

## **ORDINANCE NO. 778**

### **AN ORDINANCE ESTABLISHING LEGAL AUTHORITY FOR A FEDERALLY MANDATED PRETREATMENT PROGRAM AND AMENDING CHAPTER 12.07 OF THE TROUTDALE MUNICIPAL CODE.**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**


1. Tube Specialties Company, Inc. (TSCO) owns and operates a business within the City and discharges industrial waste to the City's POTW.
2. December 8, 2003, the Department of Environmental Quality (DEQ) determined that TSCO's iron phosphate process constitutes "coating", which is one of six core processes defined in 40 CFR Part 433.1(a) and that TSCO's powder coating operation qualifies as "categorical" under Part 471, Subpart J.
3. By letter of April 8, 2004, DEQ required that the City develop an industrial pretreatment program, unless TSCO considered a no discharge option.
4. June 22, 2004, the City and TSCO entered into an agreement that allows TSCO to continue discharging to the City's POTW and assures adequate funding for the development and implementation of a federally mandated industrial pretreatment program.
5. By Permit Action Letter of March 17, 2006, DEQ formally delegated to the City the authority to implement the industrial pretreatment program. By this letter, the pretreatment program documents were also approved by DEQ and EPA.
6. In order to implement the industrial pretreatment program approved by DEQ and EPA, it is necessary to establish legal authority.


#### **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE**

Section 1. Chapter 12.07 of the Troutdale Municipal Code, Pretreatment Program, is hereby amended to read as set forth in Attachment A.

Section 2. For the purposes of this ordinance, the "Director" shall mean the Director of Public Works.

YEAS: 5  
NAYS: 0  
ABSTAINED: 0

  
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Paul Thalhfer, Mayor  
April 26, 2006  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sarah Skroch, Office Support Specialist

Adopted: April 25, 2006

**CITY OF TROUTDALE  
MUNICIPAL CODE**

**Chapter 12.07  
Pretreatment Program**

**SECTIONS:**

- 12.07.010 Purpose and Policy
- 12.07.020 Administration
- 12.07.030 Definitions
- 12.07.040 Prohibited Discharge Standards
- 12.07.050 National Categorical Pretreatment Standards
- 12.07.060 State Pretreatment Standards
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- 12.07.080 City's Right of Revision
- 12.07.090 Special Agreement
- 12.07.100 Tenant Responsibility
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12.07.600 Performance Bonds  
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12.07.660 Upset  
12.07.670 Affirmative Defense to Prohibited Discharge Standards  
12.07.680 Bypass  
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12.07.700 Severability

**12.07.010 Purpose and Policy**

- A. This chapter sets forth uniform requirements for users of the Publicly Owned Treatment Works for the City of Troutdale and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code 1251 et seq.), the General Pretreatment Regulations (40 Code of Federal Regulations Part 403) and the Oregon Administrative Rules (OAR) Chapter 340. The objectives of this chapter are:
- (1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
  - (2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
  - (3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
  - (4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
  - (5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
  - (6) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.
- B. This chapter shall apply to all users of the Publicly Owned Treatment Works. It authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

**12.07.020 Administration**

Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the Director may be delegated by the Director to other City personnel. The City's Industrial Pretreatment Operation and Program Implementation Manual, and any amendments thereto, is adopted and incorporated by reference. If there is a conflict between the provisions in the manual and this chapter, the provisions in the manual apply. The Director has the authority to update the manual and adopt any rules or requirements that are necessary to implement the pretreatment program or to comply with any Federal, State, or City requirements.

**12.07.030 Definitions**

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

“Accidental Spill Prevention/Slug Control Plan (ASPP)” means a plan prepared by the user which provides protection for the POTW from accidental or intentional discharges of materials which may cause interference, pass through, worker health or safety problems, or damage to the POTW.

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

“Approval Authority” means the State of Oregon Department of Environmental Quality (DEQ).

“Authorized Representative of the User” means:

- (1) If the user is a corporation:

- (a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - (b) The manager of one or more manufacturing, production, or operation facilities provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
  - (3) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
  - (4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing by the individual described in paragraph 1 through 3 above, 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.

“Best Management Practices (BMPs)” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 12.07.040 of this chapter. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

“Biochemical Oxygen Demand (BOD)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20<sup>o</sup> centigrade, usually expressed as a concentration (e.g., mg/l).

“Categorical Pretreatment Standard” or “Categorical Standard” means any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

“City” means the City of Troutdale, Oregon, a municipal corporation of the State of Oregon, acting through its City Council or any board, committee, body, official, or person to whom the Council shall have lawfully delegated the power to act for or on behalf of the City.

“Composite sample” means the sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

“Control Authority” means the City of Troutdale, Oregon.

“Director” means the person designated by the City to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this chapter, or a duly authorized representative.

“Environmental Protection Agency (EPA)” means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.

