

RESOLUTION NO. 1707

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A POTW DISCHARGE AGREEMENT WITH TUBE SPECIALTIES

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Tube Specialties Co., Inc. (TSCO) owns and operates a business within the City and discharges industrial waste to the publicly owned treatment works (POTW) of the City.
2. TSCO forms, welds, and machines parts using steel and aluminized steel tubing stock to which an iron phosphate coating is applied during the cleaning process.
3. The City discovered that TSCO was a potential categorical industrial user during an industrial user survey conducted in response to the then-proposed Metal Products and Machining (MP&M) Rule. Since the City does not have a delegated pretreatment program, the results of the survey were submitted to the Oregon Department of Environmental Quality (DEQ) with a request for a categorical determination.
4. After DEQ requested and received additional information from TSCO through the City, that agency on December 8, 2003 determined that TSCO's iron phosphate 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 ("DEQ findings"). DEQ findings make TSCO subject to pretreatment standards under Part 433.17 of the Metal Finishing Regulations and Subpart J of 40 CFR 471.100-105 under the Metal Powders category. DEQ gave the City until March 8, 2004 to determine if it would develop a delegated pretreatment program or stop accepting TSCO's discharge.
5. TSCO currently discharges wastewater to the City's POTW from the iron phosphate process (40 CFR 433.1); TSCO does not currently discharge any wastewater from the powder coating process (40 CFR 471.100-105).
6. The U.S. Environmental Protection Agency (EPA) concurred with the DEQ findings by letter of December 10, 2003. In addition, EPA stated that TSCO is also subject to the requirements of 40 CFR 403.
7. TSCO disputed the DEQ findings and EPA ruling, and the City by letter of January 22, 2004 requested the upcoming EPA rulemaking process amend the appropriate portion of 40 CFR 433 to exclude the iron phosphate process from

40 CFR 433. EPA staff in Seattle and Washington D.C. indicated that the chances of this issue being considered anytime in the near future are "extremely remote".


8. The City reported to DEQ by letter of March 8, 2004 that the City would defer action on this matter until DEQ received a clear uniform direction from EPA.
9. DEQ received direction from EPA and required by letter of April 8, 2004 that the City develop an industrial pretreatment program and submit a plan and schedule for developing a program on or before April 30, 2004, unless TSCO considered a no discharge option.
10. EPA could enforce requirements of 40 CFR 403 and has the authority to take direct action against the City and TSCO by over filing DEQ at any time. The City is not responsible for direct action by EPA against TSCO.
11. The City reported to TSCO by letter of April 14, 2004 that TSCO must submit to the City a wastewater discharge permit application, a \$350 application fee, a baseline monitoring report and a 90-day compliance report meeting the requirements in 40 CFR 403.12 before April 29, 2004 if TSCO intended to continue to discharge wastewater to the POTW of the City. This deadline was not met.
12. TSCO by letter of April 30, 2004 notified the City of its intention to continue discharging wastewater to the POTW of the City. Accordingly, the City notified DEQ of TSCO's intention by letter of April 30, 2004.
13. In response, by letter of May 6, 2004, DEQ required the City to provide it with a copy of a "control mechanism" between the City and TSCO by July 1, 2004. The proposed "POTW" Discharge Agreement" is that control mechanism. The City's intention is to recover the cost of developing the federally-mandated industrial pretreatment program and a portion of the annual implementing costs from TSCO as established in the "agreement in principle" reached by the City Council and Tube Specialties on April 27, 2004.
14. TSCO submitted its baseline monitoring report on the federal deadline of June 8, 2004.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The Mayor is authorized to sign the POTW Discharge Agreement with Tube Specialties Co., Inc. in substantially the form as provided in Attachment A.

Section 2. This Resolution shall be effective immediately upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Paul A. Thalhofer, Mayor
June 23, 2004

Date



Debbie Stickney, City Recorder

Adopted: June 22, 2004



**Public Works Department
City of Troutdale
POTW DISCHARGE AGREEMENT**

This POTW Discharge Agreement ("Agreement") is entered into between Tube Specialties Company, Inc. ("User"), a corporation authorized to do business in the State of Oregon, and the City of Troutdale ("City") an Oregon Municipal Corporation.

