of \$220.00/thousand lbs., the charge for TSS = 6.255 × \$220.00 = \$1,376.10

$$\text{Total surcharge for January} = \$162.55 + \$1,376.10 = \$1,538.65$$

(Ord. No. 1995-16, part 3, § 3.5, 5-2-1995)

Sec. 38-276. Method of determining rates.

(a) The council will annually review the actual cost of operation and maintenance of the city's wastewater treatment plants and adjust the surcharge rates and the volume user charge rate (per 100 cubic feet) to reflect the true cost of constituent treatment. The adjustments, if any, will become effective following the first day of each new fiscal year. The council may review these rates and adjust them accordingly at any time it deems adjustments are in the best interest of the city.

(b) The council shall set the surcharge rates and volume user rates from time to time and a schedule of such rates is on file in the city offices.

(Ord. No. 1995-16, part 3, § 3.6, 5-2-1995)

Sec. 38-277. Industrial cost recovery.

(a) *Applicability.*

(1) This section shall be applicable only to industrial users of those portions of the city's treatment works funded (in whole or in part) by a federal grant awarded after March 1, 1973, when required by section 204(b)(1)(B) of the Federal Water Pollution Control Act Amendments of 1972.

(2) Each year during the industrial cost recovery period, each industrial user of the city's treatment works shall pay to the city such user's share of the total amount of the applicable federal grant and any grant amendment, divided by the recovery period.

(b) *Determination of payments.*

(1) *Generally.* The industrial cost recovery period and each industrial user's share of industrial cost recovery (IRC payments) shall be fixed by the city manager, after consultation with the public works director, in accordance with the methods and procedures set forth in 40 CFR 35, subpart E, February 11, 1974, and Industrial Cost

Recovery Systems, Publication No. MCD-45, by the Environmental Protection Agency, February 1976.

(2) *Selection of method or procedure.* Except as expressly provided in this section, whenever those rules, regulations or guidelines provided for permit alternative methods or procedures, the city manager shall select those methods or procedures which in his judgment will ensure that the proper amount of federal funds are recovered from industrial users and that each industrial user is treated fairly and consistently and assessed industrial cost recovery payments in accordance with applicable law and generally accepted accounting principles.

(3) *Factors to be considered.* The city manager must take the following into consideration in computing an individual industrial user's industrial cost recovery payment:

a. If an industrial user's maximum flow (hourly, daily, monthly, seasonally, and the like) contributes to the cost of construction of the treatment works, it shall be the basis of that user's industrial cost recovery payment. No credit shall be given to the industrial user for the time period when the user is not operating and is not discharging water.

b. Uncontaminated cooling waters discharged into the city's treatment facilities are declared to be process wastes and must be included in computing industrial cost recovery payments.

c. The cost of building unreserved excess capacity into the city's treatment facility shall not be recovered from existing industrial users.

d. Only those costs which can be related to the construction or preparation for construction of the city's treatment facilities will be subject to industrial cost recovery.

e. Industrial users discharging pretreated processed wastes into the city's treatment facilities must pay industrial cost recovery based on the characteristics of the pretreated wastes.

(4) *Reservation of capacity.* Industrial users may reserve capacity in the city's treatment works through a formal, written agreement. In such cases, the following will apply:

a. The industrial user shall pay to the city the full industrial cost recovery applicable to the capacity reserved;

b. If the industrial user exceeds its reserved capacity, it shall be required to pay industrial cost recovery calculated on the full reserve capacity plus additional industrial cost recovery for use above the limits of the reserve capacity or any element thereof;

c. If the treatment works are expanded in the future with Public Law 92-500 grant assistance, an industrial user who has executed a reserve capacity agreement and has made industrial cost payments based on full reserved capacity will not incur additional industrial cost recovery payments associated with the cost of expansion until such user's actual use of the treatment works exceeds its reserved capacity; and

d. Industrial users shall pay additional industrial charges associated with the cost of upgrading treatment works.

(c) *Exempt industrial users.* Anything in this section to the contrary notwithstanding, industrial cost recovery shall not be charged to or collected from any industrial user that discharges into the city's system only non-process, segregated domestic wastes, or wastes from sanitary conveniences, and which is not a significant industrial user as defined in 40 CFR 403.3.