“Existing Source” means any source of discharge, the construction or operation of which commenced prior to the publication by EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

“FOG” means fats, oils and grease.

“FOG, nonpolar” means fats, oils and grease that are petroleum based.

“FOG, polar” means fats, oils and grease generated from animal and vegetable origins.

“Grab Sample” means a sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

“Hauled waste” means any waste trucked or hauled, including septic tank waste and non-septic waste with hazardous characteristics.

“Indirect Discharge” or “Discharge” means the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

“Instantaneous Maximum Allowable Discharge Limit” means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

“Interceptor” means a device designed and installed so as to adjust, separate and retain deleterious, hazardous or undesirable matter from wastewater and to permit normal sewage or liquid wastes to discharge from the user’s premises into the POTW.

“Interference” means discharge, which alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory provisions and regulations or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

“Manual” or “The Manual” refers to the City’s Industrial Pretreatment Operation and Program Implementation Manual, and any amendments thereto.

“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 Pretreatment Standard” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

“New Source” means:

- (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(C) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - (a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
  - (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 Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (a) Begun, or caused to begin, as part of a continuous onsite construction program
  - (i) any placement, assembly, or installation of facilities or equipment; or
  - (ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- (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 paragraph.

“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-Discharging Categorical Industrial User (NDCIU)” means non-discharging industries that have industrial processes that would otherwise be subject to national pretreatment standards, including NDCIUs with zero discharge categorical standards.

“Pass Through” means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City’s NPDES permit, including an increase in the magnitude or duration of a violation.

“Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

“pH” means a measure of the acidity or alkalinity of a solution, expressed in standard units.

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

“Potential to Discharge” means hard plumbing connected to the POTW’s sanitary sewer. This includes plumbing with shut-off valves and plumbing that has been plugged with temporary or removable plugs. Plumbing that has been permanently disconnected or cemented shut would not constitute a potential to discharge.

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

“Pretreatment Requirements” means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

“Pretreatment Standards” or “Standards” means prohibited discharge standards, categorical pretreatment standards, and local limits.

“Prohibited Discharge Standards” or “Prohibited Discharges” means absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 12.07.040 of this chapter.

“Publicly Owned Treatment Works (POTW)” means a treatment works, as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

“Return to compliance” means user is complying with the pretreatment requirements outlined in a permit, compliance schedule, or other agreement or order as outlined by the City and is discharging in compliance with applicable effluent limits.



“Septic Tank Waste” means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

“Sewage” means human excrement and gray water (household showers, dishwashing operations, etc.).

“Significant Industrial User” means (except as provided in paragraph (3) below):

(1) A user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; or

(2) A user that:

- (a) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
- (b) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;
- (c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.

(3) The City may determine that an Industrial User subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

- (a) The Industrial User, prior to the City’s finding, has consistently complied with all applicable categorical pretreatment standards and Requirements;
- (b) The Industrial User annually submits the certification statement required in 40 CFR 403.12(q), signed and certified in accordance with Section 12.07.210, together with any additional information necessary to support the certification statement; and
- (c) The Industrial User never discharges any untreated concentrated wastewater.

(4) Upon a finding that a user meeting the criteria in Subsection (2) has no reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

“Slug Load” or “Slug” means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in Section 12.07.40 of this chapter.

“Standard Industrial Classification (SIC) Code” means a classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

“Storm Water” means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

“Total Suspended Solids (TSS)” means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

“User” or “Industrial User” means a source of indirect discharge.

“Wastewater” means liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

“Wastewater Treatment Plant” or “Treatment Plant” means that portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

## **12.07.040 Prohibited Discharge Standards**

- A. General Prohibitions. Discharge of industrial wastes into the POTW is prohibited unless in compliance with this chapter. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the

POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.

B. Specific Prohibitions. No user shall introduce or cause to be introduced 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, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
2. Wastewater having a pH less than 6.0 or more than 9.0, or otherwise causing corrosive structural damage to the POTW or equipment;
3. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half inch (1/2") or 1.27 centimeters in any dimension;
4. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
5. Wastewater having a temperature greater than the average influent temperature of the treatment plant during the time period of May 1<sup>st</sup> to October 31<sup>st</sup>, or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which exceeds the local limit;
6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
7. 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. Trucked or hauled pollutants;
9. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
10. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit;
11. Wastewater containing any radioactive wastes or isotopes except as specifically approved by the Director in compliance with applicable State or Federal regulations;
12. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by the Director.
13. Sludges, screenings, or other residues from the pretreatment of industrial wastes or industrial processes;
14. Medical or infectious wastes, except as specifically authorized by the Director in a wastewater discharge permit;
15. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
16. Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
17. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l.
18. Any discharge that, in the opinion of the Director could cause the City to violate the terms of its NPDES permit or could constitute a violation of state or federal laws.

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

**12.07.050 National Categorical Pretreatment Standards**

- A. The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471, and amendments thereto, are hereby adopted and incorporated herein by reference.
- B. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with 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 Director shall impose an alternate limit using the combined wastestream 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 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.