RECITALS

- A. User owns and operates a business within the City and discharges industrial waste to the publicly owned treatment works (POTW) of the City.
- B. User forms, welds, and machines parts using steel and aluminized steel tubing stock to which an iron phosphate coating is applied during the cleaning process.
- C. City discovered that User was a potential categorical industrial user during an industrial user survey conducted in response to the then proposed Metal Products and Machining (MP&M) Rule. Since the City does not have a delegated pretreatment program, the results of the survey were submitted to the Oregon Department of Environmental Quality (DEQ) with a request for a categorical determination.
- D. After DEQ requested and received additional information from the User through the City, that agency on December 8, 2003 determined that User's iron phosphate constitutes "coating", which is one of six core processes defined in 40 CFR Part 433.1(a) and that User's powder coating operation qualifies as categorical under Part 471, Subpart J ("DEQ findings"). DEQ findings make User subject to pretreatment standards under Part 433.17 of the Metal Finishing Regulations and Subpart J of 40 CFR 471.100-105 under the Metal Powders category. DEQ gave the City until March 8, 2004 to determine if it would develop a delegated pretreatment program or stop accepting User's discharge.
- E. User currently discharges wastewater to the City's POTW from the iron phosphate process (40 CFR 433.1); user does not currently discharge any wastewater from the powder coating process (40 CFR 471.100-105).
- F. The U.S. Environmental Protection Agency ("EPA") concurred with the DEQ findings by letter of December 10, 2003. In addition, EPA stated that User is also subject to the requirements of 40 CFR 403.
- G. User disputed the DEQ findings and EPA ruling, and City by letter of January 22, 2004 requested the upcoming EPA rulemaking process amend the appropriate portion of 40 CFR 433 to exclude the iron phosphate process from 40 CFR 433. EPA staff in Seattle and Washington D.C. indicated that it was considering such an exemption, however, the chances of this issue being considered anytime in the near future are "extremely remote".
- H. City reported to DEQ by letter of March 8, 2004 that City would defer action on this matter until DEQ received a clear uniform direction from EPA.

- I. DEQ received direction from EPA and required by letter of April 8, 2004 that City develop an industrial pretreatment program and submit a plan and schedule for developing a program on or before April 30, 2004, unless User considered a no discharge option.
- J. EPA could enforce requirements of 40 CFR 403 and has the authority to take direct action against the City and User by over filing DEQ at any time. City is not responsible for direct action by EPA against User.
- K. City reported to User by letter of April 14, 2004 that User must submit to City a wastewater discharge permit application, a \$350 application fee, a baseline monitoring report and a 90-day compliance report meeting the requirements in 40 CFR 403.12 before April 29, 2004 if User is intending to continue to discharge wastewater to the POTW of the City.
- L. User and the City met on April 27, 2004, to discuss the options available to the User and the City. Additionally, User appeared before City Council on April 27, 2004, and an agreement in principal was reached regarding the development of an industrial pretreatment program by the City, with funding provided by User. Following the City Council meeting, User, by letter of April 30, 2004, notified City of its intention to continue discharging wastewater to the City's POTW under the industrial pretreatment program to be developed by the City.
- M. City's intention is to recover the cost of developing a federally mandated industrial pretreatment program and a portion of the yearly maintenance fees from User.
- N. In an effort to assure adequate funding for the development and implementation of a federally mandated industrial pretreatment program and to serve as an interim discharge agreement, City and User now enter into this Agreement.

AGREEMENT

1. User Fees:

1A. User shall file a complete wastewater discharge permit application with the City, with the \$350 application fee, on or before June 30, 2004.

1B. User shall pay the City for the costs to develop a federally mandated pretreatment program (the "Pretreatment Program Development Fee"). User's obligation to pay the Pretreatment Program Development Fee shall be limited to those tasks that are required by 40 CFR 403.8.

1C. If the City assesses a Pretreatment Program Development Fee to any new entity subject to federal industrial pretreatment standards that applies to discharge to the POTW, the City shall refund to User 75% of the amount paid by the new entity, until such time as User has received eighty (80) percent of the Pretreatment Program Development Fee paid by User pursuant to this Agreement.