(d) *New industries.* Industrial cost recovery payments for new industries shall begin on the date use is initiated, and shall continue for the unexpired portion of the applicable industrial cost recovery period or until the industry ceases use of the facility, whichever occurs first. The new industry shall pay to the city its share of the total amount of the applicable federal grant and any grant amendment multiplied by the ratio of its period of

use to the industrial cost recovery period. For the purpose of this section, a new industry is one which connects to the city's treatment works after the treatment works have been put into service.

(e) *Monitoring of wastewater characteristics.*

(1) In developing the industrial cost recovery system, the wastewater characteristics of each industrial user shall be determined by monitoring or, when the city manager finds that monitoring is not feasible, by estimating using historical records, data from similar industrial users, and the like.

(2) After the industrial cost recovery system is placed into operation, major industrial users shall be monitored on a regular basis, not less often than annually; minor industries may be monitored on a random basis.

(3) Monitoring shall be conducted during periods of normal discharge.

(4) For the purposes of this subsection, a major industry shall mean one which discharges more than five percent of the total design capacity of any wastewater characteristics used in determining industrial cost recovery payments, and a minor industry shall mean any industry which is not a major industry.

(f) *Discontinuance of use of treatment works; termination of reserved capacity.* If an industrial user discontinues use of the city's treatment works or terminates its agreement with the city for reserved capacity, then it shall not be liable to the city for further industrial cost recovery payments. Other industries using the city's treatment works will not be required to assume that portion of industrial cost recovery payments which is unrecovered due to the departure of an industrial user. Any significant industrial user planning to discontinue its use of the treatment facility during the industrial cost recovery period must make its intention known in a letter of intent as required under 40 CFR 403.3.

(g) *Lump sum payments.* An industrial user may make a single lump sum payment to fulfill its industrial cost recovery obligation in lieu of periodic payments. The lump sum payments shall not relieve the industrial user of making additional payments should its wastewater flow or load increase. The city shall not grant any discounts from the total industrial cost recovery requirement to industrial users making advance industrial cost recovery payments.

(h) *Implementation of system; disposition of funds.*

(1) At the time any element of a treatment works funded by an applicable federal construction grant becomes operable, it shall be placed in the industrial cost recovery system, and the industrial cost recovery period will begin from the date of beneficial use by the first industrial user. Immediately after the industrial cost recovery period begins, the city manager will establish the accounting period for the industrial cost recovery system and, not more than 30 days after the industrial cost recovery period begins, will notify the regional administrator of the Environmental Protection Agency, in writing, of the date of implementation of the industrial cost recovery system.

(2) The first payment to the city by the industrial users shall be made not later than 12 months after the beginning of the industrial cost recovery period, and payments shall continue every 12 months thereafter.

(3) All funds recovered by the city under this section shall be deposited, accounted for and paid to the Environmental Protection Agency or otherwise used as authorized by it in accordance with the provisions of paragraph 16, Industrial Cost Recovery Systems, Publication No. MCD-45, Environmental Protection Agency, February 1976.

(i) *Appeals and requests for review.*

(1) Any industrial user may request the city manager in writing to reconsider the reasonableness of the allocation and industrial cost recovery payments imposed on it. The request shall set forth in detail why the user deems the allocation or industrial cost

recovery payments unreasonable. Within 30 days after receipt of the request, the city manager shall furnish in writing to the user the results of his reconsideration. If the user is not satisfied with the reconsideration, the user may appeal the decision of the city manager to the council, provided that written notice of appeal shall be filed with the city clerk not later than 30 days from the date the user receives the report from the city manager.

(2) Any person affected by the industrial cost recovery system may request in writing that the council review the city's administration of the city's industrial cost recovery system. The request shall specify the area to be reviewed and shall identify the methods, practices and procedures which are being challenged. The request for review shall be filed with the city clerk.

(3) Within 30 days from the receipt of an appeal under subsection (i)(1) of this section or a request for review under subsection (i)(2) of this section, the council shall grant a hearing to the applicant. The procedure for conducting the hearing, rendering the decision, and appellate review shall be as set forth by the city from time to time. The decision of the council shall be final as to all administrative matters.

(Ord. No. 1995-16, part 3, §§ 3.7--3.15, 5-2-1995)

Sec. 38-278. Liability for expense, loss or damage caused by violation.

Any person violating any of the provisions of this article shall become liable to the city for any expense, loss or damage occasioned the city by reason of the violation.