**12.07.060 State Pretreatment Standards**

State pretreatment standards located in Oregon Administrative Rules, Chapter 340, are hereby adopted and incorporated herein by reference.

**12.07.070 Local Limits**

No user shall discharge to the POTW wastewater containing pollutants in excess of limitations specified in its wastewater discharge permit, categorical pretreatment standards or other limits established by the City. The City may establish and revise standards for specific substances. The Director shall publish and revise, from time to time, local limits for specific restricted substances, temperature, and applicable pH range limitations. These local limits shall be developed in accordance with 40 CFR 403.5 and shall be applicable to all users. Local limits are usually concentration-based standards and apply at the point where wastewater is discharged from the end of treatment process. The point at which wastewater is discharged to the POTW (end of the pipe) will be used when no specific treatment system is in use. Federal categorical pretreatment standards apply at the end of process. The Director may impose mass limitations in addition to, or in place of, the concentration-based limits. Where an industrial user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply. The City may develop Best Management Practices (BMPs) in lieu of numerical limitations.

**12.07.080 City's Right of Revision**

The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW if deemed necessary to comply with objectives presented in this chapter or the general and specific prohibitions of this chapter.

**12.07.090 Special Agreement**

The City may enter into special agreements, or control mechanisms, with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, the user may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the EPA in accordance with 40 CFR 403.13. A special agreement may contain requirements in addition to those specified in this chapter.

Non-discharging categorical industrial user (NDCIUs), including NDCIUs with zero-discharge categorical limits, that have a potential to discharge, may be issued a no-discharge control mechanism or annual certification requirement. All significant industrial users shall be controlled via permits or equivalent control mechanisms.

#### **12.07.100 Tenant Responsibility**

Any person who occupies the user's premises as a tenant under any rental or lease agreement shall be jointly and severally responsible for compliance with the provisions of this chapter in the same manner as the user.

#### **12.07.110 Dilution**

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

#### **12.07.120 Pretreatment Facilities**

- A. Users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 12.07.040 of this chapter within the time limitations specified by EPA, the State, or the Director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Director for review, and shall be acceptable to the Director before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions of this chapter.
- B. Appeals.
  - 1. Users shall have fourteen (14) days to appeal the requirement to provide wastewater pretreatment.
  - 2. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
  - 3. In its petition, the user must indicate which wastewater pretreatment standards are objected to and the reasons for this objection.
  - 4. If the Director fails to act within fifteen (15) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a pretreatment requirement shall be considered final administrative actions for purposes of judicial review.
  - 5. Aggrieved parties seeking judicial review of the final administrative pretreatment requirement decision must do so by filing a complaint with the Multnomah County Circuit Court within thirty (30) days. Failure to file the complaint within thirty (30) days will bar any alternative or subsequent appeals.

#### **12.07.130 Additional Pretreatment Measures**

- A. Whenever deemed necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.
- B. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

- C. Industrial dischargers shall provide grease, oil, and sand interceptors for the proper handling of wastewater containing grease, oils, sand, or other harmful constituents in cases where such materials may be discharged into the POTW, such as (but not limited to) food and beverage processing establishments, restaurants, cafes, lunch counters, cafeterias, bars and clubs, school kitchens, coffee shops, fast food and other eateries, vehicle washing facilities, and vehicle or equipment repair facilities. All interceptors shall be of a type and capacity approved by the City in accordance with the City adopted plumbing codes and shall be installed and connected so as to be easily accessible for cleaning, maintenance, and inspection. For facilities constructed or under construction prior to the effective date of this ordinance, the discharger shall have one year from the effective date of this ordinance to provide the required interceptor. Interceptor units shall be maintained in continuously efficient operating condition at all times by the user at his expense. Each user will need to determine the adequate maintenance schedule for their interceptor(s), notify the City of the determined maintenance schedule, and keep records verifying the maintenance provided. Acceptable maintenance means pumping out the entire interceptor. If at any time, the City finds a user's maintenance schedule is inadequate to provide for efficient operation, the City shall require a more frequent maintenance schedule.
- D. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
- E. Users may be required to install a control manhole, or other sampling device approved by the Director, when deemed necessary by the Director, to facilitate observation, sampling and flow measurement of the discharge. Such manholes, or other sampling devices approved by the Director, shall be accessible and safely located and shall be constructed in accordance with plans approved by the City. The manhole, or other sampling device approved by the Director, shall be installed and maintained by the user at their expense.