1D. The City shall provide User with an estimate of the costs of developing the pretreatment program, including the costs estimated by any outside consultant, prior to incurring any costs under this Agreement. User shall have seven (7) days to review the cost estimate provided by the City before any costs are incurred by the City. If User determines that the costs are too high, User can choose to terminate the Agreement pursuant to the provisions set forth in Paragraph 4 below. All cost estimates obtained from outside consultant should be on a "cost not to exceed basis."

1E. City shall mail quarterly invoices to User requesting payments towards the Pretreatment Program Development Fee. Invoices will be issued until such time as the development of the pretreatment program is complete, or until such time as the City determines that additional work to develop the pretreatment program is not necessary. The invoices will describe the work that has been done to develop the pretreatment program and the costs associated with the work that has been done. User shall pay all invoices for the pretreatment program development fee within thirty (30) days of the date the invoice was mailed.

1F. User shall pay the City an annual wastewater discharge permit fee ("Annual Fee"). The Annual Fee shall be based solely on those tasks that are necessary to the implementation and maintenance of the City's industrial pretreatment program.

1G. If User is the only entity discharging to the POTW that is subject to federally mandated pretreatment standards, the amount of the Annual Fee shall be the total costs the City incurs to implement and maintain the pretreatment program for one year, minus fifty percent (50%) of the cost or \$20,000, whichever is less. If additional entities that are subject to federally mandated pretreatment standards discharge to the POTW, the User's amount of the Annual Fee shall be the sum of twelve monthly costs calculated by dividing the actual costs incurred for each month by the number of entities (plus one) for that month. An estimated Annual Fee shall be paid by the User at the beginning of the permit year; the adjusted Annual Fee shall be calculated within thirty (30) days following the end of the permit year. If the estimated Annual Fee paid exceeds the actual Annual Fee, the City shall refund its share of the excess amount to the User at that time. If the actual Annual Fee exceeds the estimated Annual Fee, the User shall pay its share of the difference to the City within thirty (30) days after being invoiced.

1H. City shall mail monthly progress reports to User during the development and implementation and maintenance of the pretreatment program.

2. Audit:

2A. User may request an audit of the Pretreatment Program Development Fee or Annual Fee (the "Fees"). The audit shall be done by an auditor that the User and City agree upon. The audit shall be limited to a review of the documentation that supports the City's calculation of the Fees based on the criteria set forth in Paragraph 1 above. Where the Fees include costs that are attributed to City employees, the hourly rate to be used shall be the sum of the employee's hourly pay and benefits and shall not be subject to review via the audit; provided, however, that the tasks performed by the City employee and the amount of time spent on such tasks for which the City used in calculating the Fees is subject to review via the audit.

2B. An audit request shall be filed with the City within fifteen (15) days of the date the City mailed the invoice for the Pretreatment Program Development Fee or the date the City notifies User whether or not an Adjusted Annual Fee has been calculated. If a request is late it shall be denied.

2C. User shall pay the Fees that are the subject of an audit within the timeframes set forth in paragraph 1E and 1G. The Fees shall be deposited in a City account where they will be held until such time as the audit is complete. If the findings of the audit demonstrate that the Fees were higher than the amounts authorized in this Agreement, the City shall refund the excess Fees to User within 15 days of the date the audit results are received. If the findings of the audit demonstrate that the Fees were less than the amounts authorized in this Agreement, User shall pay the shortage within thirty (30) days of the audit findings.

2D. User and the City shall share the costs of an audit.

3. Interim Discharge Requirements:

3A. User shall limit all pollutant discharges to the quantities identified in the following table:

Pollutant or pollutant property	Maximum for any 1 day	Monthly average shall not exceed
Milligrams per liter (mg/L)		
Cadmium (T)	0.11	0.07
Chromium (T)	2.77	1.71
Copper (T)	3.38	2.07
Lead (T)	0.69	0.43
Nickel (T)	3.98	2.38
Silver (T)	0.43	0.24
Zinc (T)	2.61	1.48
Cyanide (T)	1.20	0.65
TTO*	2.13
FOG		
Polar	100	100
Non-Polar	100	100

*TTO = total toxic organics

3B. User shall monitor and analyze its discharge monthly to demonstrate continued compliance with paragraph 3A. Samples shall be taken immediately downstream from the regulated process. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. All samples shall be representative of User's discharge. Monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. User shall submit to the City a quarterly report including the results of sampling and analysis identifying the nature and concentration of regulated pollutants in the discharge.