(Ord. No. 1995-16, part 3, § 3.16, 5-2-1995)

Secs. 38-279--38-300. Reserved.

DIVISION 4. WASTEWATER DISCHARGE PERMITS

Sec. 38-301. General requirements for all wastewater dischargers.

(a) It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city.

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

(Ord. No. 1995-16, part 4, § 4.1, 5-2-1995)

Sec. 38-302. Permit required for certain users.

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW director/superintendent to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the POTW director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the POTW director/superintendent be required to obtain a wastewater discharge permit for nonsignificant industrial users.

(Ord. No. 1995-16, part 4, § 4.2, 5-2-1995)

Sec. 38-303. Significant industrial user determination.

All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater, shall request from the POTW director/superintendent a significant industrial user determination. If the POTW director/superintendent determines or suspects that the

proposed discharge fits the significant industrial user criteria, he will require that a significant industrial user permit application be filed.
(Ord. No. 1995-16, part 4, § 4.2(a), 5-2-1995)

Sec. 38-304. Contents of application.

Users required to obtain a significant industrial user permit shall complete and file with the city an application in the form prescribed by the POTW director/superintendent, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW director's determination under section 38-303. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name, address, and location (if different from the address).
- (2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated.
- (3) Analytical data on wastewater constituents and characteristics, including but not limited to those mentioned in division 2 of this article, any of the priority pollutants (section 307(a) of the act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the act and contained in 40 CFR 136, as amended.
- (4) Time and duration of the indirect discharge.
- (5) Average daily and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any.
- (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation.
- (7) Description of activities, facilities and plant processes on the premises, including all materials which are or could be accidentally or intentionally discharged.
- (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet applicable pretreatment standards.
- (9) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - 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. No increment in the schedule shall exceed nine months.
 - b. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW director, including, at 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. In no event shall more than nine months elapse between such progress reports to the POTW director/superintendent.

- (10) Each product produced, by type, amount, process and rate of production.
 - (11) Type and amount of raw materials processed (average and maximum per day).
 - (12) Number and type of employees, and hours of operation of the plant and proposed or actual hours of operation of the pretreatment system.
 - (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H.0908(a), as outlined in section 38-331.
 - (14) Any other information as may be deemed by the POTW director/superintendent to be necessary to evaluate the permit application.
- (Ord. No. 1995-16, part 4, § 4.2(b), 5-2-1995)

Sec. 38-305. Application signatories and certification.

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 imprisonment for knowing violations."

(Ord. No. 1995-16, part 4, § 4.2(c), 5-2-1995)

Sec. 38-306. Application review and evaluation.

- (a) The POTW director/superintendent will evaluate the data furnished by the user pursuant to section 38-304 and may require additional information.
- (b) The POTW director/superintendent is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
- (c) Within 30 days of receipt, the POTW director/superintendent shall acknowledge and accept the complete application; or, if not complete, shall return the application to the applicant with a statement of what additional information is required.

(Ord. No. 1995-16, part 4, § 4.2(d), 5-2-1995)

Sec. 38-307. Tentative determination and draft permit.

- (a) The POTW staff shall conduct a review of the application for a wastewater permit and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
- (b) If the staff's tentative determination in subsection (a) of this section is to issue the permit, the following additional determinations shall be made in writing:
 - (1) Proposed discharge limitations for those pollutants proposed to be limited;
 - (2) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 - (3) A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (c) The staff shall organize the determinations made pursuant to subsections (a) and (b) of this section and the city's general permit conditions into a significant industrial user permit.

(Ord. No. 1995-16, part 4, § 4.2(e), 5-2-1995)

Sec. 38-308. Permit synopsis.

A fact sheet providing a brief synopsis of the application for a wastewater permit shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:

(1) A sketch and detailed description of the industrial facilities and pretreatment facilities, including the location of all points of discharge to the POTW and all established compliance monitoring points.

(2) A quantitative description of the discharge described in the application which includes at least the following:

a. The rate or frequency of the proposed discharge; and if the discharge is continuous, the average daily flow;

b. The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected to be present; and

c. The basis for the pretreatment limitations, including the documentation of any calculations in applying categorical pretreatment standards.

(Ord. No. 1995-16, part 4, § 4.2(f), 5-2-1995)

Sec. 38-309. Final action on application; authority of director.

(a) The POTW director/superintendent shall take final action on all applications for wastewater permits not later than 90 days following receipt of a complete application.