**12.07.140 Accidental Spill Prevention/Slug Control Plans**

- A. General provisions. All users, as required by the Director, shall provide protection from accidental or intentional discharges of materials, which may interfere with or cause pass through to the POTW, by developing and implementing a slug control/accidental spill prevention plan (ASPP). Facilities necessary to prevent the discharge of prohibited or restricted substances shall be provided and maintained at the user's cost and expense. An ASPP showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval before implementation of the plan. Review and approval of such plans and operating procedures by the City shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this chapter. The ASPP shall be posted and available for inspection at the facility during normal business hours.
- B. Specific provisions. The Director may require any user to develop, submit for approval, and implement such a plan. Alternatively, the Director may develop such a plan for any user.
- C. An accidental spill prevention/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 of any accidental or slug discharge, as required by Section 12.07.360 of this chapter; 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.

**12.07.150 Hauled Wastewater**

The City does not accept hauled wastes.

### **12.07.160 Wastewater Analysis**

When requested by the Director, a user shall submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The user shall sample and analyze in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. The Director is authorized to prepare a form for this purpose and may periodically require users to update this information. Failure to submit this information shall be reasonable grounds for terminating service to the user and shall be considered a violation of this chapter. All wastewater analyses must be signed and certified in accordance with Section 12.07.210.

### **12.07.170 Wastewater Discharge Permit Requirement**

- A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director, except that a significant industrial user that has filed a timely application pursuant to Section 12.07.180 of this chapter may continue to discharge for the time period specified therein.
- B. The Director may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this chapter.
- C. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the sanctions set out in Sections 12.07.480 through 12.07.650 of this chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.

### **12.07.180 Wastewater Discharge Permitting: Existing Connections**

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of this chapter and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the Director for a wastewater discharge permit in accordance with Section 12.07.200 of this chapter, and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date of this chapter except in accordance with a wastewater discharge permit issued by the Director.

### **12.07.190 Wastewater Discharge Permitting: New Connections**

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, that complies with Section 12.07.200 of this chapter, must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

### **12.07.200 Wastewater Discharge Permit Application Contents**

- A. All users required to obtain a wastewater discharge permit must submit a permit application.
- B. The Director may require all users to submit as part of an application the following information:
  - 1. All information required by Section 12.07.310(B) of this chapter;
  - 2. Signatory and certification required by Section 12.07.210 of this chapter;
  - 3. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
  - 4. Number and type of employees, hours of operation, and proposed or actual hours of operation of a pretreatment system;
  - 5. Each product produced by type, amount, process or processes, and rate of production;
  - 6. Type and amount of raw materials processed (average and maximum per day);

7. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
8. Time and duration of discharges; and
9. Any other information as may be deemed necessary by the Director to evaluate the wastewater discharge permit application.

C. Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

### **12.07.210 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”.

All wastewater analyses must be signed by an authorized representative of the user and include the following standard data certification statement:

“I certify that all analyses performed for this report were performed in accordance with procedures established by the City of Troutdale and contained in 40 CFR Part 136 and amendments thereto, or with any other test procedures approved by the City”.

All wastewater user reports prepared by someone other than the authorized representative of the user must be signed by the actual preparer of the report and include the following qualified professional certification statement:

“I hereby certify under penalty of law that this information was obtained in accordance with the applicable procedures and requirements as specified in the Federal General Pretreatment Regulations and amendments thereto, and Chapter 12.07 of the Troutdale Municipal Code. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment”.

A facility determined to be a Non-Significant Categorical Industrial User pursuant to 40 CFR 403.3(v)(2) must annually submit the following certification statement, signed by an authorized representative of the user. This certification must accompany any alternative report required by the City:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR ----, I certify that, to the best of my knowledge and belief that during the period from -----, to ----- [month, days, year]:

- (a) The facility described as ----- [facility name] met the definition of a non-significant categorical Industrial User as described in 40 CFR Sec. 403.3(v)(2);
- (b) The facility complied with all applicable pretreatment standards and requirements during this reporting period; and
- (c) The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information:

-----“

### **12.07.220 Wastewater Discharge Permit Decisions**

The Director will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete wastewater discharge permit application, the Director will determine whether or not to issue a wastewater discharge permit. The Director may deny any application for a wastewater discharge permit. Appeals of the Director’s decision are subject to the provisions of Section 12.07.250.

### **12.07.230 Wastewater Discharge Permit Duration**

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the Director. Each wastewater discharge permit will indicate a specific date upon which it will expire.

### **12.07.240 Wastewater Discharge Permit Contents**

- A. A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the Director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.
- B. Wastewater discharge permits must contain:
1. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
  2. A statement that the wastewater discharge permit is nontransferable without prior notification and approval from the City in accordance with Section 12.07.270 of this chapter, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
  3. Effluent limits based on applicable federal pretreatment standards, or local limits, whichever is most restrictive;
  4. Self monitoring, sampling, reporting, notification, and record-keeping 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; and
  5. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law.
  6. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges, if deemed to be necessary by the City.
- C. Wastewater discharge permits may contain, but need not be limited to, the following conditions:
1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
  2. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
  3. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.
  4. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.
  5. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
  6. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
  7. Requirements for immediate reporting of any instance of noncompliance and for automatic re-sampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).