3C. If User elects to connect new process wastestreams to the City's POTW, at least ninety (90) days prior to the commencement of discharge, User shall submit to the City a baseline monitoring report compliant with 40 CFR 403.12. Within ninety (90) days following the commencement of the introduction of new process wastestreams to the City's POTW, User shall submit to the City a final compliance report compliant with 40 CFR 403.12.

3D. The City shall have the right to enter the premises of User to determine whether User is complying with all requirements of this interim wastewater discharge permit. User shall allow the City 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. The City, DEQ, or USEPA shall have the right to set-up on User's property, or require installation of, such devices as necessary to conduct sampling and/or metering of User's operations. Unreasonable delays in allowing City personnel access to User's premises shall be a violation of this agreement.

3E. User shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this agreement 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 at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning User or the City, or where User has been specifically notified of a longer retention period by the City of Troutdale.

3F. User shall comply with applicable City, state and federal pretreatment regulations.

4. Termination and Modification:

4A. User may terminate this Agreement if the United States Environmental Protection Agency issues an exemption for the iron phosphate coating process of User and the City has been paid all the Pretreatment Program Development Fees and Annual Fees that are due in accordance with paragraph 1. User shall provide thirty (30) days advance notice of its intent to terminate the Agreement.

4B. City may terminate this Agreement if it becomes unnecessary or infeasible to develop, implement, or maintain an industrial pretreatment program. City shall provide User ninety (90) days advance notice of its intent to terminate the Agreement.

4C. This Agreement may be modified or terminated by either party if changes in federal pretreatment regulations result in substantial increased costs to develop, implement or maintain the program, provided however, if User terminates this Agreement it shall pay the City for all the pretreatment program development fees and annual wastewater discharge permit fees that are due in accordance with paragraph 1.

4D. This Agreement may be modified or amended for any reason upon the mutual agreement of the parties.

4E. If this agreement is terminated for any reason other than the United States Environmental Protection Agency issuing an exemption for the iron phosphate coating process of User, User shall disconnect from the City's sanitary sewer system upon the date the Agreement is terminated, provided that the notice of intent to terminate has been provided as required under this Agreement.

4F. Any amendments to the provisions in this Agreement shall be in writing and signed by both parties.

5. Remedies:

5A. For each and every day that User is in violation of any provision in this Agreement, User shall pay to the City a penalty of \$1,000.

5B. If User fails to pay the Fees, or violates a requirement under the pretreatment program, the City may require User to disconnect from the City's sanitary sewer system within ninety (90) days of written notice by the City.

5C. In the event that either party disagrees with the interpretation of the requirements under this Agreement, prior to filing an action in court, the parties shall attempt to resolve the disagreement by engaging in discussions with each other or by engaging the services of a mutually agreeable third party. The parties may, by mutual agreement, participate in any form of alternative dispute resolution with a mutually agreeable third party acting as a mediator or arbitrator.

5D. This Agreement shall be construed according to the laws of the State of Oregon. Any action brought to enforce the terms and conditions herein contained shall be brought in Multnomah County, Oregon.

6. Notice:

Notices that are required under this Agreement shall be effective upon being deposited in the United States Mail, postage prepaid, addressed as follows:

City: Public Works Director
City of Troutdale
104 SE Kibling Avenue
Troutdale, OR 97060

User: Mark Weyhrich, President
Tube Specialties Company, Inc.
1459 NW Sundial Road
Troutdale, OR 97060

For the User:



Signature

Paul Thalhofer

Typed Name

Mayor

Title or Position

104 SE Kibling Ave.

Address

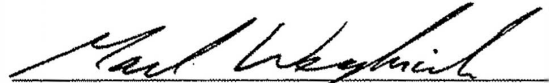
Troutdale, OR 97060

City, State, Zip Code

503-665-5175

Telephone No.

For the City:



Signature

Mark Weyhrich

Typed Name

PRESIDENT

Title or Position

1459 NW SUNDIAL ROAD

Address

TROUTDALE, OR 97060

City, State, Zip Code

503-618-8823

Telephone No.