(b) The POTW director/superintendent is authorized to:

(1) Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this article and G.S. 143-215.1.

(2) Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements.

(3) Modify any permit upon not less than 60 days' notice and pursuant to section 38-311.

(4) Revoke any permit pursuant to section 38-224(a).

(5) Suspend a permit pursuant to section 38-224(a).

(6) Deny a permit application when in the opinion of the POTW director/superintendent such discharge may cause or contribute to pass-through or interference with the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

(Ord. No. 1995-16, part 3, § 4.2(g), 5-2-1995)

Sec. 38-310. Adjudicatory hearings; appeals.

(a) *Initial adjudicatory hearing.* An applicant whose wastewater permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section 38-224(b), or a permittee/user issued an administrative order under section 38-224(b), shall have the right to an adjudicatory hearing before a hearing officer designated by the POTW director upon making written demand, identifying the specific issues to be contested, to the POTW director within 30 days following receipt of the significant industrial user permit, civil penalty assessment or administrative order. Unless such written demand is made within the time specified in this subsection, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty or order within 45 days of the receipt of the written demand for a hearing. The POTW director shall transmit a copy of the hearing officer's decision by registered or certified mail.

(1) *New permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(2) *Renewed permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(b) *Final appeal hearing.* Any decision of a hearing officer made as a result of an adjudicatory hearing held under subsection (a) of this section may be appealed to the council upon filing a written demand within ten days of receipt of notice of the decision. Hearings held under this subsection shall be conducted in accordance with subsections (1) and (2) of this subsection. Failure to make written demand within the time specified in this subsection shall bar further appeal. The council shall make a final decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.

(1) Water and sewer service shall be terminated, cease and desist orders shall be issued, and permits shall be denied, suspended or revoked by the city manager only after the city shall have given notice to the user of the contemplated action and a hearing if requested.

(2) The procedure for giving notice, conducting the hearing, rendering the decision and judicial review shall be as set forth by the city from time to time. However, the provisions of this section shall not be applicable, and the city manager may, without notice and opportunity for hearing to be held, temporarily suspend water or sewer service, or both, to any user, if in the considered opinion of the public works director an emergency exists or is imminent which threatens the public health, or is likely to cause severe injury or damage to or interruption of the city's sewer system, treatment plant or treatment processes, or threatens the lives of or is likely to cause severe injury to the city's employees, agents or other authorized personnel.

(c) *Official record.* When a final decision is issued under subsection (b) of this section, the council shall prepare an official record of the case that includes:

(1) All notices, motions and other like pleadings.

(2) A copy of all documentary evidence introduced.

(3) A certified transcript of all testimony taken, if testimony is transcribed, or, if testimony is taken and not transcribed, then a narrative summary of any testimony taken.

(4) A copy of the final decision of the council.

(d) *Judicial review.* Any person against whom a final order or decision of the council is entered pursuant to the hearing conducted under subsection (b) of this section may seek judicial review of the order or decision by filing a written petition within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, with the superior court of the county, along with a copy to the city. Within 30 days after receipt of the copy of the petition of judicial review, the council shall transmit to the reviewing court the original or a certified copy of the official record.

(Ord. No. 1995-16, part 4, § 4.2(h), 5-2-1995)

Sec. 38-311. Modification.

(a) Modifications of wastewater permits shall be subject to the same procedural requirements as the issuance of permits, except as follows:

(1) Changes in the ownership of the discharge when no other change in the permit is indicated.

- (2) A single modification of any compliance schedule not in excess of four months.
- (3) Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

(b) Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the timeframe prescribed by such standard. Where a user subject to a national categorical pretreatment standard has not previously submitted an application for a wastewater discharge permit as required by section 38-304, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

(c) A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

(Ord. No. 1995-16, part 4, § 4.2(i), 5-2-1995)

Sec. 38-312. Conditions.

(a) The POTW director/superintendent shall have the authority to grant a wastewater permit with such conditions attached as he believes necessary to achieve the purpose of this article and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

- (1) A statement of duration (in no case more than five years);
- (2) A statement of nontransferability;
- (3) Applicable effluent limits based on categorical standards or local limits or both;
- (4) Applicable monitoring, sampling, reporting, notification and recordkeeping requirements. 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;
- (5) Notification requirements for slug loads; and
- (6) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

(b) In addition, permits may contain, but are not limited to, the following:

- (1) Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- (2) Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass or other measure of identified wastewater pollutants or properties.
- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works.
- (4) Development and implementation of spill control plans or other special conditions, including management practices necessary to adequately prevent accidental, unanticipated or nonroutine discharges.
- (5) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- (6) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- (7) Requirements for installation and maintenance of inspection and sampling facilities and equipment.