8. Compliance schedules for meeting pretreatment standards and requirements.
9. Requirements for maintaining and retaining plant records relating to wastewater discharge and affording the Director, or his representatives, access thereto.
10. Requirements for prior notification and approval by the Director of any new introduction of wastewater pollutants or of any change in the volume or character of the wastewater prior to introduction in the system.
11. Requirements for the prior notification and approval by the Director of any change in the manufacturing and/or pretreatment process used by the permittee.
12. Requirements for immediate notification of excessive, accidental or slug discharges, or any discharge which could cause any problems to the POTW.
13. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit.
14. Other conditions as deemed appropriate by the Director to ensure compliance with this chapter, and State and Federal laws, rules, and regulations.

#### **12.07.250 Wastewater Discharge Permit Appeals**

- A. The Director shall provide public notice of the issuance of a wastewater discharge permit. Any person, including the user, may petition the Director to reconsider the terms of a wastewater discharge permit within fourteen (14) days of notice of its issuance.
- B. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- C. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.
- D. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.
- E. If the Director fails to act within fifteen (15) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.
- F. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the Multnomah County Circuit Court within **thirty (30) days**. Failure to file the complaint within thirty (30) days will bar any alternative or subsequent appeals.

#### **12.07.260 Wastewater Discharge Permit Modification**

- A. The Director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
  1. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
  2. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;
  3. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  4. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, or the receiving waters;

5. Violation of any terms or conditions of the wastewater discharge permit;
6. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
7. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
8. To correct typographical or other errors in the wastewater discharge permit; or
9. To reflect a transfer of the facility ownership or operation to a new owner or operator.

B. The filing of a request by the permittee for a permit modification does not stay any permit condition.

#### **12.07.270 Wastewater Discharge Permit Transfer**

- A. Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least thirty (30) days advance notice to the Director and the Director approves the wastewater discharge permit transfer. The notice to the Director must include a provision for furnishing the new owner or operator with a copy of the existing permit and a written certification by the new owner or operator which:
1. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
  2. Identifies the specific date on which the transfer is to occur; and
  3. Acknowledges full responsibility for complying with the existing wastewater discharge permit.
- B. Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

#### **12.07.280 Wastewater Discharge Permit Revocation**

- A. The Director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
1. Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;
  2. Failure to provide prior notification to the Director of changed conditions pursuant to Section 12.07.350 of this chapter;
  3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
  4. Falsifying self-monitoring reports;
  5. Tampering with monitoring equipment;
  6. Refusing to allow the City timely access to the facility premises and records;
  7. Failure to meet effluent limitations;
  8. Failure to pay fines;
  9. Failure to pay sewer charges or permit fees;
  10. Failure to meet compliance schedules;
  11. Failure to complete a wastewater survey or the wastewater discharge permit application;
  12. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
  13. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this chapter.

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

### **12.07.290 Wastewater Discharge Permit Reissuance**

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 12.07.200 of this chapter, a minimum of ninety (90) days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing wastewater discharge permit has expired and has submitted its reapplication in the time period specified in this section, shall be deemed to have an effective wastewater discharge permit until the City issues or denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has expired and who failed to submit its reapplication in the time period specified herein will be deemed to be discharging without a wastewater discharge permit.

### **12.07.300 Regulation of Waste Received from Other Jurisdictions**

- A. If another municipality, or user located within another municipality, contributes wastewater to the POTW, the Director shall enter into an intergovernmental agreement with the contributing municipality.
- B. Prior to entering into an agreement required by paragraph A, above, the Director shall request the following information from the contributing municipality:
  - 1. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
  - 2. An inventory of all users located within the contributing municipality that are discharging to the POTW; and
  - 3. Such other information as the Director may deem necessary.
- C. An intergovernmental agreement, as required by paragraph A, above, shall contain the following conditions:
  - 1. A requirement for the contributing municipality to adopt a sewer use chapter which is at least as stringent as this chapter and local limits which are at least as stringent as those set out in Section 12.07.070 of this chapter. The requirement shall specify that such chapter and limits must be revised as necessary to reflect changes made to the City's chapter or local limits;
  - 2. A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis;
  - 3. A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Director; and which of these activities will be conducted jointly by the contributing municipality and the Director;
  - 4. A requirement for the contributing municipality to provide the Director with access to all information that the contributing municipality obtains as part of its pretreatment activities;
  - 5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
  - 6. Requirements for monitoring the contributing municipality's discharge;
  - 7. A provision ensuring the Director access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Director; and
  - 8. A provision specifying remedies available for breach of the terms of the intergovernmental agreement.