- (8) Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number and types of and standards for tests, and reporting schedules.
 - (9) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation.
 - (10) Compliance schedules for meeting pretreatment standards and requirements.
 - (11) Requirements for submission of periodic self-monitoring or special notification reports.
 - (12) Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in section 38-343 and affording the POTW director/superintendent or his representatives access thereto.
 - (13) Requirements for prior notification of and approval by the POTW director/superintendent of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction into the system.
 - (14) Requirements for the prior notification of and approval by the POTW director/superintendent of any change in the manufacturing and/or pretreatment process used by the permittee.
 - (15) Requirements for immediate notification of excessive, accidental or slug discharges, or any discharge which could cause any problems to the system.
 - (16) A statement that compliance with the 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 terms of the permit.
 - (17) Other conditions as deemed appropriate by the POTW director/superintendent to ensure compliance with this article and state and federal laws, rules and regulations.
- (Ord. No. 1995-16, part 4, § 4.2(j), 5-2-1995)

Sec. 38-313. Duration.

Wastewater permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

(Ord. No. 1995-16, part 4, § 4.2(k), 5-2-1995)

Sec. 38-314. Transfer.

Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

(Ord. No. 1995-16, part 4, § 4.2(l), 5-2-1995)

Sec. 38-315. Reissuance.

A significant industrial user shall apply for wastewater permit reissuance by submitting a complete permit application in accordance with this division a minimum of 180 days prior to the expiration of the existing permit.

(Ord. No. 1995-16, part 4, § 4.2(m), 5-2-1995)

Secs. 38-316--38-330. Reserved.

DIVISION 5. DISCHARGE REPORTS

Sec. 38-331. Baseline monitoring reports.

(a) 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 POTW director/superintendent a report which contains the information listed in subsection (b) of this section. At least 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 POTW director/superintendent a report which contains the information listed in subsection (b) of this section. 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 in subsection (a) of this section shall submit the following information:

(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 Classification of the operation 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.

(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 waste stream 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 POTW director/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 section 38-340.

c. Sampling must be performed in accordance with procedures set out in section 38-341.

(6) *Statement of compliance.* 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 and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance. 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 subsection must meet the requirements set out in section 38-332.

(8) *Signatures and certification.* All baseline monitoring reports must be signed and certified in accordance with section 38-305.

(Ord. No. 1995-16, part 5, § 5.1, 5-2-1995)

Sec. 38-332. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by section 38-331(b)(7):

(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 in subsection (1) of this section shall exceed nine months.

(3) The user shall submit a progress report to the POTW director/superintendent 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.

(4) In no event shall more than nine months elapse between such progress reports to the POTW director/superintendent.

(Ord. No. 1995-16, part 5, § 5.2, 5-2-1995)

Sec. 38-333. Reports on certification 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 POTW director/superintendent a report containing the information described in section 38-331(b)(4)--(6). 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 longterm production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All certification reports must be signed and certified in accordance with section 38-305.

(Ord. No. 1995-16, part 5, § 5.3, 5-2-1995)

Sec. 38-334. Periodic certification reports.

(a) All significant industrial users shall, at a frequency determined by the POTW director/superintendent, but in no case less than twice per year (in June and December), 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. All periodic certification reports must be signed and certified in accordance with section 38-305.

(b) 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 the user's monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of the user's discharge.

(c) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW director/superintendent, using the procedures prescribed in section 38-340, the results of this monitoring shall be included in the report.

(Ord. No. 1995-16, part 5, § 5.4, 5-2-1995)

Sec. 38-335. Reports of changed conditions.

(a) Each user must notify the POTW director/superintendent of any planned significant changes to the user's operations or system which might alter the nature, quality or volume of its wastewater, at least 90 days before the change.

(b) The POTW director/superintendent 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 division 4 of this article.

(c) The POTW director/superintendent may issue a wastewater discharge permit under division 4 of this article or modify an existing wastewater discharge permit under division 4 of this article in response to changed conditions or anticipated changed conditions.

(d) For purposes of this requirement, significant changes include but are not limited to flow increases of 20 percent or greater, and the discharge of any previously unreported pollutants.

(Ord. No. 1995-16, part 5, § 5.5, 5-2-1995)

Sec. 38-336. Reports of accidental discharges and other potential problems.

(a) In the case of any discharge, including but not limited to accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW director/superintendent of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five days following such discharge, the user shall, unless waived by the POTW director/superintendent, submit 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 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 article.

(c) 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 (a) of this section. Employers shall ensure that all employees who may cause such a discharge to occur are advised of the emergency notification procedure.

(Ord. No. 1995-16, part 5, § 5.6, 5-2-1995)

Sec. 38-337. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW director/superintendent as the POTW director/superintendent may require.

(Ord. No. 1995-16, part 5, § 5.7, 5-2-1995)

Sec. 38-338. Notification of violation; repeat sampling and reporting.

If sampling performed by a user indicates a violation, the user must notify the POTW director/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 POTW director/superintendent within 30 days after becoming aware of the violation. The user is not required to resample if the POTW director/superintendent monitors at the user's facility at least once a month, or if the POTW director/superintendent samples between the user's initial sampling and when the user receives the results of this sampling.

(Ord. No. 1995-16, part 5, § 5.8, 5-2-1995)

Sec. 38-339. Notification of discharge of hazardous waste.

Wastes not permitted to be discharged into the community sewer must be transported to a state-approved disposal site. In case of a spill, the following applies:

(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 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 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 waste stream discharge during the calendar month, and an estimation of the mass of constituents in the waste stream 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 subsection need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under section 38-335. The notification requirements in this section do not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 38-331, 38-333 and 38-334.

(2) Dischargers are exempt from the requirements of subsection (1) of this section 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 nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW director/superintendent, 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 section does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued thereunder, or any applicable federal or state law.

(Ord. No. 1995-16, part 5, § 5.9, 5-2-1995)

Sec. 38-340. Techniques for pollutant analysis.

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 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

(Ord. No. 1995-16, part 5, § 5.10, 5-2-1995)

Sec. 38-341. Sample collection.

(a) Except as indicated in section (b) of this section, the user must collect wastewater samples using flow-proportional composite collection techniques. If flow-proportional sampling is infeasible, the POTW director/superintendent 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. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

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

(Ord. No. 1995-16, part 5, § 5.11, 5-2-1995)

Sec. 38-342. Date of submission of reports.

Written reports required by this article 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.

(Ord. No. 1995-16, part 5, § 5.12, 5-2-1995)

Sec. 38-343. Recordkeeping requirements.

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling, and the name of the person taking the samples, the dates analyses were performed, who performed the analyses, the analytical techniques or methods used, and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the POTW director/superintendent.

(Ord. No. 1995-16, part 5, § 5.13, 5-2-1995)

Secs. 38-344--38-360. Reserved.

DIVISION 6. COMPLIANCE MONITORING

Sec. 38-361. Monitoring facilities.

(a) The city requires the user to provide and operate, at the user's own expense, monitoring facilities to allow inspection, sampling and flow measurement of the building sewer and/or internal drainage systems.

(b) The monitoring facility should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

(c) There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility and sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

(d) Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the city.

(Ord. No. 1995-16, part 6, § 6.1, 5-2-1995)

Sec. 38-362. Access to premises.

The city will inspect the facilities of any user to ascertain whether the purpose of this article is being met and whether the use is in compliance with all requirements. Persons or occupants of premises where wastewater is created or discharged shall allow the city, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The city, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into the user's premises, the user shall make necessary arrangements with the user's security guards so that, upon presentation of suitable identification, personnel from the city, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW director's/superintendent's, approval authority's or EPA's access to the user's premises shall be a violation of this article. Unreasonable delays may constitute denial of access.

(Ord. No. 1995-16, part 6, § 6.2, 5-2-1995)

Sec. 38-363. Search warrants.

If the POTW director/superintendent, approval authority or EPA has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued under this article, or to protect the overall public health, safety and welfare of the community, then the POTW director/superintendent, approval authority or EPA may seek issuance of a search warrant from the district court of the city.

(Ord. No. 1995-16, part 6, § 6.3, 5-2-1995)

Secs. 38-364--38-370. Reserved.