### **12.07.310 Baseline Monitoring Reports**

- A. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report which contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director a report which contains the information listed in paragraph B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- B. Users described above shall submit the information set forth below.
1. Identifying Information. The name and address of the facility, including the name of the operator and owner.
  2. Environmental Permits. A list of any environmental control permits held by or for the facility.
  3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
  4. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
  5. Measurement of Pollutants.
    - a. The categorical pretreatment standards applicable to each regulated process.
    - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the Director, 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 12.07.400 of this chapter. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the City or the applicable standards to determine compliance with the standard.
    - c. The User shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this paragraph.
    - d. Sampling must be performed in accordance with procedures set out in Section 12.07.410 of this chapter and certified.
    - e. The City may allow the submission of a baseline monitoring report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
  6. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 12.07.320.
  7. Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 12.07.210.

### **12.07.320 Compliance Schedule Progress Reports**

The following conditions shall apply to compliance schedules required by the City:

- A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- B. No increment referred to above shall exceed nine (9) months;
- C. The user shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- D. In no event shall more than nine (9) months elapse between such progress reports to the Director.
- E. If compliance dates are not met, or reports not submitted when due, the City may take appropriate enforcement action for lack of satisfactory progress toward compliance.

**12.07.330 Reports on Compliance with Categorical Pretreatment Standard Deadline**

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Director a report containing the information described in Section 12.07.310 (B)(4-6) of this chapter. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 12.07.210.

**12.07.340 Periodic Compliance Reports**

- A. All significant industrial users shall, at a frequency determined by the Director 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 compliance reports must be signed and certified in accordance with Section 12.07.210.
- 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 its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- C. If a user subject to the reporting requirement in this section monitors any regulated pollutant, at the appropriate sampling location, more frequently than required by the Director, using the procedures prescribed in Section 12.07.410 of this chapter, the results of this monitoring shall be included in the report.
- D. The City may reduce the requirement in paragraph (A) of this section to a requirement to report no less frequently than once a year, unless required more frequently in the categorical pretreatment standard or by the Approval Authority, where the user meets all of the following conditions:
  - 1. The user's total categorical wastewater flow does not exceed any of the following:
    - a. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the user discharges in batches;
    - b. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

- c. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with 40 CFR Section 403.5(c).
2. The user has not been in significant noncompliance, as defined in Section 12.07.470 for any time in the past two years;
3. The user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this user would result in data that are not representative of conditions during the reporting period;
4. The user must notify the City immediately of any changes at its facility causing it to no longer meet conditions of paragraphs (D)(1) or (2) of this section. Upon notification, the user must immediately begin complying with the minimum reporting in paragraph A of this section; and
5. The City must retain documentation to support the City's determination that a specific user qualifies for reduced reporting requirements under paragraph (D) of this section for a period of three (3) years after the expiration of the term of the control mechanism.

#### **12.07.350 Reports of Changed Conditions**

- A. Each user must notify the Director 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 ten (10) days before the change.
- B. The Director 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 Section 12.07.200.
- C. The Director may issue a wastewater discharge permit under Section 12.07.220 of this chapter or modify an existing wastewater discharge permit under Section 12.07.260 of this chapter 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 twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

#### **12.07.360 Reports of 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 Director of the incident. This notification shall include the location of the discharge, date and time thereof, type of waste, concentration and volume, if known, and corrective actions taken by the user. Any affected user shall be liable for any expense, loss or damage to the POTW, in addition to the amount of any fines imposed on the City on account thereof under state or federal laws.
- B. Within five (5) days following such discharge, the user shall, unless waived by the Director, submit to the Director a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter or other applicable law.
- C. A notice shall be permanently posted in conspicuous places advising employees whom to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

#### **12.07.370 Reports from Unpermitted Users**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Director as the Director may require.

### **12.07.380 Notice of Violation/Repeat Sampling and Reporting**

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

### **12.07.390 Notification of the Discharge of Hazardous Waste**

In compliance with 40 CFR 403.12(p), industrial users shall immediately notify the Director, DEQ, and EPA in writing of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.

### **12.07.400 Analytical Requirements**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

### **12.07.410 Sample Collection**

- A. Except as indicated in Section B, below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Director may authorize the use of time proportional sampling or a minimum of six (6) grab samples where the Director determines 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, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- C. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the City and contained in the user's wastewater discharge permit. For categorical dischargers, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6 (e) in order to evaluate compliance with the applicable federal pretreatment standards.
- D. All sample results shall indicate the time, date and location of sampling; methods of analysis, date of and person performing analysis; and a certification that such sampling and analysis is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed, using methodologies in 40 CFR Part 136, more frequently than what was required in its wastewater discharge permit, user shall submit all results of sampling and analysis of the discharge as part of user's self-monitoring report.
- E. The possession and handling of a sample from the time of collection through the time of disposal shall be documented on a chain of custody form. The actual person collecting the sample shall fill out the chain of custody form at the time of sampling. The chain of custody form shall be completed by all persons in possession of the sample until it is ultimately received at an analytical laboratory and disposed of. The chain of custody record shall be retained by the user and shall become part of the analysis documentation. If the user fails to retain proper and complete chain of custody documentation, analysis for the sample in question will be invalidated and the user shall sample again.

### **12.07.420 Timing**

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

#### **12.07.430 Record Keeping**

Users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter 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(s) 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 (3) 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 Director.

#### **12.07.440 Right of Entry: Inspection and Sampling**

- A. The Director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this chapter and any wastewater discharge permit or order issued hereunder. Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.
- B. Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City, State, or US EPA will be permitted to enter without delay for the purposes of performing specific responsibilities.
- C. The City, State, or US EPA shall have the right to inspect and/or install sampling equipment on the user's property, or require installation of such devices as are necessary to conduct sampling and/or metering of the user's operations.
- D. The Director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy.
- E. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be born by the user.
- F. Unreasonable delays in allowing City personnel access to the user's premises shall be a violation of this chapter.

#### **12.07.450 Search Warrants**

If the Director 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 chapter, 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 chapter or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Director may seek issuance of a search warrant from the Troutdale Municipal Court.

#### **12.07.460 Confidential Information**

- A. Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the Director, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable



State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report.

- B. Wastewater constituents and characteristics and other effluent data as defined by 40 CFR 403.14 will not be recognized as confidential information and will be available to the public without restriction.

#### **12.07.470 Publication of Users in Significant Noncompliance**

- A. The Director shall publish annually in January, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW, a list of the users which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.
- B. The term significant noncompliance shall mean:
  1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken for the same pollutant parameter during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits;
  2. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all of the measurements taken for the same pollutant parameter during a six- (6-)month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including instantaneous limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
  3. Any other violation of a Pretreatment Standard or Requirement that the Director determines has caused, alone or in combination with other discharges, interference or pass through, (including endangering the health of POTW personnel or the general public);
  4. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Director's exercise of its emergency authority to halt or prevent such a discharge;
  5. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
  6. Failure to provide, within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
  7. Failure to accurately report noncompliance; or
  8. Any other violation(s) which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

#### **12.07.480 Violation**

Any industrial user that violates any of the provisions in this chapter shall be subject to an enforcement action using any of the remedies and sanctions that are authorized in this chapter or state law. The Director shall determine which enforcement action to take to address the violation.

When the Director finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that user a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions,

shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

#### **12.07.485 Termination of Sanitary Sewer Service**

A. The Director may terminate sanitary sewer service in accordance with subsection B of this section under any of the following circumstances:

1. When the utility bill for the sanitary sewer service is delinquent as defined in Section 12.04.060 (C).
2. When the sanitary sewer service requires a discharge permit in accordance with Chapter 12.07 and such permit is not obtained.
3. When the sanitary sewer service is not operated in accordance with federal and state regulations and the terms and conditions of Chapter 12.04, 12.07 or other applicable local requirements, including the requirements of a wastewater discharge permit.
4. When the facility serviced by the sanitary sewer service is occupied prior to a Certificate of Occupancy being issued.
5. When the facility served by the sanitary sewer service does not comply with the provisions of the City of Troutdale "Construction Standards for Public Works Facilities".
6. When the facility served by the sanitary sewer service does not comply with a condition of approval as issued by the City Council, Planning Commission, or Site and Design Review Committee.
7. When the facility served by the sanitary sewer service is improperly connected to a City utility system or is connected without obtaining the required approvals or without paying the required fees and charges.
8. When an account receiving sanitary sewer service is terminated and a new account is not established.
9. In accordance with Section 12.07.540.

B. Sanitary sewer service may be terminated after providing the account holder with a fifteen-day written notice explaining the reason for the termination. An account holder who believes the termination notice is in error may submit a written appeal to the City Administrator at least five days prior to the noticed termination date. The appeal must clearly state the location of the sanitary sewer service, the alleged reason sanitary sewer service is being terminated, and why the reason for termination is in error. The City Administrator shall issue a written decision within five days after receipt of the appeal or, if a more thorough investigation is warranted or a policy issue must be referred to the City Council, suspend the termination action until a decision is rendered. If sanitary sewer service is terminated, it shall not be resumed until the reason for termination is cured and any applicable administrative fees are paid.

#### **12.07.490 Consent Orders**

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 12.07.510 and 12.07.520 and shall be judicially enforceable.

### **12.07.500 Show Cause Hearing**

The Director may order a user which has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

### **12.07.510 Compliance Orders**

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

### **12.07.520 Cease and Desist Orders**

- A. When the Director finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:
  - 1. Immediately comply with all requirements; and
  - 2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
- B. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

### **12.07.530 Administrative Fines**

- A. When the Director finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may fine such user in an amount not to exceed \$1,000. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of 12 percent (12%) of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.
- C. Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within ten (10) days of being notified of the fine. Where a request has merit, the Director may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The Director may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

#### **12.07.540 Emergency Suspensions**

- A. The Director may immediately suspend a user's discharge and the user's wastewater discharge permit, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.
- B. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of endangerment has passed, unless the termination proceedings in Section 12.07.550 are initiated against the user.
- C. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under Sections 12.07.500 or 12.07.550.
- D. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

#### **12.07.550 Termination of Discharge**

- A. In addition to the provisions in Section 12.07.280 and 12.07.485, any user who violates the following conditions is subject to discharge termination:
  - 1. Violation of wastewater discharge permit conditions;
  - 2. Failure to accurately report the wastewater constituents and characteristics of its discharge;
  - 3. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
  - 4. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
  - 5. Violation of the pretreatment standards in Section 12.07.040—12.07.110 of this chapter.
- B. Such noncompliant user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 12.07.500 why the proposed action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action against the user.

#### **12.07.560 Injunctive Relief**

When the Director finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may petition the Troutdale Municipal Court, or other court of competent jurisdiction, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this chapter on activities of the user. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

#### **12.07.570 Civil Penalties**

- A. A user who has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of one thousand dollars (\$1,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. The Director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages or fines incurred by the City.
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

**12.07.580 Criminal Prosecution**

- A. A user who willfully or negligently violates any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000) per violation, per day, or imprisonment for not more than one (1) year, or both.
- B. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least one thousand dollars (\$1,000), or be subject to imprisonment for not more than one (1) year, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.
- C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000) per violation, per day, or imprisonment for not more than one (1) year, or both.
- D. In the event of a second conviction, a user shall be punished by a fine of not more than three thousand dollars (\$3,000) per violation, per day, or imprisonment for not more than three (3) years, or both.

**12.07.590 Remedies Nonexclusive**

The remedies provided for in this chapter are not exclusive. The Director 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 Director may take other action against any user when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant user.

**12.07.600 Performance Bonds**

The Director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this chapter, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance.

**12.07.610 Liability Insurance**

The Director may decline to issue or reissue a wastewater discharge permit to any user who has failed to comply with any provision of this chapter, a previous wastewater discharge permit, or order issued hereunder, or any other

pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

### **12.07.620 Water Supply Severance**

Whenever a user has violated or continues to violate any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

### **12.07.630 Public Nuisances**

A violation of any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance. The Director may require any person with authority to remedy a violation of this chapter correct or abate such nuisance. Any person(s) creating a public nuisance shall be subject to the provisions of Chapter 8.28 governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

### **12.07.650 Contractor Listing**

Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by a user found to be in significant noncompliance with pretreatment standards or requirements may be terminated at the discretion of the Director.

### **12.07.660 Upset**

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (C), below, are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  1. An upset occurred and the user can identify the cause(s) of the upset;
  2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  3. The user has submitted the following information to the Director within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
    - a. A description of the indirect discharge and cause of noncompliance;
    - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users will have the opportunity for a judicial determination on any claim of upset only if an enforcement action is brought for noncompliance with categorical pretreatment standards.

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

### **12.07.670 Affirmative Defense to Prohibited Discharge Standards**

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 12.07.040A of this chapter or the specific prohibitions in Sections 12.07.040(B)(3) through (B)(18) of this chapter 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:

- A. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

### **12.07.680 Bypass**

- A. For the purposes of this section,
  - 1. "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
  - 2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.
- C. Notice of a bypass shall be provided as follows:
  - 1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the Director, at least ten (10) days before the date of the bypass, if possible.
  - 2. A user shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the 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 Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- D. Bypass is prohibited, and the Director may take an enforcement action against a user for a bypass, unless
  - 1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
  - 2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
  - 3. The user submitted notices as required under paragraph (C) of this section.
- E. The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

## **12.07.690 Wastewater Discharge Fees**

- A. There is established a wastewater discharge pretreatment program development fee to be paid by a user creating the need for a pretreatment program. The Council shall establish the amount of the fee by resolution and may, from time to time, change the fee amount. The fee that is established by Council resolution will be based on the cost the City incurs to develop a pretreatment program, including the establishment of local limits.
- B. There is established a wastewater discharge permit fee and a wastewater discharge permit application fee, to be paid by each user that is required to obtain a permit under this chapter. The Council shall establish the amount of the fees by resolution, and may, from time to time, change the fee amounts.
  - 1. The application fee that is established by Council resolution will be based on the costs the City incurs for processing applications, writing permits, and processing appeals.
  - 2. The permit fee that is established by Council resolution will be based on the costs the City incurs to implement and maintain a pretreatment program; develop report formats; monitor inspections; perform surveillance; sample and analyze discharge; review reports from industrial users; investigate complaints; review and respond to accidental discharge procedures and construction; enforce compliance with the provisions in this chapter; and for any other costs the City may incur for activities associated with provisions in this chapter.
- C. The wastewater discharge pretreatment program development fee, the application fee, and the permit fee imposed in this chapter are separate from all other fees, fines and penalties that are chargeable by the City.

## **12.07.700 Severability**

If any provision of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be effected and shall continue in full force and effect.